



***RESOURCE INFORMATION
ON
EXTENDED SCHOOL YEAR
SERVICES***

***MARYLAND STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION/EARLY
INTERVENTION SERVICES
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INTRODUCTION

This document provides each public and nonpublic agency with information regarding the implementation of extended school year (ESY) services as a component of a free appropriate public education (FAPE). This information is intended as a resource to assist agencies in developing policies and procedures for ESY services. The Individuals with Disabilities Education Act (IDEA) as amended June 4, 1997, the Code of Federal Regulations [34 CFR 300] effective May 11, 1999, and the Maryland Code of Regulations [COMAR 13A.05.01; and 13A.05.02] effective July 1, 1999 clarify the requirements for determining and providing ESY services to students with disabilities.

The August 25, 1994 Ruesch v. Fountain decision regarding the provision of extended school year services has direct implications for all public agencies in Maryland. Extended school year services are among those services that must be considered in providing a FAPE for a student with a disability. The Ruesch v. Fountain decision states, “there is no requirement that extended school year services be part of every disabled child’s Individualized Education Plan (IEP) even if there would be some benefit. Indeed, it appears that ESY services would appropriately be part of an [sic] FAPE for a relatively small number of disabled children. Nevertheless, while there is no requirement that all disabled children have ESY in their IEP, there is a legal obligation to consider and fairly evaluate the appropriateness of ESY in developing every IEP for every disabled child.”

Therefore, each public agency must have local policies and procedures for the consideration of extended school year services in accordance with the Public Agency Standards Submission (PASS) document which is submitted to the Maryland State Department of Education (MSDE) annually as a component of each agency’s Local Application for Federal Funds. COMAR applies to all public agencies that provide educational services to students with disabilities, ages 3 through 20 years old, including local school systems, Department of Health and Mental Hygiene, Department of Juvenile Justice, Maryland School for the Blind, Maryland School for the Deaf, and Adult Correctional Facilities. [13A.05.01.02A and .03B(51)(b)]

REGULATIONS

To order to assist individuals in having access to primary information sources relevant to ESY services, below are excerpts from current federal and State laws and regulations for your convenience.

FEDERAL

Individuals with Disabilities Education Act (IDEA), as Amended, 1997 20 USC 1412(a)(1)(A) and (B)

“(1) Free appropriate public education

(A) In general - A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation - The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

- (i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges.”

IDEA Regulation – 34 CFR §300.309

“(a) General –

- (1) each public agency shall ensure that extended school year services are available as necessary to provide FAPE;
- (2) extended school year services must be provided only if a child’s IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child; and
- (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 mean 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).” [Maryland State Department of Education (MSDE)]

STATE

Education Article §8-405(b), Annotated Code of Maryland

“(b) Extended year services. – The individualized education program team shall determine, on at least an annual basis, whether the child requires extended year services in order to ensure that the child is not deprived of a free appropriate public education by virtue of the normal break in the regular school year.”

COMAR 13A.05.01.07B(2)

“(2) A public agency shall ensure that meetings to determine a student’s need for extended school year services are conducted early enough in the school year to provide the parent the opportunity to request mediation or a due process hearing in accordance with regulation .15B and C of this chapter.”

COMAR 13A.05.01.08B(2)

“(2) Extended School Year Services.

(a) At least annually, the IEP team shall determine whether the student requires the provision of extended school year services in accordance with Education Article 8-405, Annotated Code of Maryland.

(b) The IEP team shall consider:

- (i) whether the student’s IEP includes annual goals related to critical life skills;
- (ii) whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
- (iii) the student’s degree of progress toward mastery of IEP goals related to critical life skills;
- (iv) the presence of emerging skills or breakthrough opportunities;
- (v) interfering behaviors;
- (vi) the nature and severity of the disability; and
- (vii) special circumstances.

- (c) The IEP team shall determine if any of the factors described in (2)(b) of this regulation will prevent the student from receiving some benefit from the student's educational program during the regular school year, if the student does not receive extended school year services."

TERMINOLOGY RELATED TO ESY

Critical Life Skills

A critical life skill is any skill determined by the IEP team to be critical to the student's overall educational progress.

Degree of Progress

The IEP team must review the expected degree of progress on IEP goals targeting critical life skills. The IEP team must determine whether, without extended school year services, the student's degree of progress on those IEP goals is likely to prevent the student from receiving some educational benefit from his or her educational program during the regular school year.

Emerging Skills/Breakthrough Opportunities

The IEP team determines whether any IEP goals targeting critical life skills are at a breakthrough point. At this point, the IEP team determines whether the interruption of instruction on the critical life skills caused by the school break is likely to prevent the student from receiving some educational benefit from his or her educational program during the regular school year without extended school year services.

Extended School Year Services (ESY)

Extended school year means an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in a student's IEP. ESY services will vary in intensity, location, inclusion of related services, and length of time, depending upon the student's needs. ESY services are provided as part of a free appropriate public education in accordance with a student's individualized education program for students exhibiting the need for special education, related services, or both, beyond the regular school year at no cost to the parents.

Interfering Behaviors

The IEP team determines whether any interfering behaviors, such as stereotypic, ritualistic, aggressive or self-injurious behavior(s), targeted by IEP goals would have prevented the student from receiving some benefit from his or her educational program during the regular school year. Or the team determines whether the interruption of programming for any of these interfering

behaviors is likely to prevent the student from receiving some benefit from his or her educational program without extended school year services.

Nature and/or Severity of the Disability

The IEP team determines whether, without extended school year services, the nature and/or severity of the student's disability is likely to prevent the student from receiving some benefit from his/her educational program during the regular school year.

Regression/Recoupment

The IEP team determines whether, without extended school year services, there is a likelihood of substantial regression of critical life skills caused by the school break that would result in the failure to recover those lost skills in a reasonable time following the school break.

“Regression” is a substantial loss of any critical life skill. Some degree of loss in skills typically occurs with all students during normal school breaks and would not be considered substantial.

“Recoupment” is the ability to recover a loss of skills in a reasonable time following a normal school break. Most nondisabled students recoup skills within 60 calendar days. Reasonable recoupment rates vary among individuals based upon individual learning styles and accordingly, the rate of recoupment for students with disabilities may also vary.

Special Circumstances

The IEP team determines whether, without extended school year services, there are any special circumstances that will prevent the student from receiving some benefit from his/her educational program during the regular school year.

Summer School

In contrast to extended school year services, summer school programs are optional and voluntary programs which provide enrichment or reinforcement activities. Summer school is not required for a FAPE. Extended school year services could be provided in combination with existing summer school programs, if such programs are available.

CONSIDERATIONS IN EXTENDED SCHOOL YEAR DECISION MAKING

A school system must provide extended school year services when such services are necessary to permit a student who has an IEP to receive some benefit from his/her educational program during the regular school year. While there is no requirement that extended school year services be made a part of every disabled student's IEP even if there would be some educational benefit,

there is an affirmative obligation for the IEP team to determine each student's need for extended school year services at least annually.

Since ESY is an individualized decision for each student with a disability, an IEP team may determine a student with a disability requires the provision of ESY services for a particular critical life skill goal because that goal has progressed to a "breakthrough point" and continued instruction will enable the student to maintain demonstrated progress.

ESY services can be offered for varying lengths of time depending on the student's needs, as determined by the IEP team. The IEP team must make individualized decisions about the frequency and duration of ESY services, e.g. how many hours per day, how many days per week and how many weeks, depending on the individualized needs of the student. ESY services are not services to be provided to maximize each student's potential but must be provided if a student needs ESY to obtain some benefit from the educational program, and to ensure the provision of FAPE.

Because ESY services are uniquely designed to meet the individual needs of a student with a disability, it is necessary to emphasize that extended school year services are:

- **Not** a mandated twelve (12) month services for all students with disabilities;
- **Not** a child care service;
- **Not** necessarily a continuation of the total IEP provided during the regular school year;
- **Not** required to be provided all day, every day, or each day during the normal school break;
- **Not** an automatic program provision from year to year;
- **Not** a service limited to or available by only broad categories of disabilities; or
- **Not** a service to be provided to maximize each student's potential.

PARENT NOTIFICATION OF EXTENDED SCHOOL YEAR SERVICES

Each public agency is required to ensure that parents of students with disabilities are notified of the availability of ESY services. Notification must be sufficient to ensure that Education Article §8-405, Annotated Code of Maryland, has been met. Each agency needs to determine how they intend to provide sufficient notice to all parents that meet the requirement, and ensure that parents receive such notice. Whatever means an agency chooses as a method to provide notice to parents of the availability of extended school year services, that notice must also provide the parent with sufficient information regarding the ESY decision making process.

Methods that have been utilized by public agencies include, but are not limited to:

- a description of ESY services, the decision making process, and the process for determining the need for individualized ESY within the public agency's Procedural Safeguards document;

- inclusion of ESY services as one of the purposes of the IEP team meeting within the notice for the meeting;
- newsletters that go to each parent of a student with a disability;
- news releases about an agency's special education services;
- a public agency's annual school calendar of events and programs that goes to each parent.

IEP TEAM PROCEDURES

The IEP team shall:

1. Schedule IEP team meetings early enough in the school year to ensure that parents can meaningfully exercise their due process rights, if they wish to challenge an ESY decision. When two or more public agencies are involved in the determination of ESY services, this IEP team meeting, involving representatives from the agencies, must be held in a timely manner to ensure appropriate services are provided and the responsibilities of each agency are clarified. [13A.05.01.07B(2) and .11B]
2. Ensure that the membership and the participants in the development and/or review of the IEP consist of the appropriate personnel in accordance with IDEA and COMAR regulations. [34 CFR §300.344; 13A.05.01.07A]
3. Provide parents with written notification of the IEP team meeting at least 10 days prior to the meeting. Notification should indicate that the need for ESY services would be considered at the IEP team meeting. Notification of an IEP team meeting also includes providing the parent with a copy of the public agency Procedural Safeguards. [34 CFR §300.504(a)(2); 13A.05.01.11A].
4. Provide parents with information on the availability of ESY services and the factors that are to be considered in determining the student's need for ESY services. [13A.05.01.11B]
5. Review the student's progress on IEP goals. [13A.05.01.08B]
6. Determine whether there are goals targeting critical life skills on the student's IEP, which may require the provision of ESY services in order for the student to receive FAPE. [13A.05.01.08B(2)(a)]
7. The IEP team must consider and document:
 - a) whether the student's IEP includes annual goals related to critical life skills;

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- b) whether there is likelihood of substantial regression of critical life skills caused by the normal school break;
 - c) the student's degree of progress toward mastery of IEP goals related to critical life skills;
 - d) the presence of emerging skills or breakthrough opportunities;
 - e) interfering behaviors;
 - f) the nature and severity of the disability, and
 - g) special circumstances. [13A.05.01.08B(2)(b)]
8. Based upon the IEP team's consideration of the factors listed above, in relationship to the student's IEP and progress, the IEP team shall determine whether any of these factors will prevent the student from receiving some benefit from the educational program during the regular school year, if the student does not receive ESY services. If so, the student requires the provision of ESY services to receive FAPE. [13A.05.01.08B(2)(c)]
9. Identify the IEP goals to be addressed through ESY services and delivered through a properly developed IEP. Decisions regarding services must be based on the student's individual need and not be dependent on existing programs. [13A.05.01.09A(2)]
10. Document the discussion of ESY services. Documentation should include the IEP team decision regarding the provision of ESY services and the basis for the decision. [13A.05.01.08B and .09A(2)]
11. Document least restrictive environment (LRE) decision making as it pertains to ESY services. [34 CFR §300.550-.556; 13A.05.01.10]
12. Notify parents, in writing, of the IEP team decision regarding ESY services and due process rights. All procedural safeguards, including due process rights are applicable to the provision of ESY services. [13A.05.01.12B]