



Parents Engaged for Learning Equality

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Myth

ESY is just about regression and recoupment



Step #1

Download the manual from the
Virginia Department of Education



Step #2

Understand the basics.

- ESY refers to special education and/or related services provided beyond the normal school year for the purpose of providing FAPE to a student with a disability.
- ESY planning is part of the IEP process
- Must be considered for all children with disabilities

ESY in Virginia regulations

8 VAC 20-80-60 I, Extended school year services

1. Each school division shall ensure that extended school year services are *available as necessary* to provide a free appropriate public education.
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 a free appropriate education to the child.
3. A local school division may not:
 - (a) Limit extended school year services to particular categories of disability; or
 - (b) *Unilaterally limit the type, amount, or duration of those services.*

Case Law Decisions re: ESY

- Basic Standard: ESY services are only necessary to a FAPE when the benefits gained during the school year will be significantly jeopardized without ESY.
- Showing of actual regression is not required
- The mere fact of “likely regression” is not a sufficient basis for ESY services because all students, disabled or not, may regress to some extent during the lengthy breaks from school.
- “ESY services are required under IDEA only when such regression will substantially thwart the goal of ‘meaningful progress.’”
- “Appropriate deference” must be given to judgment of the professional educators
- However, failure of the IEP team to consider the parents’ independent evaluations created an IDEA procedural violation for the school division

ESY services are NOT...

- based on the category of the student's disability - services must be based on the student's unique educational needs;
- mandated twelve-month services for all students with disabilities;
- a child care service;
- necessarily a continuation of the total IEP provided to a student with a disability during the regular school year;
- required to be provided all day, every day, or each day;
- an automatic program provision from year to year;
- summer school, compensatory services, or enrichment programs;
- required to be provided in a traditional classroom setting; and
- a service to be provided to maximize each student's potential.



Step #2

Understand the basics.

ESY is essentially a summer IEP.

But parents must show child

NEEDS it for FAPE.



Step #2

Think about your child's IEP.

Areas that your child's IEP currently addresses:

- (1) _____
- (2) _____
- (3) _____



Step #2

IS ESY necessary for your child?

“Historically ... Decision was **based on regression and recoupment**. Recent case law developments in Virginia, however, have shown that **ESY** ... can be used as a **means to address the issue of FAPE.**”
ESY p. 3.



Step #3

**Build a case for your child's
IEP Goals on the 6 Factors**



Step #3

“Will the benefits a disabled child gains during the regular school year be **significantly jeopardized** if the child is not provided with the ESY program?”

ESY pp. 4-5.

When are ESY services appropriate?

- Types of factors to be considered when determining the need for ESY services:
 - regression/recoupment
 - degrees of progress
 - emerging skills/breakthrough opportunities
 - interfering behaviors
 - the nature and/or severity of the disability
 - special circumstances or other factors



Step #3

Your first sentence:

*“Sally has made significant gains this year in math, reading and processing; **however**, the benefits she gained will be significantly jeopardized without ESY because ...”*



Types of Evidence

- Observation by parents
- Observations after long weekends, vacations and past summer breaks



Factor I

Fast Regression and Slow Recoupment that significantly jeopardizes ...

- Important note: The IEP team does not need evidence of previous student regression before providing ESY services.



Factor 1 *examples*

- MATH: counting coins- 2 weeks off – she totally forgot –I had to start all over –took just as long
- IDEAS for next year: Ask now for your child to be objectively tested in June and then in September



Factor 2

Degrees of Progress

- **your child is behind meeting his IEP goals**



Factor 3

Emerging skills/breakthrough opportunities

- For instance, your child has spent all year working on reading and in recent weeks, he is making considerably more progress than before . . .



Factor 4

Interfering behaviors

(or physical problems)

- behavior problems at start of the school year
- absences due to disability (cannot get the 180 days like a non-disabled child)



Factor 5

The nature and severity of the disability

-Window of opportunity between 5 and 8 years old for greatest progress.



Factor 6

Special circumstances/other factors, i.e.

- ability of the child's parents to provide the educational structure at home;
- ability of the child to interact with children without disabilities; and
- areas of the child's curriculum, which need continuous attention

Note: ESY services should not be granted solely on the basis of the student's failure to achieve one or more of the IEP's goals

What sources of information can provide assistance in the IEP team's determination?

- historical data
- review of current and previous IEPs
- documented regression and recoupment time
- documented clinical evidence
- classroom observation
- progress notes
- standardized tests
- samples of the student's work
- behavior logs
- parent interviews
- attendance information
- other objective evidence
- expert opinions.



Step #4

Do the Ask!

“I then made my prepared and practiced statement:

Multiple unmet IEP yearly goals show that Alex is making little progress in reading.

What can ESY services look like?

- Should be based on the student's IEP
 - Must be in the LRE, as much as possible during the summer and the student's schedule
- Qualified Personnel must provide ESY Services (and ideally provide a report to the student's teacher(s) for the coming school year)
- School division is responsible for student's transportation
- School division must not allow the availability of ESY services to be limited by the financial resources of the school division
- Examples:
 - the teacher and parent working together (materials could be sent home with progress periodically monitored by the teacher)
 - learning packages with staff monitoring
 - home-based programs
 - grouping students with similar goals
 - school-based programs
 - cooperative programs with other agencies
 - multi-system shared programs
 - contractual arrangements with service providers or agencies
 - community-based programs
 - vocational settings



Myth

ESY is all about regression and recoupment

With special thanks to SEAC member Jeff Martin, who created some of these slides while a student in the PELE Clinic.