**Extended School Year Services**

**Legal Framework**

Extended School Year (ESY) services are governed by federal law, federal regulation and case law. The purpose of this section is to provide an overview of the legal requirements for ESY services in Colorado. Although the federal Individuals with Disabilities Education Act (IDEA) makes no reference to ESY services, the federal regulations implementing the IDEA specifically address ESY Services. ESY services are defined as special education and related services that are provided beyond the normal school year in accordance with the child’s IEP and at no cost to the parents.1 ESY services are a necessary component of a free appropriate public education (FAPE) for some, but not all, students with disabilities, i.e., ESY services “must be provided only if a child’s IEP Team determines, on an individualized basis…that services are necessary for the provision of FAPE to the child.”2 Administrative units and state‐operated programs may not limit ESY services to “particular categories of disability; or [unilaterally] limit the type, amount, or duration of those services.”3 Consistent with the obligation to provide FAPE, ESY services must be determined annually and provided in the least restrictive environment (LRE) as determined by the child’s IEP Team. However, the U.S. Department of Education has clarified that an administrative unit or a state operated program is “not required to create new programs as a means of providing ESY services to students with disabilities in integrated programs if the public agency does not provide services at that time for its nondisabled children.”4 Since at least 1983, questions about the proper standard for determining ESY services have been a source of litigation. The Tenth Circuit Court of Appeals, whose decisions are binding in Colorado, issued a decision in 1990 that continues to serve as the touchstone for determining ESY services in Colorado. *Johnson v. Independent School District No. 4 of Bixby, Tulsa County* involved a student with severe and multiple disabilities who attended an Oklahoma school district.5 In the *Johnson* case, the court framed the critical issue to be resolved by IEP Teams when determining whether a child needs ESY services as follows:

[The *Rowley*] educational benefit standard does not mean that the requirements of the Act are satisfied so long as a handicapped child’s progress, absent summer services, is not brought “to a virtual standstill.” Rather, if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the handicapped child may be entitled to year round services...The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months…[the] analysis should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child’s parents as well as circumstantial considerations of the child’s individual situations at home and in his or her neighborhood community.

The court identified a list of possible factors to be considered when determining ESY services:

 The degree of impairment;

 The degree of regression suffered by the child;

 The recovery time from this regression;

 The ability of the child’s parents to provide the educational structure at home;

 The child’s behavioral and physical problems;

 The availability of alternative resources;

 The ability of the child to interact with children without disabilities;

 The areas of the child’s curriculum which need continuous attention;

 The child’s vocational needs; and

 Whether the requested service is extraordinary for the child’s condition, as opposed to an integral part of a program for those with the child’s condition.7

It is important to note that the court did not intend that the possible list of predictive factors be exhaustive or that each factor “would impact planning for each child’s IEP“.

The long‐standing interpretation by the Colorado Department of Education (CDE) of the

*Johnson* case has been that the purpose of ESY services is to maintain a student’s previously learned skills.9 The CDE’s interpretation was challenged in *McQueen v. Colorado Springs School District No. 11*.10 The federal district court upheld the CDE’s interpretation but clarified that teaching a student new skills in order to maintain learned skills may be necessary depending on the unique needs of the student.11 The CDE agrees with the clarification, which is reflected in the CDE Guidance Manual. Within this legal context, then, the CDE Guidance Manual identifies a practical process for determining whether a special education student needs ESY services in order to receive a FAPE. The process also provides a practical method for documenting the annual ESY decision made by the IEP Team.

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| Fact  ESY Services are: | Fiction  ESY Services are not: |
| ESY Services are for a subset of students, aged 3 to 21, who are eligible for Special Education. | ESY Services are not:   * For every student on an IEP * Automatically provided because the child received services the prior summer or at any other time in the past, or * Based on a disability category or medical diagnosis |
| ESY Services are required to maintain existing skills in order to prevent severe regression, which may include the teaching of new skills in order to maintain existing skills, and are derived from targeted goals and objectives from the current IEP. | ESY Services are not designed to develop new skills unrelated to the maintenance of existing skills. |
| ESY Services are provided in the least restrictive environment (LRE). | ESY services are not required to be provided in integrated settings if the public agency does not provide services at that time for its non-disabled children. |
| ESY Services are based on the individualized needs of the student. | ESY Services are not:   * Provided as a substitute for daycare, or * A one-size-fits-all traditional summer school |
| ESY Services, including the type, the amount and duration are determined by the IEP Team and based on the unique needs of each student. | ESY Services are not compensatory education (i.e., making up for missed or inadequate services).  ESY Services are not:   * Designed to replace or duplicate alternative community resources; and/or * Intended to make up for absences when the parent opts to remove the child from school. |
| ESY Services are provided at no cost to families; however, when there are two or more appropriate programs, the cost of each option must be considered by the IEP Team. ECEA Rule 4,03(8)(c). | ESY Services are not paid for by the family. If the family opts for additional activities not related to ESY Services, the family is responsible for those costs. |

**Determination of Extended School Year Services**

The CDE Guidance Document is meant to assist IEP Teams in making appropriate decisions as to applicability of ESY services. ESY services must be considered annually for all students, aged 3‐

21, including:

 newly identified students;

 students transitioning from IDEA Part C services to IDEA Part B services; and

 students receiving secondary transition services

When determining ESY eligibility, there are several factors to consider. First, the IEP team must provide documentation that identifies the child’s progress toward his/her goals and/or objectives. This data must be gathered before and after breaks and analyzed to determine whether the child has shown severe regression over breaks from school. Staff should document if there is severe regression and, if so, the length of time taken to recoup or regain a skill. Once the data have been reviewed, the IEP team must then review the Predictive Factors. Each guiding question under the Predictive Factors should be considered in relationship to the specific child and his/her progress toward goals and/or objectives. After information has been gathered and each question has been individually considered, the IEP team will discuss the information to develop a comprehensive picture of the child. This information, along with the regression data, will be used to answer the question, **“Without continued supports and** **services, will the student experience a loss of skill(s) that will significantly jeopardize the educational benefits accrued to the student during the regular school year?**”

The datacollected will also be used to determine the type and amount of service that will be provided toassist the child in maintaining his/her learned skills over the break from school.

Remember that ESY services are not intended to meet newly developed goals and objectives, or to replicate full day services during the school year. ESY services can be provided in a variety of settings and may include the home, school, or community setting. Alternatively, if the child is scheduled to take part in family‐planned community or home activities that may meet the child’s need for ESY services, such activities may be sufficient rather than providing ESY services through the administrative unit. When determining ESY eligibility, there are several factors to consider through a decision-making process. This process includes collecting a body of evidence that includes the following:

**Step 1:** Collect and review progress monitoring data throughout the regular school year based on current goals and/or objectives, paying particular attention to data points collected before and after extended breaks (e.g., winter, spring, summer, and fall, and breaks occurring during year‐round school).

**Step 2:** Use the progress monitoring data to determine whether there was severe regression and recoupment during the extended breaks.

**Step 3:** Review and document the Predictive Factor data, using every applicable Guiding Question.

**Step 4:** After the regression/recoupment and predictive factors data have been reviewed, the IEP team must answer the following question: **Without continued** **supports and services, will the student experience a loss of skill(s) that will** **significantly jeopardize the educational benefits accrued to the student during the** **regular school year?**

**Step 5:** If the answer is “yes,” the IEP Team must determine the type and amount of service that will be provided to assist the child in maintaining his/her learned skill(s) during the ESY period. If the answer is “no,” then the child does not qualify for ESY services.

**Flow Chart for Determining ESY Services**

All students eligible for special education must go through a data review at least annually to determine if they are eligible for ESY.

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Collect data from a variety of sources; before and after major breaks to use for consideration of eligibility for ESY

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The IEP team will review data for regression and recoupment of learned skills.

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The Iep team will review predictive factors and provide data/information regarding the impact of the factors.

**If No:**

Data does not show likelihood of severe or substantial regression of learned skills/behavior and/or the amount of time to recoup skills was similar to that of students without disabilities OR the impact of predictive factors does not indicate a need for ESY services.

**If Yes:**

Data shows likelihood of severe or substantial regression and/or the amount of time to recoup skills/behavior would be longer than that of students without disabilities OR the impacts of predictive factors indicates a need for ESY services.

**Regression and Recoupment**

Regression is the loss of skills and/or knowledge experienced by the student during a break

from school. Severe regression is loss of skill that significantly jeopardizes the educational benefits accrued to the student during the regular school year. Thus, it is critical to collect pre‐ and post‐break data in addition to the year‐round progress monitoring of goals and/or objectives and the collection of multiple data points. It is imperative to note that all students exhibit regression of skills during extended breaks. Recoupment is the amount of time it takes for a student to recover skills and knowledge lost during a break. Pre‐ and post‐break progress monitoring must include enough data points to obtain the rate of recoupment. The data is analyzed to determine whether this regression and recoupment significantly jeopardizes the educational benefits accrued to the student during the regular school year. Depending on the child’s unique needs, the number of data points needed to determine regression and recoupment may vary.

**Guiding Questions:**

1. What does pre‐ and post‐break data show regarding regression of learned skills?

2. After extended breaks how much time does it take the student to recoup lost skills?

**Data/Information regarding Regression and Recoupment:**

**Predictive Factors**

The following questions will guide the process to be used by the IEP Team in determining whether the educational benefits accrued to the child during the regular school year will be significantly jeopardized if the child is not provided ESY services during extended breaks The

IEP Team should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the professional judgment of the IEP Team, as well as circumstantial considerations of the child's individual situation at home and in the child's neighborhood and community.

**Child’s Rate of Progress**

**Guiding Question:**

Is the child’s rate of progress such that the regression is severe and/or the recoupment is so slow that the child is prevented from progressing on his/her goals and/or objectives?

Describe the rate of progress and whether the interruption of services would be detrimental to continued progress.

**Data/Information regarding the predictive factor of rate of progress:**

**Predictive Factors Type and Severity Guiding Question:**

How does the degree of impairment of this student’s disability impact the maintenance of learned skills? Consider the following:

 Explain the student’s progress on goals and/or objectives.

 What are the contributing factors that have impacted progress (e.g., Health factors, multiple illnesses)?

 Describe the type and amount of services and supports needed for the child to maintain skills or knowledge (e.g., Does the student require a highly organized, structured, environment to maintain skills)?

**Data/Information regarding the predictive factor of type and severity: Behavioral / Physical Behavioral Guiding Question:**

How does the child’s behavior impact/interfere with the student’s ability to maintain learned skills?

 Consider the information in the student’s Behavior Intervention Plan (BIP), if the child has one.

**Data/Information regarding the predictive factor of behavioral:**

**Physical Guiding Question:**

How do the child’s physical needs impact/interfere with the student’s ability to maintain learned skills?

**Data/Information regarding the predictive factor of physical:**

**Alternative Resources Guiding Question:**

What alternative resources are already planned by the family or could be available in order for the student to maintain learned skills? Please consider:

 What is the family planning for the extended break that might support the maintenance

of the learned skill or knowledge of concern?

 What resources and activities have been or could be provided to the family to work on goals and/or objectives during extended breaks?

**Data/Information regarding the predictive factor of alternative resources:**

**Ability to Interact with Peers without Disabilities Guiding Question:**

How will the student have opportunities to interact with peers without disabilities during the extended break?

 If there is a lack of opportunity for the student to interact with peers without disabilities, consider how that may significantly interfere with the maintenance of learned skills.

**Data/Information regarding interaction with peers without disabilities:**

**Curriculum That Needs Continuous Attention Guiding Question:**

Describe the goals, objectives, curricular elements, or other IEP components that require continuous attention in order to maintain learned skills.

**Data/Information regarding the predictive factor of curriculum that needs continuous attention: Vocational Needs Guiding Question:**

What data indicate that the student requires ongoing vocational instruction in order to maintain learned skills?

**Data/Information regarding the predictive factor of vocational needs: Other Relevant Factors Guiding Question:**

What additional factors have impacted the child’s ability to maintain learned skills and knowledge?

**Data/Information regarding the predictive factor of other relevant factors:**

**Summary of Determination**

Based on the body of evidence, without continued supports and services, will the student experience a severe loss of skill(s) or knowledge that will significantly jeopardize the educational benefits accrued to the student during the regular school year?

 Yes (If yes, the student is eligible for ESY services.)

 No (If no, the student is not eligible for ESY services.)

Regardless of whether the response is “yes” or “no,” provides the rationale and bases for the decision.

If the student is eligible for ESY services describe the supports/services that are essential, as well as reasonable to meet this student’s individual needs in order to maintain learned skills.

Add the information here to the ESY section of the IEP.

# Roles and Responsibilities of ESY Summer staff AND staff of students who are ESY eligible

If you have a student eligible for ESY: Complete ESY forms and return by due date, provide ESY materials for summer staff.

Special Education Director will obtain the key for access and reserve the room.

Records notifies transportation/arranges transportation.

Beginning class:

* first week teacher contacts parents before class begins
* identifies who is attending
* communicates those attending to Records for transportation needs
* sets schedule
* sets up class (pick up summer school supplies from BOCES back storage)
* pick up individual student supports provided by current staff (materials)
* share daily schedule with the rest of providers for consistency (if multiple providers)
* sets up progress monitoring sheets
* share key with next instructor (if multiple providers)
* share what works and doesn’t work with next provider (if multiple providers)
* ensure health needs are identified and shared
* pass along folder with goals and progress monitoring

All instructors:

* share key with next instructor (if multiple instructors)
* progress monitor and share results with next instructor (if multiple providers)
* share what works and what doesn’t work with next provider (if multiple providers)
* ensure health needs are identified and shared
* each teacher will provide written progress monitoring data for end of summer Enrich documentation
* keep or pass along folder with goals and progress monitoring (if multiple providers)

Ending class:

* teacher returns supplies to BOCES back storage
* return key to Special Education
* complete and send to families progress monitoring on Enrich on goals worked on