



# EXTENDED SCHOOL YEAR SERVICES

A UTAH STATE BOARD OF EDUCATION TECHNICAL ASSISTANCE DOCUMENT

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# INTRODUCTION

Individualized Education Program (IEP) teams are responsible for determining 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. To provide a Free Appropriate Public Education (FAPE), a local education agency (LEA) "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (Endrew F. v. Douglas County Sch. Dist. RE-1, U.S. 2017).

For some students with disabilities, the 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 jeopardizes the overall progress the IEP team individually determines that a particular student is capable of making from year-to-year. Due to the possibility of students significantly regressing in attained skills and, consequently, the potential need for extended time to recoup those lost skills, IEP teams are responsible for considering whether 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 ESY 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 the Individuals with Disabilities Education Act (IDEA) and Utah State Board of Education (USB E) Rule. To support IEP teams in making these important decisions, this document concludes with ESY-related technical assistance provided by the USB E. The USB E recommends that each LEA consider this technical assistance document in developing and/or revising existing LEA ESY policies and procedures. This document provides many potential factors and associated data types that may be considered in the ESY decision process.

Although an IEP team is not required to complete an exhaustive review of all factors and data sources identified in this document, it is of paramount importance they meet the requirement to make individualized ESY determinations. The individualized ESY determination should be based on the IEP team's consideration of multiple factors and associated data, the selection of factors from this document, or the use of factors identified by the IEP team's LEA for each student. Similarly, an

LEA may not make blanket or unilateral policies regarding ESY services that neutralize the requirement for individualized ESY determinations.

## UTAH STATE BOARD OF EDUCATION RULES

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The Utah State Board of Education (USBE) defines Extended School Year Services and outlines the requirements for LEAs and IEP Teams in section III.N. of the USBE Special Education Rules as well as in Administrative Rules, R277-751. For the [Extended School Year Services \(34 CFR §300.106\) USBE Special Education Rules III.N. follow this link.](#) For [Special Education Extended School Year R277-751 follow this link.](#)

# EXTENDED SCHOOL YEAR SERVICES

## CONSIDERATIONS FOR IEP TEAMS

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### *WHAT IS ESY?*

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 LEA, in accordance with the student's IEP, for the purpose of ensuring a 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 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 USBE 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 USBE Special Education Rules (34 CFR § 300.17; Rules I.E.18.).

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 maintenance of 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 progress.

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) are eligible for ESY services if their IEP team has determined on an individual basis, **based upon a review of multiple data sources and factors**, 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 Prior Written 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 eligibility for ESY.

**The decision regarding ESY services must be made at least annually by the student's IEP team.**

## *HOW DO IEP TEAMS DETERMINE WHETHER ESY SERVICES ARE NECESSARY?*

The IEP team will consider several sources of educational data (both predictive and retrospective) as part of a multifaceted approach to determining the need for ESY services.

“The analysis [for an ESY decision] 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 situation at home and in his or her neighborhood and community.”

ESY determination *must be tailored* to the individual student, and may include many factors such as “the degree of impairment and the ability of the child’s parents to provide the educational structure at home. . . the child’s rate of progress, his or her behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with [typical] children, the areas of the child’s curriculum which need continuous attention, and the child’s vocational needs, and whether the requested service is ‘extraordinary’ to the child’s condition, as opposed to an integral part of a program for those with the child’s condition” Johnson v. Independent School District of Bixby, 921 F.2d 1022 (10th Circuit, 1990).

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, the student is eligible for ESY services, and the IEP team need not pursue further analysis.

If an IEP team’s retrospective analysis does not direct them to authorize ESY, the team should pursue 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 they are not receiving a FAPE.

A special education student is eligible for ESY if either:

- Data shows a likelihood of substantial regression and/or the amount of time to recoup skills or behavior would be longer than that of student without disabilities, **OR**
- The impact of predictive factors indicates a need for ESY services.

A special education student is **NOT** eligible for ESY services if:

- Data **DO NOT** show a likelihood of substantial regression and/or the amount of time to recoup skills or behavior would be longer than that of student without disabilities, **AND**

- The impact of predictive factors **DOES NOT** indicate a need for ESY services.

## EXAMPLES OF DATA

The following are examples data to be considered by the IEP team.

While IEP teams should consider multiple factors, the number of factors to consider for each student may vary. Additionally, IEP teams need not consider every possible factor but should choose factors most applicable to the circumstances of the individual student.

## RETROSPECTIVE DATA

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Retrospective data refers to data that currently exists, verified through observation, data collection and review, or written reports of academic or other performance.

This may include such data as:

- Regression and Recoupment Data—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.
- Past Regression Data—data gathered from 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).
- Past Rate of Recoupment Data—data gathered on past of recoupment of skills that is significantly delayed, or skills only recouped to a limited degree after services resume.
- Other Data—any other data that meets the standard of significant skill losses of such degree and duration as to seriously impede appropriate progress required for a FAPE.

## PREDICTIVE DATA

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Predictive data refers to examining student, classroom, school, and home-based indicators to predict student outcomes, 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

### *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 create policies that unilaterally limit the type, amount, or duration of ESY services.

## *WHO CAN DELIVER ESY SERVICE?*

Personnel providing ESY services must meet IDEA and USBE licensing requirements, including:

- Appropriate licensing of special education teachers and related service providers, and
- Appropriate training of supervised paraeducators and supervised general educators

## *WHERE CAN ESY SERVICES BE DELIVERED?*

A student's ESY placement and location may differ from the regular school year placement and location. ESY 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.

## *ESY DOCUMENTATION REQUIREMENTS*

The IEP team must document the annual consideration of ESY and data-based decision of whether ESY is needed on each IEP and provide Prior Written 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 Prior Written 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 individual student's needs, and then provide the parent(s) with Prior Written 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 services