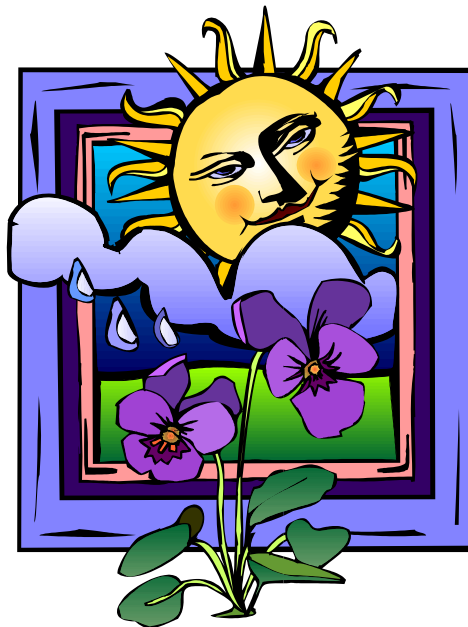




New Mexico
State Department of Education
Technical Assistance Manual

EXPERT

**SCHOOL YEAR
SERVICES**



Special Education Office
Santa Fe, New Mexico
Revised, August 2003

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Technical Assistance Manual Extended School Year (ESY) Services

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Technical Assistance Manual Extended School Year (ESY) Services

What is ESY?

The term *Extended School Year* (ESY) means the provision of special education and related services beyond the traditional 9 months or 180 school days per year.

Why is ESY Needed?

Most students benefit from school holidays and breaks. Breaks in formal programming allow most students to rest and to generalize school-learned skills and behaviors to their home and community, thereby facilitating new learning outside of the school setting. Most students also lose skills during regular breaks from school, but regain them in a short amount of time once school resumes. However, some students with disabilities have difficulty regaining learned skills after a break and may need ESY services. ESY services are designed to maintain those skills or slow the loss caused by an interruption of learning during times when school is not in session for holidays, breaks, and summer months so that the student is reasonably ready to begin the next school session. A student will need ESY whenever he or she experiences an unacceptable loss of skills (**regression**) and requires more than the typical length of time to get back what was lost (**recoupment**).

Some students with disabilities have difficulty regaining learned skills after a school break.



The Legal Requirements

The federal Individuals with Disabilities Education Act (IDEA), requires that districts provide ESY services to a student with a disability in accordance with the student's Individualized Education Program (IEP), and at no cost to the parent. Additionally, the IDEA states that each public agency shall ensure that ESY services are available as necessary to provide a student a free appropriate public education (FAPE). Districts must provide ESY services if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student. School districts may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. Specifically, the IDEA at 34 CFR Sec. 300.309 provides as follows:

Subpart C—Services Free Appropriate Public Education

Sec. 300.309 Extended school year services.

(a) **General.**

- (1) Each public agency shall 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 300.340-300.350, 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—
 - (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).



Who Determines Eligibility for ESY?

Although the law requires that IEP teams consider ESY for all students with disabilities, not all students with disabilities will need ESY services. Nor does the provision of ESY services mean that a student will need such services each year. IEP teams should not elect to provide ESY services to any student who is simply not showing progress in the accomplishment of IEP goals and objectives. Rather, if a student regresses in a critical academic or behavioral area and the lost skills require an unusual amount of time to regain, the student's IEP team may determine that the student is eligible for ESY services. If so, the IEP team identifies the type and length of the program that will meet the student's needs by designing a program that will maintain student mastery of critical skills and/or behavior and maintain a reasonable readiness for the student to begin the next school year.

The student's IEP team determines the need for ESY services.



When the IEP team determines that a student is in need of ESY services, the district must provide the service at no cost to parents. Additionally, the district provides ESY services, on an individual basis under the auspices of an IEP. Like all other special education decisions, the basis for determining the need for ESY is the individual student's unique needs, and it is not dependent on the capabilities of the district to provide those services. As a student's needs change over time, the need for ESY services may also change, and the IEP team should revise the student's IEP accordingly. The IEP team needs to review the necessity for ESY services on an annual basis.

Factors in Considering the Need for ESY

The purpose of ESY is not to enhance or maximize the present levels of educational performance (PLEP) exhibited by students with disabilities at the end of the regular school year. Instead, the IEP team bases the need for ESY services on skill **regression** (loss) and a student's limited capacity for **recoupment** (regain). ESY services may be provided when the IEP team determines that a student might regress to such an extent in a skill and/or behavior area that recoupment of such skill loss would require an unusually long period of time, or make it unlikely or impossible to recoup the PLEP.

A significant regression/recoupment factor is the first line of inquiry for establishing criteria and eligibility standards for ESY services. The regression/recoupment factor is relative to the student's current IEP goals and objectives and his or her PLEP. It is not necessary to

continue instruction on all of the previous year's IEP goals and objectives during the ESY period. The purpose of ESY instruction is to focus on those specific goals and objectives severely impacted by extended breaks in instruction.

Regression/recoupment problems triggering the need for ESY services occur when

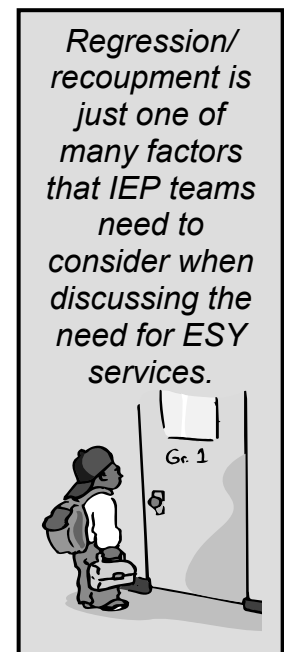
- a student suffers an inordinate or disproportionate degree of regression during that portion of the year in which the customary 180-day school year is not in session; and
- it takes an inordinate or unacceptable length of time for the student to recoup lost skills. There is no precise measure of the amount of regression and limited recoupment that would indicate a student's need for ESY programming.

Regression/recoupment **is just one of many factors** that IEP teams need to consider when discussing the need for ESY services. In considering a recommendation for ESY services the IEP team should also consider the following factors that might indicate a need for ESY:

- severity of the disability
- behavioral skills
- critical learning period
- learned material
- potential for generalization and maintenance
- emerging skills that are at risk for loss
- medical conditions
- family circumstances

In addition, in 1990, the 10th Circuit Court whose decisions are binding on public education agencies in New Mexico identified the following standards for determining the need for ESY services: ¹

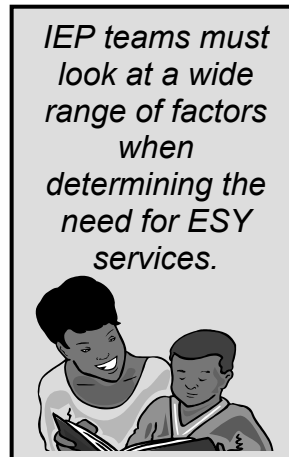
- degree of regression suffered in the past
- exact time of the regression
- ability of the parents to provide educational structure at home
- student's rate of progress
- student's behavioral and physical problems
- availability of alternative resources
- ability of the student to interact with non-disabled students
- areas of the student's curriculum that need continuous attention
- student's vocational needs



¹ See *Johnson v. Independent School District No. 4*, 17 IDLER 170, (10th Circuit, 1990).

- whether the requested services are extraordinary for the student's disabling condition as opposed to an integral part of a program for populations of students with the same disability

Moreover, the IEP team needs to keep in mind that the length of interruption in instructional programming and/or related services, which causes a detrimental effect, may vary because the regression/recoupment cycle is an individual process. Thus, it is imperative that IEP teams consider each student's functioning level on an individual basis.



- IEP teams should consider additional standards identified from the court case mentioned above.
- IEP teams must not look solely to a student's previous experiences in making its ESY eligibility determination.
- IEP teams should consider if the student is at a critical point in his or her program and the impact of the interruption on possible future regression and/or recoupment problems.

Collecting Data

An IEP team may consider a student's need for ESY services at any meeting called to discuss the IEP. A discussion on the need for ESY services should occur early in the school year so that the team can begin collecting supporting data to allow for planning on the part of the IEP team, and if appropriate, any outside agencies providing special education and/or related services. Parents need to know about the possibility of ESY services early in the year to prevent conflicts with family vacations and other summer activities. School district administrators need time to plan for the provision of special education and/or related services. The IEP committee documents the need for ESY and identifies the goals for ESY services on the student's IEP. Determination of the need for ESY services requires a thorough analysis of formal and informal assessment data collected by the IEP team. In determining the need for ESY, the IEP team should review the following sources of information:

- The current IEP, especially the present levels of educational performance, annual goals, and short-term instructional objectives
- Pre- and post-testing using criterion-referenced assessment procedures
- Results of efforts on the part of educators and/or parents which specifically addressed the maintenance of learned skills while programming was interrupted

- Areas of learning which are identified as an integral part of a skill area required to reach the student's assessed potential, such as social, motor, behavioral, academic, self-help, and communicative abilities
- Pertinent medical, psychological, and educational data
- Data that reflects the regression/recoupment cycle experienced by the student following interruptions of instruction services. Document periodically during the regular school year

It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.

Proposed Schedule

A schedule for collecting data regarding a student's possible regression may be one or more of the following:

- At the beginning of the school year
- After extended breaks (winter, spring) and/or illness
- After regular shorter breaks such as weekends and/or extended weekends due to holidays or illness
- At the end of the regular school year
- At the end of the ESY program

Documenting the Need

The student's IEP team must use the prior written notice (PWN) to document its proposal and decision that a delay or break in the provision of special education and related services may result in a significant delay in the recoupment of academic and/or behavior skills. The need for ESY services should be based on documented evidence showing that substantial regression caused by interruption in educational programming, together with the student's limited recoupment capacity, may result in a significant delay in recoupment of critical skills. In order to provide a FAPE to a student who demonstrates a disability in one or more areas, answers to the following questions should alert the IEP team to the possible need for ESY:

- Yes No Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help, and communication) over regularly scheduled school breaks during the year?
- Yes No Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behaviors and skills?
- Yes No Does the review of data indicate that the student benefited from previous ESY services? **It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.**
- Yes No Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?
- Yes No Did the IEP team consider other program options that would meet the needs of the student? Identify the programs considered by the IEP team?
-
- Yes No Did the IEP team determined that ESY would best meet the needs of the student? Why or why not? _____

A sample IEP addendum form containing the above questions can be found on pages 22 and 23 of the appendices. Districts may reproduce the form and use it to document a student's need and eligibility for ESY services.



Possible Service Delivery Models

ESY service delivery models may include, but are not limited to, the options and/or examples below. Districts must also provide transportation when it is necessary to ensure the implementation of ESY services.

- **Direct services** refer to special education and/or related and support services. Provision of these services may be individually or in groups, at center-based or home sites.
- **Home consultation** provides support, instructional techniques, and materials to parents so that the parent can implement the student's program to prevent regression.
- **Cooperative service arrangements** refer to the coordination of services with district programs and other agencies. Such arrangements for implementing ESY components may include local recreation programs, summer school, sheltered workshops, or other appropriate programs.
- **The traditional school-based summer program**
- **Residential placement** in a boarding facility
- **Private programs** that provide the least restrictive environment available



ESY is Not Summer School

ESY services provide a different focus from traditional summer school programs. ESY services provide an ***extension*** of the programming from the regular school year, as identified in the IEP. The table below provides a comparison of ESY and summer school.

ESY	Summer School
<ul style="list-style-type: none"> • is a required consideration by IDEA for any student with a disability who needs special education and/or related services in order to receive FAPE • is determined on a case-by-case basis by an IEP team in accordance with IDEA regulations • assures FAPE by maintaining and preventing loss of critical learned skills. ESY services are not provided for the purpose of helping students with disabilities advance in relation to their peers • is free to parents of eligible students • schedule, setting, and extent of services designed to meet the individual student's needs in order to assure FAPE. The IEP team determines the amount and duration 	<ul style="list-style-type: none"> • is an optional or permissive program provided beyond the school year. A school district may or may not elect to conduct summer school classes • is determined by the school district based on its own criteria. Participation does not depend upon a team determination of the need • is teaching or reviewing previously presented material and/or providing recreational activities • often involves a fee • is typically operated on a predetermined set schedule

Frequently Asked Questions

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

- Question 1:** *Can school districts refuse to consider ESY services?*
- Question 2:** *Must school districts notify parents of the availability of ESY services?*
- Question 3:** *Is there a separate or different IEP for ESY programs?*
- Question 4:** *Can districts offer one program for all ESY students?*
- Question 5:** *Do disciplinary rules apply to ESY programs?*
- Question 6:** *Are school districts required to provide related services during ESY?*
- Question 7:** *Is a school district required to provide transportation to an ESY program?*
- Question 8:** *Can a district use cut-off dates for providing preschool ESY services under Part B to three-year-olds?*
- Question 9:** *Are students with severe disabilities always eligible for ESY?*
- Question 11:** *Must ESY services be provided in the least restrictive environment (LRE)?*
- Question 12:** *Are students in unilaterally parentally placed private schools entitled to ESY?*
- Question 13:** *Can districts provide related services alone without other instructional services during ESY?*
- Question 14:** *Can districts provide ESY in a non-educational setting?*
- Question 15:** *Can districts provide ESY services during times other than the summer months?*
- Question 16:** *Is ESY required if a school district, pursuant to state law, uniformly offers all students with disabilities the same number of school days per year?*
- Question 17:** *Is a school district responsible for covering the cost of ESY if it has provided the disabled student with the round-the-clock services of a residential placement?*
- Question 18:** *If a school district fails to provide required ESY services to an eligible student, can a hearing officer or court order reimbursement for tuition and expenses incurred by parents in having provided such programs?*

Question 19: *When there is no documentation of past regression/recoupment problems, may a student be eligible for ESY services?*

Question 20: *Does the fact that a student received ESY services in a prior year mean that he or she needs ESY services in the current year?*

Question 21: *Must districts provide the full continuum of services for ESY?*

Question 22: *Must a district duplicate all of the services provided during the regular school in the ESY programs?*

Question 23: *At what point does a school district decide if a student with a disability is eligible for ESY programming?*

Question 24: *How can the IEP team use the concept of “recoupment” in determining the need for ESY services?*

Question 25: *How should a school district document a student’s regression?*

Question 26: *Can an IEP team enroll a student in other federally funded programs as a means to providing ESY?*



Question 1: *Can school districts refuse to consider ESY services?*

Answer: No. School districts must provide ESY programming to IDEA eligible students when necessary to provide FAPE. This requirement applies even in situations where a school district does not ordinarily provide educational services beyond the normal school year. (See 34 CFR Sec. 300.309(a) (1) and Attachment 1 to 34 CFR Sec. 300, page 12576.)

Question 2: *Must school districts notify parents of the availability of ESY services?*

Answer: Yes. Just as school districts provide notice of the availability of all special education and related services, they must inform parents of the availability of ESY. (See 34 CFR 300.309 and Attachment 1 to 34 CFR Sec. 300, page 12576.)

Question 3: *Is there a separate or different IEP for ESY programs?*

Answer: No. Districts must provide ESY service on an individual basis, determined by the IEP team, and in accordance with the provisions of 34 CFR Secs. 300.340 through 300.350 listed below:

300.340 Definitions related to IEPs.

300.341 Responsibilities for IEPs.

300.342 When IEPs must be in effect.

300.343 IEP meetings.

300.344 IEP team.

300.345 Parent participation.

300.346 Development, review, and revision of IEP.

300.347 Content of IEP.

300.348 Responsibility for transition services.

300.349 Private school placements by public agencies.

300.350 IEP—accountability.

These IEP requirements include specifying the types and amounts of services consistent with the individual disabled student's right to FAPE.

Question 4: *Can districts offer one program for all ESY students?*

Answer: No. School districts cannot categorically limit the **types, amounts, or duration** of services they will provide. (See 34 Sec. CFR300.309 (a)(3)(ii).)

Question 5: *Do disciplinary rules apply to ESY programs?*

Answer: Yes. The IDEA's disciplinary provisions affect all students with disabilities without regard to the timing of their instruction. Therefore, they apply all year round. (See LIH ex rel. LH v. New York City Bd. Of Educ., 103 F. Supp.zd 658 (F.D.N.Y. 2000) 33 IDLER 1, applying 34 CFR Sec. 300-529 disciplinary protection in ESY services)

Question 6: *Are school districts required to provide related services during ESY?*

Answer: Yes. If the IEP team makes the determination that a related service is required to assist a student with a disability to benefit from special education then the district is obligated to provide the service(s). (See 34 CFR Sec. 300.24 (a).)

Question 7: *Is a school district required to provide transportation to an ESY program?*

Answer: Yes. The U.S. Department of Education (DOE) recognizes that ESY, including related services, may differ from the regular school year program. However, if the ESY services are part of the student's program to receive FAPE, school districts must provide transportation to and from those services. (See *Letter to Baugh*, 211 IDELR 481 OSERS 1987.)

Question 8: *Can a district use cut-off dates for providing preschool ESY services under Part B to three-year-olds?*

Answer: No. A school district may not use cut-off dates for determining eligibility if the effect would deny the provision of FAPE beginning on the child's third birthday. This includes provision of ESY services to a child who turns three during the summer months, if the IEP team determines the child needs ESY to receive FAPE. (See 34 CFR Sec.300.121 (c) (2).) This would be determined at the student's transition from Part C to Part B planning meeting. (See 34 CFR 300.132.)

Question 9: *Are students with severe disabilities always eligible for ESY?*

Answer: No. A student's IEP team determines, on an individual case-by-case basis, whether ESY services are necessary for the provision of FAPE. Because each student's individual need for such services is at issue, a school district may not establish categorical rules limiting eligibility to a ***particular type of disability***. (See 34 CFR Sec. 300.309 (3) (i).)

Question 10: *Does a school district have to provide all related services indicated on the IEP even in summer when related services providers are difficult to secure?*

Answer: Yes. School districts are required to provide special education and related services ***directly, by contract, or through other arrangements.*** (See 34 CFR Sec. 300.341 (b) (2).)

Question 11: *Must ESY services be provided in the least restrictive environment (LRE)?*

Answer: Yes. Discussions accompanying the publication of the final regulations to the IDEA affirm that schools must provide ESY services in a student's LRE. (See Appendix B, pages 24-26 Attachment 1 to 34 CFR page 12577.)

Question 12: *Are students in unilaterally parentally placed private schools entitled to ESY?*

Answer: No. Students enrolled in private schools by their parents have no individual entitlement to FAPE. Determinations regarding the provision of services, including the types and amounts of such services, require a process of consultation between representatives of public agencies and private schools. (See 34 CFR Sec. 300.454 (a) and Attachment 1 to 34 CFR 300, page 12577.)

Question 13: *Can districts provide related services alone without other instructional services during ESY?*

Answer: Yes. "Special Education" in New Mexico as authorized by 34 CFR Secs. 300.7 (a) (2) (ii) and 300.26 (a) (2) (i) may include speech-language services or any other related service that meets the State Special Education regulations, Subsection (c)(15) of 6.31.2.7 NMAC.

Question 14: *Can districts provide ESY in a non-educational setting?*

Answer: Yes. Consistent with a school district's obligation to ensure that each disabled student receives necessary ESY services in order to receive FAPE, nothing in regulations would prohibit a public agency from providing ESY services in a non-educational setting if the student's IEP team determines that the student could receive necessary ESY services in that setting.

Question 15: *Can districts provide ESY services during times other than the summer months?*

Answer: Yes. Typically, districts provide ESY services during the summer months. The definition of ESY services, provided in 34 CFR Sec. 300.309 (b), does not limit the ability of a school district to provide ESY services to a student with a disability during times other than the summer. The IEP team must determine and document that the student requires ESY services during other times, when school is not in session, in order to receive FAPE.

Question 16: *Is ESY required if a school district, pursuant to state law, uniformly offers all students with disabilities the same number of school days per year?*

Answer: Yes. A consistent cluster of early court decisions established that a uniform number of school days per year, typically 180, violates IDEA's mandate for a FAPE.

Question 17: *Is a school district responsible for covering the cost of ESY if it has provided the disabled student with the round-the-clock services of a residential placement?*

Answer: Yes. Regardless of a student's placement in a residential setting, he or she is entitled to ESY, at no cost to the parents, if he or she meets the criteria for eligibility for ESY.

Question 18: *If a school district fails to provide required ESY services to an eligible student, can a hearing officer or court order reimbursement for tuition and expenses incurred by parents in having provided such programs?*

Answer: Yes. In following the rationale of *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359 (1985), hearing officers and courts have issued such relief in several cases.

Question 19: *When there is no documentation of past regression/recoupment problems, may a student be eligible for ESY services?*

Answer: Yes. A student may be eligible for ESY services even though there is no documentation of past regression/recoupment problems. In analyzing a student's potential regression/recoupment problems, the IEP team needs to consider **predictive information** as well as any other appropriate factors.

Question 20: *Does the fact that a student received ESY services in a prior year mean that he or she needs ESY services in the current year?*

Answer: No. IEP teams must consider ESY services annually in light of the student's current needs and current skills.

Question 21: *Must districts provide the full continuum of services for ESY?*

Answer: No. Because ESY services are provided during a time when the full continuum of educational placements is not normally available, the district is not required to establish programs to ensure that a full continuum of educational placements is available solely for the purpose of providing ESY services.

Question 22: *Must a district duplicate all of the services provided during the regular school in the ESY programs?*

Answer: No. A student's ESY program may differ from the regular school year program. ESY services may include special education and/or related services. The IEP team must specify these services on the student's IEP. The IEP team should describe these differences separately on an additional IEP schedule of services that specifically outlines the proposed extended school year services and their frequency and duration. The U.S. Department of Education, Office of Special Education Programs (OSEP), has indicated the following:

It is reasonable for an IEP to concentrate on

- *the areas in which the child may experience regression; or,*
- *skills or programs that are not academic but are needed so that regression does not occur in academics. (See Letter Myers, 213 IDELR 255 (OSEP 1989).)*

Question 23: *At what point does a school district decide if a student with a disability is eligible for ESY programming?*

Answer: At least once annually the student's IEP team must consider the need for an extended school year program. The IEP team must determine the need for ESY on an individual basis and in a timely manner.

Question 24: *How can the IEP team use the concept of “recoupment” in determining the need for ESY services?*

Answer: The team documents recoupment difficulties by documenting areas in which the student has regressed without ESY. For example, the team may document:

- the loss of performance levels that were attained before a break in service
- the student’s limited learning rate, which lengthens the amount of time the student requires to review and/or relearn previously attained objectives
- the fact that the time for that student to accomplish such recoupment is greater than the period of time the school district allows all other students for review and/or relearning.

Question 25: *How should a school district document a student’s regression?*

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

Question 26: *Can an IEP team enroll a student in other federally funded programs as a means to providing ESY?*

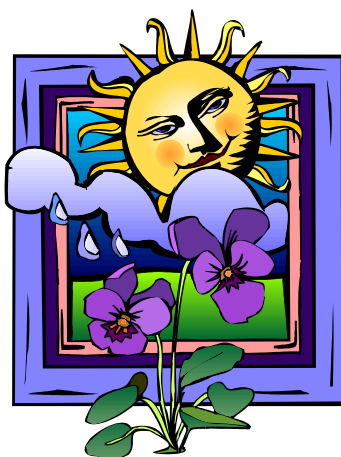
Answer: No. It is not allowable to write other federally-funded programs or services into a student’s IEP. Title I funds **cannot** be used to provide the level of services necessary to meet federal and state requirements for IDEA eligible students. However, districts may use Title I and other federally-funded programs and services to supplement a student’s services.



Appendices

A. Extended School Year Addendum (Revised, August 2003)

B. Discussion from Attachment 1



Addendum for Determining Eligibility for Extended School Year Services

A significant regression/recoupment factor is the first line of inquiry for establishing criteria and eligibility standards for ESY services. The regression/recoupment factor must relate to the student's current IEP goals, objectives, and present levels of educational performance based on multi-disciplinary team data, including information from the parent(s)/guardian(s). In addition to regression/recoupment, consider the following factors: severity of the disability, behavioral skills, critical learning period, learned material, potential for generalization and maintenance, emerging skills that are at risk for loss, medical conditions and family circumstances.

To determine eligibility for ESY services, the IEP team must:

- 1) answer the following questions and,
- 2) provide documentation indicating that the student's regression of learned skills, and his or her ability to recover lost skills (recoupment), render it unlikely that the student will attain the state of self-sufficiency that he or she would otherwise reasonably be expected to reach.

The student...

- Yes No Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help and communication) over regularly scheduled school breaks during the year (i.e., holidays, weekends, between special education classes)?
- Yes No Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behavior and skills?
- Yes No Does the review of data indicate that the student benefited from previous ESY services? **It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.**
- Yes No Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?
- Yes No Did the IEP team consider other program options that would meet the needs of the student? Identify the programs considered by the IEP team:

- Yes No Did the IEP team determined that ESY would best meet the need of the student? Why or Why not? _____

Extended School Year (ESY) Services *(continued)*

List the names of documents reviewed by the team to make this determination.

Document Name:

Document Date:

_____	_____
_____	_____
_____	_____
_____	_____

If documentation is not attached to this addendum, please indicate where it is located.

The IEP team has reviewed the documentation above and has determined the following:

The student is **not** eligible for ESY services.

The student requires the following ESY services:

Instructional

Behavioral

Related services (Identify): _____

How will services be provided and by whom? _____

Start and ending dates: _____

Additional information is required to determine eligibility for ESY services.

• Name of person responsible for collecting additional information:

• Anticipated data collection dates: _____

• Anticipated IEP date for review of collected data: _____

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Name: _____

Discussion from Attachment 1

The following is a summary of guidance from the U.S Department of Education, Office of Special Education Programs (OSEP) regarding ESY services. Attachment 1 to the IDEA Regulations—Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, March 12, 1999, Page 12575, provides in relevant part as follows:

The regulation and notes related to ESY services were not intended to create new legal standards, but to codify well-established case law in this area (and, thus, ensure that the requirements are all in one place). Since the requirement to provide ESY services to students with disabilities under this part who require such services in order to provide FAPE is not a new requirement, but merely reflects the longstanding interpretation of the IDEA by the courts and the Department, including it in these regulations will not impose any financial burden on school districts.

34 CFR Section 300.309 clarifies the obligations of public agencies to ensure that students with disabilities who require ESY services in order to receive FAPE have the necessary services available to them, and that individualized determinations about each disabled student's need for ESY services are made through the IEP process. ***An individual student's entitlement to FAPE is the basis for determining the student's right to ESY services.*** Some disabled students may not receive FAPE unless they receive necessary services during times when other student's, both disabled and nondisabled, normally would not be served. Both parents and educators have raised issues for many years about the need for making determinations about ESY services consistent with the requirements of Part B.

It is essential to ensure that public agencies do not limit eligibility for ESY services to students in particular disability categories, or the duration of these necessary services. ESY services are key to ensuring that each eligible student receives FAPE.

In the past, the U.S. Department of Education has declined to establish standards for states to use in determining whether disabled students should receive ESY services. Instead, the Department has said that states may establish state standards for use in making these determinations so long as the state's standards ensure that FAPE is provided consistent with the individually-oriented focus of the IDEA and the other requirements of Part B and do not limit eligibility for ESY services to students in particular disability categories. These regulations continue this approach.

Whatever standard state uses, to document a student's need for ESY services, must be consistent with the individually oriented focus of the IDEA and may not constitute a limitation on eligibility for ESY services to students in particular disability categories.

The provision of ESY services occurs only if a student's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350, that the services are necessary for the provision of FAPE to the child.

Section 300.309 (a) (2) specifies that the determination of whether a student with a disability needs ESY services must be made on an individual basis by the IEP team in accordance with Sections 300.340-300.350. These IEP requirements include specifying the types and amounts of services consistent with the individual disabled student's right to FAPE.

The student's IEP team makes the determination of whether an individual disabled student needs ESY. In most cases, a multi-factored determination would be appropriate, but for some students, it may be appropriate to make the determination of whether the student is eligible for ESY services based on one criterion or factor. In all instances, the student's IEP team must decide the appropriate manner for determining whether a student is eligible for ESY services in accordance with applicable state standards and Part B requirements. There is no need to specify a timeline for determining whether a student should receive ESY services. The IDEA expects school districts to make these determinations in a timely manner so that students with disabilities, who require ESY services in order to receive FAPE, can receive the necessary services.

Section 300.309 (b) (1) (i) specifies that districts provide ESY services to a student with a disability "beyond the normal school year of the public agency." For most public agencies, the normal school year is 180 school days. Typically, students receive ESY services during the summer months. The definition of ESY services, provided in 34 CFR Sec. 300.309 (b), does not limit the ability of a school district to provide ESY services to a student with a disability during times other than the summer. The IEP team must determine and document that the student requires ESY services during other times, when school is not in session, in order to receive FAPE.

Since Part B does not prescribe standards for determining eligibility for ESY services, regardless of the student's age, the issue of whether a state should establish a different standard for school-aged and preschool-aged children is a matter for state and local

authorities to decide. The IEP or Individualized Family Service Plan (IFSP) will specify whether services must be initiated on the child's third birthday for students with disabilities who transition from Part C to the Part B program, if the child turns three during the summer. This means that the child will receive ESY services in the summer if the IEP or IFSP of a child with a disability specifies that the child must receive ESY services during the summer. In any case, the IEP or IFSP must be developed and implemented in accordance with the terms of those documents by the child's third birthday. The IDEA provides clarification of these responsibilities elsewhere in these regulations.

Students enrolled in private schools by their parents have no individual entitlement to FAPE. Determinations regarding the provision of services, including the types and amounts of such services, require a process of consultation between representatives of public agencies and private schools. (See 34 CFR Sec. 300. 454 (a) and Attachment 1 to 34 CFR 300 page, 12577.) Through consultation, if a determination is made that ESY services are one of the services that a public agency will offer one or more of its parentally placed disabled children, Part B funds could be used for this purpose.

The regulations remain the same regarding the application of LRE requirements to ESY services. Districts must provide ESY services in the LRE; however, public agencies are not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the public agency does not provide services at that time for its nondisabled students.

