

# 2012

EXTENDED SCHOOL YEAR (ESY)

# Services

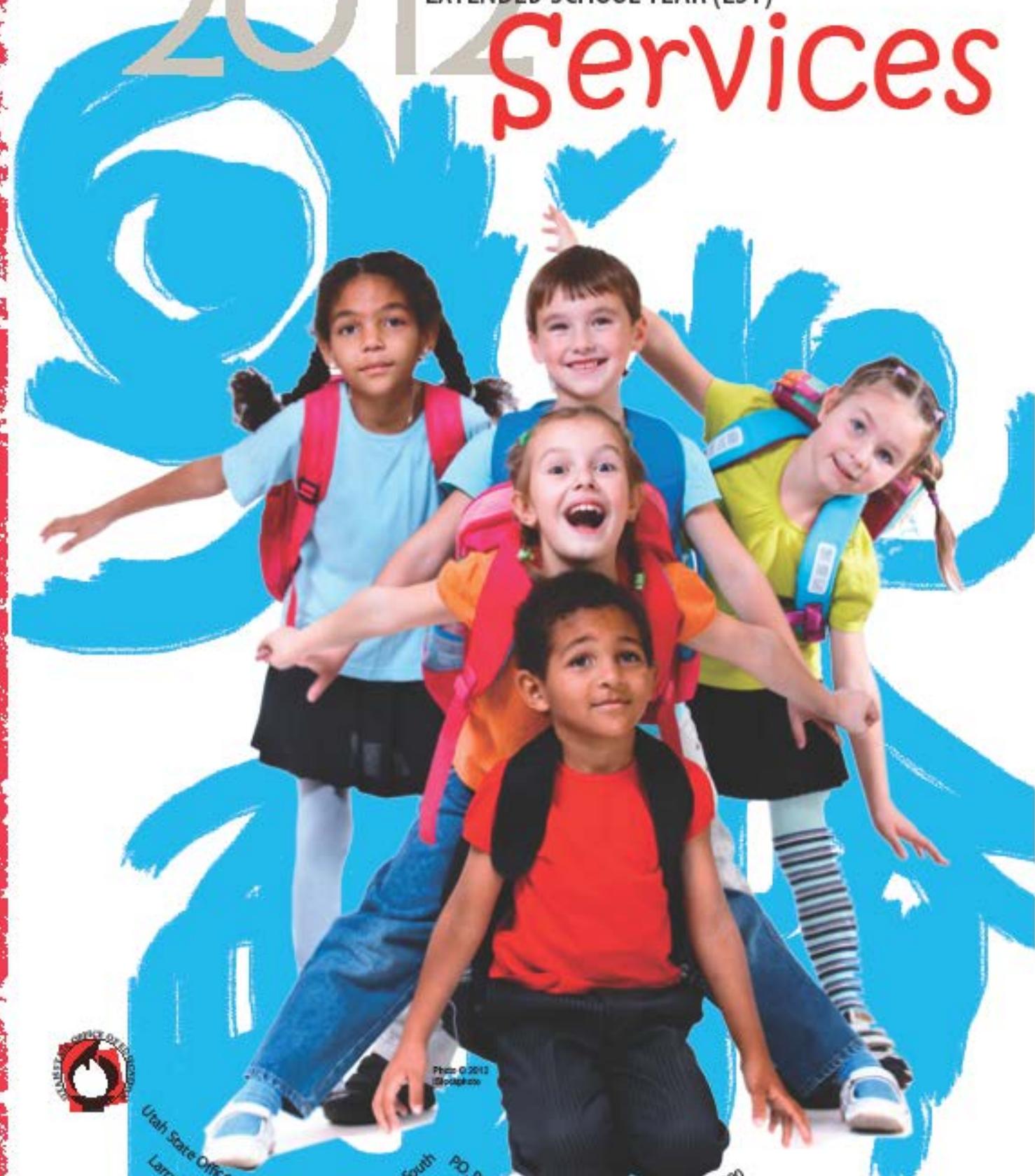


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## **EXTENDED SCHOOL YEAR (ESY) SERVICES**

Individualized Education Program (IEP) teams are responsible to determine student needs for specially designed instruction, related services, and supplemental aids and services, in support of a student with disabilities' achievement of annual IEP goals. One measure of whether an LEA has provided a Free Appropriate Public Education (FAPE) to a student is whether that student made meaningful progress toward IEP goals. It is important to note for some students with disabilities the meaningful progress achieved during the school year may erode during scheduled breaks in instruction and may not be re-attained in a reasonable time, which in effect produces very little progress in "real growth" in a student's skills from year to year. Due to the possibility of students significantly regressing in attained skills and need for extended time to recoup lost skills, IEP teams are responsible to consider if extended school year (ESY) services are warranted to provide a student with a FAPE. This document is designed to support IEP teams in determining if individual students with disabilities require extended school year services.

For teams to fully understand their charge in determining students' eligibility for ESY, it is advised that they review the following directives identified in IDEA statute and Utah State Board of Education Rule. To support IEP teams in making these important decisions, this document concludes with ESY-related technical assistance provided by the USOE. The USOE recommends that each LEA consider this technical assistance document in developing and/or revising existing LEA ESY policies and procedures. While many examples are provided throughout the document to identify potential factors and associated data types which may be considered in the ESY decision process, the requirement is for IEP teams to consider multiple factors and associated data when making ESY decisions. More specifically, an LEA's IEP teams are not required to complete an exhaustive review of all factors and data sources identified in this document, but to select multiple factors from this document or identified by the LEA which aids teams in determining if ESY is needed.

## **IDEA STATUTORY AUTHORITY (§300.106)**

### (a) General.

- (1) Each Local Education Agency (LEA) must ensure that extended school year services are available as necessary to provide a Free Appropriate Public Education (FAPE).
- (2) Extended school year services must be provided only if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.
- (3) In implementing these requirements, an LEA 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 student with a disability:
  - (i) Beyond the normal school year of the LEA
  - (ii) In accordance with the student's IEP; and
  - (iii) At no cost to the parents of the student; and
  - (iv) Meet the standards of the State Education Agency (SEA).

## **UTAH STATE BOARD OF EDUCATION RULE (R277-751) (*Effective February 7, 2012*) R277-751. Special Education Extended School Year (ESY).**

### **R277-751-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "ESY" means extended school year.
- C. "ESY program" means the individualized education program provided by the school to a student with a disability during the ESY.
- D. "ESY services" means special education and related services that are provided to a student with a disability beyond the normal school year of the LEA, in accordance with the student's IEP, at no cost to the student's parents, and meet the standards of the USOE.
- E. "FAPE" means a free appropriate public education which includes special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the USOE and Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.1401(3), include preschool, elementary school and secondary school education in Utah; and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and Utah State Board of Education Special Education Rules.
- F. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.
- G. "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.
- H. "LEA" means a local education agency which includes school boards/public school districts, charter schools, and, for the purposes of this rule, the Utah Schools for the Deaf and the Blind.
- I. "Procedural Safeguards" means the procedural rights designed to protect the rights of students with disabilities and their parents. Requirements are defined in IDEA and Utah State Board of Education Special Education Rules, and include the parent's right to participate in meetings, review educational records, request an independent

educational evaluation, receive written prior notice of actions proposed or refused by the LEA, and consent to evaluations and special education services. Procedural Safeguards also describe dispute resolution options.

J. "Regression" means reversion to a lower level of functioning, evidenced by a decrease in the level of basic behavioral or academic patterns, or both, or skills, which occurs as a result of an interruption in educational programming. These behaviors or skills are specified on a student's current IEP.

K. "Recoupment" means recovery of basic behavioral or academic patterns, or both, or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

L. "Student with a disability" means a student who meets eligibility criteria for special education and related services, as defined in the Utah State Board of Education Special Education Rules.

M. "USOE" means the Utah State Office of Education.

#### **R277-751-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules regarding services to students with disabilities and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the standards for the special education ESY.

#### **R277-751-3. Determining Eligibility.**

A. Students eligible for ESY services are:

- (1) Students who have been determined as eligible under Utah State Board of Education Special Education Rules and Part B of the IDEA; and
- (2) Students whose IEP team has determined, based upon a review of multiple data sources and factors, on an individual basis, an ESY is required to receive FAPE.

B. The student's IEP shall reflect the IEP team's decision regarding need for ESY services.

- (1) Parents shall be provided with written prior notice of proposal or refusal to provide ESY services.
- (2) If determined as eligible for ESY services, the IEP team shall determine the appropriate ESY program, based on the student's individual needs.
- (3) ESY eligibility decisions and written prior notice of ESY programs shall be provided to parents in sufficient time to permit accessing dispute resolution options of the Procedural Safeguards, in the event of a dispute.

#### **R277-751-4. ESY Program Standards.**

A. The primary goal for a student requiring ESY services is to maintain the current level of the student's academic and functional skills and behavior in areas identified by the student's IEP in order to provide FAPE.

B. LEAs may not:

- (1) Limit ESY to particular categories of disabilities or particular ages or grade levels of students.
- (2) Unilaterally limit the type, amount, or duration of ESY services provided for students.
- (3) Limit data consideration by IEP teams to only an analysis of regression and recoupment.

C. LEAs shall ensure that:

- (1) ESY student programs are provided in the least restrictive environment.

(2) ESY teachers and paraprofessionals meet IDEA's highly qualified requirements.

**R277-751-5. Division of Responsibilities.**

A. The duties of the Utah State Office of Education shall include:

- (1) Monitoring ESY compliance through:
  - (a) LEA program administrative reviews, such as Utah Program Improvement Planning System (UPIPS) monitoring;
  - (b) requiring student attendance and membership accountability.
- (2) Providing technical assistance to LEAs;
- (3) Collecting data on:
  - (a) the number, disabilities, and levels of students served;
  - (b) the types of program delivery models used;
  - (c) costs of the ESY program in LEAs;
  - (d) program effectiveness.
- (4) Developing guidelines for LEAs.

B. The duties of LEAs shall include:

- (1) Establishing LEA procedures which are in accordance with Board rules;
- (2) Providing professional development and on-site visits to assure that Board and LEA procedures are appropriately understood and implemented;
- (3) Establishing timelines to accomplish the purposes of this rule;
- (4) Analyzing LEA needs, reported by professionals, for ESY services for individual, eligible students;
- (5) Determining LEA ESY program parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;
- (6) Ensuring parents and professionals have received information about dispute resolution procedures for the appeal of ESY eligibility decisions and ESY program parameters;
- (7) Implementing processes to collect program effectiveness data.

## Technical Assistance: EXTENDED SCHOOL YEAR (ESY) SERVICES Considerations for IEP Teams

### WHAT IS ESY?

- Extended School Year (ESY) means special education and related services that are provided to a student with a disability beyond the typical school year/school day of the Local Education Agency (LEA), in accordance with the student's Individualized Education Program (IEP), for the purpose of providing a Free Appropriate Public Education (FAPE) to a student with disabilities.
- ESY is an entitlement **if** the IEP team determines that the student **could not** receive a FAPE without it. FAPE is defined within the Utah State Board of Education Special Education Rules (2007) as special education and related services that are provided at public expense, under public supervision and direction, and without charge, meet the standards of the USOE and Part B of the IDEA, include preschool, elementary school, and secondary school education in Utah, and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and State Special Education Rules.
- ESY services are different from regular school enrichment/tutoring programs and/or summer school and are not just an extension of time or duplication of the regular school year services. ESY services focus on specific goals selected by the IEP team from the student's current IEP.
- ESY services may consist of special education or special education and related services in areas such as academic, social/behavior, motor, and/or communication instruction, based upon the individual needs of the student.

### WHAT IS THE PURPOSE OF ESY SERVICES?

- The purpose of ESY services is to maintain student skills on current IEP goals to ensure a FAPE. ESY needs and services are determined and documented by the student's IEP team, based on the student's individual needs.
- It is recognized that during breaks in education, a reduction in skills can be measured in students with and without disabilities. ESY is used to ensure that skills do not regress so significantly that the level of achievement attained prior to an educational break cannot be re-attained in a reasonable period of time after traditional instruction resumes.
- ESY is not required or meant to address the needs of students who did not meet IEP goals during periods of traditional instruction or to maximize educational benefit.
- ESY services are not designed to develop new skills not currently identified in the student's IEP.

### WHO MAY BE ELIGIBLE FOR ESY SERVICES?

- Students (aged 3-21) eligible for ESY services are those whose IEP team has determined, **based upon a review of multiple data sources and factors**, on an individual basis that an ESY is required for that student to receive a FAPE.
- IEP teams, including input from the parent(s), must consider the need for ESY for each student with a disability at least annually and must document and provide Written Prior Notice of the decision regarding ESY eligibility to the parent(s).
- LEAs may not refuse to provide IEP team-determined ESY services or limit ESY services to students who have a particular disability, or to students with a particular level of severity of disability.
- IDEA eligibility does not automatically require the provision of ESY services.

- Previous eligibility for ESY services does not trigger an ongoing need for ESY. The decision regarding the need for ESY must be made at least annually by the student's IEP team.

### **HOW DO IEP TEAMS DETERMINE A NEED FOR ESY SERVICES?**

- The IEP team will consider several sources of educational data (both predictive and retrospective) as part of a multifactor approach to determining the need for ESY services.
- IEP teams should begin with a retrospective analysis of the skill decrements measured during breaks in a student's education and the length of time to recoup previously attained skills. If this analysis directs the IEP team to provide ESY to ensure the student receives a FAPE, their work is complete.
- If an IEP team's retrospective analysis does not direct them to authorize ESY, the team should continue with a predictive analysis to determine if evidence suggests that a student is at significant risk of experiencing such significant regression in skills and extended time to re-achieve previously attained skills that a FAPE is not achieved.

### **Following are examples of different types of data that could be considered by the IEP team; there is no requirement that the IEP team consider all factors.**

- The IEP team should consider retrospective data, such as:
  - Regression and recoupment data; that is, behavioral or academic data gathered at the end of instruction before a break, at the beginning of subsequent instruction after a break, and at the time of recoupment of the skill to its former level.
  - Data that currently exist, verified through observation, data collection and review, or written reports of academic or other performance.
  - Past regression on targets that demonstrate significant regression on learned skills during a break in services (e.g., degree of regression and exact time of regression).
  - Rate of recoupment of skills that is significantly delayed or skills only recouped to a limited degree after services resume.
  - Other data that meets the standard of significant skill losses of such degree and duration as to seriously impede progress toward educational goals and loss of educational benefit.
  - Depending on the student's unique needs, the number of data points needed to determine regression and recoupment may vary.
  - NOTE: Utah is part of a 10<sup>th</sup> Circuit Decision (Johnson v. Independent School District of Bixby, 921 F.2d 1022 (10<sup>th</sup> Circuit, 1990)) that states regression data alone are not a sufficient basis for an ESY decision, because all students, having disabilities or not, may regress to some extent during lengthy breaks from school. The decision should be based on a multifaceted inquiry such as the degree of the child's impairment, the ability of the child's parents to provide the educational structure at home, the child's rate of progress, his physical or behavioral problems, the availability of alternative resources, the ability of the child to interact with typical children, the areas of the child's curriculum that need continuous attention, the child's vocational needs and whether the requested service is extraordinary to the child's condition.
- The IEP team should consider predictive data, such as;
  - The professional judgment of the IEP team on data, including those such as:
    - The degree and nature of the student's disability
    - The student's rate of progress on IEP goals
    - Any physical or behavioral concerns regarding the student

- The areas of the student's curriculum that need continuous attention
- Emerging skills
- The student's vocational and transition needs
- Circumstantial considerations based on information about unique situations in the student's home, neighborhood, or community, including those such as;
  - The availability of alternative resources
  - The ability of the student to interact with nondisabled students
- Anecdotal reports from teachers, parents, caregivers, and related service providers
- Data from measures of daily performance such as state-wide assessment data, norm-referenced test data, checklists, work samples, and others

The IEP team, after reviewing the collected data, determines if the student is eligible for ESY services.

- The student **is not eligible** for ESY if the data do not show a likelihood of 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.
- The student **is eligible** for ESY if the data show the likelihood of substantial regression and/or the amount of time to recoup skills/behavior would be longer than that of students without disabilities or the impact of predictive factors indicates a need for ESY services.

#### **WHEN CAN ESY SERVICES BE DELIVERED?**

Timelines for delivery of ESY services are determined by the IEP team based upon the individual needs of the eligible student. Options may include, but are not limited to:

- Summer vacations
- Before or after regular school hours
- School vacations

#### **HOW CAN ESY SERVICES BE DELIVERED?**

ESY services provided to address current goals may differ from the IEP special education and related services provided to the student during the typical school year; however, LEAs may not unilaterally limit the type, amount or duration of ESY services. ESY services may be modified to enhance generalization and maintenance of academic and behavior skills.

Service model and delivery options may include, but are not limited to:

- School-based programs
- A cooperative program with another agency (e.g., LEA or State agency)
- Limited in-person student contact
- Week(s) of review prior to school starting
- Contracted services
- Community-based programs
- Services provided by parent(s) and supported by LEA personnel
- Services in conjunction with a summer school program of the LEA
- Direct instruction, consultation, and/or supervision
- Special education or special education and related services

#### **WHAT AMOUNT OF ESY SERVICE IS NEEDED?**

The IEP team determines the need for ESY services, as well as the type, amount, location, and duration, based upon data specifying the amount and types of services needed to

mitigate substantial skill reduction and the student's individual needs. LEAs may not unilaterally limit the type, amount or duration of ESY services.

### **WHO CAN DELIVER ESY SERVICE?**

Personnel providing ESY services must satisfy the Highly Qualified (HQ) requirement set forth in the IDEA regulations (i.e., anyone who can deliver specialized instruction during regular school year), including:

- Appropriately and adequately trained and prepared special education teacher
- Appropriately and adequately trained and prepared related service provider
- Appropriately trained and supervised paraeducator
- Appropriately trained and supervised general educator

### **ESY DOCUMENTATION REQUIREMENTS**

- The IEP team must document the consideration of ESY and data-based decision of whether ESY is needed on each IEP and provide Written Prior Notice to parent(s).
- If the ESY decision is postponed at the annual IEP meeting, the IEP team must revisit the issue and document the final ESY decision in the IEP and the LEA must provide Written Prior Notice to the parent(s) in sufficient time to permit access to Procedural Safeguards dispute resolution options.
- If the IEP team determines the student needs ESY services in order to receive a FAPE, the IEP team shall determine the ESY program based on the student's needs, and then provide the parent(s) with Written Prior Notice of the IEP team decisions regarding:
  - Data used to make the decision
  - Which goals/skills will be reinforced (for maintenance)
  - Amount, type, and location of special education or special education and related services
  - The personnel responsible for providing the ESY service(s)

### **WHERE CAN ESY SERVICES BE DELIVERED?**

- A student's ESY placement may differ from the regular school year placement but must be provided in the least restrictive environment (LRE) appropriate to meet the student's needs.
- LEAs must maintain or utilize the necessary placement options to implement the student's IEP and meet the requirements of the LRE for ESY services.
- An LEA is not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the school does not provide services for its nondisabled students at that time. LRE requirements may be met through the use of LEA-funded alternative means (e.g., private placements, community settings), if the IEP team determines that the student requires interaction with nondisabled students during the provision of ESY.
- An LEA is not prohibited from providing ESY services in a noneducational setting, if the student's IEP team determines that the student could receive appropriate services in that setting.