

# **Extended School Year Services in Michigan: Standards and Guidance for Educators, Service Providers, and Families**

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## Standards for Extended School Year Services in Michigan

**The need for extended school year (ESY) services must be considered for every student at his/her Individualized Education Program Team (IEP Team) meeting.** ESY services must be provided if the IEP Team determines that such services are necessary to the provision of a **free appropriate public education** to the student.

**The IEP Team's consideration for ESY services must address the following standards:**

### **Regression/Recoupment:**

- The student will substantially regress in critical skills as a result of an interruption in instruction.
- The student will likely require significant time to recoup lost skills.

### **Nature and/or Severity of Disability**

- The student requires more consistent and highly-structured programming techniques due to the severity of the disability.
- The student will suffer significant loss of skills or behavior in areas deemed to be crucial to reaching the ultimate goal of independence.

### **Critical Stages and Areas of Learning**

- The student's degree of progress in any of the critical life skills identified by the individualized education program (including, but not limited to, self-sufficiency, independence from caretakers, development of motor and/or communication skills, etc.) will be jeopardized by an interruption in instruction.

Please refer to "Guidance for Michigan Extended School Year Services" for more details on procedures and considerations.

# Guidance for Michigan Extended School Year Services

## Purpose

The purpose of this document is to provide information and assistance for parents, educators, administrators, and service providers regarding the consideration for extended school year (ESY) services in Michigan. This document defines ESY services according to regulations implementing the Individuals with Disabilities Education Act (IDEA) of 2006, outlines a brief legal history of, and justification for, ESY services in both federal and state contexts, provides an explanation of processes involved in determining ESY eligibility and implementation, and answers frequently asked questions.

## Section 1: Legal Framework

Provisions for ESY services were first established by regulations implementing the IDEA. Prior to this, the basis for interpretation of ESY requirements was drawn from case law. The 1999 regulations implementing the IDEA did not create legal standards for ESY services, but brought together well-established case law in this area. The regulations implementing the reauthorized IDEA 2004 at §300.106 have upheld the requirements as implemented in 1999.

### Federal Regulations on Extended School Year Services (2006)

#### A. General.

1. Each school must ensure that ESY services are available as necessary to provide a free appropriate public education (FAPE).
2. ESY services must be provided only if a child's Individualized Education Program Team (IEPT) determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.
3. In implementing the requirements of ESY services, a school **may not**:
  - a. limit ESY services to **particular categories of disability**; or
  - b. unilaterally **limit the type, amount, or duration** of those services.

#### B. Definition.

As used in this section, the term ESY services means special education and related services that:

1. Are provided to a child with a disability:
  - a. beyond the normal school year of the school;
  - b. in accordance with the child's IEP; and
  - c. at no cost to the parent of the student.
2. Meet the standards of the state education agency. (§300.106)

## Section 2: Defining Extended School Year Services in Michigan

### What are ESY services?

ESY refers to special education and/or related services provided beyond the normal school year for the purpose of providing a FAPE to a student with a disability. The purpose of ESY is different from the purpose of enrichment programs, summer school programs offered to all students, or compensatory education programs, and are not simply an extension of the regular school year. ESY services are offered at no cost to parents and will vary in type, location, and length of time, depending on the individual needs of the student. The purpose of ESY services is to maintain skills, not to develop new ones.

### ESY services are NOT:

- for teaching new skills;
- based on the category of student's disability;
- mandated for all students with disabilities;
- required 12-month programs;
- child-care services;
- necessarily a continuation of the total IEP provided to a student with a disability during the regular school year;
- required to be provided all day or every day;
- an automatic provision from year-to-year;
- required to be provided in a traditional classroom setting;
- a service to be provided to maximize each student's potential;
- for credit recovery; and
- a replacement for lack of attendance.

### Why does Michigan have ESY services?

The IDEA of 2004 assigns educators the responsibility of developing and delivering a FAPE to students with disabilities. The IDEA defines FAPE as special education and related services that are provided at public expense in conformity with an individualized education program (IEP).

Essential to the provision of a FAPE is the IEP Team's determination of what services are appropriate to meet the distinctive educational needs of each student in a suitable environment. The IEP process ensures that students with disabilities receive a FAPE.

Some students with disabilities may not receive a FAPE unless they participate in programs or services during time periods when other students, whether they have a disability or not, normally would not be served. For such students, restricting services to a standard number of school days does not allow the development of an educational program that is truly individualized. Consequently, some students may require ESY services in order to receive a FAPE.

### Who is eligible for ESY services?

Any student with an IEP is eligible for the consideration of ESY services if ESY is essential to provide a FAPE. Each student has his or her own individual educational needs. Therefore, ESY services will accomplish different purposes for different students. Some students may suffer losses of social, behavioral, communication, academic, self-sufficiency, or other skills

during interruptions in academic year instruction. This is particularly relevant during long breaks, such as summer vacation. These losses may be so significant that they can actually jeopardize progress obtained during the regular academic year. When the school year resumes, it is possible that unreasonable amounts of time are needed to recoup lost skills. Case law has referred to these instances with terms such as regression and recoupment.

### **Factors to Consider to Determine Eligibility for ESY**

- **Regression/Recoupment.** Loss of critical knowledge and/or acquired skills included in the objectives of the student's IEP, resulting from a scheduled break in instruction. **Regression** can be an indication of a student's inability to maintain performance or to generalize acquired skills to new settings outside of the instructional environment. **Recoupment** is the process of regaining skills, through review and re-teaching, following a scheduled break in instruction. Both of these conditions should be evaluated by the IEP Team in determining eligibility for ESY services.

It is important to note that the IDEA 2004 and various court cases **do not** address the **extent** of regression or recoupment necessary to qualify for ESY services. It is, therefore, the decision of the IEP Team made on an individualized basis. In addition, the determination of eligibility for ESY services can be based on an assessment of the **likelihood** of regression or other factors that can hinder progress on a student's IEP goals.

A student cannot be required to fail or demonstrate a lack of progress for an entire year simply to prove the need for ESY services. If no empirical data are available on regression, the need may be shown by expert opinion, parent input, or prospective criteria established by the IEP Team.

- **Nature and severity of the student's disability.** If a student requires more consistent and highly-structured programming techniques due to the severity of the disability, the student may be more vulnerable to regression when the school program is interrupted. A severely disabled student may revert to lower functioning levels or exhibit more behaviors which interfere with learning after a long break in programming. If the nature or severity of a student's disability is such, then the student may be eligible for ESY services.
- **Critical Stages and Areas of Learning.** If a student's degree of progress in any of the critical life skills identified by the IEP (including, but not limited to self-sufficiency, independence from caretakers, development of motor and/or communication skills, etc.) is potentially jeopardized by an interruption in instruction, the student may be eligible for ESY services. Considerations may include:
  - **Breakthrough opportunities.** If a student is at a critical point for acquiring one or more skills, and a break in instruction may hinder the progress towards this skill, ESY services may be provided.
  - **Loss of access to on-the-job training or productive employment as a result of regression in skills.** If an interruption in instruction will lead to a regression in skills relating to vocational training, ESY services may be provided.
  - **Interfering behaviors.** If the IEP Team determines that an interruption in instruction will result in the loss of progress on interfering behaviors such as

stereotypic, ritualistic, aggressive, or injurious behavior(s) that affect a student's ability to accomplish IEP goals, the student may be eligible for ESY services.

- **IEP goals.** ESY services are not granted **solely** on the basis of a student not meeting one or more of the IEP goals. However, if a student has not made adequate progress on his/her planned IEP goals, he/she may be eligible for ESY services. It is important to note that nothing in federal law or the corresponding regulations requires students with disabilities who do not meet their IEP goals to participate in ESY.

Again, the purpose of all ESY services is not to develop new skills.

### **Section 3: Extended School Year Service Provision**

#### **Who is responsible for the provision of ESY services in Michigan?**

It is the obligation of each school to ensure that students with disabilities who require ESY services in order to receive a FAPE have the necessary services available to them. The right of an individual student with a disability to ESY services is based on that student's entitlement to a FAPE.

#### **Who determines the need for ESY services?**

The need for ESY services is determined on an individualized basis by the student's IEP Team. The student's IEP Team is a group of individuals composed of: the student's parents, the student, if appropriate, general education teacher(s), special education and related service providers, an administrator or school representative, individual(s) who can interpret the instructional implications of evaluation results, and others as appropriate. Each member of the IEP Team brings important information about the student's individual needs and his/her academic, social, and behavioral progress.

#### **How is the need for ESY services measured?**

Determination of a student's need for ESY services is not based on a formula. Formulas do not ensure that each student with a disability has the appropriate educational planning to meet his/her unique needs. Case law supports the conclusion that the determination of need for ESY services cannot be based on a policy that prohibits full consideration of the needs for each student with a disability.

The IEP Team needs a variety of information to determine a student's need for ESY services. This information is collected through an ongoing assessment of the student's progress towards IEP goals. Information can be gathered by a range of informal and formal methods. The following list includes some approaches to measuring a student's need for ESY services. Please note that this list is not exhaustive of all possibilities:

- daily academic or behavioral performance records;
- criterion-referenced and norm-referenced test data;
- anecdotal records from information collected throughout the year;
- behavioral checklists;
- student work samples;
- IEP progress reports;

- expert opinion;
- parent input;
- therapy logs;
- point sheets;
- frequency charts;
- the student's prior experience with regression/recoupment; and
- other predictive information.

The IEP Team should strive to collect information about the student at baseline, intermediate, and end-point intervals of the IEP. The series of measurements **may** be:

1. At the end of instruction (i.e., the end of the current school year);
2. At the beginning of the subsequent instruction (i.e., the beginning of the next school year); and
3. At the time of recoupment (i.e., the date of regaining skills that have been attained by the end of the previous school year).

When reviewing a student's IEP, the IEP Team must consider the student's progress with respect to ESY services. As mentioned above, these circumstances include regression and recoupment, breakthrough opportunities, incompleteness of IEP goals, critical life-skill areas, loss of access to on-the-job training, and/or interfering behaviors.

#### **Should new goals be developed for ESY services?**

No. ESY services are intended to maintain previously-learned skills as identified in the current IEP. The purpose of ESY services is not to teach new skills. New goals **should not** be added to a student's IEP for the implementation of ESY services.

#### **When should the IEP Team meet to determine ESY services?**

The IEP Team is obligated to consider the need for ESY services at the annual IEP meeting. While the student's IEP must be renewed every calendar year, there is no deadline for proposed ESY services within the IEP. In other words, the IEP Team may decide to add or subtract the need for various ESY services throughout the year, making changes to the IEP as necessary.

In the event that the need for ESY services and/or the characteristics of those services are not known at the time of the annual IEP meeting, the IEP Team can identify the date it will reconvene to determine the need and services to be provided. The IEP Team may also plan what data should be gathered to assist in making later determinations. An addendum documenting any changes may be completed and attached to the current IEP.

Although there is no timeline for the IEP Team's consideration of ESY services, the IDEA regulations specify that "public agencies are expected to ensure that these determinations are made in a timely manner so that students with disabilities who require ESY services in order to receive FAPE can receive those necessary services." [*Federal Register*, Vol. 64, No. 48, 1999, pg. 12576]

**Does the receipt of ESY services one summer ensure such services in subsequent summers?**

No. A student’s involvement in ESY services one year does not automatically guarantee ESY services in the following year(s). Similarly, if no ESY services were provided in a prior year, it does not follow that ESY services are not needed in the current year. The decision is made on an **annual** basis.

**Where are ESY services provided?**

As with any IEP, the needs of the student determine the services. Individualized ESY services can be provided in a traditional classroom setting; however, the location and nature of service delivery can vary with the needs of the student. Other acceptable service delivery options can include, but are not limited to:

- a cooperative program with another school district;
- a cooperative program with another community agency; and
- other learning environments.

**What kinds of services can ESY provide?**

The following list includes some services which may be acceptable for the provision of ESY. It is **not** an exhaustive list of all possible services.

- Daily instruction in specific IEP goal areas.
- Small group instruction.
- One or more related services(s) at a community recreation program.
- Consultation with a job coach.
- Intensive short-term instruction at various points in the summer months to prevent regression.
- A week of intensive review just prior to the beginning of the school year.

**Section 4. Extended School Year and Summer School**

**What is the difference between ESY and summer school?**

The following table compares summer school with ESY services:

<p style="text-align: center;"><b>SUMMER SCHOOL</b> Not Required on an IEP</p>	<p style="text-align: center;"><b>EXTENDED SCHOOL YEAR SERVICES</b> Required on an IEP</p>
<p><b>Definition:</b> An optional or permissive program provided beyond the regular school year. A school may elect whether or not to operate summer classes.</p>	<p><b>Definition:</b> Services required by the IDEA 2004 are to be provided beyond the traditional school year for any student with a disability who needs special education services and/or related services in order to receive a FAPE.</p>
<p><b>Purpose:</b> Teaching new content or enrichment and/or offering recreational or academic opportunities not present during the regular school year. Students with and without disabilities benefit from additional educational opportunities.</p>	<p><b>Purpose:</b> Ensuring a student’s meaningful progress during the regular school year (FAPE) by maintaining learned skills and preventing loss of critical skills. If services are not provided, students’ skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping students with disabilities advance in relation to their peers.</p>
<p><b>Cost:</b> Free or on a fee basis</p>	<p><b>Cost:</b> Free to parents</p>
<p><b>Duration:</b> Typically operated on a set schedule for a number of weeks during the summer for all those who participate.</p>	<p><b>Duration:</b> Schedule, setting, and extent of services designed to meet the individual needs of a student in order to assure a FAPE. The amount and duration of services cannot be determined arbitrarily by a school’s summer school schedule.</p>
<p><b>Location:</b> General education setting; based on needs and interests of all students.</p>	<p><b>Location:</b> Varies depending upon each student; the IEP has more flexibility regarding location of services.</p>
<p><b>Eligibility:</b> A student’s participation does not depend on an IEP Team determination of need.</p>	<p><b>Eligibility:</b> IEP Team determines the need and extent of services to meet the unique needs of the student.</p>

Source: Copenhaver, et. al, Mountain Plains Regional Resource Center, 2004

### **Can a student's ESY services be provided in a school's optional summer school program?**

Yes. The summer school setting can offer meaningful opportunities for a student, as well as provide frequent practice for the maintenance of skills. However, ESY services must be tailored to the unique needs of each student and cannot be based **solely** on the availability of services during the summer. The IEP should provide detailed justification of how a summer school program would address the student's unique educational needs.

It is recommended that special education personnel collaborate with summer school staff, informing them of appropriate modifications and accommodations based on the student's needs. Under Section 504 of the Rehabilitation Act of 1973, a school cannot discriminate against a student with a disability in any program and/or activity offered by that school.

## **Section 5. Frequently Asked Questions about Extended School Year**

### **Can students with disabilities who have been placed by their parents in private schools be considered for ESY services?**

Yes. Determinations regarding services to be provided, including types and amounts of services, and which students will be served, are made by a consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools.

### **How does the least restrictive environment (LRE) relate to ESY services?**

The requirements for placement in the LRE during the academic year apply to ESY services. However, a school is not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the school does not provide services at that time for its students without disabilities.

Similarly, a school is not prohibited from providing ESY services to a student with a disability in a non-educational setting if the student's IEP Team determines that the student could receive necessary ESY services in that setting. The IEP Team should consider a flexible service model that takes the individualized needs of the student into account.

### **Are all students with disabilities required to have ESY services?**

No. A student and/or his/her guardian(s) have the right to refuse ESY services in the event that they are offered. Likewise, a student and/or his/her guardian(s) have the right to appeal the decision of the IEP Team in the event that ESY services are not offered.

## Appendix A: Free Appropriate Public Education Federal Regulations

### § 300.17 Free appropriate public education.

*Free appropriate public education* or *FAPE* means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

### FAPE Requirements

#### § 300.101 Free appropriate public education (FAPE).

(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) *FAPE for children beginning at age 3.*

(1) Each State must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or Individualized Family Service Plan (IFSP) will begin.

(c) *Children advancing from grade to grade.*

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

## **Appendix B: Worksheet Example for Families and Schools to Aid in the Discussion of Extended School Year Service Considerations**

**Instructions:** Below are areas of possible discussion points. Attach supporting documentation for any areas checked.

### **Regression and Recoupment**

- With an interruption in instruction, the student is likely to lose critical skills or fail to recover these skills within a reasonable time.
- There is a possibility of substantial regression of critical skills caused by an interruption in instruction.

### **Nature and/or Severity of Disability**

- The student requires a consistent and highly-structured program due to the severity of the disability.
- The student would be at educational and/or physical risk with an interruption in his/her programming. Please describe:
- The student requires additional assistance with his/her behavior to maintain skills learned the past school year. Please describe:
- The student's (mental, emotional, physical) health or the chronic nature of his/her disability requires additional assistance to maintain skills. Please describe:

### **Critical Stages and Areas of Learning**

- A break in instruction might jeopardize the student's emerging skills or compromise his/her progress in one or more skill areas. Describe emerging skills below:
  - Progress in any of the critical life skills identified by the IEP is potentially jeopardized by an interruption in instruction.
  - The student's vocational needs require additional support either not provided or typically found during the regular school year. Please describe:
  - The student's transitional needs require additional support not found in the regular school year. Please describe:
1. Given the answers to questions in this checklist, should the student be considered for ESY services?
  2. What kinds of services are necessary to address the unique needs of this student?
  3. What activities, outside of those provided in a regular school year, would help the student benefit from his/her educational program?

4. When would be the best time for the student to participate in his/her needed services?
5. What is the desired outcome of ESY services for this student?
6. Who will coordinate and monitor the provision of ESY services to the student in the event that they are offered?
7. Additional comments or concerns:

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**Appendix C: Prototype Model Form to Document Extended School Year Consideration.**

This form provides a model for how IEP Teams might document the consideration of the need for ESY. This form could be attached to the IEP.

**Are there historical data, predictive expert opinion, parent input and/or prospective criteria established by the IEP Team to demonstrate that the following standards apply in this situation?**

STANDARD	YES OR NO	IF YES, EXPLAIN.
The student will substantially regress in critical skills as a result of an interruption in instruction.		
The student will likely require significant time to recoup lost skills.		
The nature or severity of the student's disability is expected to require a longer school year for the student to prevent regression, recoup lost skills, and/or attain the goal of self-sufficiency and independence from caregivers.		
An extended break in instruction at this stage will jeopardize critical skill development.		
The student will suffer significant loss of skills, behavior, or opportunities in an area deemed to be crucial to reaching the ultimate goal of independence.		

2. Based on the evidence above, this student:  
 \_\_\_ does not require an ESY; or  
 \_\_\_ requires an ESY to address a specific goal or need.

3. ESY services will be provided as follows to address specific goals/needs.

SPECIFIC GOAL OR NEED	ESY SERVICE TO BE PROVIDED	FREQUENCY/DURATION	LOCATION

4. Staff member responsible for assuring that ESY is provided: