



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

MICHAEL P. FLANAGAN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

August 8, 2007

MEMORANDUM

TO: State Board of Education

FROM: Michael P. Flanagan, Chairman 

SUBJECT: Report on the Special Education Advisory Committee Recommendations on Administrative Rules for Special Education, Policy Documents, and the Development of Draft Standards for Extended School Year Services

The Special Education Advisory Committee (SEAC) is mandated under the Individuals with Disabilities Education Act (IDEA) to advise the State Education Agency/State Board of Education (SBE) regarding special education issues. Its membership, appointed by the SBE, is regulated under the IDEA and through state statute. The SEAC members represent a broad diversity of stakeholders – administrators, providers, advocates, and consumers – concerned with the education of all children, including students with disabilities. One of SEAC's main duties is to advise the SBE on proposed administrative rules and other policies or procedures.

On June 28, 2007, the SEAC met in a special session to discuss the administrative rules and policy documents that are proposed for revision. Attached is the official comment submitted by the SEAC (Attachment A).

Public input during the public hearings and subsequent written comment indicate a need for a set of standards in determining extended school year (ESY) services for students with disabilities. Staff was directed to research other state and organizational policies (Attachment B), and prepare draft standards for ESY services (Attachment C).

Section 300.165 of the IDEA requires that "prior to the adoption of any policies and procedures needed to comply with Part B of the Act ... the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities." The SEAC will be given the opportunity to review the draft standards and it is anticipated that the draft standards will be available for public input and public hearings in September, 2007.

It is recommended that the State Board of Education receive the official public comment from the Special Education Advisory Committee and receive the draft standards for extended school year services as attached in the Superintendent's memorandum dated August 8, 2007.

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

Michigan Special Education Advisory Committee

Public Comment on

Proposed Administrative Rules and Procedures

for Special Education Programs and Services

published in the Michigan Register, June 1, 2007

The Special Education Advisory Committee (SEAC) is Michigan's Individuals with Disabilities Education Improvement Act (IDEA) mandated State Advisory Panel to the State Board of Education and the Michigan Department of Education (MDE). The members of the SEAC represent a broad diversity of stakeholders – administrators, providers, advocates and consumers -- concerned with the education of all children, including students with disabilities. The SEAC has as one of its duties to comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities. The SEAC welcomes this opportunity to publicly comment on the proposed Administrative Rules and documents published June 1, 2007 in the Michigan Register.

The SEAC is in a unique position in its advisory role to the State Board of Education and the Michigan Department of Education. The SEAC has engaged in extensive learning, dialogue and discussion with regard to matters that impact the education of all children, including those with disabilities. The SEAC believes that the leadership at the Department of Education and the State Board of Education is advocating for the high quality education and successful outcomes for all students, including students with disabilities. The SEAC believes that special education is an essential part of the overall educational system, a service designed to assure that children most at risk by the nature of their handicapping condition are supported in achieving high standards and desired life outcomes.

The SEAC understands the efforts taken by the Michigan Department of Education to bring the Rules for special education programs and services in line with the reauthorized Individuals with Disabilities Education Act (IDEA 2004) as well as to update outdated language. We believe that thoughtful alignment with IDEA 2004, along with careful consideration for successful student outcomes will benefit Michigan students with disabilities and their families. We recognize, however, that this process of alignment will invariably present challenges on those rules and regulations where Michigan practice varies. We believe with learning through dialogue, those challenges can shift to opportunities that enhance the services we provide to students with disabilities, and reach those higher standards.

Lastly and prior to our specific comment, the SEAC would like to express its sincere thanks to the Office of Special Education and Early Intervention Services for its investment in our education with regard to the rules and regulations as well as in understanding the process of rules promulgation. The time spent as a SEAC learning about these rules and regulations enabled the SEAC to identify those items on which we felt compelled to comment publicly. That is not to say that these are the only areas within this current package of rules and regulations on which we might comment. Rather, given the package as presented, we determined that these were the areas on which we must comment.

Rule 340.1738 Programs for students with severe cognitive impairments and Rule 340.1748 Programs for students with severe multiple impairments propose to eliminate the description of the number of days and clock hours of instruction. These program specific rules provide for extended school year services for students placed in programs for students with severe cognitive impairments and severe multiple impairments. The SEAC recognizes that the intent of this change is to bring the Michigan rules in alignment with IDEA with regard to the individual determination of the need for extended school year. However, we have concerns with regard to the elimination of this rule language without new standards to guide the determination of the extended school year services.

The intent of an extended school year is to maintain skills such that students with disabilities have equitable opportunity to make progress from where they were in the spring upon return to school in the fall. We believe that if the language describing the number of days and clock hours of instruction is removed, extended school year services will be limited further. Federal Rule 300.106 states that the State must establish standards for the determination of extended school year. At present, Michigan has established no standards, save these program rules. Removing this language leaves Michigan with circuit case law as the only guidance in determining extended school year and places the burden to prove that these services are necessary on parents.

The SEAC believes that Michigan needs state standards to determine extended school year. Given that those standards do not presently exist, with regard to Rule 340.1738 and Rule 340.1748, the SEAC advises that

1. The language currently in effect should remain in place until standards are established for extended school year (ESY).
2. The standards that are established should guide IEP decisions about ESY that meet the needs of individual students (tie into federal rule 300.106)
3. The standards mandate discussion and decision regarding the need for ESY for all students with disabilities as part of the IEP process.

SEAC believes that the establishment of standards and procedures for the determination of Extended School Year (ESY) is essential. In many cases, ESY is not currently discussed at IEP meetings and parents must fight for ESY unless their child is identified as eligible under the definition for severe cognitive impairment or severe multiple impairment. Many parents of students with other disabilities are not even aware of the possibility of ESY for their child. In the absence of specific guidance, some school districts may resist ESY unless forced to consider it. Being forced – or feeling like one is being forced – can do damage to the relationship between parents and the school and set the occasion for adversarial interactions.

The SEAC believes that there is need for specific language in the Michigan Rules to provide procedures for determining the need for ESY services. They must clearly outline the process for the determination of need for ESY to provide free, appropriate public education (FAPE) as required in Federal regulations, and they must be a more explicit part of the IEP (e.g., see attached *Florida Extended School Year Services* form). The consideration of ESY services should not be limited and may include ancillary services. Further, the procedures should encourage districts to be creative in meeting students' needs in a variety of ways in addition to the more traditional classroom style, day program.

Determination of the need for extended school year needs to consider a variety of factors. At present, circuit law precedent determines the need for ESY based on regression/recoupment. Other states that have adopted standards for determining ESY

have identified a number of additional factors to consider in making the determination (e.g., see attached excerpt from Florida Technical Assistance Paper *Determining an Individual Student's Need for Extended School Year Services*). We believe that Michigan needs such guidance in implementing its procedures for determining ESY.

To support a new rule for the determination of the need for ESY services, the MDE needs to provide technical assistance to districts to implement the rule appropriately and creatively to meet the individual needs of students with disabilities. We believe Michigan can benefit and learn from the experiences of other states in addressing ESY, for example, the decision-making flow chart from the *Iowa Heartland AEA Decision-making Worksheet*. Further, the SEAC believes that methods for data collection related to determining the need for ESY need to be researched, developed and included in the technical assistance to school districts. Lastly, we believe that data regarding the number of Michigan students with disabilities receiving ESY services needs to be collected and analyzed. Specifically, Michigan needs to know who has been receiving ESY services and in what forms for the past five years and what the impact of those services has been. Further, those data need to be collected and analyzed from this date forward. If those data are not available, then a means to collect that information must be established immediately.

Rule 340.1713(2) strikes language describing in detail how a severe discrepancy is determined. To maintain continuity of determination across Michigan, the Office of Special Education and Early Intervention Services needs to develop a specific definition for what constitutes a Severe Discrepancy and a definition of a "pattern of strengths and weaknesses" as stated in IDEA. The Federal Rule language on Specific Learning Disability, either in its entirety or with reference to the Federal Rule number, should be included in the Michigan Administrative Rules for Special Education Programs and Services.

Rule 340.1713 (3) Specific learning disability; determination adds language that allows the public agency to use a process that determines if a student responds to scientific, research-based intervention, popularly referred to as response to intervention (RTI). The proposed rule language uses the term 'may' in describing the processes available to determine whether a student has a learning disability. The federal language uses the term 'must permit' and further requires clear guidelines for the use of those procedures. The SEAC believes the use of the term 'may' is confusing and unclear with regard to the specific intent of this change. The SEAC recommends use of the term 'must permit' and the definition of clear guidelines for districts to follow in implementing these procedures.

Implementing RTI is currently a decision of the local educational agency (LEA). As such, the utilization of RTI is a K-12 system decision and is used with all children to support their learning and school success as well as to determine eligibility. RTI is not an alternative way to access special education programs and services, rather it is a way to identify and intervene prior to needing special education. The SEAC believes that the Michigan Department of Education must develop guidelines for LEAs as to what RTI should be. These guidelines should include an implementation process describing how a district can move to a RTI model for all students as well as timelines and documentation of interventions for use in determining eligibility for special education programs and services. Further, the SEAC believes that LEAs must have guidelines in place prior to using an RTI model for eligibility determination.

Response to scientifically based intervention represents a significant change in practice for Michigan. All stakeholders need to understand what RTI means and how it supports learning for all students. The SEAC believes it is essential that parents be provided with information, training and support to clarify what RTI is. The SEAC has made separate

recommendations to the MDE and SBE regarding the RTI model and is in support of this approach. The SEAC has specific concerns with regard to the implementation of this approach and advises that additional guidance is necessary in support to this rule language.

Rules 340.1832 addresses content of the ISD Plans. Rule 340.1832(l) describes the role and function of the parent advisory committee (PAC) and strikes language illustrating related matters. While the role described is an illustration of a related matter or role for the PAC, it appears to eliminate this function for the PAC. There is confusion regarding the role and specific responsibilities of the PAC as well as who is responsible for defining those roles and responsibilities. Given this, the SEAC requests that the language be retained until the defined role and responsibilities of the PAC is clarified.

Approval of ISD Plans is addressed in Rule 340.1837 and 340.1837(2), defines the responsibility of the ISD in advising constituents with regard to the receipt of plan approval. The item as written lacks specificity with regard to who is responsible for advising the constituents. The SEAC believes that the rules would be enhanced with consistency in the way language is used and further suggests that the ISD superintendent or his/her designee be identified as the responsible person.

With regard to Rule 340.1701 Definitions; I to P, b (ii) Definition of Parent, we recognize that these changes do not take rights away from parents, but rather, provide the same rights to those legally authorized to act on behalf of the child. With regard to the process of designating a surrogate, we wonder if all the necessary words to assure that the surrogate can act on behalf of the student with a disability have been included. Given the potential of assignment of rights to a surrogate or foster parent and that these assignees may not necessarily have knowledge of special education, the SEAC has concerns with regard to assuring that these assignees are fully informed. Further, we have the same concerns with regard to the emancipated minors and those individuals with disabilities who act on their own behalf. The SEAC believes it is imperative that emancipated minors and those of age to act on their own behalf be fully informed of their rights including their right of refusal and that responsibility for informing them be assigned to a public agency.

With regard to the document, Special Education Considerations: Student Discipline Procedures, the SEAC comment takes the form of questions to consider with regard to this document. Specifically, on page four of the document, is language used 'not yet referred' inconsistent with 'not yet eligible' used in other parts of the document? With regard to the use of this document, how will this information be communicated to the classroom level? We wonder if examples or scenarios might help those implementing these considerations to visualize these procedures in operation. With regard to communication of this information to parents, we wonder if a parent friendly document explaining these procedures including the 10-day rule might be helpful.

With regard to the Michigan Special Education Model Due Process Complaint Form, we wonder if given what is stated on these forms, are e-mail and fax still acceptable? If not, that information should be written on the form. In addition, we wonder if statements should be added to the form informing the parent that by completing the form, the Department does not assure that it constitutes a sufficient due process complaint under the law and that the parents seeking to file a due process hearing complaint should consult legal counsel as to how to complete it.

As the rules, laws and practices become more complex, we can not forget there is a child's face behind those services we provide. The SEAC welcomes continued dialogue to assure students with disabilities receive the supports they require to become successful within a changing educational framework.

In closing, our comment provided here is intended to fulfill SEAC's federally defined function to publicly comment on any rules or regulations proposed by the State regarding the education of students with disabilities. It is our hope that this comment will assist the State to effectively bring consistent, quality supports for students with disabilities. SEAC again thanks the MDE-OSE/EIS and the State Board of Education for this opportunity.

Extended School Year Services Research: Literature Review

State	Document Type
Alabama "Special Education in Alabama: A Right, Not a Favor" University of Alabama, 2007	Technical Assistance (TA) document
Alaska "Special Education Handbook" Alaska Department of Special Education and Early Development, 2003	TA document
Arizona "Special Education Procedures Manual" Arizona Department of Special Education, 2005	Fact sheet/Q&A
Arkansas "Procedural Requirements and Program Standards" Arkansas Department of Education, date unavailable	Administrative rules
California "Extended School Year Program at Compton Unified School District: Report on Program Effectiveness" Legislative Analyst's Office, 2000 See also: CCR, Title 5, Section 3043 on extended school year services.	Research study
Colorado "Determining ESY Services" Colorado Department of Education, 1998	TA document
Connecticut "Extended School Year Services" and "Extended School Day/Extended School Year" Special Education Resource Center, 1997	TA document
Delaware "Extended School Year Services" Delaware Department of Education, date unavailable	Administrative rules
Florida "ESY: What is the IDEA Behind Extended School Year Services for Students with Disabilities?" Florida Department of Education, 2002	TA document
Georgia "Free Appropriate Education" Georgia Department of Education, date unavailable	Administrative rules

<p>Hawaii "Subchapter 5: Individualized Education Program"</p> <p>Hawaii Department of Education, date unavailable</p>	Administrative rules
<p>Idaho "Extended School Year"</p> <p>Author, date unavailable</p>	TA document
<p>Illinois "Communication on Extended School Year Services" (Memorandum)</p> <p>Illinois State Board, 2001</p>	State Board memorandum
<p>Indiana "Technical Assistance Document: Determining the Need for Extended School Year Services"</p> <p>Mountain Plains, Utah State University (Indiana, 2005)</p>	Copy, Mountain Plains TA document
<p>Iowa "Extended School Year Service: Iowa Standards for Students with Disabilities"</p>	TA document
<p>Kansas "Guide to Special Education"</p> <p>Kansas State Department of Education: Student Support Services, 2006</p>	TA document
<p>Kentucky "Extended School Services" and "Kentucky District and School Coordinators' Perceptions of their Extended School Services Programs"</p> <p>Kentucky Department of Education, date unavailable and Cowley, et al, 2002</p>	Administrative rules, research study
<p>Louisiana "Extended School Year Program Handbook"</p> <p>Louisiana Department of Education, 2005</p>	Administrative rules, TA document
<p>Massachusetts "Question and Answer Guide on Special Education Extended School Year Programs"</p> <p>Massachusetts Department of Education, Program Quality Assurance Services, date unavailable http://www.doe.mass.edu/pqa/ta/esyp_ga.html</p>	Fact sheet, Q&A
<p>Minnesota "Extended School Year Services for Students with Disabilities: Fact Sheet"</p> <p>Minnesota Disability Law Center, date unavailable</p>	Fact sheet

<p>Mississippi "Extended School Year Services Guidelines"</p> <p>Mississippi Department of Education, 2004</p>	TA document
<p>Missouri "Recommendations for Extended School Year Policies"</p> <p>Missouri Department of Elementary and Secondary Education, Division of Special Education, 1999</p>	Administrative rules
<p>Montana "Extended School Year Services"</p> <p>Montana Office of Public Instruction, 2002</p>	TA document
<p>Nebraska "Extended School Year Services: Technical Assistance Document"</p> <p>Nebraska Department of Education, 2003</p>	TA document
<p>Nevada "Extended School Year and Special Education Technical Assistance Document"</p> <p>Nevada Department of Education, 2003</p>	TA document
<p>New Hampshire "Extended School Year Services"</p> <p>Commissioner of Education, 2007</p>	Memorandum
<p>New Jersey "Extended School Year"</p> <p>Inter-departmental correspondence, 1999</p>	Memorandum
<p>New Mexico "Technical Assistance Manual: Extended School Year Services"</p> <p>New Mexico Department of Education, 2005</p>	TA document
<p>New York "Extended School Year Programs and Services: Questions and Answers"</p> <p>New York Department of Education, 2006</p>	Fact sheet/Q&A
<p>North Dakota "Extended School Year Services for Students with Disabilities"</p> <p>North Dakota State Office of Public Instruction, 2003</p>	TA document
<p>Ohio "How do I get Extended School Year Services for My Child: Ohio Legal Services Fact Sheet"</p> <p>Ohio Legal Rights Services Publications, 2004</p>	Q&A/fact Sheet

<p>Oklahoma "Extended School Year Service for Children and Youth with Disabilities"</p> <p>Oklahoma State Department of Education, 2004</p>	TA document
<p>Oregon "Extended School Year (ESY) Programs" in "Special Education: A Guide for Parents and Advocates"</p> <p>Oregon Advocacy Center, 1999</p>	TA document
<p>Pennsylvania "Basic Education Circulars"</p> <p>Pennsylvania Department of Education, 2003</p>	Administrative rules, TA document
<p>Rhode Island "Regulations of the Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities"</p> <p>Rhode Island Department of Elementary and Secondary Education 2000</p>	Administrative rules
<p>South Carolina "Report to the Legislative-Governor's Committee on Mental Health and Mental Retardation on the ESY Pilot Project"</p> <p>South Carolina Department of Education, 1991</p>	Committee report
<p>South Dakota Information not available</p>	Copy, Mountain Plains TA document
<p>Tennessee "Extended School Year Services"</p> <p>Sevier County Department of Special Education, date unavailable</p>	TA document
<p>*Texas "Extended School Year Services for Students with Disabilities"</p> <p>Texas Education Agency, Office of Special Education, 2004</p>	TA document
<p>Utah "Special Education and Extended School Year"</p> <p>Utah Department of Education, 2007</p>	Administrative rules, TA document
<p>Vermont "Special Education Regulations"</p> <p>Vermont State Board of Education, 2006</p>	Administrative rules
<p>Virginia "Extended School Year Services Technical Assistance Resource Document"</p> <p>Virginia Department of Education, 2000</p>	TA document

Washington "The Extended School Year Resource Guide" Washington Office of Public Instruction, date unavailable	TA document
West Virginia "Issues and Options for Extended School Year Services for Young Children with Disabilities" West Virginia Early Childhood Transition Steering Committee	Q&A
Wisconsin "Information Update" Wisconsin Department of Public Instruction, 1996	Fact sheet
Wyoming "Guidelines on the Provision of Extended School Year Services for Students with Disabilities" Wyoming Department of Education, 2007	TA document

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2. Ahearn, E (2000). "Extended School Year - State Regulations and Policies." *NASOSE Forum, QTA*.
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4. Copenhaver, et al (2004). "Primer on the Provision of Extended School Year Services." Mountain Plains Regional Resource Center. North Logan, UT.
5. Katsiyannis, Antonis (1990). "Extended School Year Policies: An Established Necessity." *Rase*. Vol. 12. Issue 1.
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10. Rapport, et al (1993). "Extended School Year: Legal Issues and Implications." *Jash*. Vol. 18. No. 1. pgs. 16-27.
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Extended School Year Services in Michigan: Guidelines for Educators, Service Providers, and Families

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Guidelines 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 considerations and guidelines 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 1999, 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 have upheld the same standards and 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). (See Appendix A for detailed federal FAPE regulations.)
2. ESY services must be provided only if a child's individualized education program (IEP) Team determines, **on an individual basis**, that the services are necessary for the provision of FAPE to the student. (See Section 3 for IEP Team definition and details.)
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 (SEA).

(Authority: 20 U.S.C. 1412 (a)(1))

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. These services are different from 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.

ESY services are not:

- 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; and
- A service to be provided to maximize each student's potential.

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 IEP. (See Appendix A for detailed federal regulations on FAPE.)

Essential to the provision of 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 FAPE.

Some students with disabilities may not receive 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 FAPE.

Who is eligible for ESY services?

Any student with an IEP is eligible for the consideration of ESY services. 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.

Regression: The gradual loss of 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. Both of these conditions should be evaluated by the IEP Team in determining eligibility for ESY services.

Recoupment: The process of regaining skills, through review and re-teaching, following a scheduled break in instruction.

The purpose of ESY under the above circumstances is to maintain skills, not to develop new ones.

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. Other circumstances that may be justifiable for a student to obtain ESY services include, but are not limited to:

- **Nature and severity of the student's disability.** If the nature or severity of a student's disability is such that he/she will not receive a reasonable amount of benefit from his or her educational program during the regular school year, he/she may be eligible for ESY services. For example, the chronic nature of a student's disability may influence issues such as regression and recoupment. Such students are eligible for consideration.
- **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.
- **Incompletion of 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.
- **Critical life skill areas.** 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
- **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.

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

Is the IEP Team required to demonstrate regression before ESY services are provided?

No. A student cannot be required to fail or demonstrate a lack of progress for an entire year simply to prove a 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.

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 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 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 or 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 should be completed and attached to the current IEP.

Although there is no timeline for the IEP Team's decision for or against 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:

- intra-school cooperative programs;
- a cooperative program with another community agency; and
- other learning facilities.

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 all academic areas;
- small group instruction in math;
- speech and language therapy provided onsite by a community recreation program;
- consultation with a job coach or trainer for a high school student;
- intensive tutoring at various points in the summer months to prevent regression; and
- 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:

SUMMER SCHOOL	EXTENDED SCHOOL YEAR SERVICES
<p>Definition: An optional or permissive program provided beyond the regular school year. A school may elect whether to operate summer classes.</p>	<p>Definition: 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 FAPE.</p>
<p>Purpose: 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>Purpose: 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>Cost: Free or on a fee basis</p>	<p>Cost: Free to parents</p>
<p>Duration: Typically operated on a set schedule for a number of weeks during the summer for all those who participate.</p>	<p>Duration: Schedule, setting, and extent of services designed to meet the individual needs of a student in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.</p>
<p>Location: General education setting; based on needs and interests of all students.</p>	<p>Location: Varies depending upon each student; the IEP has more flexibility regarding location of services.</p>
<p>Eligibility: A student's participation does not depend on an IEP Team determination of need.</p>	<p>Eligibility: 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 relate to ESY services?

The requirements for placement in the least restrictive environment (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 or her guardian(s) have the right to refuse ESY services in the event that they are offered. Likewise, a student and/or his or 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.

(Authority: 20 U.S.C. 1401(9))

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.

(Authority: 20 U.S.C. 1412(a)(1)(A))

Appendix B: Extended School Year Services Considerations for School Personnel, Students, and Families

Instructions: Please discuss all relevant areas for consideration. Check all boxes that apply. Attach supporting documents as necessary.

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.**

Degree of Progress Toward IEP Goals and Objectives

- An interruption in instruction may hinder the student's degree of progress toward IEP goals or interfere with the student's ability to receive some benefit from his/her educational program during the regular school year. List affected IEP goals below:**

Emerging Skills

- 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:**

Breakthrough Opportunities

- There has been a change in the student's mental, physical, and/or emotional health that should be addressed. Please describe:**

- There has been a change in the student's behavior that should be addressed. Please describe:**

- There has been a change in the student's overall well-being that should be addressed. Please describe:**

Nature and/or Severity of Disability

- The student's (mental, emotional, physical) health or the chronic nature of his/her disability requires additional assistance to benefit from his/her educational program. Please describe:**

- The student would be at educational and/or physical risk with an interruption in his/her programming. Please describe:**

- The health of the student prevented him/her from benefiting from his/her education program or general education courses during the previous school year. Please describe:**

- The student requires additional assistance with his/her behavior. Please describe:**

- The student has demonstrated, or has the potential to demonstrate, stereotypic, ritualistic, aggressive, or self-injurious behavior(s) that have prevented him/her from benefiting from his/her education program of general education courses during the previous school year. Please describe:**

- There are other concerns related to the nature and/or severity of the student's disability that are likely to prevent the student from receiving some benefit from his/her educational program during the regular school year alone. Please describe:**

Vocational and Transition Needs

- ☐ 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:**

Appendix C: Discussion Questions

- 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:**