

EXTENDED SCHOOL YEAR

Updated 8/12/15

Extended School Year services must be provided for each student with exceptional needs who requires special education and related services in excess of the general academic year. These services can be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of Free Appropriate Public Education (FAPE) to the child.

The IEP Team has the responsibility of determining what services will be appropriate for each student individually, as Federal law prohibits an LEA from unilaterally limiting participation by categories of disability. The law also prohibits the LEA from unilaterally limiting the type, amount or duration of services that will be available during Extended School Year.

The California Code of Regulations (CCR §3043) states:

Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program.

Determining eligibility for Extended School Year, like all other services is the responsibility of the IEP team. This team must include a special education teacher, a general education teacher, the parent and an administrative designee. The IEP team may also include other service providers and/or the student.

In deciding whether a student requires Extended School Year services in order to receive FAPE, the IEP Team needs to consider whether the student is likely to regress in skill levels while school is not in session. In a 4th Circuit decision (MM v. School District of Greenville County, 2002) the Federal court found that "Extended School Year services are only necessary to FAPE when the benefits accrued a disabled child during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months." In addition to regression, the IEP team should also consider other factors such as the amount of time needed for recoupment in the fall, the child's rate of progress, the child's behavioral or physical problems, the availability of alternative resources, the areas of the child's curriculum which need continuous attention and the child's vocational needs (Lawyer vs. Chesterfield, 1993)

The probability of skill regression is a difficult thing for an IEP team to forecast without data, but the team should begin with the proposition that providing an extended school year is the exception, not the rule. The team may need to review data and request information from teachers or specialists who have had the opportunity to observe the student over a period of several years in order to make a determination on whether the student is likely to regress over an extended school break. If the team determines that the student is likely to regress, and is also unlikely to regain those lost skills in a reasonable amount of time, then the student should receive Extended School Year services. We tend to think of Extended School Year services as an exact duplication of the services the student received during the regular school year. In some cases, however, the IEP team may determine that different services, amounts or frequencies of service are required. Services provided should concentrate on those skills that are likely to be lost during an extended school break. When different services are to be provided, these changes need to be documented in the IEP. The services for extended school year must be clearly designated in the IEP on the services page. . It may be that the student's IEP goals can be addressed by a general education summer school program, by Related Services only, in a shortened day, or in an entirely different setting. While it is permissible for the IEP team to be creative in determining what constitutes FAPE for each student during school breaks, they must use caution to provide a program delivered by highly qualified teachers that meets minimum time standards for claiming Average Daily Attendance (ADA) funding. ADA establishes 20 as the minimum number of days for ESY with 55 being the upper limit for students in special classes or centers and 30 days as the upper limit for other students.

Remember: If changes to the IEP Team offer of Extended School Year are not documented in the IEP and agreed to by the parents, the parents can presume that the Extended School Year program will be EXACTLY the same as the program offered during the regular school year.

The length of the school day during Extended School Year is not required to be the same length as the school day provided during the regular school year; however, the length of the school day does need to be the same as the school day for pupils of the same age level attending summer school in the district in which the Extended School Year program is provided. Again, if the length of this day is different than the regular school year day, this difference needs to be described in the IEP.

Districts are not required to provide in Extended Year an inclusive schooling experience for a disabled student who is educated in a general education classroom during the regular school year, if the district does not provide a summer school experience for general education students. (Tuscaloosa County Board of Education, 35 IDELER 172 [SEA AL 2001]). If general education peers are not available during school breaks, the disabled student's IEP needs to reflect this change. This should be done on the IEP Notes page.

Although no single criteria can be used to determine eligibility for Extended School Year, the purpose is to maintain skills, not enhance them. Although team members may determine that the student would benefit from the extra "boost," or through "Pre-teaching" for the next grade, this is not a requirement of law.

Extended School Year (ESY) Is:

- Determined on multiple criteria, not an eligibility category
- A service determined by an IEP team based on a specific student's likelihood to regress during an extended school break or the likelihood of extended time for recoupment after an extended school break.
- Designed to maintain a reasonable readiness to begin the next year

Extended School Year (ESY) Is Not:

- For students who exhibit regression related to transitional life or medical situations.
- Compulsory. Parents may refuse ESY services offered on an IEP>
- Subject to the same programming options as regular school year if options such as those for mainstreaming are not available or the IEP team determines an alternate program could meet the needs of the student.
- Required as a respite of recreation program for students with disabilities during summer.
- A primary means of credit recovery for classes failed or for making up for poor attendance during the regular academic year.
- Required solely when a child fails to achieve IEP goals during the regular school year
- Required to provide a "boost" on next year for students with disabilities.

If the IEP team determines the student is ineligible for Extended School Year, the student may still be referred for participation in other intervention programs offered during summer months including credit recovery.

34 Code of Federal Regulation section 300.106

(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 IEP Team determines, on an individual basis, in accordance with sections 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 -5 C.C.R 3043

Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression., when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f)

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who:

(1) Are placed in special classes or centers; or

(2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the Individualized Education Program Team.

(c) The term "extended year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:

(1) A maximum of 55 instructional days excluding holidays shall be allowed for individuals in special classes or centers for the severely handicapped; and

(2) A maximum of 30 instructional days excluding holidays shall be allowed for all other eligible pupils needing extended year.

(e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subsection (d)(1) and (2).

(f) An extended year program, when needed, as determined by the Individualized Education Program team, shall be included in the pupil's individualized education program.

(g) In order to qualify for average daily attendance revenue for extended year pupils, all of the following conditions must be met:

(1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the individualized education program to meet a pupil's unique needs.

(2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.

(h) If during the regular academic year an individual's individualized education program specifies integration in the regular classroom, a public education agency is not required to meet that component of the individualized education program if no regular summer school programs are being offered by that agency.

(i) This section shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.