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## NJ DOE OSEP POLICY LETTERS

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May 24, 1999

**TO:** Chief School Administrator  
 Director of Special Education  
 Director of a State Facility  
 Administrator of a Charter School  
 Administrator of an Approved Private School for the Disabled  
 Administrator of a College-Operated Program  
 Administrator of an Approved Clinic or Agency

**FROM:** Barbara Gantwerk, Director  
 Office of Special Education Programs

**SUBJECT: Extended School Year**

The issue of extended school year for students with disabilities is of considerable importance to this office. In the last revision of the state special education regulations, it was clarified at N.J.A.C. 6A:14-4.3(b) that the IEP team must make an individual determination regarding the need for an extended school year program at the IEP meeting. To assist districts in understanding this responsibility, I am issuing the attached clarification.

*Attachment*

c: David C. Hespe, Commissioner  
 Barbara Anderson  
 Bob DeSando  
 Douglas Groff  
 Madeleine Mansier  
 John Sherry  
 County Superintendent  
 County Supervisor of Child Study  
 State Special Education Advisory Council  
 Office of Administrative Law  
 Agency and Organization Concerned with Special Education  
 Higher Education Council

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### **EXTENDED SCHOOL YEAR (Attachment)**

The federal law, Individuals with Disabilities Education Act (IDEA), and New Jersey special education code specify the requirements local school districts must follow in providing special education and related services to students with disabilities.

In meeting their obligation to offer each child with a disability a free, appropriate public education (FAPE), local school districts must make available programs and services that meet a child's individual needs. Some children may

require the provision of services beyond the traditional school year. Such services are components known as extended school year (ESY) services. Federal and state law and regulations do not require that every student with a disability receive extended school year services. These decisions are to be made in each individual case based on established eligibility criteria that have evolved over the past 20+ years through case law and procedural application of the IDEA.

This technical assistance document provides a summary of ESY requirements along with helpful tips to be used by parents and school districts when addressing issues involving the provision of extended school year services. It is the result of a concentrated analysis of leading case law and policy interpretations by the U.S. Department of Education's Office of Special Education Programs (OSEP). The document is presented in a question and answer format. OSEP periodically examines each state's ESY policy and implementation as part of its regular monitoring procedures. This document was produced to enable New Jersey to meet its commitment of ensuring the delivery of a free and appropriate public education to students with disabilities.

## **FREQUENTLY ASKED QUESTIONS**

### **1. What does Extended School Year (ESY) mean?**

The term "extended school year" services means educational programming beyond the traditional 180 day school year for eligible students with disabilities as outlined by the Individuals with Disabilities Education Act (IDEA).

### **2. Who must be considered for ESY services?**

Every student with a disability under IDEA must be considered for ESY services. The determination of whether a student is eligible for ESY services is made on an individual basis by the student's IEP team and must be discussed at each annual IEP review meeting.

### **3. Who determines ESY eligibility?**

The IEP team determines eligibility for ESY services. The team is made up of the parent, child if appropriate, regular education teacher if the student is or may be in a regular class, at least one special education teacher or provider, at least one child study team member, the school district representative who is qualified to provide or supervise the provision of special education and is knowledgeable about the general curriculum and the available resources, and others at the parent's or school's discretion.

### **4. What criteria should be used in making an ESY eligibility determination?**

While there is no single criterion used in making an eligibility determination, case law has established several factors to be considered. One standard is the regression/recoupment analysis which considers the amount of regression a student experiences as a result of an interruption in educational services with the amount of time required to regain the prior level of skill. Other criteria may include the nature and severity of the student's disability, the ability of the child's parents to provide educational structure in the home, behavioral and physical impairments, the ability of the student to interact with nondisabled peers, the student's vocational needs, the availability of alternative resources, whether the requested services are "extraordinary" for the student's condition, "emerging skills" and "breakthrough opportunities," as when a student is on the brink of learning to read.

Regression/recoupment analysis is an integral part of the determination of the appropriateness of ESY services, but it is not the only measure used in determining the necessity of a structured extended school year program.

Consideration of all pertinent information and individual student circumstances are taken into account in determining appropriateness of ESY programming.

ESY is not limited to certain categories of disability and must be considered for all students with disabilities receiving special education and related services as identified.

### **5. How is eligibility for ESY services determined?**

Consideration of a broad range of highly detailed information by the IEP team is essential when determining eligibility for ESY services. Parent/teacher ongoing communication and assessment of the IEP goals and objectives as they relate to the regression and recoupment of a student's progress, work samples, test results, report cards, homework, progress reports and parent observations are examples of typical information and documentation used when determining eligibility for ESY services. Establishing a series of measurement timelines is helpful in providing a baseline to document regression and recoupment. In general, any information that can assist the IEP team in developing a composite of the level of functioning and circumstances having an impact on the student's educational

performance should be presented.

**Additional factors to be considered include the following:**

- The degree of the impairment;
- The degree of the regression;
- The recovery time from the 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 and physical needs;
- 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; and
- Whether the requested services are extraordinary for the child's condition as opposed to an integral part of the program for those with the child's condition.

A schedule for collecting data about a student's progress can be helpful. Collecting data related to the IEP goals and objectives as they relate to ESY determination can provide the essential information in determining not only ESY eligibility but the specific services that may be needed by the student.

**Recommended Schedule:**

- At the end of the regular school year;
- At the end of the summer program;
- At the beginning of the subsequent school year;
- At the end of the subsequent school year;
- Before/after school vacations;
- An ongoing collection of information throughout the school year; and
- Before/after student has been out of school for other reasons.

**6. Are students required to fail in order to be eligible for ESY services?**

No. Students cannot be required to fail before being eligible for ESY. ESY must be determined individually based on the needs of the student.

**7. How is ESY structured?**

The IEP team will determine the type, duration, and frequency of services for a student receiving an ESY program. The goals and objectives should be a continuation of all or part of the school year IEP, although the ESY services may be modified to provide maintenance of acquired skills during periods of interruption of school.

**8. What types of ESY models are available?**

Like any special education service decision, the individual needs of the student determine the program and services to be provided. ESY service options may include, but are not limited to:

- Support services for maintenance of skills, such as math, reading, etc.;
- Home instruction or consultation to provide parents with support and materials to prevent regression;
- Individual or group instruction;
- Recreational services to provide for the maintenance of identified IEP skills; and
- Services during periods of school vacation.

Some community agencies that provide recreation services have expanded those opportunities to meet the needs of children with disabilities and youth. The opportunity to explore and develop ESY services with community agencies may offer opportunities to design services in natural community settings and may provide a more cost effective partnership in meeting the needs of children with disabilities requiring ESY services.

**9. Must all the services that are provided during the regular school year be duplicated in the ESY program?**

No. A student's program and placement for ESY services may differ from the regular school year program. When a student is determined to need ESY services, the IEP team will determine what services need to be provided through the IEP meeting process.

**10. Is a student automatically entitled to ESY services because he/she was determined eligible the year before?**

No. Eligibility determination for ESY services is made on the present needs of the student.

**11. Do ESY services have to be provided in a classroom?**

No. ESY services may not necessarily be provided in a classroom or school setting. The location and delivery of program services may be provided in the home or at an alternative location (such as the local YMCA, library, Boys & Girls Club, etc.) taking into consideration the identified individual needs of the student in an appropriate environment.

12. When is ESY not an appropriate decision?

The purpose of providing ESY services to students with disabilities is to maintain identified skills to prevent or avoid substantial loss of previously acquired or emerging skills or behavior. With this objective it is expected that not every student will be in need of ESY services.

13. What happens if there is disagreement regarding ESY?

Parents and school districts are encouraged to resolve matters of disagreement. Mediation has proven to be an effective method of dispute resolution. Upon request, the New Jersey Department of Education will assign an impartial mediator to assist the parties in resolving differences. Mediation is voluntary; therefore, the participants (parent(s), guardians, and school district) must agree to mediation. In addition, parents and school districts can always exercise their right to request a due process hearing.

*More information regarding mediation or a due process hearing can be obtained by contacting the New Jersey Department of Education, Office of Special Education Programs, at (609) 292-0147*