STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

MICHAEL P. FLANAGAN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

May 23, 2008

Memorandum

TO: State Board of Education

FROM: Michael P. Flanagan, Chairman

SUBJECT: Standards and Guidance for Extended School Year Services

On August 14, 2007 the State Board of Education (Board) received the "Extended School Year Services in Michigan: Guidance for Educators, Service Providers, and Families" (Guidance). After extensive discussion, Department staff was instructed to revamp portions of the Guidance, including dividing the document to create stand-alone Standards, and present the document for public comment. The process has resulted in draft Standards (Attachment A) and Guidance (Attachment B).

The Office of Special Education and Early Intervention Services held hearings in November 2007, and public comment concluded on December 28, 2007. On December 5, 2007 the Special Education Advisory Committee (SEAC) finalized its public comment and submitted official comment to the Department. In January 2008, all public comment was analyzed and the draft extended school year document was revised based on the comment. Of particular note, the bullet points at the end of the SEAC public comment (Attachment C) were instrumental in the revisions of the document: all of the concerns and recommendations from SEAC have been addressed and/or incorporated in the draft Standards and Guidance.

For clarity and consistency, and as suggested by the Board and the SEAC, the original document was broken into two parts, "Standards for Extended School Year Services in Michigan" (Standards) and "Guidance for Extended School Year Services in Michigan" (Guidance). The Standards lay out the requirements for each individualized education program team (IEP Team). The Guidance document is an expanded discussion and explanation of each of the items in the Standards.

Department staff intends to promulgate an administrative rule requiring IEP Teams to follow the Standards. This rule will be part of the next special education administrative rule package. The Standards will be recommended for approval by the Board at its next meeting.

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608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909
www.michigan.gov/mde • (517) 373-3324

ATTACHMENT A

Standards for Extended School Year Services in Michigan

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MICHIGAN Department of Education

June 10, 2008

Standards for Extended School Year Services in Michigan

The need for extended school year (ESY) services must be considered for every student with a disability at each Individualized Education Program (IEP) Team meeting. ESY services must be provided if the IEP Team determines that such services are necessary for the provision of a free appropriate public education (FAPE) to the student. The need for ESY must be determined individually and may not be provided or denied based upon category of disability or program assignment.

In considering ESY services, the IEP Team must answer the following question:

- **Is there one or more current annual goals that address skills which need to be maintained without interruption for the student to benefit meaningfully from a FAPE?**

  There must be at least one current IEP annual goal where significant concerns exist regarding skill maintenance during a break in services. A goal area of concern should represent skills essential to the progress of the student.

  A student may be determined to need ESY services due to:

  1. a serious potential for regression of skills beyond a reasonable period of recoupment, **or**
  2. the nature or severity of the disability, **or**
  3. critical stages or areas of learning.

- **If there is no goal area(s) of concern, ESY services are not needed for a FAPE.**

- **If there is one or more identified goal area(s) of concern, the following questions must be answered by the IEP Team:**

  1. **Are there data that indicate to the IEP Team that in the identified goal area(s) of concern there is a serious potential for regression of skills beyond a reasonable period of recoupment?**

     Regression refers to the inability of the student to maintain an acquired skill in an identified goal area of concern when special education instruction or related services in an IEP goal area are interrupted and require an unreasonable amount of time for recoupment.

     Recoupment is the student's capacity to recover those skills that have regressed to a level demonstrated prior to the break in instruction. The IEP Team determines what a reasonable period of recoupment is for each student.

     The IEP Team needs to take into account the fact that all students, whether in general education or special education, lose skills when there is a break in services. Students who lose skills over breaks in service, but who can recoup those skills with re-teaching in a reasonable amount of time, are not eligible for ESY services. This is the case with most students with disabilities.

  The provision of ESY services may not be limited only to those students who have actually experienced serious regression of skills requiring an unreasonable amount of time for

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recoupment. The IEP Team must assess the potential for difficulties in regression and recoupment.

2. **Are there data regarding the nature or severity of disability of the student that indicate to the IEP Team that there is a need to provide services in the identified goal area(s) of concern during breaks in the school year?**

   The IEP Team must consider whether the nature or severity of the student's disability requires highly-structured or consistent programming without substantial breaks in service in order to make progress in the identified goal area(s) of concern.

3. **Is there information that indicates to the IEP Team that in the identified goal area(s) of concern the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills?**

   A 'critical stage in learning' means that the learning must occur without delay and that learning the skill(s) in the identified goal area(s) of concern will enhance the student's ability to function independently.

   A 'critical area of learning' means an area of instruction that is essential to the student's development in achieving self-sufficiency and independence.

   The IEP Team needs to determine that:

   a. there is a skill that needs to be mastered immediately – if the student does not master the skill immediately the degree of mastery is likely to be permanently reduced; **or**
   b. the student is at a critical stage of development where there is a window of opportunity that will be lost if services are not provided; **or**
   c. changes in the student's medical, physical, or sensory status make it possible to predict an accelerated rate of learning during the ESY period; **or**
   d. the skill is in a critical area of learning and a break in services will result in the loss of a window of opportunity for mastering the skill.

Other factors that must be considered:

- **Determination of the need for ESY services must be based on data.**

  As in all IEP decisions, the IEP Team must base ESY decisions on data. Data sources may include (**<u>but are not limited to</u>**):

  1. progress monitoring data on IEP goals and objectives;
  2. data recorded and provided by parents;
  3. data from another school district that the student attended;
  4. reports from outside agencies and professionals;
  5. interviews with present and past teachers or service providers, the parents, and the student;
  6. medical records indicating that the student has experienced significant trauma making the need for services immediate;
  7. data that indicate continuous or year-round programming is an integral part of the teaching methodology used with the student;
  8. vocational or pre-vocational assessments;

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9. medical records that indicate an immediate need for services that cannot wait until after a break;
10. data that indicate loss of access to on-the-job training will potentially result in significant delays in mastering critical pre-vocational or vocational skills;
11. professional peer-reviewed literature in the goal area(s) of concern that provides research substantiating a critical stage in learning and that this learning must occur without delay; and,
12. developmental standards within the goal area(s) of concern that indicate the student is at a critical stage of learning.

- **Determination of the need for ESY services may not be based on a formula.**

  Formulas lack the individualization needed to ensure that IEP Teams make appropriate decisions to meet the unique needs of students with disabilities. The determination may not be based on a policy that prohibits or inhibits full consideration of the unique educational needs of each student.

- **ESY services can be provided in a variety of ways.**

  Ways that ESY services can be provided include (**but are not limited to**):

  1. a traditional classroom setting;
  2. school-based programs that vary in length of schedule;
  3. daily instruction in specific IEP goal areas;
  4. small group instruction;
  5. one or more related services at a community recreation program;
  6. cooperative programs with other agencies;
  7. intra-school cooperative programs;
  8. consultation with a job coach;
  9. intensive short-term instruction at various points in the summer months to prevent regression;
  10. a week of intensive review just prior to the beginning of the school year; and,
  11. home-based programs that include parent training.

  Related services (including therapy services and transportation) and supplemental aids and services must be considered, as well as instructional programming when developing a plan for ESY services.

- **Least restrictive environment (LRE) requirements for ESY services are not identical to LRE requirements for the normal school year.**

  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 or inclusive 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 noneducational 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.
- **ESY services are provided only for those annual goals identified as areas of concern and which are determined to require ESY services.**

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ESY services are not intended to duplicate all services provided during the normal school year for most students who require ESY.

- **New annual goals are not developed for ESY services.**

  ESY services are based on first identifying an existing annual goal area of concern and then determining the need for ESY services.

- **Consideration of ESY services needs to be made in a timely manner.**

  The IEP Team is obligated to consider the need for ESY services at every 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 is 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 Individuals with Disabilities Education Act 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] This means that the determination of the need for ESY services should be accomplished in sufficient time to make plans for the delivery of ESY services and to permit any party to exhaust administrative remedies (mediation, facilitated IEP, state complaints, due process complaints) if there is a difference in opinion prior to the break in services.

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ATTACHMENT B

Guidance for Extended School Year Services in Michigan

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MICHIGAN Department of Education

June 10, 2008

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Purpose

The purpose of this document is to provide information and assistance for parents, educators, administrators, and service providers regarding the implementation of the *Standards for Extended School Year Services in Michigan*.

Section 1: Legal Framework

Michigan has provided extended school year (ESY) services for students with severe cognitive impairments and severe multiple impairments through longer or alternate school-year classroom programs since the beginning of the implementation of special education rules developed by the State Board of Education in 1973 in response to PA 198 of 1971, the Michigan law that first mandated special education programs and services for students with disabilities. This law was one of the first of its kind in the nation, and later served as a model for the federal special education law, PL 94-142 of 1975. The Individuals with Disabilities Education Act (IDEA) 2004 is the most recent reauthorization of the federal special education law.

PL 94-142 and its accompanying regulations required that school districts provide a free appropriate public education (FAPE) to all students with disabilities but did not mention ESY services. ESY services were initially established as a part of providing FAPE through a series of court cases beginning in the late 1970s. These court cases also established that not all students with disabilities required ESY services and that providing ESY services was the exception rather than the rule. The Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitative Services (OSERS) of the U.S. Department of Education has also issued a series of letters regarding ESY services that discuss the implications of these court cases and their relationship to special education regulations. The court cases are discussed in detail in the article *Extended School Year Services: A Review of Eligibility Criteria and Program Appropriateness* (Research & Practice for Persons with Severe Disabilities, 2002, Vol. 27, No. 3, 188-203). The OSEP letters are discussed in detail in the Florida Department of Education's *Technical Assistance Paper ESE311202: Determining an Individual Student's Need for Extended School Year Services: Appendix*. Links to these articles are provided in Appendix 3.

In 1999, the OSEP issued the final regulations that stemmed from the IDEA 1997 reauthorization. These regulations included language addressing ESY services for the first time. As noted in the comments included in the Federal Register (pages 12575-76 of Number 48 of Volume 64 for the Federal Register published March 12, 1999), the new ESY regulations did not create new legal standards but instead codified well-established case law in the area and reflected the longstanding interpretation of the IDEA by the courts and the U.S. Department of Education.

The language of the ESY regulations has remained unchanged in the latest federal regulations for the IDEA issued in 2006:

> **§ 300.106 Extended school year services.**
> (a) *General.*
> (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
> (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
> (3) In implementing the requirements of this section, a public agency may not—
> (i) Limit extended school year services to particular categories of disability; or
> (ii) Unilaterally limit the type, amount, or duration of those services.

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(b) *Definition.* As used in this section, the term extended school year services means special education and related services that—
(1) Are provided to a child with a disability—
(i) Beyond the normal school year of the public agency;
(ii) In accordance with the child's IEP; and
(iii) At no cost to the parents of the child; and
(2) Meet the standards of the SEA.
(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(1))

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.

§ 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 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.

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It is the ESY and FAPE regulations, coupled with case law, that form the legal basis for ESY services for students with disabilities. Michigan's ESY standards are found in the document *Standards for Extended School Year Services in Michigan*. A one-page summary of these standards is provided in Appendix 1.

Section 2: Definition of Extended School Year Services in Michigan

ESY services refer to special education and/or related services provided beyond the normal school year or school day for the purpose of providing a FAPE to a student with a disability. Some students with disabilities may not receive a FAPE unless they participate in programs and/or related services during time periods when other students, whether they have a disability or not, normally would not be served. Consequently, some students may require ESY services in order to receive a FAPE. Some students may suffer losses of social, behavioral, communication, academic, self-sufficiency, or other skills during periods of interruption of services that are so significant that they can jeopardize progress made during the normal school year. Each student has his or her own unique educational needs. Therefore, ESY services will accomplish different purposes for different students and will be provided in different ways to address the student's unique needs.

All students who are eligible for special education and/or related services must be considered for ESY services at each IEP, although most students will not be entitled to these services. The need for ESY services must be determined individually and cannot be provided or denied based upon category of disability or program assignment.

ESY services are provided in accordance with the student's IEP at no cost to the parents or child and meet the Michigan standards for ESY services.

Section 3: Determination of the Need for Extended School Year Services

The need for ESY services must be considered for every student with a disability at each Individualized Education Program (IEP) Team meeting. ESY services must be provided if the IEP Team determines that such services are necessary for the provision of a FAPE to the student.

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.

The determination of the need for ESY services is a two-step process, with several additional factors that must be considered (see the *Extended School Year Decision-making Flowchart* and *Questions for Extended School Year Decision-making* in Appendix 2).

In considering the need for ESY services, the IEP Team must first answer the following question:

Is there one or more current annual goals that address skills which need to be maintained without interruption for the student to benefit meaningfully from a FAPE?

There must be at least one current IEP goal where significant concerns exist regarding skill maintenance during a break in services. Goal areas of concern should represent skills essential to the progress of the student.

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The determination of the need for ESY services must be based on data. The IEP Team needs to evaluate the data to determine which, if any, goals represent areas of concern that may present significant difficulties in maintaining skills during breaks (see the section below for a discussion on data sources).

A student with a goal area of concern may be determined to need ESY services due to:
(1) a serious potential for regression of skills beyond a reasonable period of recoupment, **or** (2) the nature or severity of the disability, **or** (3) critical stages or areas of learning.

If there are no identified goal areas of concern, then ESY services are not needed for a FAPE.

If there is one or more identified goal area of concern, then the following questions must be answered by the IEP Team:

1. **Are there data that indicate to the IEP Team that in the identified goal area(s) of concern there is a serious potential for regression of skills beyond a reasonable period of recoupment?**

   Regression refers to the inability of the student to maintain an acquired skill in an identified goal area of concern when special education instruction or related services in an IEP goal area are interrupted and require an unreasonable amount of time for recoupment.

   Recoupment is the student's capacity to recover those regressed skills to a level demonstrated prior to the break in instruction.

   This is a two-part question: (1) there must be serious potential for regression of skills related to the goal area(s) of concern, and (2) the potential period of recoupment must be beyond a reasonable amount of time.

   The IEP Team determines what a reasonable period of recoupment is for the goal area(s) of concern for each student. In making this determination, the IEP Team must consider the unique needs of the student, rather than basing the determination on a formula. This is because formulas do not provide the individualization needed for this type of decision. It is not possible to develop a formula that can take into account the unique needs of all of the students with disabilities in the state of Michigan. Any formula, by its nature, will inadvertently exclude someone from appropriate consideration for ESY services.

   The IEP Team needs to take into account the fact that all students, whether in general education or special education, lose skills when there is a break in services. Students who lose skills over breaks in service, but who can recoup those skills with re-teaching in a reasonable amount of time, are not eligible for ESY services. This is the case with most students with disabilities.

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The provision of ESY services cannot be limited only to those students who have actually experienced serious regression of skills requiring an unreasonable amount of time for recoupment. The IEP Team must assess the potential for such difficulties in regression and recoupment.

2. **Are there data regarding the nature or severity of disability of the student that indicate to the IEP Team that there is a need to provide services in the identified goal area(s) of concern during breaks in the school year?**

   The IEP Team must consider whether the nature or severity of the student's disability requires highly-structured or consistent programming without substantial breaks in service in order to make progress in the identified goal area(s) of concern.

   If a student requires more consistent or highly-structured programming techniques due to the severity of the disability, the student may be more vulnerable to the loss of essential skills when the school program is interrupted.

   A student with severe disabilities may revert to lower-functioning levels or exhibit more behaviors which interfere with learning after a long break in programming.

   A student's mental, emotional, or physical health, or the chronic nature of his or her disability, may also indicate the need for ESY services in order to maintain skills that otherwise would be lost and not recovered in a reasonable amount of time.

3. **Are there data that indicate to the IEP Team that in the identified goal area(s) of concern, the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills?**

   A 'critical stage in learning' means that this learning must occur without delay and that learning the skills in the identified goal area(s) of concern will enhance the student's ability to function independently. For example, very young students with significant disabilities may require ESY services to prevent loss of critical language, behavior, or self-help skills they learned during the school year.

   A 'critical area of learning' means an area of instruction that is essential to the student's development in becoming self-sufficient and independent. This includes skills that are essential for the promotion and maintenance of the student's self-sufficiency. Skills such as toileting and eating are essential for minimal independence; stable relationships, impulse control, and appropriate peer interactions are necessary for community living.

   The critical stage/critical area of learning must be identified, and the following questions must be answered:

   a. Is there a skill that needs to be mastered immediately? If the student does not master the skill immediately, is the degree of mastery likely to be permanently reduced? What data support this? **or**

   b. Is the student at a critical stage of development where there is a window of opportunity that will be lost if services are not provided? What data support this? **or**

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c. Are there changes in the student's medical, physical, or sensory status that makes it possible to predict an accelerated rate of learning during the ESY period (critical stage)? What data support this? **or**

d. Is the skill in a critical area of learning and will a break in services result in the loss of a window of opportunity for mastering the skill? What data support this?

If one or more of these questions on critical stages/areas of learning is answered yes, then the IEP Team needs to develop an ESY plan.

If all of these questions are answered no, then ESY services are not needed for a FAPE.

Summary: Determining the need for ESY services

ESY must be considered for every student with a disability at each IEP Team meeting. ESY services must be provided if the IEP Team determines that such services are necessary to the provision of a FAPE.

Answer the following question: Is there one or more annual goals where significant concerns exist regarding skill maintenance during a break in services?

If no, ESY is not needed for a FAPE.

If yes, for each goal area of concern, answer the following questions:

1. Is there information that indicates to the IEP Team that in this goal area there is a serious potential for regression of skills beyond a reasonable period of recoupment? What data support this?

2. Is there information regarding the nature or severity of disability of the student that indicates to the IEP Team that there is a need to provide services in the identified goal area(s) of concern during breaks in the school year? What data support this?

3. Is there information that indicates to the IEP Team that in the identified goal area(s) of concern the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year or school day will severely limit the student's capacity to maintain essential skills?

   Answer the following questions:

   a. Is there a skill that needs to be mastered immediately? If the student does not master the skill immediately, is the degree of mastery likely to be permanently reduced? What data support this? **or**

   b. Is the student at a critical stage of development where there is a window of opportunity that will be lost if services are not provided? What data support this? **or**

   c. Are there changes in the student's medical, physical, or sensory status that makes it possible to predict an accelerated rate of learning during the ESY period (critical stage)? What data support this? **or**

   d. Is the skill in a critical area of learning and will a break in services result in the loss of a window of opportunity for mastering the skill? What data support this?

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If the answer to all of these questions is no, ESY services are not needed for a FAPE.

If the answer to one or more of these questions is yes, the IEP Team needs to develop a plan for ESY services.

Section 4: Other Factors That Must Be Considered

1. **Determination of the need for ESY services must be based on data.**

As in all IEP decisions, the IEP Team must base ESY decisions on data.

Data sources may include (**but are not limited to**):

a. progress monitoring data on IEP goals and objectives;
b. data recorded and provided by parents;
c. data from another school district that the student attended;
d. reports from outside agencies and professionals;
e. interviews with present and past teachers or service providers, the parents, and the student;
f. medical records indicating that the student has experienced significant trauma making the need for services immediate;
g. data that indicate continuous or year-round programming is an integral part of the teaching methodology used with the student;
h. vocational or pre-vocational assessments;
i. medical records that indicate an immediate need for services that cannot wait until after a break;
j. data that indicate loss of access to on-the-job training will potentially result in significant delays in mastering critical pre-vocational or vocational skills;
k. professional peer-reviewed literature in the goal area(s) of concern that provides research substantiating a critical stage in learning and that this learning must occur without delay;
l. developmental standards within the goal area(s) of concern that indicate the student is at a critical stage of learning.

Potentially, the most useful data available will be the progress monitoring data on current IEP goals and objectives. Well-designed IEPs have goals and objectives that are specific and measurable, use action words, and are realistic, relevant, and time-limited.

Goals and objectives that have clear descriptions of the skills and/or knowledge to be taught and how the student's progress will be measured.

'Measurable' means that it can be counted or observed. Measurable goals and objectives enable IEP Teams to know how much progress the student is making at each measurement interval.

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'Using action words' means having three components to the goals and objectives:
(1) the desired direction of the behavior (e.g. increase, decrease, maintain); (2) the specific area of need (e.g. reading skills, communication skills, self-care skills); and
(3) the target level of attainment (e.g. performs skill without assistance, reads 100 words per minute correct in grade level text).

'Realistic and relevant' means that the goals and objectives address the student's unique needs that result from the disability.

'Time-limited' means that measurement intervals will be meaningful and short enough to make appropriate educational decisions based on the data.

The time to think about documenting the need for ESY services is at the start of the school year rather than at the end. Procedures for measuring progress should be sensitive enough to determine the effects of breaks in instruction that occur during the school year.

At a minimum, the IEP Team should collect progress monitoring data about the student's performance at baseline, intermediate, and end-point intervals of the IEP.

Consider gathering progress monitoring data about the student's performance after long weekends, winter, and spring breaks.

Consider making measurements at these times: at the end of instruction (i.e., the end of the current school year); at the beginning of the subsequent instruction (i.e., the beginning of the next school year); and at the time of recoupment (i.e., the date of regaining skills that have been attained by the end of the previous school year).

More frequent, ongoing progress monitoring may be more useful in making ESY decisions (as well as ongoing instructional decisions).

In the event that the need for ESY services 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.

Progress monitoring data are not the only data that IEP Teams should consider. The IEP Team must consider data from a variety of sources. Parent involvement in the determination is critical, and information provided by parents must be considered. The list above outlines examples of other data sources. Note that this list is not exhaustive, and data from sources not listed above can also be considered.

2. **Determination of the need for ESY services cannot be based on a formula.**

   Formulas lack the individualization needed to ensure that students with disabilities have appropriate decisions made by IEP Teams to meet their unique needs. Case law is clear that the determination cannot be based on a policy that prohibits or inhibits full consideration of the unique educational needs of each student. It is not possible to develop a formula that can take into account the unique needs of all of the students with disabilities in the state of Michigan. Any formula, by its nature, will inadvertently exclude someone from appropriate consideration for ESY services.
3. **ESY services can be provided in a variety of ways.**

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Ways these services can be provided include (**<u>but are not limited to</u>**):

a. a traditional classroom setting;
b. school-based programs that vary in length of schedule;
c. daily instruction in specific IEP goal areas;
d. small group instruction;
e. one or more related services(s) at a community recreation program;
f. cooperative programs with other agencies;
g. intra-school cooperative programs;
h. consultation with a job coach;
i. intensive short-term instruction at various points in the summer months to prevent regression;
j. a week of intensive review just prior to the beginning of the school year;
k. home-based programs that include parent training.

Related services (including therapy services and transportation) and supplemental aids and services must be considered, as well as instructional programming, when developing a plan for ESY services.

IEP Teams are encouraged to be creative in providing ESY services.

ESY services can be offered through summer school, although offering summer school by itself is not an acceptable substitute for ESY services. 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 specifically indicate how a summer school program would address the student's unique educational needs and what specific special education and/or related services, as well as supplemental aids and services, will be provided to meet those needs at the summer school program.

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.

Although ESY services are generally considered during the summer break, they cannot be explicitly limited to the summer months. IEP Teams can consider other times outside of the normal school year, including outside the normal school day.

4. **Least restrictive environment (LRE) requirements for ESY services are not identical to LRE requirements for the normal school year.**

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 or inclusive settings if the school does not provide services at that time for its students without disabilities.

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Similarly, a school is not prohibited from providing ESY services to a student with a disability in a noneducational 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. For example, when social goals and objectives are targeted for ESY services, the IEP Team needs to take into account whether the student needs opportunities for interaction with same-age peers in a nonschool setting if the usual school setting is not available.

5. **ESY services are provided only for those annual goals identified as area(s) of concern and which are determined to require ESY services.**

   ESY services are not intended to duplicate all services provided during the normal school year for most students who require ESY.

6. **New annual goals are not developed for ESY services.**

   ESY services are based on first identifying an existing annual goal area of concern and then determining the need for ESY services. The purpose of ESY services is to maintain skills rather than to teach new ones.

7. **Consideration of ESY services needs to be made in a timely manner.**

   The IEP Team is obligated to consider the need for ESY services at every 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 is 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] This means that the determination of the need for ESY services should be accomplished in sufficient time to make plans for the delivery of ESY services and to permit any party to exhaust administrative remedies (mediation, state complaints, due process complaints) if there is a difference in opinion prior to the break in services.

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Appendix 1

Standards for Extended School Year in Michigan
The One-Page Summary

ESY must be considered for every student with a disability at each IEP Team meeting. ESY services must be provided if the IEP Team determines that such services are necessary to the provision of a FAPE.

Answer the following question: Is there one or more annual goals where significant concerns exist regarding skill maintenance during a break in services?

If no, ESY is not needed for a FAPE.

If yes, for each goal area of concern, answer the following questions:

1. Is there information that indicates to the IEP Team that in this goal area there is a serious potential for regression of skills beyond a reasonable period of recoupment? What data support this? **or**

2. Is there information regarding the nature and/or severity of disability of the student that indicates to the IEP Team that there is a need to provide services in the identified goal area(s) of concern during breaks in the school year? What data support this? **or**

3. Is there information that indicates to the IEP Team that in the identified goal area(s) of concern the student is at a critical stage of learning and/or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills?

   To answer this question, first answer the following questions:

   a. Is there a skill that needs to be mastered immediately? If the student does not master the skill immediately, is the degree of mastery likely to be permanently reduced? What data support this? **or**
   b. Is the student at a critical stage of development where there is a window of opportunity that will be lost if services are not provided? What data support this? **or**
   c. Are there changes in the student's medical, physical, or sensory status that makes it possible to predict an accelerated rate of learning during the ESY period (critical stage)? What data support this? **or**
   d. Is the skill in a critical area of learning and will a break in services result in the loss of a window of opportunity for mastering the skill? What data support this?

If the answer to all of these questions is no, ESY services are not needed for a FAPE.

If the answer to one or more of these questions is yes, the IEP Team needs to develop a plan for ESY services.

Other factors that must be considered:

- The determination of the need for ESY must be based on data.
- The determination of the need for ESY services cannot be based on a formula.
- ESY services can be provided in a variety of ways.
- LRE requirements for ESY services are not identical to LRE requirements for the normal school year.
- ESY services are only provided for those annual goals identified as an area of concern and which are determined to require ESY services.
- New annual goals are not developed for ESY services.
- Consideration of ESY services needs to be made in a timely manner.

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Appendix 2

Extended School Year Decision-making Flowchart and Questions for Extended School Year Decision-making

The documents in this appendix, *Extended School Year Decision-making Flowchart* and *Questions for Extended School Year Decision-making*, are intended to be used together.

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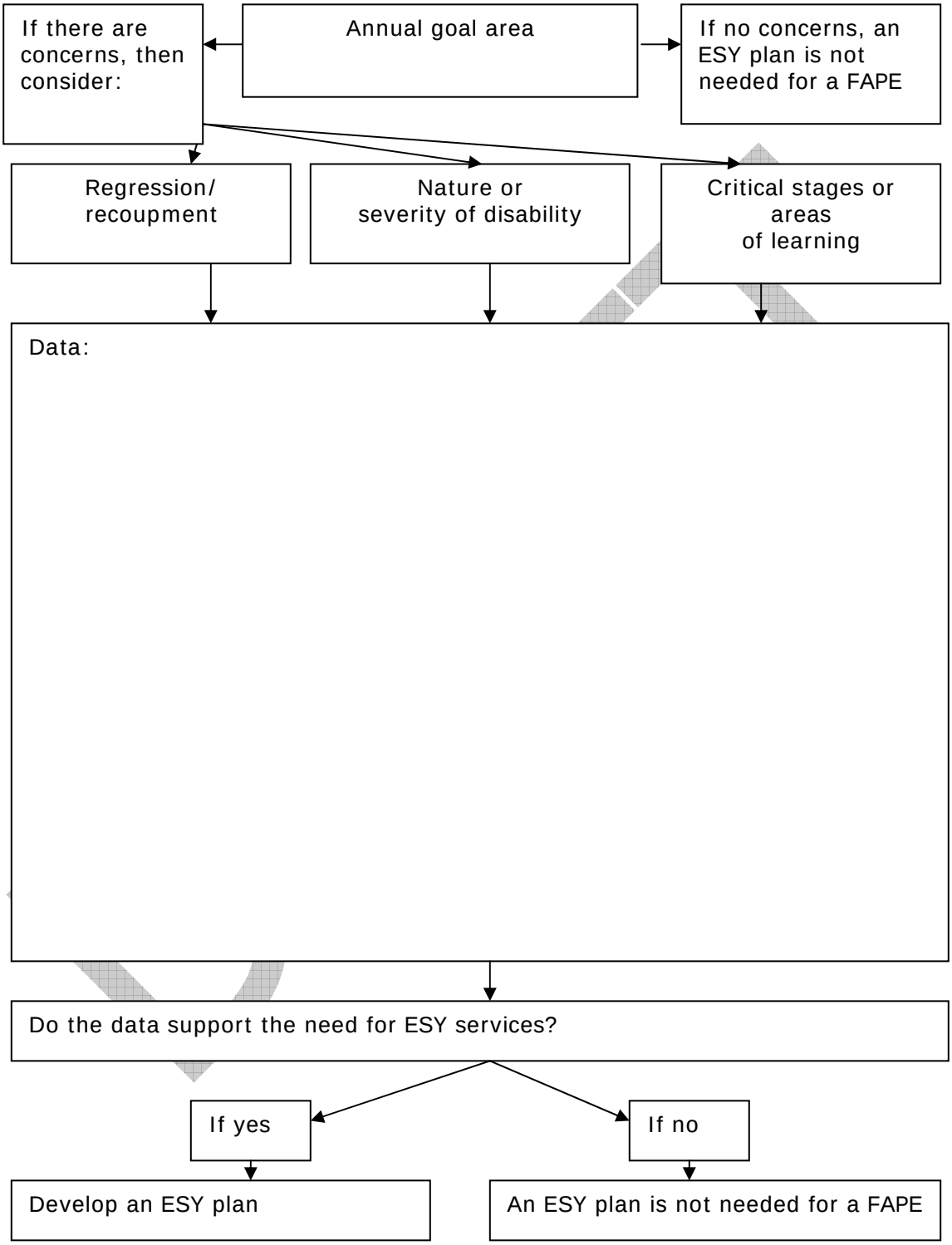
Extended School Year Decision-making Flowchart



Questions for Extended School Year Decision-making
(Use in conjunction with the Extended School Year Decision-making Flowchart)

Is there one or more annual goal areas of concern addressing skills that need to be maintained without interruption for the student to benefit meaningfully from a FAPE?

If no, then ESY services are not needed for a FAPE.

If yes, for each goal area of concern answer the following questions:

1. Is there data that indicates to the IEP Team that in the identified goal area of concern there is a serious potential for regression of skills beyond a reasonable period of recoupment? What data support this?

2. Is there data regarding the nature or severity of the disability of the student that indicates to the IEP Team that there is a need to provide services in the goal area of concern during breaks in the school year? What data support this?

3. Is there information that indicates to the IEP Team that in the identified goal area of concern the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills? To answer this question, answer the following questions:

    a. Is there a skill that needs to be mastered immediately? If the student does not master the skill immediately, is the degree of mastery likely to be permanently reduced? What data support this? **or**

    b. Is the student at a critical stage of development where there is a window of opportunity that will be lost if services are not provided? What data support this? **or**

    c. Are there changes in the student's medical, physical, or sensory status that makes it possible to predict an accelerated rate of learning during the ESY period (critical stage)? What data support this? **or**

    d. Is the skill in a critical area of learning and will a break in services result in the loss of a window of opportunity for mastering the skill? What data support this?

If the answer to all of these questions is no, then ESY services are not needed for a FAPE.

If the answer to one or more of these questions is yes, then the IEP Team needs to develop a plan for ESY services.

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Appendix 3

Extended School Year Resources

This is a compilation of resources that were reviewed during the development of the *Standards for Extended School Year Services in Michigan*

Documents referenced in Section 1: Legal Framework

Note: On the electronic version of this document, links are provided where available. Many of the links are directly to PDF or Word documents.

State or Publication	Document Link
Research & Practice for Persons with Severe Disabilities	Etscheidt, S. (2002) *Extended School Year Services: A Review of Eligibility Criteria and Program Appropriateness.* Research & Practice for Persons with Severe Disabilities, 27, 188-203
Florida Department of Education	Technical Assistance Paper - Determining an Individual Student's Need for Extended School Year Services (2002) – see Appendix for discussion of OSEP letters.

In addition to public comment (June & July 2007, and November & December 2007), the Michigan State Board of Education discussion (August 14, 2007), the *Michigan Administrative Rules for Special Education* and the *IDEA 2004* and its *2006 implementing regulations*, the following resources were reviewed during the development of Michigan's ESY Standards:

State, Organization or Publication	Document (and link if available)
Alabama	Special Education in Alabama: A Right not a Favor.
Alaska	Alaska Special Education Handbook – Section 13 Extended School Year Services.
Arizona	Free Appropriate Public Education (FAPE) Policy and Procedure Checklist.
Arkansas	Proposed Rules for Extended School Year (includes present language).
California	Regulation 5 CCR 3043 - Extended School Year Services.
Colorado	Determining Extended School Year Services.
Connecticut	Topic Brief: Extended School Year Services.
Delaware	Title 14 – 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies 6.0 Extended School Year Services (scroll down from the top).
Florida	Technical Assistance Paper - Determining an Individual Student's Need for Extended School Year Services & Extended School Year Services for Students with Disabilities: A Guide for IEP and FSP Teams.

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State, Organization or Publication	Document (and link if available)
Georgia	Free Appropriate Education (FAPE).
Hawaii	Chapter 56, Subchapter 5: Individualized Education Program (scroll down to §8-56-40: Extended School Year Services).
Idaho	Chapter 2 of the Idaho Special Education Manual addresses FAPE but not ESY. Form 410c of Idaho's IEP forms has a section for ESY consideration.

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Illinois	Communication on Extended School Year Services for Students With Disabilities.
Indiana	Technical Assistance Document: Determining the Need for Extended School Year Services.
Iowa	Heartland AEA Special Education Manual Module 3 (scroll down to Chapter 9, page 152, Extended School Year Services Decision Making).
Kansas	Kansas Special Education Process Handbook Chapter 5 (2001 – currently in process of being revised) & Draft Revised Chapter 5 (not yet approved). See page 11, Extended School Year Services.
Kentucky	Kentucky Special Education Regulations on ESY (see Section 8) & Kentucky Regulations on ESY for all students who are struggling (not just students with disabilities).
Louisiana	Extended School Year Program Handbook 2005 & ESYP Forms 2005.
Maine	Special Education Regulations 2007 (see page 113 for ESY).
Maryland	Technical Assistance Bulletin 5, Extended School Year Services & Extended School Year Services by the Maryland Disability Law Center.
Massachusetts	Question and Answer Guide on Special Education Extended School Year Programs.
Michigan	Kent ISD Guidelines for Determining the Need for Extended School Year Services.
Minnesota	Chapter 5 of the Total Special Education Systems (TSES) Manual (Section 5.02.04).
Mississippi	Extended School Year Services: MS Department of Education ESY Guidelines. Note: this is a powerpoint & Extended School Year Handbook.
Missouri	Extended School Year Questions & Answers & Recommendations for Extended School Year Policies.
Montana	Extended School Year.
Nebraska	Extended School Year (ESY) Services – A Technical Assistance Document.
Nevada	Extended School Year and Special Education – Technical Assistance Document.
New Hampshire	Bureau of Special Education FY '08 Memo #4 Re: Extended School Year Services (ESY).
New Jersey	Appendix G NJDOE OSEP Policy Letters.
New Mexico	Technical Assistance Manual – Extended School Year Services.
New York	Extended School Year Programs and Services – Questions and Answers.
North Dakota	Special Education Frequently Asked Questions, page 5, & Guidelines: Individualized Education Program Planning Process, page 64.
Ohio	Whose IDEA Is This? A Resource Guide for Parents (updated April 2007) (scroll down for a downloadable copy).
Oklahoma	Technical Assistance Document - Extended School Year Services for Children and Youth with Disabilities.
Oregon	Policies and Procedures for Special Education 2007-2008 Section 2, Page 3.
Pennsylvania	Extended School Year Eligibility – Pennsylvania Code & Guide to Extended School Year Services in Pennsylvania.
Rhode Island	Approval of Special Education Regulations – memo from RI DOE Commissioner.
South Dakota	Primer on the Provision of Extended School Year Services.
Tennessee	Extended School Year Services for Students in Sevier County Schools &

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	What Extended School Year Is and Is Not & Extended School Year Services Frequently Asked Questions.
Texas	Extended School Year Services for Students with Disabilities.
Utah	Rule R277-751. Special Education Extended School Year.
Vermont	Special Education Guide ESY on page 64.
Virginia	Technical Assistance Resource Document – Extended School Year Services.
Washington	WAC 392-172A-02020: Extended School Year Services.
West Virginia	Notice to Parents of Special Education Students with Disabilities Concerning Extended School Year Services. Also, the OSEP Letter to Given addresses ESY in West Virginia.
Wisconsin	Determining Extended School Year Services: A Practitioner's Guide.
Wyoming	Guidelines for the Provision of Extended School Year Services for Students with Disabilities.
Mountain Plains Regional Resource Center	A Primer on the Provision of Extended School Year Services for Parents and Educators 2006.
Educational Resources Information Center	*Summer Learning Loss: The Problem and Some Solutions*. (2003) ERIC Digest.
U.S. Department of Education, OSEP	Ahearn, E. (1996) *Extended School Year: A Brief Analysis of State Regulations and Policies*. Report prepared for OSEP, U.S. Department of Education.
National Association of State Directors of Special Education (NASDSE)	Ahearn, E. (2000) *Extended School Year – State Regulations and Policies*. NASDSE Forum, QTA.
IEP Resources	Bateman, B. D. & Linden, M. A. (2006) *Better IEPs: How to Develop Legally Correct and Educationally Useful Programs*, 4th Edition. IEP Resources, Attainment Company.
School Psychology Review	Browder, D., & Lentz, F. E. (1985) *Extended School Year Services: From Litigation to Assessment and Evaluation*. School Psychology Review, Vol. 14, 188-195.
Journal of the Association for Persons with Severe Handicaps	Browder, et al (1988) *Determining Extended School Year Eligibility: From Esoteric to Explicit Criteria.* Journal of the Association for Persons with Severe Handicaps. Vol. 13, No. 4., Pgs 235-243.
Research & Practice for Persons with Severe Disabilities	Etscheidt, S. (2002) *Extended School Year Services: A Review of Eligibility Criteria and Program Appropriateness.* Research & Practice for Persons with Severe Disabilities, 27, 188-203.
Remedial and Special Education	Katsiyannis, A. (1990) *Extended School Year Policies: An Established Necessity*. Remedial and Special Education. Vol. 12, Issue 1.

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Focus: A Review of Special Education and the Law	Kirk, S. (1989) *Issues and Errors in Reporting Extended School Year Programs*. Focus: A Review of Special Education and the Law. Feb/March.
NASDSE Liaison Bulletin	Macy, D. (1989). *Extended School Year Programs for Children with Handicaps: A Literature Review and Report*. NASDSE Liaison Bulletin. Vol. 15, No. 3.
NASDSE Project Forum	(1996) Extended School Year: *A Brief Analysis of State Regulations and Policies.* NASDSE Project Forum.
The Journal of Special Education	Olmi, et al. (1995). *Extended School Year Services: Prediction, Description, and Impact of Judicial Precedence.* The Journal of Special Education. Vol. 29., No. 1., pgs 72-83.
Journal of The Association for Persons with Severe Handicaps	Rappaport, et al. (1993) *Extended School Year: Legal Issues and Implications.* Journal of the Association for Persons with Severe Handicaps. Vol 18, No. 1., pgs 16-27.
Special Ed Connection (This is a subscription service.)	(2006) *Smartstart IEPs: Extended School Year Programming*. (2006) *Smartstart Placement: Extended School Year and Summer Programs*. (2006) *Smartstart Application of LRE beyond the Classroom*. (2007) *Smartstart FAPE: Extended Programming*. (2008) *LRP Tips on ESY.*
Wrightslaw	Bar-Lev, N. B. (1998) *Memorandum: Standards for Extended School Year, Revised 2006.*
Wrightslaw	Wright, P., & Wright, P. (2006) *From Emotions to Advocacy - The Special Education Survival Guide, 2nd Edition.* Wrightslaw. See especially Chapter 12 – SMART IEPs, available for free download, courtesy of Wrightslaw.
U.S. Department of Education, OSEP, OSERS	Letter to Anonymous (1995), Letter to Ash (1992), Letter to Baugh (1987), Letter to Given (2003), Letter to Gregory (1991), Letter to Harkin (1989), Letter to Kleczka (1998), Letter to Libous (1990), Letter to Myers 1 (1989), Letter to Myers 2 (1989), Letter to Skiba (1991). OSEP and OSERS letters do not carry the force of law but do indicate the interpretation of ESY by these agencies. Generally, the above letters discuss case law and regulations in relation to the specific question asked about ESY. Except for the Letter to Given, we were not able to locate copies of these letters for free download on the internet. All of these were retrieved online from Special Ed Connection, a subscription service. See the Appendix of this Florida Department of Education document for summaries of most of these letters: *Technical Assistance Paper - Determining an Individual Student's Need for Extended School Year Services* (2002).
Case Law	A number of cases related to ESY were reviewed in their entirety: Armstrong v Kline 1979; Hendrick Hudson District Board of Education v

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	Rowley 1982; Johnson v Independent School District No. 4 of Bixby 1990; Reusch v Fountain 1994; MM v Greenville 2002; McQueen v Colorado Springs 2006. Except for Hendrick Hudson District Board of Education v Rowley 1982 and Reusch v Fountain 1994, we were not able to locate copies of these letters for free download on the internet. All of these were retrieved online from Special Ed Connection, a subscription service. These cases (except for McQueen v Colorado Springs 2006) and many others are discussed in: Etscheidt, S. (2002) *Extended School Year Services: A Review of Eligibility Criteria and Program Appropriateness.* Research & Practice for Persons with Severe Disabilities, 27, 188-203.

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Appendix 4

Glossary of Terms

Annual goal area(s) of concern. Current IEP goal where significant concerns exist regarding skill maintenance during a break in services. Goal area(s) of concern should represent skills essential to the progress of the student.

Case law. The law made by courts interpreting cases and laws as opposed to law made by legislatures. In the American system, the primary sources of law are: (1) constitutions, (2) statutes/regulations, and (3) case law.

Critical area of learning. An area of instruction that is essential to the student's development in becoming self-sufficient and independent. This includes skills that are essential for the promotion and maintenance of the student's self-sufficiency. Skills such as toileting and eating are essential for minimal independence; stable relationships, impulse control, and appropriate peer interactions are necessary for community living.

Critical stage in learning. This learning must occur without delay and learning the skill(s) in the identified goal area(s) of concern will enhance the student's ability to function independently. For example, very young students with significant disabilities may require ESY services to prevent loss of critical language, behavior, or self-help skills they learned during the school year.

ESY. Extended school year refers to services which are special education and/or related services provided beyond the normal school year or school day for the purpose of providing a FAPE to a student with a disability. Originally defined in a series of court cases (case law) as sometimes necessary to provide a FAPE, ESY now is a part of the IDEA regulations.

FAPE. Free appropriate public education, which is explicitly defined in the IDEA 2004 and the 2006 regulations for implementing the IDEA. 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 special education agency, 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 IEP that meets the requirements of §§ 300.320 through 300.324.

IDEA. The federal *Individuals with Disabilities Education Improvement Act of 2004 (short title – Individuals with Disabilities Education Act - IDEA)*, which is the current version of the original federal special education law, the *Education for All Handicapped Children Act of 1975* (Public Law 94-142).

IEP Team. Individualized Education Program 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.

MDE. Michigan Department of Education.

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OSE/EIS. The Office of Special Education and Early Intervention Services in the Michigan Department of Education.

OSEP. Office of Special Education Programs. This is the federal office within the U.S. Department of Education that oversees the states' compliance with special education laws and regulations for students with disabilities.

OSERS. The Office of Special Education and Rehabilitative Services. This is the federal office that provides oversight to the states' compliance with laws and regulations for persons with disabilities of all ages.

Nature or severity of disability. In the context of ESY, the IEP Team must consider whether the nature or severity of the student's disability requires highly-structured or consistent programming without substantial breaks in service in order to make progress in the identified goal area(s) of concern. 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 the loss of essential skills when the school program is interrupted. A student with severe disabilities may revert to lower-functioning levels or exhibit more behaviors which interfere with learning after a long break in programming. A student's mental, emotional, or physical health, or the chronic nature of his or her disability, may also indicate the need for ESY services in order to maintain skills that otherwise would be lost and not recovered in a reasonable amount of time.

Normal school year. Sometimes informally referred to as the regular school year, 'normal school year' is the phrase the IDEA 2004 implementing regulations of 2006 use in describing ESY services: From *§ 300.106 Extended school year services,* "… the term extended school year services means special education and related services that— (1) Are provided to a child with a disability— (i) Beyond the normal school year of the public agency." The Michigan Revised School Code and the Michigan Revised Administrative Rules for Special Education refer to this only as the 'school year.'

Regression. The inability of a student to maintain an acquired skill in an identified goal area(s) of concern when special education instruction or related services in an IEP goal area are interrupted and require an unreasonable amount of time for recoupment.

Recoupment. The student's capacity to recover those regressed skills to a level demonstrated prior to the break in instruction.

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ATTACHMENT C

Michigan Special Education Advisory Committee

Public Comment on
Extended School Year Services in Michigan: Standards and Guidance
for Educators, Service Providers, and Families
October 24, 2007

[*Bolded statements highlight the recommendations from SEAC; the bulleted recommendations on page 2 are the specific recommendations. ALL of these recommendations have been incorporated into the Draft Standards and Guidelines presented to the State Board of Education on June 10, 2007*]

In July 2007, the Special Education Advisory Committee (SEAC) submitted its public comment on the proposed Administrative Rules for Special Education (Rules) that included changes in the provision of extended school year (ESY) services. As part of those comments, the SEAC advised that standards be established to guide individualized education program (IEP) decisions about the need for services that meet the needs of individual students, and that the standards mandate discussion and decision regarding the need for ESY services for all students with disabilities as part of the IEP process. **The SEAC applauds the efforts of the State Board of Education (SBE) to define standards and offer guidance in the determination of the need for ESY services.** The SEAC believes, however, that as presented, these **standards and guidance (*August 2007*) need clarification and revision**.

The SEAC is Michigan's Individuals with Disabilities Education Act mandated state advisory panel to the SBE and the Michigan Department of Education. Our members represent a broad diversity of stakeholders; for example, administrators, providers, advocates, and consumers, concerned with the education of all children, including students with disabilities. The SEAC offers this advice on the proposed *Extended School Year Services in Michigan: Standards and Guidance for Educators, Service Providers, and Families* as part of our federally-mandated duty to comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities.

With regard to the ESY services' Standards (Standards) (page 3), the SEAC believes the Standards are not sufficiently clear. A standard is defined as a rule or principle that is a basis for judgment. As such, they must be clearly articulated so there is reasonable assurance that they will be consistently understood and applied. Our discussions of the Standards suggest they are not. At one extreme, the Standards were viewed as affording ESY services for all students with disabilities while at the other extreme, they were viewed as ones that no child would meet. This suggests to the SEAC that the Standards are not a basis for consistent judgment. Lacking such clarity, there could be legal consequences.

The Standards define three areas of consideration for ESY services:

1. Regression/recoupment;
2. Nature/severity; and
3. Critical stages.

As presented, it is unclear if the basis for determining the need for ESY services is meeting all three or any one of the three stated areas. **The SEAC recommends that the document clearly define these three areas, articulate what constitutes meeting them, and state if any one or all of them need to be met.** It is essential that the Standards make clear that determination of ESY services' need is based on meeting these Standards and not the eligibility label or program placement of the child.

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Furthermore, the terms used within the Standards are open to interpretation. Terms such as "substantial regression," "consistent," and "degree of loss" are open to multiple interpretations and do not appear to be standards by which decisions can be made. **Therefore, the SEAC recommends that the Standards be more clearly defined to assure portability between intermediate school districts.** In SEAC's July 2007 comment (on the Proposed Administrative Rules), we cited the decision-making flow chart from the Iowa Heartland AEA Decision-making Worksheet that includes more specific definitions; for example, "regression" defined as (the) "inability of a student to maintain an acquired skill, in the identified goal area of concern, when special education instruction or support services in an IEP goal area are interrupted and require an unreasonable period of re-teaching (as determined by the IEP team) for the student to regain previous competence." **The SEAC believes Michigan needs definitions at this level of specificity, as well as a clear process for determination**.

With regard to the ESY services' Guidance (Guidance) section of the document, the SEAC believes the role of this document should be to provide background on and explain how to implement the Standards. **It is essential that the Guidance be consistent with the Standards; use terms in similar ways; and help educators, service providers, and families in their determination of the need for ESY services.** Considering the information presented in *Extended School Year Services in Michigan: Standards and Guidance for Educators, Service Providers, and Families (October 24, 2007),* some information appears to be in conflict with other information throughout the document or Standards. It is unclear what, if any, skills are to be considered in determining the need for ESY services, in particular when it comes to the discussion of maintenance of skills. Furthermore, the presentation of Guidance in a question and answer format does not seem like guidance. Rather, as in many parts of the document, it reads like a list of frequently asked questions (FAQ) and, thus, does not give information to guide the decision-making process. The SEAC believes the document, as presented, needs to be further developed, clarified, and edited so it, in fact, provides guidance.

Given the diversity and divergent nature of the comments from the members of the SEAC, the SEAC recommends that the *Extended School Year Services in Michigan: Standards and Guidance for Educators, Service Providers, and Families* be further developed and clarified so that:

- **The Standards are clearly articulated as standards and include definitions;**
- **The Standards clearly state which requirements or combination in the three areas determine eligibility;**
- **The Guidance document is separate and consistent with the Standards document;**
- **A decision-making process is included for applying the Standards during the IEP process;**
- **Updates in the (*Administrative*) Rules and the Michigan Model IEP Form are developed to implement the Standards; and**
- **The FAQs are in a separate document.**

In the absence of additional clarity, the SEAC believes that confusion evident in our discussions as to what constitutes a need for ESY services and how that need is determined will continue. If clarity is not achieved, students may not receive the services needed to be successful. The SEAC welcomes the opportunity to be involved in further discussions.

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