



Parent Advocacy Network

Empowering families, professionals,
and others interested in the well-
being and education of children and
youth

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{and more}

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SPAN FACT SHEET

Currently, ESY services, if a child is determined eligible, would be delivered virtually as they have been during the Covid-19 shutdown

Extended School Year and COVID-19

What is ESY?

Extended School Year (ESY) refers to special education services provided beyond the traditional 180-day school year.

What types of services and instructions should be provided during ESY?

ESY for student with disabilities - whether enrolled in a public school program or placed by the district into a private program Out-of-District - must be "an extension of the special education and related services" and must be "provided in accordance with the student's IEP." The delivery of ESY may vary in type and length. The programs range from full-time residential to in-district schooling, even summer camps. It can also be in the form of related services, such as speech or occupational therapy.

How does Covid-19 affect ESY services?

Students with disabilities should continue to receive appropriate virtual learning services during ESY as they should have been during the Covid-19 shutdown. The U.S. Department of Education made it clear that, "If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act (IDEA), or is receiving services under Section 504, is required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19, provision should be made to maintain education services". This includes ESY - extended school year - services.

How is eligibility for ESY determined?

The decision about the need for ESY is individualized. Although federal and state laws do not provide specific criteria, the courts have identified several factors that should be considered, the most notable of which is "regression/recoupment."

Regression refers to a decline in skills and abilities during or following an interruption in educational programming. *Recoupment* refers to the rate at which skills and abilities are regained following an interruption in educational programming.

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If a student received ESY services last year. Is he/she automatically eligible this year?

No. Like all aspects of the IEP, the need for ESY is determined annually.

Are some disability categories ineligible for ESY services?

Districts may not establish an across-the-board policy limiting ESY services. Federal law requires that the IEP team consider the “duration of services” when developing the components of a *free appropriate public education* (FAPE) in the IEP. The courts have interpreted this to mean that any child may be entitled to extended school year (ESY) services as part of his/her entitlement to a free appropriate education, if it is determined necessary. The determination for eligibility is made on an individual basis and is not limited to certain categories of diagnosis or disability.

Is ESY the same as “summer school”?

The term “summer school” generally refers to programs that a school district may offer for recreational purposes, or to allow students to recover lost credits, usually unrelated to a student’s IEP. IDEA, Section 504 and the American with Disabilities Act all require schools to make “summer school” available to students with disabilities to the same extent as it is available to students without disabilities.

ESY differs from summer school in several important ways:

1. ESY must be individualized and be based on the student’s Individualized Education Plan (IEP).
2. ESY must be provided at no expense to the parents.
3. ESY is not designed to help students make up for poor performance during the regular academic year, or get a jump-start on fall classes.

Are preschoolers eligible for ESY?

Yes. If a child has an IEP, he/she should be considered for ESY services. For young children leaving the Early Intervention System who need ESY, services should start in the summer.

What if a school district doesn’t agree ?

As with all advocacy efforts, it is vital that decisions and denials be communicated in writing explaining why the service is being denied. It may be helpful to request an independent evaluation. Parents have the right to request mediation, an administrative due process hearing, or file a complaint investigation to resolve the dispute.

What factors must be considered ?

Regression is not the only factor in determining eligibility for ESY services.

State rules require the IEP team to consider “ all relevant factors” including:

- Degree of progress toward IEP goals and objectives.
- Emerging skills/breakthrough opportunities (will a lengthy summer break cause significant problems for a child who is learning a key skill, like reading)?
- Opportunity for interaction with non-disabled peers
- Child’s behavior and/or physical needs
- Nature and/or significance of disability

Learn more:

- New Jersey regulations regarding ESY can be found on page 98 at <https://www.state.nj.us/education/code/current/title6a/chap14.pdf>
- New Jersey ESY Policy Memo www.asah.org/pdf/njpolicymemoesy.pdf
- Federal regulations regarding ESY can be found at <https://sites.ed.gov/idea/regs/b/b/300.106>
- Covid-19 and educational rights can be found at https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
- Questions and answers to providing services during Coronavirus can be found <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>



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