

## Program Quality Assurance Services

### Compliance and Monitoring

## Question and Answer Guide on Special Education Extended School Year Programs

603 CMR 28.05(4)(d)

### Introduction

The Department of Elementary and Secondary Education regularly receives inquiries from the public and school districts on the topic of "extended school year" (ESY) programs for children with special needs. ESY programs are described under state and federal special education requirements and have been further interpreted through case law and through advisories issued by the U. S. Department of Elementary and Secondary Education, Office of Special Education Programs (OSEP).

The following questions and answers are intended to provide school districts with an overview of the basic requirements for ESY programs as they proceed to implement these opportunities for children with special needs in Massachusetts.

#### 1. Couldn't all children benefit from "extended year programs", not just children with special needs?

All children "regress"--lose progress, forget, revert to previous behavior--to some extent between school years. It must be determined whether a child's regression would likely be substantial, and whether the child would require a greater than usual time to "recoup"--to get back to the level the child had achieved before a break in service.

#### 2. What if a school district doesn't offer "summer school"?

ESY programs are not "summer school"; therefore, school districts cannot categorically refuse to consider ESY programs because districts do not offer "summer school" to all children.

#### 3. At what point does a school district decide whether or not a child with special needs is eligible for ESY programming?

At least once annually the child's Team must consider the need for an extended school year program and record its determination on page 6 of the IEP. A Team's determination regarding the need for an ESY program must be made on an individual basis.

#### 4. May the TEAM "wait and see" if a child experiences substantial regression during a break in service before it determines whether ESY services should be proposed?

No. The child's Team must not put off a determination to offer ESY programming until the end of a break in service (i.e., summer vacation). The Team must consider the need for such services prior to the beginning of the break in service by anticipating whether substantial regression and problems with recoupment will occur in the absence of ESY services. ESY programs should be a continuation of the education benefits that accrue to a child during the regular school year and should be consistent with the child's IEP goals and objectives addressed throughout the regular school year; however, they don't necessarily have to be the same services delivered at the same frequency as provided during the regular school year.

#### 5. Must local school districts establish written policy and procedures for special education extended school year programs?

Yes. School districts must have written policy and procedures regarding the provision of extended school year programs. Such ESY policy and procedures supplement assurances of the district in its Local Special Education Plan required by IDEA. The policy and procedures must detail the criteria used by a Team for individually determining the need for ESY programming and should embody all requirements discussed in this Question and Answer Guide. In order to ensure consistent staff implementation of its ESY policy, each school district must train all staff involved in Team evaluations to implement the ESY policy and procedures.

#### 6. Which children are eligible for extended school year programs?

ESY programs may not be limited to children with special needs in certain program types (e.g., substantially separate settings) or to children with certain types of special needs. Decisions about ESY programs must be made on an individual basis, taking into consideration the unique needs of the child.

#### 7. Must ESY services described on an IEP be provided at no cost to the child's parent(s)?

Yes.

#### 8. May "recreation programs" be considered extended year programs?

Federal special education regulations under the Individuals with Disabilities Education Act (IDEA) do provide for "recreation programs" as related services. Therefore, an ESY program may consist of, or include, a recreation program. As with all special education services, educational goal(s) and objectives for a recreation program must be included in a child's IEP. Note, however, that state special education regulations indicate that camping or recreation programs provided **solely** for recreational purposes and with no corresponding IEP goals or specially designed instruction shall not be considered extended year programs.

#### 9. How is the concept of "recoupment" used by a Team in determining the need for extended school year programming?

The Department of Elementary and Secondary Education interprets a child's difficulties with "recoupment" to be an aspect of "significant regression". Specifically, significant regression and recoupment consist of the following inter-related elements:

(1) the loss of performance levels that were attained before a break in service,

(2) the child's limited learning rate, which lengthens the amount of time the child requires to review and/or relearn previously attained objectives, and

(3) the fact that the time for that child to accomplish such recoupment is greater than the period of time the school district allows all other children for review and/or relearning.

#### 10. What other criteria should a Team apply in making a determination for needed ESY programming?

Any decision regarding needed ESY programming must take into account the child's history of significant regression and limited recoupment capability. In other words, a child's Team must look backward and forward when considering the need for ESY programming.

In addition to significant regression and/or limited recoupment, courts have set forth other ESY criteria to be applied by a Team, as follows:

- the degree of the child's impairment
- the parents' ability to provide structure at home
- the child's rate of progress
- the child's specific behavior and/or physical problems
- the availability of alternative resources
- the child's ability to interact with non-disabled children
- the specific curricular areas in which the child needs continuing attention
- the vocational and transition needs of the child
- whether the service requested is "extraordinary" rather than usual in consideration of the child's condition.

Only when all factors are considered together by the child's Team can a determination be made as to how much service will be offered.

**11. Should ESY programming be considered by a Team even if there is no previous record of substantial regression over a summer vacation period?**

When there is no previous record of a child's substantial regression after a significant break in service, a Team should still consider the need for an ESY program if the following circumstances are present:

1. there is lack of progress in meeting short-term objectives over two marking periods, resulting in little or no progress made over the school year,
2. there are significant regression/recoupment problems over short-term vacation periods or other breaks in the school year, and /or
3. the unique nature of any specially designed instruction or related services due to the disability of the student requires such extended school year programming.

**12. How should a school district document a child's regression?**

Since proposed ESY programming must take into account the probability of substantial regression, school districts should ensure that special education service providers maintain quantitative and qualitative data regarding the child, including anecdotal records on the rates of both learning and relearning, as well as a child's attainment of IEP goals and objectives.

**13. Must ESY programming include all programs and related services to which the child is entitled during the regular school year?**

ESY programs may include special education and/or related services and must be specified on the IEP. Since ESY services are proposed in order to avoid substantial regression, the portion of the child's IEP for ESY services may differ somewhat from the portion of the IEP that governs the provision of services for the regular school year. Such differences may be separately described on an additional IEP service delivery grid that specifically outlines the proposed extended school year services and their duration and frequency. The U.S. Department of Education, Office of Special Education Programs, has indicated:

*It is . . . reasonable for an extended school year IEP to concentrate on:*

*(1) the areas in which the child may experience regression, or (2) skills or programs that are not academic but are needed so that regression does not occur in academics. (Citation omitted) Myers, EHLR 213:255*

**14. Are ESY programs also to be provided in the Least Restrictive Environment (LRE)?**

Yes. As in regular school year placements, the principles of LRE apply to the provision of ESY services. (OSEP policy letter, December 18, 1989)

**Parents and school personnel should contact the Department of Elementary and Secondary Education, Program Quality Assurance Services (781-338-3700), if further clarification is needed on the topic of Extended School Year Programs.**