

## Guidelines for Determining Need for Extended School Year (ESY) Services

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# Understanding the Legal and Practical Aspects of ESY

The legal and practical aspects of understanding extended school year (ESY) include the relevant federal regulations, California Code of Regulations, case law clarifications, and practical implications of what ESY is and is not.

## **FEDERAL REGULATIONS**

The Individuals with Disabilities Education Act (IDEA) and the corresponding Code of Federal Regulations (i.e., 34 CFR Part 300 §300) contain a number of citations relevant to the legal aspects of ESY.

- The Term “extended school year services” means special education and related services that:
  - Are provided to a child with a disability:
    - Beyond the normal school year of the public agency;
    - In accordance with the child's IEP; and
    - At no cost to the parents of the child; and
  - Meet the standards of the SEA. (34 CFR 300.106(b).)
- A child who meets eligibility requirements for special education is entitled to a FAPE.
  - A FAPE is defined, in pertinent part, as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's individualized education program (IEP).
  - Special education is defined, in pertinent part, as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.
- The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional and developmental needs of the child.
- ESY services are special education and related services provided to children with a disability beyond the normal school year.
- ESY services are necessary only if the IEP team finds, on an individual basis, that these services are necessary to provide a FAPE.
- An extended year program, when needed, as determined by the IEP team, shall be included in the pupil's IEP.
- ESY services must be in accord with a child's IEP.
  - The CFR does not prescribe the time in which the school district must present an ESY proposal.
  - School districts are entitled to have a reasonable time to implement ESY services. (see *Faulders v. Henrico County School Board* [E.D. Va. 2002], *Reinholdson v. School Board of Independent School District No. 11* [8th Cir. 2006], *Reusch v. Fountain* [D. Md. 1994])
- Federal law requires that children with disabilities be educated in the least restrictive environment (LRE) to the maximum extent appropriate, and authorizes removal of children with disabilities from the regular educational environment only when the nature

or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

- However, Section 300.115 of Title 34 of the Code of Federal Regulations is general, and is not directed specifically to ESY services. The Department has long interpreted its requirement of a continuum of alternative placements not to apply to summer programs.
- Because ESY services are provided during a period of time when the full continuum of alternative placements is not normally available for any students, the Department does not require States to ensure that a full continuum of placements is available solely for the purpose of providing ESY services. (*Letter to Myers, supra*, 16 IDELR 290.)
  - Furthermore, the section which prohibits the unilateral limitation of the type, amount, and duration of summer services, has never been interpreted as requiring a school district that does not offer a program in summer to create one simply to provide an LRE.
  - In commenting on the 1999 revisions to the IDEA regulations governing the ESY, the Department stated: While ESY services must be provided in the LRE, public agencies are not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the public agency does not provide services at that time for its nondisabled children.
- If a parent disagrees with the IEP and proposed placement, he or she may file a request or notice for a due process hearing.

### **CALIFORNIA CODE OF REGULATIONS**

Extended school year (ESY) services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, *and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.* The lack of clear evidence of such factors may not be used to deny an individual an ESY program if the individualized education program (IEP) team determines the need for such a program and includes ESY in the IEP pursuant to the California Code of Regulations (CCR §3043(f)).

- (a) ESY special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.
- (b) Individuals with exceptional needs who may require ESY are those who:
  - (1) Are placed in special classes or centers; or
  - (2) Are individuals with exceptional needs whose IEPs specify an extended year program as determined by the IEP Team.
- (c) The term "extended year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.
- (d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:

- (1) A maximum of 55 instructional days excluding holidays shall be allowed for individuals in special classes or centers for the severely handicapped; and
  - (2) A maximum of 30 instructional days excluding holidays shall be allowed for all other eligible pupils needing extended year.
- (e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance (ADA) generated beyond the maximum instructional days allowed in subsection (d)(1) and (2).
  - (f) An extended year program, when needed, as determined by the IEP team, shall be included in the pupil's IEP.
  - (g) In order to qualify for ADA revenue for extended year pupils, all of the following conditions must be met:
    - (1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the IEP to meet a pupil's unique needs.
    - (2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.
  - (h) If during the regular academic year an individual's IEP specifies integration in the regular classroom, a public education agency is not required to meet that component of the individualized program if no regular summer school programs are being offered by that agency.
  - (i) This section shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.

## **CASE LAW**

Due process cases and court decisions have provided the following guidance in determining what constitutes FAPE and/or a student's need for extended school year (ESY) services.

- A school district is required to provide a "basic floor of opportunity' . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Educ. v. Rowley*, 1982)
  - The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential (*Bd. of Educ. v. Rowley*, 1982; *Gregory K. v. Longview School District*, 9th Cir. 1987).
  - The public educational benefit must be more than *de minimis* or trivial. (*Doe v. Smith*, 6th Cir. 1989).
  - An IEP should confer a meaningful educational benefit (*T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ.*, 3rd Cir. 2000)
- Local Education Agencies (LEAs) are required to consider more than just the regression and recoupment analysis and consider other factors relevant in determining a student's need for special education services during ESY.
  - No single criterion can be used as a sole qualifying factor (*Johnson v. Independent School District No. 4*, 1990).
  - One factor to be considered is the critical stage of developing a skill which has great potential for increasing self-sufficiency. For such skill, if not completely acquired and

mastered, it is likely that the current level of acquisition will be lost due to the interruption of summer vacation (*Reusch v. Fountain*, 1994).

- There is a reference in *Fullerton USD vs. Parent* (OAH Case # 2011080355) that ESY services are recommended only if a pupil is at risk of a severe regression in skills that would require six to eight weeks at the start of the regular school year to recoup.
- LEAs are not required to create programs in order to provide ESY services.
  - In *Cordrey v. Euckert* (6<sup>th</sup> Cir 1990), the court noted that “the school district has no purely custodial duty to provide for handicapped children while similar provision is not made for others. Therefore, begin with the proposition that providing an extended school year is the exception and not the rule...”
  - An example would be a student who requires an integrated setting. If the LEA does not provide summer services for non-disabled students, the LEA is not required to create a new program (*Tuscaloosa County Board of Education*, SEA AL 2001; *Parent on Behalf of Student v. San Francisco Unfired School District*, OAH case # 2001040611.)
  - In the *Alameda USD v. Student* (OAH Case # 2007100793), the District offered a specialized academic classroom placement for students with moderate to severe disabilities located at an Elementary School for four hours a day, five days a week. The ESY offer was at a different campus than the student’s regular school year. The District did not operate an autism-specific SDC class during the summer ESY after the end of the regular school year. The special day class was taught by a teacher who conducted Student’s academic assessment, had many years experience teaching children with disabilities including autism, and was assisted by highly trained paraprofessionals. The class was small, highly structured, and facilitated language and social skills training throughout the day in a multi-sensory environment. Based on the above findings, District’s offer of a moderate to severe SDC class for the 2007 summer ESY, including children with autism, was appropriate.
- The content of ESY services are governed by the necessity to prevent skills or benefits already accrued from the prior year from facing significant jeopardy due to regression or lack of retention. (*McQueen v. Colorado Springs School District No. 11*, D. Colo. 2006). Additional skills training may be included in ESY when the IEP team determines that this is necessary to meet ESY skills maintenance goals.
- FAPE includes not only special education, but also related services.
  - A change in placement can occur when related services are modified in a way that is likely to affect in some significant way the student’s learning experience. A district is not required to provide prior written notice when a district makes minor discretionary decisions with regard to a student’s curriculum or assignment of teachers or entertaining suggestions for alternatives to a proposed placement. Requiring prior written notice for every suggestion of an alternative placement or service considered at an IEP meeting would render the process unworkable (*Student v. Tustin USD*, OAH case #2006070017).
  - An offer for ESY must address all areas of student need. In the *Garden Grove USD* OAH Case # 2007080547, the judge ruled that
    - The offer was not appropriate because it did not address occupational therapy services, which were necessary to prevent regression; however,

- Even though intensive behavior interventions (IBI) were not included in the ESY offer, it was established that the nature of the services provided to student would prevent undue regression over the summer, particularly because student was going to have a 1-1 aide.
- In determining whether the content of ESY failed to provide a student with FAPE, it is important to consider the following legal interpretations.
  - The standards for determining whether a student is entitled to an ESY placement in order to receive a FAPE are different from the standards pertaining to FAPE in the regular school year. The purpose of special education during the ESY is to prevent serious regression over the summer months. (*Hoelt v. Tucson Unified School District*, 9th Cir. 1992; *Letter to Myers*; OSEP 1989).
  - In *SS, JD, SS v. Henrico County School Board* (4<sup>th</sup> Cir. 2003), the Hearing Officer found that ESY services “were not for the purpose of achieving goals not met during the school year.”
  - The mere fact of likely regression is not enough to require an ESY placement, because all students “may regress to some extent during lengthy breaks from school.” The court ruled “ESY services are only necessary to FAPE when the benefits accrued a disabled child during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months” (*MM v. School Dist. of Greenville County*, 4th Cir 2002).
  - It must be established that the significant skill losses were of such degree and duration so as seriously to impede progress toward his/her educational goals. (*Kenton County School District v. Hunt* (6th Cir. 2004).
  - The analysis must focus primarily on the adequacy of the proposed program. If the school district’s program was reasonably calculated to provide the student some educational benefit, the school district’s offer will constitute a FAPE even if the student’s parents preferred another program and even if the parents’ preferred program would have resulted in greater educational benefits to the student. The focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the parents (*Gregory K.*).
  - An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight.
    - An IEP is “a snapshot, not a retrospective” and it must be evaluated in terms of what was objectively reasonable when the IEP was drafted (*Adams by & Through Adams v. Oregon*, 9th Cir. 1999)
    - The issue is what the record demonstrated that the IEP team knew when it indicated that ESY was unnecessary as the student was progressing appropriately and would not need ESY (*Santa Ana USD vs. Student and vice versa*, OAH Case #s 2005090037; 2005100257).
    - Evidence must support recommendations to offer or not offer ESY, even when an expert in autism opines in an Independent Educational Evaluation (IEE) that the student required ESY (*Parent vs. Torrance USD*, OAH Case # 2010080289).
    - Even when the student’s condition meets the first criteria for ESY (that her disabilities were likely to continue for a long time), the student did not establish that she had limited recoupment capacity that would render it impossible or unlikely to attain a level of self-sufficiency and independence that would otherwise be expected (*Parent v Roseville Joint Union High School District and Placer County Children’s System of Care*, OAH CASE # 2011061341).

## **PRACTICAL IMPLICATIONS: WHAT ESY IS AND IS NOT** (Adapted from [www.slc.sevier.org](http://www.slc.sevier.org) 2003)

### **Extended School Year (ESY) Is:**

- Based only on the individual student's specific critical skills that are critical to his /her overall education progress as determined by the IEP team.
- Designed to maintain student mastery of critical skills and objectives represented on the IEP and achieved during the regular school year.
- Designed to maintain a reasonable readiness to begin the next year.
- Focused on specific critical skills where regression, due to extended time off, may occur.
- Based on multi-criteria and not on a single factor.
- Considered as a strategy for minimizing the regression of skill, in order to shorten the time required to gain the same level of skill proficiency that the child exited with at the end of the school year.

### **Extended School Year (ESY) Is Not:**

- A mandated 12-month service for all students with disabilities.
- Required to function as a respite care service.
- Funded by General Fund.
- Required or intended to maximize educational opportunities for any student with disabilities.
- Necessary to continue instruction on all the previous year's IEP goals during the ESY period.
- Compulsory. Participation in the program is discretionary with the parents, who may choose to refuse the ESY service. There may be personal and family concerns that take precedence over ESY.
- Required solely when a child fails to achieve IEP goals and objectives during the school year.
- To be considered in order to help students with disabilities advance in relation to their peers.
- For those students who exhibit random regression solely related to transitional life situation or medical problems which result in degeneration.
- Subject to the same least restrictive environment (LRE) environment considerations as during the regular school year as the same LRE options are not available. Additionally, LRE for some students may be home with family members.
- A summer recreation program for students with disabilities.
- To provide a child with education beyond that which is prescribed in his/her IEP goals and objectives.
- For making up for poor attendance during regular school year.
- The primary means for credit recovery for classes failed during the regular school year.

## **Guidance for IEP Teams**

It is important that IEP team members understand who recommends ESY services, the difference between ESY and summer school, when ESY should be recommended, why ESY services should be documented in an individual student's IEP, and how eligibility for ESY services should be determined.

### **WHO RECOMMENDS ESY SERVICES?**

Both federal and state regulations make it clear that it is the responsibility of the individual education program (IEP) team to determine a child's need for ESY services. The IEP team membership must include a person knowledgeable about the range of services available, a general education teacher, a special education teacher, and the parent. The IEP team

membership may also include related services providers, assessment personnel, and/or the student.

### **WHAT IS THE DIFFERENCE BETWEEN ESY & SUMMER SCHOOL?**

ESY services are special education and related services that are required by an individual with exceptional needs beyond the regular school year. Such individuals shall have disabilities which are likely to continue indefinitely or for prolonged periods, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disability. It is the issues of regression and recoupment that provide a framework upon which to base discussion about the need for the student to receive special education support beyond the regular school year.

If the student does not require ESY, the student could be considered for regular summer school or regular summer intervention program services offered within the school district. Summer school classes are not special education, are not required, are not based upon a child's individual needs, do not require an IEP, and are not required in order for a child to receive FAPE. While summer school usually focuses on opportunities for secondary students to recover credits, summer intervention programs generally focus on the development of skills that students at risk of retention need in order to progress. Given that, summer intervention classes may very well be appropriate for students with disabilities who are working toward grade level standards.

Several court cases have referred to the "availability of alternative resources" when considering ESY services. The LEA could consider community programs that are available to students. The LEA must be cautious when identifying services provided by community agencies such as a Parks and Recreation program. These outside agencies have no requirement to maintain the student in their program.

### **WHEN SHOULD ESY BE RECOMMENDED?**

Since the need for ESY is primarily based on an unacceptable regression or recoupment time as demonstrated by the student with a disability, it is important to understand what might be acceptable for most students. Tilley, Cox, and Staybrook (1986) that found that most students experience some regression during summer break. Using standardized tests, they found the rate of regression for regular education students was 4%. Students with mild handicaps, hearing impairments, and serious behavior disorders regressed at approximately the same rate as their regular education peers. For students with moderate to severe handicaps, there was an increased rate of regression and a slower rate of recoupment. According to the study, the areas that were most impacted for those students were language, gross motor, fine motor, and self-help skills. Therefore, it is reasonable for students with moderate to severe disabilities to be considered for an ESY program that would concentrate on minimizing regression and recovery time.

When considering ESY for any student, the IEP must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. This decision should be based on a multi-faceted measurement, although there may be rare instances where the IEP team might consider ESY services based on a single criterion. In either case, the IEP team must decide a child's eligibility for ESY services based on data collected that reflects his/her regression/recoupment capacity. To help understand this process, a Data Collection Guide is provided in Appendix 1.

Several districts have year round calendars which may require a timeline for provision of ESY slightly different than traditional school year calendars. However, consideration of need for ESY services would follow a similar pattern as that outlined above. In both cases the number of days recommended for ESY is based on student data collected to support student need. Typically



ESY services are aligned with the summer school and/or summer intervention programs provided for general education students in the district or school of attendance. However, the IEP team may determine that more days are needed given the program options available and the student's identified needs.

### **WHY SHOULD ESY BE DOCUMENTED IN A CHILD'S IEP?**

ESY services are to be considered for students between the ages of three to twenty one or students who have not graduated from high school with a diploma. To ensure that the student receives a free appropriate public education (FAPE), ESY services should concentrate on the areas most impacted by regression and inadequate recoupment. These services may look markedly different in ESY than services provided during the regular school year. The IEP team decision is not driven by the setting in which the student is educated during the comprehensive school year. This may also be true for the frequency and/or the duration of services as based on the individual child's needs. The student's need for related services must also be considered as they relate to the child's benefiting from special education. Since it may be different, it is very important that the offer of FAPE for the ESY period be clearly documented within the IEP.

### **HOW SHOULD ESY ELIGIBILITY BE DETERMINED?**

The student's IEP should be the foundation for determining the need for ESY services. This can be achieved through ongoing assessment and/or review of progress toward goals/objectives. The IEP team meets to review the student's progress, considering a variety of measurements to provide a baseline that documents the student's regression and recoupment rate. The IEP team for an initial IEP will not be able to make this determination until after the student has been receiving the special education services and data has been collected. It is recommended that the IEP team reconvene after implementing the IEP for 3-6 months to review progress data and compare work from before and after break.

Since many districts have already implemented multiple measures to assess progress toward standards, the district's assessments and observational or informal data may be applicable to the IEP team determination of need for ESY. The assessment must be based on the IEP goals and/or objectives so that progress can be matched directly to each benchmark outlined and the data can be compared to support evaluation of service effectiveness. The team also needs to determine and document if the student will take the local multiple academic achievement measures with or without accommodations, with or without modifications, or take alternative measures.

The severity of a student's disability is a primary consideration in determining eligibility for ESY. Based on the Reusch v. Fountain case, the IEP team should consider the student's age, severity of the disability, presence of medically diagnosed health impairments, attainment of self-sufficiency, and development of an emerging, critical skill that will be lost due to interruption. Other factors to consider are regression rate and recoupment time in relation to normal rates, behavioral and physical problems, curricular areas which would be adversely impacted, and vocational needs. Younger students with medically diagnosed health impairments are more likely to be referred for ESY due to degenerative diseases and/or high absenteeism as a result of the health impairment. Mental health problems may also have an impact on a student's ability to maintain appropriate social, emotional and/or behavioral expectations when school is not in session and lead to regression in skills. The ability of the more mentally and physically challenged students to maintain self-sufficiency skills will continue to be a key issue in determining ESY eligibility.

Once ESY services are determined as necessary based on data collected and regression-recoupment rate, the IEP team must include a description of the services required by the student in his/her IEP in order to receive FAPE during the provision of ESY.

The Riverside County SELPA has developed a "*Determination of Need for ESY Services Worksheet*" (Appendix 2) to assist IEP team members in this decision making process. The Case Carrier begins the worksheet by identifying the student's name, date of birth, grade,

school, district, and Regular School Year Special Education Services. Various people (e.g., special education teacher, general education teacher, related services personnel, parent, and/or administrator) may provide information to complete the multiple criteria considerations in all areas of need. These should include:

- ✓ Teacher observations, running records, and benchmark measures;
- ✓ Progress toward goals/objectives;
- ✓ Evidence of regression following break;
- ✓ Evidence of difficulty recouping information and/or skills following break;
- ✓ Consideration of other options available; and
- ✓ Other factors.

With the above information in hand, the IEP team proceeds to answering the series of questions on the *Determination of Need for ESY Services Worksheet*. The worksheet is signed, dated, and attached to the student's IEP. Please note: This determination of need for ESY services needs to be completed annually.

## Planning for ESY

Effective planning for a successful ESY program involves working with other departments, communicating with site personnel, projecting ESY enrollment, meeting staffing needs, having a smooth registration process that includes communicating with parents, and arranging for transportation needs.

### **WORKING WITH OTHER DEPARTMENTS**

In beginning to plan for ESY it is critical to work closely with personnel from Educational Services Division to determine what plans are being made for summer intervention and summer school so that ESY services are aligned. Scheduling a general planning meeting with the following personnel to discuss their roles/responsibilities is critical.

- Educational Services: To determine dates, times, locations of summer programs; to provide leadership/direction to plans of all other department activities.
- Business Services: To discuss fiscal resources and/or limitations.
- Human Resources: To discuss projected and/or identified needs (e.g., administrative, certificated teachers, classified [secretaries, health technicians, attendance technicians, instructional aides, custodial], negotiated contract constraints, timelines, posting of openings, interview or appointment process, notifications to personnel, master schedule of assignments, board approval.
- Maintenance and Operations: To discuss facilities needs, custodial support, etc.
- Curriculum and Instruction: To determine course offerings in summer school, targeted population for summer intervention, instructional content of summer intervention, needed instructional materials, teacher preparation time, staff training or meeting needs, assessment strategies, progress reporting, etc.
- Selected Principals/Lead Teachers: To be involved in discussions and kept apprised of plans, to communicate to other principals, to facilitate registration procedures and data collection, to take necessary follow-up actions.
- Special Education: Identify the lead person to discuss projected ESY numbers, staffing needs, facilities, instructional materials, registration procedures, timelines, communicating with parents, nutrition, transportation, etc.
- Instructional Technology: To discuss how students enrolled in ESY, summer intervention, and summer school will be captured, transmittal and/or collection of achievement data, attendance reporting procedures, progress reports, etc.
- Food Services: To discuss nutrition program offerings, time schedules, and staffing needs

- **Transportation:** To be aware of sites, times, schedules, population or subgroup of students who will need to be bussed, information needed from sites, arranging routes and staff needed, determining strategies and responsibilities for communicating with departments and parents regarding transportation plans.
- **Health Services:** To determine need for health technicians, nurses, and/or related services instructional aides; to arrange for specialized equipment and/or materials to be available for students at assigned sites; to provide any necessary health or medical training to selected personnel.
- **County Office:** If the county operates programs within the district, it is important to include appropriate county personnel in these discussions to facilitate good communication and smooth program operations.

## **COMMUNICATING CALENDAR OF ACTIVITIES**

Once decisions have been made at the district level, it is important to communicate plans to site personnel. Although Educational Services Division will be sending out information regarding summer programs, it is important for the Special Education Office to communicate the specifics about ESY. A sample calendar of activities and master schedule of programs by site is available in the SELPA office.

## **PROJECTING ESY ENROLLMENT**

The Special Education administrator or Data Entry Clerk pull a report of all students with ESY services on their IEP through web-based IEP reporting system. The data query needs to include the students' last name, first name, birth date, grade, disability, ESY services, location, case carrier, and transportation status. This information can then be saved as an excel file and sorted by any of these features. This data will give you a maximum number of potential students for ESY. By sorting the data into categories, you can project possible number of students by services to project staffing needs. It is important to analyze ESY services to be sure to identify not only specialized academic instructional needs but also related services and transportation needs.

To get a more accurate projection, timelines will need to be established for registration processes and for communicating with staff members, parents, and other departments listed above. As much as possible, these timelines should align with what is happening for general education student enrollment in summer programs. However, because ESY is listed as a service in an IEP, even when parents miss the registration timeline enrollment must be taken due to the legal obligation of providing for FAPE.

## **MEETING STAFFING NEEDS**

These notes on meeting staffing needs incorporate ideas about pre-planning, selecting staff, notifying personnel, and informing other district/site personnel.

### **Pre-Planning**

Utilizing data on projected enrollment by grade level, programs, and sites, makes it possible to project staffing needs for summer programs, including ESY. Since the goal is to serve special education alongside general education summer programs, it is important to first identify what staff members are going to be provided for the site as a whole (e.g., principal, assistant principal, lead teacher, counselor, secretary, attendance clerks, security personnel [School Resource Officer, Supervision Aides], nurse and/or health technician, food services personnel, custodians, bus drivers). The supports needed from the special education program planning should be supplemental to these supports provided for all summer program attendees.

Special education ESY personnel considerations need to include teachers (mild-moderate, moderate-severe), related services personnel (e.g., speech language pathologist, occupational therapist, adapted PE, psychologists), instructional aides (e.g., nonsevere, severe, special

circumstance or related services), and program support (e.g., special education administrator, program specialist, and/or teacher on special assignment). In the analysis of student needs, which drives staffing needs, the number of days and/or hours per day of the various types of positions identified may need to be adjusted. For example, high school double sessions or longer days may be different than what is needed at elementary or middle school. If related services must be provided per IEPs, the days or hours of these personnel may vary as well.

Class sizes need to be determined so that staff can be added or deleted based upon actual attendance patterns (e.g., nonsevere 14 students to one teacher and one aide; severe 9 students to one teacher and two aides). It is important to communicate the projected staffing needs not only with Human Resources staff but also with those who are assigning facilities/classrooms at each location to ensure that each person employed has the appropriate space assignment.

### **Selecting Staff**

Based upon procedures established in the district, Human Resources will fly the positions available for certificated and classified personnel. It is important to indicate on the flyer that stability of positions will be based upon actual enrollment. Depending on district procedures, the application process may include an essay and/or interview. Based upon the district's negotiated contracts, consideration may need to be given to if the candidates applied for and/or were given a position the prior year. It is also important to consider staff members' preferences for grade level and program. Sample interview questions provided by Hemet USD follow.

1. Tell us why you are qualified for an ESY teaching position?
2. What strategies/methods will you use to ensure academic progress for students?
3. Describe your classroom management.
4. If the defined core program is not working, what would you utilize or implement?
5. If you are not selected, would you sub?  YES  NO
6. Questions?

It is important that a Special Education Administrator be involved in the ESY personnel decision making process to ensure that the right people are assigned to the appropriate programs/students. If personnel are given ESY assignments other than what they normally work during the regular school year, it is important to assess their needs for any specialized training and provide this prior to the first day of school. In addition, it is critical to have established means of communicating information regarding the needs of the students (see later section for more details).

### **Notifying Personnel**

In working closely with Human Resources, it is important to determine who will be sending notification letters to the special education personnel selected to work during ESY. Sample letters are available in the SELPA Office.

Once a staffing plan has been finalized, it is important to communicate this to all people involved. Again, it needs to be determined if the Human Resources or Special Education Department has this responsibility. Either in the same or a separate spreadsheet or letter, include the dates and hours selected personnel are scheduled to work. It is important to address both credentialed and classified support (e.g., ESY Instructional Aide assignments). Sample staffing plan formats are available in the SELPA Office.

### **REGISTRATION PROCESS**

The registration processes described herein include creating and distributing parent notification forms, creating class lists, and arranging for specialized transportation.

## **Creating and Distributing Parent Notification Forms**

As the district establishes criteria for summer intervention (e.g., at risk of retention) and summer school (e.g. credit recovery) programs, it may be possible to serve a large number of special education students in these programs. In these cases the parents would be provided the same registration information and follow the same processes as established for general education students.

In planning the ESY program, the Special Education administrator can determine if the standard letters to parents and registration forms utilized for general education summer programs will meet the needs of ESY enrollment. While it is important to follow the same timelines to the extent possible, it may be that ESY forms will look different than those utilized in general education. Because of variation in dates, times, and/or locations across grade levels, it may be necessary to establish different parent information letters and registration forms for the various groupings. To facilitate ease in sorting through the paperwork that is submitted, it is also advisable to establish a color paper code system (e.g., elementary = yellow, middle school = green, high school = purple, SH = pink). It is also important to have the parent information letters and registration forms available in English, Spanish, and any other high frequency language. While a designated administrator takes the lead, other personnel in the Special Education Office (e.g., coordinator, program specialist, secretary, and clerks) need to be familiar with the registration processes. Sample parent information letters and registration forms are available in the SELPA Office.

Once the ESY Registration Forms have been created, it is important to establish a method for distribution and collection. Typically the Special Education Department utilizes the site principals and/or case carriers to distribute this information to parents. A sample letter to case carriers and another for site administrators is available in the SELPA Office.

## **Creating Class Lists**

As registration forms are received, a staff member can revamp the original or begin to create and fill in an excel spread sheet indicating each student's last name, first name, birth date, grade, disability, ESY services, location, case carrier, and transportation status. Additional information obtained from the registration forms themselves (e.g., specific transportation needs, emergency information, health/medical problems, medications) can be added.

The Special Education administrator can begin to sort this data into ESY class lists by program and sites and begin to put in names of staff members assigned. An effective strategy is to create one excel spreadsheet with tabs at the bottom for each site. In this way the entire worksheet can be disseminated to people who need to see the entire program and/or sorted out by site only for distribution to selected personnel. Putting page breaks between teacher assignments also enables one to provide a class list for a single staff member. It is also important to insert in the header or footer the date the report was generated to track changes.

Following the recommended timelines with follow up communication with site personnel on requests for completed registration forms can help finalize the class lists and staffing plan. Although registration forms are distributed well in advance of the start of ESY, there may be new students enrolling and/or change in services for students after the original deadline. Given the legal requirement to offer FAPE, it is important to continue the registration process as long as possible. The class list information can also be utilized to begin communication with the transportation department.

## **Arranging For Transportation Needs**

Typically the Special Education Office maintains a list of students receiving specialized transportation during the regular school year that can be used as a reference for planning ESY transportation needs. As completed Registration Forms are received and class lists generated for each site, a list of students in need of bus transportation can be generated. Based upon

information collected, the list can indicate if transportation is needed to school, home from school, or both; the pick-up and drop-off addresses; emergency contact information; and any significant health/medical needs.

Based upon the individual needs of students, it may also be necessary to arrange for specialized transportation (e.g., wheelchair bus) for students who are attending summer intervention and/or summer school programs. As Registration forms for these programs may be going through a different department, it is important to establish how this information will be gathered and who will be responsible for arranging for the bus. If this falls within the Special Education Office, it is recommended that the same procedures utilized for ESY be followed.

It is important to communicate student and schedule information to the agency responsible for providing the transportation. They may need to receive the information way in advance in order to determine the number of drivers needed and routes. They may also require individual information sheets for each pupil in addition to the excel spread sheets. The person and/or department responsible for informing parents of the expected pick-up and drop-off times should be identified in the pre-planning stages. In addition, decisions should be made in advance on how to handle situations where no one is home to receive the child after school. Given all this, it critical to include a representative from the transportation department in the preplanning stages, establish information needed, and facilitate ongoing communication throughout the planning and implementation phases.

Once routes are established, it is important to add the bus/route number into the spread sheet. Prior to the start of classes, the master list of who is being transported should be provided to the summer program site administrators, health office, and case carriers. Once school has started, it is important to continue communication to resolve any parent complaints, add or drop students, etc.

### **MEETING PARTICIPATING STUDENTS' NEEDS**

Gathering information about the needs of the students attending ESY can be done at the same time as Registration if a copy of each student's most recent complete IEP, any subsequent IEP addendums, most recent multiple measures results, latest report card and progress toward goals report are collected. Another alternative is to have the case carriers complete an "ESY Cover Sheet" such as the one in Appendix 3.

Although the focus is on providing ESY services, many special education students may be enrolled in summer intervention and/or summer school classes. Providing basic information such as that noted in Appendix 3 may be useful to the general education teachers and/or site administrators working with these students.

In addition to academic instruction, students may need related services supports during the ESY program. If so, the targeted goal areas, frequency, and intensity need to be considered in developing the staffing plan and built into the daily or weekly schedule. If a staff member hired is not familiar with the students, s/he needs to be provided the same information as the ESY teacher (copy of each student's most recent complete IEP, any subsequent IEP addendums, most recent multiple measures results, latest report card and progress toward goals report) to help guide development of lesson plans/activities.

Similarly, it is likely that teachers will be assigned students that they are not familiar with and they will need time to review the records and develop lesson plans. It is critical that the teachers are provided the appropriate instructional materials to meet the needs of their students during ESY. If possible, try to keep the students who need functional life skills curriculum in the same classroom environment to which they are accustomed and in which the instructional materials are readily available. If this is not possible, plans must be made to transport the needed materials to the new classroom. Likewise, teachers of core curricular content areas will need to have the materials provided to them. In general, basic materials and supplies provided to general education teachers for summer intervention and/or summer school should be

provided to the special education teachers as well. Any additional budgetary considerations for purchase of additional materials or supplies and/or community outings need to be built into planning. If the teachers are not familiar with the grade level and/or content to which they have been assigned for ESY instruction, some staff development time may need to be built into the schedule prior to the students' arrival.

## **“Just Prior” Communications**

To facilitate understanding of everyone involved, there are often “just prior” communications to administrators, teachers, related services staff, and parents.

### **TO ADMINISTRATORS**

As noted previously, knowing who is going to be attending each site, their assignment, and their needs is critical. Aligning special education's plans to the other summer program plans and participating in collaborative planning meetings helps to keep everyone aware. The pre-planning work has generated excel spread sheets for staffing, student lists by teacher, and a transportation list. A copy of this information needs to be provided to the site and district administrators overseeing the summer programs. Copies may also need to be provided to the health offices, attendance clerks, counselors, and/or instructional technology department based upon what was established in the pre-planning meetings. The extent of what individual student information (e.g., copy of IEP or “ESY Cover Sheet”) needs to be distributed and to who should also be pre-established and provided just prior to the start of the session.

### **TO TEACHERS AND RELATED SERVICES STAFF**

As noted previously, it is critical that the teachers and related services staff members who will be providing the direct instruction to the students are familiar with their needs. One district provided a copy of the excel spread sheet class list, transportation list, and individual student information (stapled together copy of each student's most recent complete IEP, any subsequent IEP addendums, most recent multiple measures results, latest report card and progress toward goals report) to each teacher in a rubber banded package. Another district provided a notebook for each teacher that included copies of complete IEPs for students assigned to their caseload during ESY.

### **Progress Monitoring**

Pre-Post assessment measures and/or progress reports may be employed to evaluate students' progress during the ESY instructional program. By working closely with the Educational Services personnel, it may be possible for the special education students to take the same evaluation measure as other students, with or without accommodations or modifications, or alternative measure(s) may need to be identified. Selecting the measure(s) and clearly communicating with staff members how and when to administer these are also important considerations in planning for successful programs. Similarly, the same progress report form and/or a special education progress toward goals report form may be used.

Close communication between the district office ESY administrative and support staff members, site administrators, and teachers can alleviate many potential problems in this area. Keeping everyone aware of the plans also makes it possible for anyone to answer questions that arise from parents. Providing clear direction to teachers on expectations for completing pre-post assessments and/or progress reporting is also critical. If formal report cards and/or grades will be reported for credits, this information needs to go to the site administrator, counselor, and/or Registrar. Staff members should also be advised on what to do with the student information once the session is over.

## **TO PARENTS**

Since parents typically complete the ESY Registration Form many weeks before the start of the summer program, it is important to send a “just prior” letter out to them, including the dates of ESY, location of services, hours of operation, name of teacher, classroom room number, information about transportation (if applicable), and contact telephone number.

## **Final Notes**

In the district level planning meetings it is important to schedule time to debrief the successes and struggles of the summer programs. Providing time for teachers to discuss what went well and/or where more support was needed prior to leaving for the summer can provide valuable input into planning for the future. Similarly, pulling together the administrative team members at the end of the session or near the opening of the next school year provides the opportunity to review information from the Educational Services, Business Services, Human Resources, Maintenance and Operations, Curriculum and Instruction, Special Education, Instructional Technology, Food Services, Transportation, Health Services, County Office, principals and lead teacher perspectives. Doing so sets the stage to begin the planning again the next year.

As information is gathered back together at the end of the ESY session(s), it is important to have a plan for distribution of progress reporting back to the case carriers and the parents. It will be important for the IEP team members to consider response to ESY services and impact on regression and recoupment time as they begin the new school year. Analyzing results helps the team start back through the processes of determining need for ESY services in the next year.

Approved by Coordinating Council: November 19, 2004  
Revised January 25, 2008, April 18, 2008, May 18, 2012



# Data Collection Guide

<b>First 8 weeks of school</b>
<ul style="list-style-type: none"><li>• Collect data and re-teach</li><li>• Compare to Spring data to determine if the student recouped his/her skills from previous year (This data should be the basis of the ESY eligibility discussion at the annual IEP)</li><li>• Instruction and ongoing data collection</li><li>• As soon as a student is found eligible for ESY, document the reasons why ESY is recommended on the IEP summary page or on an addendum IEP</li><li>• Include data supporting the recommendation for ESY</li><li>• Continue instruction and document progress on progress reports</li></ul>
<b>Following the first and second grading period</b>
<p>*For new students or any student for whom you were unable to gather regression/recoupment data during the first 8 weeks of school, review data before and after any break from school (e.g. Thanksgiving, Winter or Spring break) to determine if student may have a significant regression/recoupment problem</p> <ul style="list-style-type: none"><li>• Use data collected as the basis for ESY eligibility discussion at the annual review IEP or addendum meeting</li><li>• Re-teaching time should equal the length of the break (1 week break = 1 week re-teaching; retest)</li><li>• As soon as students are found eligible for ESY, the reasons for eligibility are documented on the IEP summary sheet or addendum</li><li>• Continue instruction and document progress on progress report</li></ul>
<b>Two to three months prior to the end of the school year</b>
<ul style="list-style-type: none"><li>• Notify district administrator for students eligible for ESY<ul style="list-style-type: none"><li>➤ Be sure to include documentation to support decision</li></ul></li><li>• Continue to teach and gather data for last quarter/trimester of the school year</li><li>• If the data indicates the student has a need for ESY and this has not yet been addressed, convene an IEP team meeting<ul style="list-style-type: none"><li>➤ If the team determines services are warranted, notify the district administrator as explained above</li></ul></li></ul>
<b>When should ESY Data Collection occur?</b>
<ul style="list-style-type: none"><li>• Recommended times for data collection:<ul style="list-style-type: none"><li>➤ At the end of regular school year</li><li>➤ At the end of summer program</li><li>➤ At the beginning of subsequent school year</li><li>➤ Before and after school vacations; if student has been out of school for other reasons</li><li>➤ Ongoing collection of information throughout the school year</li></ul></li></ul>

Adapted from [www.kyrene.org/resource/esy](http://www.kyrene.org/resource/esy)

**RIVERSIDE COUNTY SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)**  
**ESY ELIGIBILITY WORKSHEET**

Student Name: \_\_\_\_\_ Date of Birth: \_\_ / \_\_ / \_\_\_\_ IEP Date: \_\_ / \_\_ / \_\_\_\_

Age: \_\_\_\_\_ Grade: \_\_\_\_\_ Gender: \_\_\_\_\_

### Definitions

**ESY:** Extended School Year services are programs and services that assist the student in working toward the same goals and objectives that the student works on during the school year. ESY services are only provided for those areas on the current IEP where the student has demonstrated a) regression of skills during an extended school break and b) limited ability to benefit from re-teaching of skills after an extended school break. Regression Loss of previously attained skills documented by a review of the IEP goals, due to an extended school break.

**Rate of Recoupment:** Length of time required to re-learn skills following an extended school break.

**Regression and Recoupment:** Some students have disabilities that are likely to continue indefinitely or for a prolonged period. In this situation, interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (5 C.C.R. Section 3043.)

**Directions: The IEP Team shall determine the following in order to designate a student as requiring ESY as part of FAPE.**

**Using input from staff and parents, answer the following questions:**

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	1. At the start of the school year, with a review period equal to that of general education students, was the student unable to regain skills lost over the break that would otherwise be expected in view of the student's disabling condition? If YES, specify what area(s)
<input type="checkbox"/>	<input type="checkbox"/>	2. Does this student display a loss of previously taught skills and an inability to regain those skills following interruptions in instruction during the regular school year, i.e., Thanksgiving break, Winter Break, and Spring Break? If YES, specify what area(s)
<input type="checkbox"/>	<input type="checkbox"/>	3. Is the current student at a crucial stage in learning a skill(s), such that an interruption in school program might cause loss of a skill(s) that the student would not be able to re-learn in a reasonable period of time in view of the student's disabling condition? If YES, specify what essential skill(s)
<input type="checkbox"/>	<input type="checkbox"/>	4. Is the student able to maintain the skills identified without Extended School Year? If NO, specify what skill(s)
<input type="checkbox"/>	<input type="checkbox"/>	5. Does the student require ESY to continue to achieve at the level of independence that is expected in view of the student's disabling condition?

**Note: Refer to criteria specified on the ESY Worksheet page 2, if answer is "yes" on #5 above.**

**RIVERSIDE COUNTY SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)  
ESY ELIGIBILITY WORKSHEET**

**Student Name:** \_\_\_\_\_ **Date of Birth:** \_\_ / \_\_ / \_\_\_\_ **IEP Date:** \_\_ / \_\_ / \_\_\_\_

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	<p>1. The student demonstrates a pattern of past regression in skills as evidenced by breaks of more than four weeks:</p> <p>Comments (describe the degree (minimal or serious) of actual or likely regression following a school break):</p> <p><b>Unknown</b> <input type="checkbox"/></p>
		<p>2. What is the estimated amount of time it takes or it may take the student to regain the prior level of knowledge skills, benefits or functioning following a school break:</p> <p><input type="checkbox"/> One Month or less    <input type="checkbox"/> Up to 3 months    <input type="checkbox"/> 4 to 6 months    <input type="checkbox"/> Other</p> <p>Comments:</p>
		<p>3. Describe the student's rate of learning (as compared with the student's ability to recoup after a break):</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>4. Does the IEP team feel the student's disability will continue indefinitely or for a prolonged period of time?</p> <p>Comments (describe the degree (minimal or serious) of actual or likely regression following a school break):</p> <p><b>Unknown</b> <input type="checkbox"/> Describe the degree, nature and severity of the student's disability:</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>5. Does the IEP team feel it will be impossible or unlikely the student will attain self-sufficiency and independence expected in view of the student's disability following a break?</p> <p>Comments (describe the degree (minimal or serious) of actual or likely regression following a school break):</p> <p><b>Unsure</b> <input type="checkbox"/></p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>6. Is the student at a critical point of skill acquisition or readiness where their ability to acquire the skills will be lost or greatly reduced as a result of an interruption of services? If yes, describe:</p> <p><b>Unsure</b> <input type="checkbox"/></p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>7. Are there any other issues concerning the student's physical, medical condition, emotional, social, behavioral, mental health, academic and/or vocational issues, and his/her ability to be with typically developing peers that may be adversely impacted if the student does not receive ESY services? If yes, describe:</p> <p><b>Unsure</b> <input type="checkbox"/></p>

# ESY Cover Sheet

Student Name: \_\_\_\_\_ Age: \_\_\_\_ Grade: \_\_\_\_ Site: \_\_\_\_\_

Disability: \_\_\_\_\_ Services: \_\_\_\_\_

How disability shows up in class: \_\_\_\_\_

Special behavioral or discipline considerations:  Yes  No

Positive behavioral intervention plan?  Yes  No

Target Area(s): \_\_\_\_\_

Reading Level: \_\_\_\_\_ Reading Comprehension Level: \_\_\_\_\_

Target Goal: \_\_\_\_\_

Target Goal: \_\_\_\_\_

Functional Writing: \_\_\_\_\_

Target Goal: \_\_\_\_\_

Functional Math: \_\_\_\_\_

Target Goal: \_\_\_\_\_

Social/Emotional: \_\_\_\_\_

Target Goal: \_\_\_\_\_

Health/Medical Concerns: \_\_\_\_\_

Parent Involvement:  High  Medium  Low

Other: \_\_\_\_\_

**Possible Predictive Factors in Determining if ESY services are Necessary:**  
(*Johnson v. Indep. Sch. Dist. No. 4*, 17 IDELR 170 (10th Cir. 1990), *cert. denied*, 110 LRP 38025, 500 U.S. 905 (1991).)

- **Type and Severity** – In what ways does the student’s disability and/or intensity of needs impact the maintenance of learned skills?
- **Behavioral/Physical** –
  - Are there behavioral or physical factors that negatively impact the student’s ability to maintain learned skills?
  - Have there been extended absences that impact ability to maintain learned skills?
  - Have there been major life events that impact ability to maintain learned skills?
  - Have there been significant behavioral challenges that interfere with the maintenance of learned skills?
- **Alternative Resources** –
  - What community/home resources are already planned or could be available in order for the student to maintain learned skills?
  - How does the parents’ ability to provide educational structure at home impact the child’s ability to maintain learned skills?
- **Ability to Interact with Nondisabled Peers** –
  - Does the lack of opportunities for the student to interact with nondisabled peers significantly interfere with maintenance of learned skills?
  - What community/home support is needed to provide necessary opportunities for the student?
- **Curriculum that Needs Continuous Attention** –
  - Are there any objectives on the IEP that require ongoing support in order to maintain learned skills?
  - Are there other elements of the IEP (such as a behavior plan or health care plan that require ongoing support in order to maintain learned skills?
- **Vocational Needs** –
  - Does the student require ongoing support in order to maintain learned vocational skills?
- **Extraordinary vs. Integral** –
  - What support/services are essential, as well as reasonable, to meet this student’s individual needs in order to maintain learned skills?
- **Child’s Rate of Progress** –
  - How does the length of time that the student takes to learn a skill negatively impact the maintenance of learned skills?
  - Would the interruption of services be detrimental to the student’s continued progress?
- **Other Relevant Factors** –
  - Has anything occurred additionally throughout the year that ought to be considered?