

Guidance for Extended School Year Services in Michigan

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Guidance for Extended School Year Services in Michigan

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. The rules were developed in response to PA 198 of 1971, which is 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 require 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 (USDoEd) 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*.

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 USDoEd.

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 Individualized Education Program (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.

(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 state education agency (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 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 Individualized Family Service Plan (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 local educational agency (LEA) for making eligibility determinations.

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 summary of these standards is provided in Appendix 1.

Section 2: Definition of ESY 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 ESY 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 or 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 goal(s) 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.

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 Section 4 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;
 - 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 receiving general education or special education instruction, 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 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 the 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?

- (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?
 - (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?
 - (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 goal(s) 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 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 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?
 - 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?
 - 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?
 - 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.

Section 4: Timeliness of Decision Making

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 may 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 a 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, due process complaints and hearings, and state complaints) if there is a difference in opinion prior to the break in services.

ESY Guidance on Timeliness of Decision Making

To make individualized, student-centered, and data-driven decisions regarding determination for and provision of ESY services, the decisions must be made in sufficient time. The timeliness of decisions about ESY services is affected by knowledge, planning time, data, and dispute resolution.

Knowledge

All special education providers need to be informed about the ESY services rule in Michigan's Administrative Rules for Special Education (MARSE) and this guidance on how to make decisions about and implement ESY services. For example, staff needs to know:

- The need for ESY services is an individual decision based on many different sources of information that must be reviewed every year from a fresh perspective.
- ESY services need to be discussed at every student’s IEP and other team meetings, as appropriate.
- The purpose of ESY services is to address skills which need to be maintained without interruption for the student to benefit meaningfully from a FAPE.
- It is **not** the purpose of ESY services to work on new goals or objectives.
- A student with one or more goal areas of concern may need ESY services for a variety of reasons, not just regression or recoupment.
- ESY services can be provided in many different ways, including using community resources as part of an individual ESY plan.
- ESY services are not limited to the summer months, especially in programs that spread school days across the calendar year.

School districts should conduct professional development about ESY services so special education staff can effectively share information about ESY decision making with parents and general education staff. It is important to have procedures in place to provide new staff with this information if they are employed after training has been provided.

It is important for parents to have the same information as staff about ESY services so they can be true partners in decision making. Although ESY services would benefit nearly every student, parents need to know that ESY services are only for students to maintain essential skills. It is recommended that schools work with parent advisory groups to become informed on ESY services and to develop parent-friendly methods to explain how decisions about ESY services should be made.

Planning Time

In planning for ESY services, districts should allow at least 30 school days (prior to implementation) to plan for and determine an individual student’s ESY services, which is consistent with other standard timelines for the IEP.

Planning for ESY services for individual students needs to happen throughout the year—not at the end of the year—taking into account the need for data and outside information.

- Outside events and other changing circumstances that affect the student’s performance can happen at any time during the school year.
- Vocational cycles are not defined by the school calendar or IEP cycle.
- Developmental milestones or windows of opportunity are also not related to the school calendar or IEP cycle.

- Data should be reviewed as it is collected; e.g., for a student that regresses over the summer, you would have recoupment data in the fall. The IEP team should consider the data at that time, not waiting until the scheduled IEP date.
- Individual student planning has to include information of what goals will be addressed by ESY.

Planning needs to occur to determine not only eligibility for ESY services, but to determine the nature and timing of the ESY services. Skill regression is more likely to be avoided when services are spread through vacation periods and long breaks are avoided. Planning also needs to take into account the relationship to the student's annual goals and objectives and the ability of the provider to support the student in meeting those goals.

Waiting until late spring to plan for summer ESY services is not in sufficient time.

Since ESY services are unique to each student, districts need to take time to plan how each student's needs will be met and by whom. This needs to happen both on an individual basis and systemically. Systemic planning for meeting the needs of students in regards to ESY services needs to be done in sufficient time.

Planning time needs to allow for IEP facilitation, if necessary, to help the IEP team develop a program. Planning time should also allow for the needs of students who are new to the district.

Schools that provide services to children with disabilities under the age of three must provide services throughout the calendar year. However, the number of days of service that are spread throughout the year may not be sufficient for all children under age three to maintain essential child goals and outcomes. If a child under age three has a goal—an outcome—that requires ESY, services may need to be provided during one or more breaks that may occur at times other than the summer.

Data

IEP Data—All members of the IEP team should have access to the data being used to discuss ESY services. See Section 5 for examples of possible data sources.

High frequency, systematic data collection assessing progress of measurable and observable goals is required to detect subtle trends in student performance. Data should be evaluated regularly to identify issues of regression/recoupment, critical stages or areas of learning, or the nature and severity of the disability. The data collected may, and probably will, look different under each of these issues.

Example 1: Regression/Recoupment

There is a consistent pattern of learning. It may be a steady baseline, or an increase in skill acquisition, with a drop in student performance following a break in instruction. It then takes the student an extended time to regain the previous level of acquired skill/level of performance.

Example 2: Critical stages or areas of learning

The data may look like a very slow rate of learning with a sudden and/or steep incline/increase prior to a break in instruction.

Example 3: Nature and severity

The data pattern may show a significant drop in performance of goal maintenance after a break in the consistency of programming.

Data needs to be collected on a regular, ongoing basis, with a minimum of those times mandated by the IEP. However, some IEP goals may require more frequent data collection (e.g., weekly, every other week, monthly), and the goal schedule should be written with this in mind. Data regarding ESY services should be evaluated minimally at these data collection points.

Data collection during the ESY should be consistent with data collection during the year in order to verify the effectiveness of ESY programming.

District Data—Districts should consider developing guidelines, a monitoring system for data collection, and an effective method for IEP team members to regularly analyze and discuss data.

Dispute Resolution

Planning and making decisions for ESY services must leave sufficient time for dispute resolution. Sufficient time includes time for available dispute resolution processes to reach solutions permitting the delivery of services. Gauging the time needed for dispute resolution is affected by the following:

- School districts having determined a process and standard for determination of ESY services.
- School staff and parents need to bring and share the necessary information that supports an ESY determination and selection of appropriate ESY services. That information may include but not be limited to: parent reports, outside agency service logs, outside evaluation, outside reports, progress reports, reading records, observation logs, communication logs, written observations, benchmarks acquired, and ancillary service logs.
- Sharing the same information at IEP team meetings can be as helpful in avoiding disputes as in resolving them at a later date.
- Scheduling participants in IEP team meetings may involve many key players. When arranging meetings, consideration may be given to other technological means of participation (e.g., telephone conference, email, sound/video recording, Skype).

- It is important to have the person who can commit resources be available or at the table at the time of ESY determination and selection of services.
- Before a dispute arises, school staff and parents should have made ESY decisions based in part on the time it takes to reach a solution through the variety of dispute resolution options available:
 - Request for formal evaluation or additional information from the school.
 - Outside evaluation and/or independent education evaluation (up to 45 days).
 - Local resolution (may take as long as necessary to meet).
 - Facilitated IEP team meeting (disputes resolved at the meeting).
 - Mediation (30 day average).
 - State complaint (60 days).
 - Due process (45 days).
 - Resolution session (30 days).
 - Due process with resolution meeting (75 days).
- School staff and parent awareness should include access to the above dispute resolution processes.

Section 5: 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 that will potentially result in significant delays in mastering critical prevocational 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 the 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.

'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).
- 3) The target level of attainment (e.g. performs skill without assistance, reads 100 words per minute correct at grade level).

'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 endpoint 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 may 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.

Ways these services can be provided include (but are not limited to):

- 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 service(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 may 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.

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.

For example, a middle school student with autism spectrum disorder has a social skills goal to interact with typically developing peers in general education classes during the normal school year. This goal is identified by the IEP team as a goal area of concern requiring ESY services because the data indicate regression and recoupment is a serious issue. The school district does not operate any middle school general education classes during the summer, and does not have a general education summer school program. The school district is not required to create a general education class and compel general education students to attend in order for the student to continue to work on this goal. The school district could address LRE by using organized activities in the community in which typically developing peers participate during the summer. Examples could include (but are not limited to) a local recreational program, a local library reading club, or a softball team.

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.

Appendix 1: A Summary of Standards for Extended School Year in Michigan

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 goal(s) 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 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 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 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?
 - 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?
 - 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?
 - 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 may 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.

Appendix 2: ESY Decision Making Process and Questions for ESY Decision Making

Extended School Year Decision-Making Process

- Begin with an annual goal area.
 - If there are no concerns, an ESY plan is not needed for a FAPE.
 - If there are concerns, then consider:
 - Regression/recoupment.
 - Nature or severity of the disability.
 - Critical stages or areas of learning.
 - Document any data related to the annual goal area and the considerations mentioned above.
 - Do the data support the need for ESY services?
 - If yes, develop an ESY plan.
 - If no, an ESY plan is not needed for a FAPE.

Questions for Extended School Year Decision Making

Is there one or more annual goal area(s) 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?
 - 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?
 - 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?
 - 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.

Appendix 3: Example of Planning Steps for ESY Services

Many steps have to be completed by special education providers and administrators to successfully implement ESY programs and/or services. As was stated elsewhere, ESY services may be provided at any time when there is a break in instruction. Important steps and suggested timelines for ESY services are provided in the example below. The following steps were written for ESY services that will be provided in the summer months:

- 1) **Beginning of year**—Special education administrator should remind providers to collect and record data regularly, but make sure data is collected at beginning of year, four to six weeks later, and before/immediately after holiday breaks.
- 2) **During first semester**—Providers should identify students on caseload with suspected ESY needs and ensure data has been collected.
- 3) **Beginning of second semester**—Submit names and documentation to support ESY needs to special education administrator.
- 4) **At least three months prior to end of school year**—Special education administrator consults with staff to form ideas about ESY service needs and delivery models. S/he also confirms staffing requirements and availability of community resources.
- 5) **No less than two months prior to end of school year**—Conduct IEP Team meetings for students with suspected need for ESY. If ESY decisions were delayed from an IEP completed earlier in the school year due to data, use an IEP or IEP Addendum to address ESY needs. IEP Teams identify areas of ESY needs (based on current goals), determine ESY service(s), and identify the frequency and duration of ESY service(s) based on student needs.
- 6) **No less than two months prior to end of school year**—Special education administrator should:
 - Identify staff positions needed to provide ESY;
 - Confirm staff availability;
 - Allocate or hire staff needed for ESY services;
 - Determine schedule, meal needs, and location(s) for ESY services; and
 - Identify materials needed for ESY and whether materials need to be transferred to ESY location.

- 7) **No less than one month prior to ESY delivery**—Special education administrator should:
 - Set up special transportation; and
 - Provide training and/or orientation related to specific student needs to staff providing ESY services who are new to students being served.
- 8) **One or two weeks prior to ESY delivery**—Provide staff with sufficient time to plan quality ESY services for students.
- 9) **Ongoing**—Although many students with ESY needs can be identified early in the school year, some needs may not be identified until much later in the spring. Special education administrators should keep these “late-breaking” cases in mind when planning how to deliver ESY services in his or her district.
- 10) **During ESY Service:**
 - Assess student progress pre- and post-ESY services;
 - Provide services consistent with current IEP goals identified for ESY services;
 - Communicate with parents during ESY service; and
 - Provide data/documentation of outcomes of ESY services to special education administrator and parents at the conclusion of ESY services.

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.

Due process complaint and hearing. A due process hearing is an administrative proceeding that resembles a court hearing. School districts and parents present witnesses, evidence, and arguments to support their positions. An administrative law judge (ALJ) decides each issue and orders corrective action as needed. A due process hearing is initiated by filing a due process complaint. A due process complaint may be filed by either a parent or a school official in the event of a dispute about an issue, which typically arises out of or is related to the IEP process. Issues that might be involved include a student's evaluation, identification, placement, IEP, or any other matter concerning the appropriate education and services for a student. There are specific requirements and procedures involved in filing a due process complaint, including timeliness. See the MDE Procedural Safeguards Notice and Michigan Due Process Request Model Form for additional information.

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.

Facilitated IEP. An IEP Team meeting led by a facilitator. Facilitation refers to the use of specialized skills to run a meeting in a fair, inclusive and organized fashion. It can be used in any IEP Team meeting, or in a resolution session. Facilitation is used to ensure that meeting participants interact respectfully, have ample opportunity to express their views and ideas, and focus on developing the appropriate IEP for the child involved. It can help participants avoid disputes or resolve them before they escalate. Facilitation can increase the chances of achieving a signed IEP agreeable to all parties. An independent, neutral facilitator can aid communication when issues are complex or relationships among the participants are strained. A facilitator also can free a meeting leader to focus on the issues at hand while the facilitator runs the meeting. Facilitators do not serve as participants, attorneys or advocates. They have no input on substantive matters and make no decisions. The participants control the outcome. Also see SEMS.

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.

Mediation. Mediation is a collaborative means of resolving disputes with help from a neutral third party. During the mediation process the parties share ideas and attempt to develop a solution that meets the needs of the child and is workable for all concerned. The mediator aids communication, but the parties make all the decisions. A successful mediation results in a written, signed agreement that can be incorporated into an IEP and enforced in court. Mediation can be requested by a

parent or an educator for any special education or early intervention issue at any time. Mediation is voluntary and confidential. Discussions during mediation cannot be used as evidence in later legal proceedings. It can be used as a means of early resolution, though the parties are always free to pursue a hearing or complaint. Also see SEMS.

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.’

OSE. The Office of Special Education 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. OSEP is an office of OSERS.

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.

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.

SEMS. Special Education Mediation Services. The SEMS is a program funded by the MDE to provide mediation and facilitation services that enable parents and educators to discuss and resolve issues relating to special education disputes. The SEMS also conducts workshops that enhance skills in collaborative problem solving. The SEMS services are free to users. See the [SEMS website](http://MiKids1st.org) (<http://MiKids1st.org>) for more information.

State complaint. A state complaint involves an allegation (claim) that a district has failed to implement an IEP for a child or student with a disability or has not complied with state or federal regulations related to early intervention or special education services. Formal complaints must be written and signed and must include the facts on which the allegation is based and a proposed resolution. Anyone can file a state complaint. There are specific requirements and procedures involved in making a state complaint, including timeliness. See the MDE Procedural Safeguards Notice and Michigan Special Education Model Complaint Form for additional information.