



NOVEMBER 23, 2010

ACTION REQUIRED
 INFORMATIONAL

TO: Chancellor, District of Columbia Public Schools (DCPS)
Public Charter School Board
Public Charter School Directors
Principals, DCPS

FROM: Beth H. Colleye
Interim State Superintendent of Education

RE: Extended School Year (ESY) Services Policy

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INTRODUCTION

The purpose of this Memorandum is to establish state-level standards and criteria for extended school year (ESY) services that are consistent with the Individuals with Disabilities Education Act (IDEA) requirement to provide a free appropriate public education (FAPE) to all students with disabilities. It is the expectation of the Office of the State Superintendent of Education (OSSE) that all local educational agencies (LEAs) implement this policy to support Individualized Education Program (IEP) Teams in making appropriate ESY eligibility determinations and service designations.¹

DEFINITION OF EXTENDED SCHOOL YEAR (ESY) SERVICES

Extended school year (ESY) services are IDEA Part B special education and related services that are provided to a student with a disability beyond an LEA's regularly scheduled school year. Similar to other Part B services, ESY services must be provided in accordance with the student's IEP and at no cost to the parents of the student.² The designation of ESY services must be individualized to the unique needs of each student. LEAs may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of these services.³

¹ 34 C.F.R. §300.106(b)(2)

² 34 C.F.R. §300.106(b)(1)

³ 34 C.F.R. §300.106(a)(3)



DIFFERENCE BETWEEN ESY SERVICES AND SUMMER SCHOOL

By definition, ESY services are distinct from summer school and summer enrichment programs, which typically offer generalized content on a predetermined schedule. A student's need for ESY services cannot be fulfilled by summer programming that is not implemented according to the student's IEP. ESY services are often considered for the summer break, but may be provided during other times outside of the normal school year, such as before and after regular school hours or during winter or spring break, if the IEP Team determines that the student requires ESY services during those time periods in order to receive FAPE.

ELIGIBILITY FRAMEWORK FOR EXTENDED SCHOOL YEAR (ESY) SERVICES

Eligibility for ESY services must be considered on an annual basis as part of the IEP process for every student with a disability.⁴ The intent of ESY services is to provide FAPE, not to provide additional resources or maximize programming beyond FAPE. When an IEP Team makes a decision regarding ESY eligibility, it is determining whether the benefits gained during the regular school year would be significantly jeopardized if the student does not receive ESY services. OSSE has established the following criteria for the IEP Team to apply in determining ESY eligibility:⁵

Criterion 1: Impact of Break in Service on Critical Skills

The IEP Team begins the ESY determination process by considering whether the break in service will jeopardize one or more critical skills. In the context of ESY services, the phrase *critical skill* refers to a skill that is essential to a student's overall educational progress. A critical skill may be an academic skill, such as reading, or a non-academic skill that has a direct educational impact, such as a fine motor skill.⁶ The IEP Team is required to describe the educational impact of the break in service on any identified critical skill and to support any identified concerns with student data. See Analysis of Student Data Section. ESY services are not necessary for FAPE if the IEP Team does not have concerns about the impact of the break in service on any of the student's critical skills.

Criterion 2: Degree of Regression of Critical Skill

The IEP Team must consider the degree of regression that the student will experience in any critical skill identified as potentially being jeopardized by the break in service. In the context of ESY services, the term *regression* refers to a decrease in performance level or ability related to a previously attained critical skill. Since most students experience some natural regression during breaks in service, the IEP Team should use student data to determine if there is a likelihood of significant regression (*i.e.* the student would need to relearn the critical skill or skill set in its entirety, to the detriment of his/her overall educational progress). See Analysis of Student Data

⁴ 34 C.F.R. §300.106(a)(2); 34 C.F.R. §300.324(b)(1)(i)

⁵ "States may use recoupment and retention as their sole criteria but they are not limited to these standards and have considerable flexibility in determining eligibility for ESY services and establishing State standards for making ESY determinations. However, whatever standard a state uses must be consistent with the individually-oriented requirements of [IDEA 2004] and may not limit eligibility for ESY services to students with a particular disability category or be applied in a manner that denies students with disabilities who require ESY services in order to receive FAPE access to necessary services." 71 Fed. Reg. 46582 – 46583 (August 14, 2006)

⁶ Non-academic skills also include social, functional, and behavioral skills that have a direct educational impact. ESY eligibility decisions based on the identification of a critical skill that is related to behavior must reference and build upon the student's behavioral intervention plan (BIP) and functional behavior assessment (FBA).



Section. ESY services are not necessary for FAPE if there is little or no risk of significant critical skill regression.

Criterion 3: Time Required for Recoupment of Critical Skill

The IEP Team must consider the time the student would require for recoupment of any critical skill identified as potentially being jeopardized by the break in service. In the context of ESY services, the term *recoupment* refers to a student's capacity to recover a regressed critical skill to a degree demonstrated prior to the break in service. Due to natural regression, most students will require a reasonable amount of time for recoupment once school reconvenes. The IEP Team must use student data to assess whether the time the student requires for critical skill recoupment is extraordinary. See Analysis of Student Data Section. ESY services are not appropriate for students with disabilities who can recoup critical skills with re-teaching in a reasonable amount of time.

ANALYSIS OF STUDENT DATA

IEP Teams must use student data to quantify, to the extent possible, the likely impact of a break in service on educational benefit, through a rigorous discussion of critical skill regression and recoupment. In order to make well-informed ESY eligibility and service decisions, IEP Teams must utilize at least three months of progress monitoring data from the current school year. The term *progress monitoring data* refers to student information that, collected and measured over time, demonstrates a performance trend toward or away from the achievement of a specified goal in the student's IEP. Examples of progress monitoring data include assessment data, progress or service notes, classroom observations, and student work samples. Other sources of data that IEP Teams must use, if available, to inform and support their decisions include:

- Historical data that documents the level of regression of a critical skill and time needed for the recoupment of the critical skill following previous breaks from service;
- Medical records or evaluations that speak to the nature/severity of the student's disability as it relates to the student's need for consistent access to highly-structured programming; and
- Peer-reviewed literature that provides research substantiating the incremental nature of the critical skill acquisition, along with developmental data that indicate that the student is at a critical stage of learning or on the verge of acquiring an emerging skill within a skill set.

For an IEP Team's ESY decisions to be considered complete, the IEP Team must identify the source of student data utilized and describe the analysis of such student data for each eligibility criteria in the student's IEP. All supporting documentation must be uploaded to the Special Education Data System (SEDS) no later than 5 business days after the ESY eligibility determination.

APPROPRIATE DESIGNATION OF ESY SERVICES

Once an IEP Team has completed its analysis of student data and has determined whether the student is eligible for ESY services, the IEP Team must designate special education and/or related services that are directly relevant to preventing the anticipated significant regression of the identified critical skill. Designated ESY services may include all, some, or at minimum one, of the special education and/or related services that the student receives during the school year. It is inappropriate for an IEP Team to designate an entirely new service that is not substantively linked to the student's existing services.



The IEP Team must specify frequency, duration, and setting of ESY service delivery in the IEP in a manner consistent with OSSE's Related Services Policy. The term *frequency* refers to how often a special education or related service will be provided (*i.e.* the number of sessions per week and the length of each session). The term *duration* refers to how long the LEA will continue to provide the special education or related service (*i.e.* how many weeks or months of service as indicated by start and end date). The term *setting* refers to the decision regarding whether the designated services will be delivered in a general education or a non-general education learning environment.

Similar to special education and related services provided during the year, ESY services must be provided in the student's least restrictive environment (LRE). However, LEAs are not expected to create entire programs to accommodate individual students in a general education setting.⁷ The IEP Team may make alternative arrangements (*e.g.* services within the student's home) if such a location does not interfere with service delivery or conflict with ESY goals (*e.g.* those goals specific to socialization).

Eligibility for ESY-Related Special Education Transportation Services

Students eligible for transportation as a related service during the school year are eligible for transportation as a related service for the duration of ESY services. Students who were not determined eligible for transportation as a related service during the school year may be eligible for transportation as a related service for the duration of ESY services, if the IEP Team, applying new student data such as location of ESY services, determines that the student is eligible using the established state-level criteria. All ESY-related transportation eligibility decisions must be recorded in the student's IEP. LEAs must submit a completed ESY administrative transportation request form to OSSE-DOT no later than 5 business days after the ESY-related transportation eligibility determination.

DEVELOPMENT OF ESY GOALS

An IEP Team that determines that a student is eligible for ESY services must develop and document at least one ESY goal per identified critical skill. The goal should be designed to ensure that the student will retain the identified critical skill rather than acquire new skills. However, LEAs are not prohibited from teaching a new skill if required to assist the student in retaining the identified critical skill. The goal(s) must link service delivery to critical skill performance in a way that is specific, measurable, attainable, relevant, and time-limited. Each goal should have a clear description of the content taught, the way in which the student's progress will be measured, and the frequency with which the student's cumulative data will be assessed for necessary adjustments. All service decisions, terms, and goals must be documented in SEDS.

LEA RESPONSIBILITY TO PARTICIPATE IN & CERTIFY ESY DECISIONS

For ESY services that are designated for the summer months, LEAs must ensure that all ESY eligibility determinations, service designations, and location site decisions are made in a timely manner. An LEA's responsibility to ensure timely ESY decisions includes certification of the following affirmative ESY eligibility and service decisions:⁸

⁷ ESY services must be provided in the LRE. However, LEAs are not required to create new programs as a means of providing ESY to students with disabilities in integrated settings if the LEA does not provide such programs at that time for its general education students. 71 Fed. Reg. 46582 (August 14, 2006)

⁸ The term "certification" refers to the requirement that LEAs provide adequate and timely notice to OSSE of ESY and ESY-related services that result in state-level expenditures. The term "certification" does not imply that LEAs have unilateral decision-making discretion over ESY decisions, which remain the domain of the IEP Team. DCPS does not have to certify



LEA Certification of ESY Decisions for Students Served by Nonpublic Schools

LEAs must certify all affirmative ESY eligibility and service decisions for all students served by nonpublic schools to OSSE⁹ no later than the first Monday of May every school year. To meet this certification requirement, LEAs must submit the LEA Certification Form listing all students eligible for ESY services to be provided by nonpublic schools. ESY service decisions that are not properly and timely certified by an LEA will be monitored by OSSE, for compliance with IDEA, to ensure that LEAs have participated adequately in IEP Team decision-making.¹⁰ OSSE will not pay invoices for ESY services where there is no documentation of the LEA's knowledge of, or involvement or participation in, the IEP Team decision regarding eligibility and service designation for ESY.

LEA Certification of ESY-Related Transportation Service Decisions

LEAs must certify all affirmative ESY-related transportation eligibility decisions, including all ESY service site location assignments, to the Department of Transportation at OSSE (OSSE-DOT) no later than the first Monday of May every school year. To meet this certification requirement, LEAs must submit the LEA Certification Form listing all students eligible for ESY-related transportation services. OSSE-DOT will not process requests for ESY-related transportation services resulting from IEP Team decisions made without appropriate knowledge or involvement of the LEA at which the student is enrolled, and will not process requests for students who did not receive transportation during the school year without proper documentation in SEDS as required by the Special Education Transportation Policy.

DOCUMENTATION OF ESY SERVICE IMPLEMENTATION & CLOSEOUT SUMMARY REQUIREMENT

After all ESY decisions have been certified, LEAs must continue to fulfill their obligation to provide FAPE by ensuring that ESY services are provided by qualified service providers, implemented according to the services and terms specified in the student's IEP, and documented in service logs in SEDS.¹¹ Once ESY services have been rendered to the student for the duration specified in the student's IEP, the LEA must examine the service log record to ensure completeness, and must complete a final closeout summary in SEDS that summarizes 1) the progress made on the student's ESY goal(s) and 2) the status of the identified critical skill(s) in terms of the resulting level of regression and the anticipated time required for recoupment. All summer closeout summaries must be completed prior to the beginning of the next school year.

COMPLIANCE AND MONITORING

The U.S. Department of Education's Office of Special Education Programs (OSEP) requires that every State Education Agency monitor LEAs to ensure compliance with IDEA Part B. A finding of LEA noncompliance by the OSSE results in the requirement to submit an improvement plan containing corrective actions for each area of noncompliance. The OSSE may also recommend or require training

"District Charter" ESY decisions to OSSE, as District Charters are responsible for the costs of providing ESY services to their students.

⁹ The LEA at which the student is enrolled is responsible for being involved in all ESY decisions, including ESY decisions made in IEP Team meetings convened at nonpublic schools. Consistent with OSSE's IEP Process Policy, LEAs may participate in IEP Team meetings in-person or through designation of nonpublic personnel. Regardless of mode of participation, the LEA remains responsible for being actively involved in all IEP decisions. 34 C.F.R. §300.325(b)(2)

¹⁰ 34 C.F.R. §300.325(b)

¹¹ Responsibility for service implementation remains with the LEA, even if a nonpublic school implements a student's IEP. 34 C.F.R. §300.325(c)



and technical assistance to LEA staff when crafting corrective actions. All items of noncompliance must, by federal law, be corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.¹²

All LEAs must comply with monitoring requirements established annually by the OSSE, which include the collection and submission of both quantitative and qualitative data that supports monitoring for regulatory compliance and programmatic quality. Additionally, a subset of LEAs will be selected for the OSSE's focused monitoring process annually.

ADDITIONAL GUIDANCE

OSSE is committed to ensuring that all children with disabilities receive a free appropriate public education in compliance with the law and that LEAs have the knowledge base and tools to support LEA compliance, including, but not limited to, necessary training and technical assistance.

This memorandum supersedes all previous policy, memorandum, and/or guidance promulgated by the state educational agency (SEA). Please direct any questions regarding the content of this document to Grace Chien, LEA Policy and Charter Implementation Specialist, at (202) 741-5089 or by email at Grace.Chien@dc.gov.

¹² 34 C.F.R. §300.604(a)