

TECHNICAL ASSISTANCE DOCUMENT

**EXTENDED SCHOOL YEAR (ESY) SERVICES FOR
CHILDREN AND YOUTH
WITH DISABILITIES**



**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES**

**Revised
February 2004**

**TECHNICAL ASSISTANCE DOCUMENT
FOR
EXTENDED SCHOOL YEAR (ESY)
SERVICES FOR CHILDREN WITH DISABILITIES**

Extended School Year Services

34 CFR § 300.309 *Extended school year services.*

(a) *General.*

(1) *Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.*

(2) *Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§ 300.340–300.350, that the services are necessary for the provision of FAPE to the child.*

(3) *In implementing the requirements of this section, a public agency may not —*

(i) *Limit extended school year services to particular categories of disability; or*

(ii) *Unilaterally limit the type, amount, or duration of those services.*

(b) *Definition. As used in this section, the term extended school year services means special education and related services that —*

(1) *Are provided to a child with a disability —*

(i) *Beyond the normal school year of the public agency;*

(ii) *In accordance with the child's IEP; and*

(iii) *At no cost to the parents of the child; and*

(2) *Meet the standards of the SEA.*

Based on the requirements of the Individuals with Disabilities Act (IDEA) and implementing regulations at 34 CFR § 300.309, extended school year (ESY) services are special education and related services that are provided to children (aged 3 – 21 years) with disabilities, beyond the normal 180-day school year of the public agency, as necessary for a free appropriate public education (FAPE), in accordance with the child's Individualized Education Program (IEP), and meets the standards of the State and the the IDEA, as amended.

According to the IDEA and a 1990 Tenth Circuit Court of Appeals decision (Johnson v. Independent School District 4, Bixby), ESY services must be provided when it is determined, on an individual basis, by the IEP team in accordance with 34 CFR § 300.309 and 34 CFR §§ 300.340 - 300.350 Individualized Education Programs (see Federal Register March 12, 1999), that a child needs the services to receive FAPE.

As stated by OSEP on pages 12575 - 12576 of Number 48 of Volume 64 of the Federal Register published on March 12, 1999, the new ESY regulations contained in Section 300.309 of Title 24 of the Code of Federal Regulations did not "create new legal standards," instead they "codif[ied] well-established case law in this area" and "reflect[ed] the longstanding interpretation of the IDEA by the courts and the [federal] Department [of Education]."

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Each local educational agency (LEA) in Oklahoma shall ensure that local ESY policy complies with the Federal and State requirements to make ESY services available to those children with disabilities who have been determined by the IEP team to require ESY services for the provision of FAPE.

Free Appropriate Public Education

34 CFR § 300.13 Free appropriate public education.

As used in this part, the term free appropriate public education or FAPE

means special education and related services that-

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.340 – 300.350.

In Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. (1982) the U.S. Supreme Court established a twofold inquiry in determining if FAPE has been met:

- 1) Have the procedures set forth in the IDEA been adequately complied with?
- 2) Is the IEP reasonably calculated to enable the child to receive educational benefit?

IEP Team Determination of Need for ESY Services

- The need for ESY service(s) is a FAPE determination that must be determined on an individual basis by the IEP team; therefore, any predeterminations as to a child's need for services or services available via an ESY program are contrary to law.
- ESY policies and practices must not be invoked which have the effect of limiting ESY services based upon particular categories of disabilities (Letter to Baugh, 211 IDELR 481, OSERS, August 12, 1987).
- ESY may not be limited only to children who require a particular modality, such as a structured learning environment (Letter to Libous, 17 IDELR 419, OSERS, November 15, 1990).
- The type, amount, or duration of ESY services may not be unilaterally limited, but must be determined on an individual basis by the IEP team and may not be pre-determined (Letter to Libous, 17 IDELR 419, OSERS, November 15, 1990). Even the time period during which ESY may be offered may not be restricted, but rather determined on an individual basis.
- ESY services must be provided in accordance with the IEP/Review. The IEP team must specify which annual goal(s) and short-term objectives/benchmarks are to be addressed by the ESY services for the child to receive FAPE. Procedures for IEPs are described under the IDEA regulations at 34 CFR §§ 300.340 - 300.350; these are contained in the Policies and Procedures for Special Education in Oklahoma. The IEP team can initially determine that further evaluations are needed before the IEP team can make that decision (Letter to Baugh, 211 IDELR 481, OSERS, August 12, 1987). Any changes to the amount of services provided must also be made in an IEP

team meeting (Letter to Harkin, 213 IDELR 263, OSERS, September 15, 1989). The specific amount and type of special education and related services to be provided must also be stated in the IEP. The amount of time to be committed to each of the services must be stated in the IEP to be sufficiently clear to all who are involved in the IEP's development and implementation (Letter to Gregory, 17 IDELR 1180, OSEP, March 20, 1991).

- The question of a child's need for ESY services may be raised at any time by the parents and other IEP team members through an IEP or IEP Review meeting. Office of Special Education Programs (OSEP) states that ESY is not explicitly limited to summer months; rather, it could include any times outside the regular school year when a child requires additional services.
- For a child whose current IEP provides for ESY services, the question of a continuing need, or a change, for such services would be addressed in subsequent meetings held to develop, review, and revise the IEP. OSEP has indicated that just because ESY was or was not provided in a prior year does not inevitably indicate what is appropriate for the current year (Letter to Baugh, 211 IDELR 481, OSERS, August 12, 1987). Also, OSEP has stated that federal law does not mandate ESY if a child does not meet the IEP's goals (Letter to Kleczka, 30 IDELR 270, OSEP, September 29, 1998).
- The services offered via ESY may be different from those offered during the regular school year (Letter to Myers, 213 IDELR 255, OSEP, August 30, 1989). Also, a child may only require related services for ESY services to meet the FAPE standard. The determination as to what related services are necessary is based on the IEP team's determination of what is needed to assist the child to benefit from the special education being provided; and thus, should be the same that is used for the special education services determination. Related services, such as transportation, must be provided if they are necessary for the provision of ESY services (Letter to Baugh, 211 IDELR 481, OSERS, August 12, 1987).
- The least restrictive environment (LRE) requirement must be met for ESY, although the LRE for the duration of ESY services may differ from that during the school year. The LRE for the duration of an individual student's ESY services is based on the goals and objectives to be addressed during that period of time. LEAs do not have to establish public programs for nondisabled children solely to implement the LRE provision. However, if a child's IEP for the ESY period requires interaction with nondisabled children, then the district must develop alternative means for meeting that requirement. OSEP's discussion indicates that this also could include noneducational settings (Letter to Myers, 213 IDELR 255, OSEP, August 30, 1989).
- OSEP continues to emphasize that children who are eligible for special education and related services must have a transition IEP developed and implemented by their third birthday, so that a child who reaches age 3 during the summer must receive ESY services prior to the school year if the IEP team has determined a need for them. If ESY is not needed, then the initiation of services can begin with the school year (Letter to Ash, 18 IDELR 786, OSEP, March 19, 1992).

- Determination of need for ESY should be made by the IEP team in a timely manner to ensure free appropriate public education and early enough to allow resolution of disputes. ESY services must be implemented as soon as possible in accordance with the IEP/Review. While OSEP indicates that there is no specific timeline when an ESY determination must be made, OSEP has made it clear that ESY determinations must be made sufficiently in advance to ensure that the necessary services are provided in a timely manner.
- Parents retain the right to request a meeting for this purpose and may request a mediation or due process hearing to resolve disputes about ESY services to ensure FAPE. This means that disagreements regarding ESY constitute a FAPE issue which is resolvable via due process and other IDEA requirements (Letter to Anonymous, 22 IDELR 980, OSERS, March 24, 1995, and Letter to Ash, 18 IDELR 786, OSEP, March 19, 1992).

Factors for Considering the Need for ESY Services

The 1990 Tenth Circuit Court of Appeals decision lists possible factors for consideration by the IEP team in determining the need for ESY services to ensure FAPE. The IEP team may not limit analysis of the need for ESY to any single criterion. This list is not intended to be exhaustive, nor is it intended that each factor would necessarily impact planning for each child's IEP. The list of possible factors includes:

- degree of impairment;
- the degree of regression suffered by the child;
- the recovery time from this regression;
- the ability of the child's parents to provide the educational structure at home;
- the child's rate of progress;
- the child's behavioral problems;
- the child's physical problems;
- the availability of alternative resources;
- the ability of the child to interact with nondisabled children;
- the areas of the child's curriculum which need continuous attention;
- the child's vocational needs;
- whether the requested service is extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition; and
- other relevant factors as determined by the IEP team.

All children with disabilities will not require ESY services in order to receive FAPE. A key provision is that a child with a disability, regardless of categorical disability, may be considered for ESY services on an individual basis. If ESY services are determined to be necessary by the IEP team for a FAPE, those services must be provided.

Suggestions for Data and Evaluation Information to Determine ESY Needs

The IEP team must determine a child's need for ESY services by collecting, reviewing, and analyzing existing information and pertinent data, including, but not limited to, the child's disability, educational history, and present levels of performance/educational functioning and needs. Examples of data and information could involve a review of the following:

- criterion-referenced and standardized tests, including pretest and posttest data of a student's progress;
- functional assessments used in natural environments (e.g., home, community, work, school);
- analysis of data collected on a regular basis;
- evaluations and progress records for related services;
- parent, student, and/or service provider information;
- attendance records;
- behavior and disciplinary records;
- health/medical information;
- interviews with teachers and parents, students; and
- progress reports and assessments to determine the child's performance of IEP annual goals and objectives or benchmarks across time.

COMMON QUESTIONS ABOUT ESY SERVICES

1. Do all children with disabilities require ESY services?

No. The decision regarding the need for ESY services must be made on an individual basis, see 34 CFR 300.309 (a)(2). The decision must also address whether ESY services are necessary in order for the child to receive FAPE.

Determination of the need for ESY services is an IEP team decision designed to ensure the provision of FAPE. The need for ESY services must be reviewed annually for every student with a disability. ESY is not intended to provide education beyond that which has been determined necessary by the IEP team to ensure FAPE. In many cases, not all of the services specified in an individual student's IEP for the 180-day school year need to be provided as part of ESY services. Parental requests for ESY services must be considered. However, if ESY services are requested by the parent but the IEP team does not see the provision of the requested ESY services as necessary for the provision of FAPE, then Written Notice to Parents (OSDE Form 9) of the refusal must be provided.

2. Must ESY services be restricted to certain groups of children with disabilities, such as those with multiple disabilities?

No. Such a decision must be made on an individual basis by the IEP team and not limited exclusively to particular categorical disabilities. Such a practice, would violate the IDEA requirement that special education and related services, including ESY services, be provided in accordance with a child's individualized educational needs for provision of FAPE. In development, review, and revision of the IEP, team members will need to consider relevant data and evaluation information.

3. Must preschool-aged children with disabilities receive ESY services?

Preschool-aged children (3 – 5 years) may require ESY services if these services are determined to be necessary by the child's IEP team. The IEP team will determine whether the child needs ESY services based on relevant and developmentally appropriate data, including background information, current evaluations, and information. If a child transitioning from Part C, Early Intervention (SoonerStart), is determined to be eligible as a child with a disability under Part B and will reach his/her third birthday when the normal school year is not in session, the IEP team must consider whether ESY services are necessary for the provision of FAPE.

4. What criteria should be used in determining ESY services?

No single criterion has been identified as the determining factor for ESY services. Decisions regarding whether a child with a disability requires ESY services to receive a FAPE remain an IEP team decision and cannot be limited by use of a formula or single measure. Criteria that can be used to determine whether a student requires ESY services are not limited to those identified in the 1990 Tenth Circuit Court of Appeals decision (Johnson v. Independent School District 4, Bixby).

5. In practical terms, how might regression and recoupment be considered?

A child with a disability may need ESY services if the IEP team determines that the severity of regression caused by interruption of the child's educational program (such as school breaks) together with limited recoupment capacity, make it unlikely or impossible that the child will recover previously acquired skills within a reasonable period of time. If an agency maintains, regularly reviews, and updates existing information, then collecting additional data to assess regression-recoupment and the child's rate of progress may not always be needed. Examples of practical strategies for collecting and using such data are: (1) parent, teacher, and service provider interviews and staffing regarding the extent of regression during summer months or otherwise beyond the normal school year and the rate of recoupment following breaks in programming; (2) analysis of daily or weekly notes/logs and data collected on a regular basis, progress reports on annual goals provided to parents as often as for nondisabled students; (3) review of the IEP present levels, needs, and annual goals; and (4) comparison of relevant test results and/or functional assessment of skill levels during the beginning of the current year with skill levels at the end of the preceding school year. Assessment of progress towards the IEP annual goals could be continued at regular intervals (e.g., weekly, monthly, or quarterly) after the normal school year is resumed. The regression recoupment analysis is not the only measure used to determine the need for ESY.

6. May parents be included in the provision of ESY services?

Yes. After affirming a parent's ability to provide educational structure at home, an IEP team may determine that appropriate ESY services would consist totally or partially of such parental support. For example, as a result of parent counseling and training, parents may be assisted in acquiring the necessary skills that would allow them to support the implementation of their child's IEP [see 34 CFR § 300.24 (b)(7)].

7. What are some alternative ESY service delivery arrangements?

A wide variety of ESY services and service delivery arrangements are possible to address IEP annual goals for specific needs (e.g., behavior, speech, physical therapy, vocational/rehabilitation, or recreational). Provision of special education and related services for ESY may include alternative resources and services provided in community settings and facilities; home training, which focuses on training the primary caregiver/parents to work with the child; summer camp and other recreational programs; and contracts or arrangements for programs in conjunction with other agencies. Such alternative arrangements may provide opportunities for interactions with nondisabled children.

8. Is it possible for a student to receive only related service(s) during the ESY period?

Yes. The purpose of ESY services is to ensure the provision of FAPE. The IEP team reviews the student's progress on the IEP as a whole, utilizing a variety of criteria. Special education, related services, or both, may be determined necessary. The determination of what related services are necessary is based on the IEP team's determination of what is needed to assist the child to benefit from the special education

being provided during the entire year. In some cases, related services may be provided without special education services for the ESY period.

9. If a child is determined to need ESY services one year, are such services automatically required thereafter?

No. According to federal regulations at 34 CFR § 300.343(c), the LEA must ensure that the IEP team reviews a child's IEP at least once annually or more often as needed. This would include a review of IEP annual goals, ESY services previously provided, and areas which may need continued attention. A review of the IEP could be scheduled as often as deemed necessary and appropriate. Since a child's individual needs may change, so may a determination by the team regarding a child's need for ESY services to ensure FAPE.

In considering the need for ESY services, the IEP team may decide to postpone a decision until a later date. In such circumstances, the district should ensure that the team reconvenes within a timely manner. A determination may be considered timely if there were sufficient time to allow for resolution of disputes regarding ESY services before the break in services occurs.

10. May schools be obligated to provide transportation to children and youth receiving ESY services?

Yes. Federal regulations at 34 CFR § 300.24(b)(15) define transportation as a "related service" to be provided, if necessary, to assist a child with a disability to benefit from special education. If a child's IEP team determines that transportation is necessary for the child to receive FAPE, then transportation must be provided at no cost to parents. The determination of the child's individual needs and specific arrangements for transportation as a related service will be made by the IEP team.

11. May schools establish limits for the type, amount, or duration of ESY services?

No. A school district may not unilaterally limit the type, amount, or duration of ESY services. The IEP team determines on an individual basis the type, amount, and duration of ESY services necessary for the provision of FAPE. OSEP has issued a policy letter stating that limiting the duration of summer services for students with disabilities ". . . would violate the basic requirement that programs be designed to meet the individual needs of each child" (Letter to Baugh, 211 IDELR 481, OSERS, August 12, 1987). Any predetermination or set policy on the amount of time ESY will be provided is contrary to the regulations. Individual determinations of the number of weeks, days per week, and minutes per day should be based on each student's unique needs. If the IEP team determines the student needs services beyond the LEA's established 180-day school year, a plan should be developed to provide the needed services.

12. How are ESY services to be described on the IEP?

ESY services need to be described in such a manner that all parties to the IEP process are clear about the services to be provided. Therefore, it is necessary to document the goals and benchmarks or short-term objectives to be addressed during ESY services, including the type, amount (including time and frequency), duration (including

beginning and ending dates), and least restrictive environment (LRE) considerations of such services.

13. How does the LRE requirement of IDEA apply to ESY services?

ESY services, like all other special education services, must be provided in the least restrictive environment in which the IEP can be implemented. The federal regulations comments section referencing 34 CFR § 300.309 states that “. . . public agencies are not required to create new programs as a means of providing ESY services to students in integrated settings if the public agency does not provide services at that time for its nondisabled children.” A district is not required to create a program for the sole reason of providing LRE; however, it may be necessary to provide services in alternative settings if the most appropriate setting determined by the IEP team is not available.

The LRE for the duration of a student’s ESY services may differ from the LRE for the duration of the portion of the IEP in effect during the traditional school year. Not all goals from the current year are automatically carried over for ESY services. The IEP team targets specific goals to be addressed, and the LRE determination must be based on the most appropriate setting in which to address those goals. Because of this, the placement needed to implement the student’s IEP for ESY may differ from the regular school year placement.

14. If a student who receives special education during the school year needs to receive ESY in the summer, is this considered summer school?

No. If an IEP team determines that a student requires special education or related services beyond the traditional 180-day school year in order to receive FAPE, those services are, by definition, considered ESY services. The special education and related services provided during the summer period would be documented as ESY services on the IEP. “Summer School” may be one of the service delivery methods chosen by the IEP team.

15. Do parents have the right to request a due process hearing over ESY services?

Yes. ESY services may be necessary for a free appropriate public education; therefore, procedural safeguards include the right to request a due process hearing. Parents or guardians may request a hearing to challenge the identification, evaluation, or educational placement (The Tenth Circuit Court of Appeals indicated that the parties in the dispute should note “that the burden of proof in these matters rests with the party attacking the child’s individual education plan.”). In accordance with 34 CFR § 300.506, mediation must be available as an option whenever a hearing is requested. However, parents and schools may use mediation to resolve a dispute regarding ESY without a request for a due process hearing.

Child: _____ Birthdate: _____

Grade: _____ Date of Review: _____

District/ Agency: _____ Building/ Site: _____

CONSIDERATION FOR EXTENDED SCHOOL YEAR (ESY) SERVICES

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(iii) *At no cost to the parents of the child; and*

(2) *Meet the standards of the SEA.*

The following information may be completed by the IEP team during the annual IEP review or any time the need for ESY services is being considered by the IEP team to ensure a free appropriate public education (FAPE). Documentation should be considered and maintained in the child's individual special education records.

1. Skill areas and annual goals being considered:

a. List/explain:

2. Degree of the impairment:

a. Degree of impairment: Mild Moderate Severe

Describe/explain:

3. Degree of regression and the time necessary for recoupment of skills:

- a. Documented degree of regression in the past:

Documentation source/basis:

Documentation not available

- b. Documented amount of time required for recoupment of skills in the past:

Documentation source/basis:

Documentation not available

- c. Predicted degree of regression during interruption of child's educational program (such as school breaks):

- d. Predicted amount of time required for recoupment at the beginning of each school year if this child does not receive ESY services:

4. The Ability of the child's parents to provide educational structure at home:

Information/Comments:

5. The child's rate of progress:

Information/ data reviewed:

Comments on IEP annual goals and progress:

6. Describe any behavioral problems:

7. Describe physical problems which the child has:

8. Availability of alternative resources for this child:

9. The ability of the child to interact with nondisabled children:

Comments on IEP determination for least restrictive environment:

10. **Area(s) in curriculum which require continuous attention for the child:**

11. **Child's vocational needs:**

12. **Whether requested service(s) is "extraordinary" for this child's disability, as opposed to an integral part of a program for those with the child's disability:**

Yes

No

13. **Other relevant factors as determined by the IEP team:**

Additional information or comments:

The IEP team has determined ESY services are necessary for the provision of FAPE to this child.

*Yes

No

*The IEP annual goals and benchmarks or short-term objectives requiring ESY service(s) are determined by the IEP team in accordance with 34 CFR §§ 300.340 – 300.350. The type, amount, and duration of ESY services will be determined by the IEP team on an individual basis and not based on particular categories of disability.

IEP TEAM MEMBERS PARTICIPATING IN REVIEW OF EXISTING DATA FOR ESY:

Parent(s) Date

Student (as required) Date

Special Education Teacher Date

Regular Education Teacher Date

Administrative Representative Date

Related Service Provider(s) (as appropriate) Date

Others (indicate name and title) Date