

Section 3: Determination of the Need for ESY Services

The need for ESY services must be considered for every student with a disability at each Individualized Education Program (IEP) Team meeting. ESY services must be provided if the IEP Team determines that such services are necessary for the provision of a FAPE to the student.

The student's IEP Team is a group of individuals composed of the student's parents, the student, if appropriate, general education teacher(s), special education and related service providers, an administrator or school representative, individual(s) who can interpret the instructional implications of evaluation results, and others, as appropriate. Each member of the IEP Team brings important information about the student's individual needs and his/her academic, social, and behavioral progress.

The determination of the need for ESY services is a two-step process, with several additional factors that must be considered (see the *Extended School Year Decision-Making Flowchart* and *Questions for Extended School Year Decision Making* in Appendix 2).

In considering the need for ESY services, the IEP Team must first answer the following question:

Is there one or more current annual goal(s) that address skills which need to be maintained without interruption for the student to benefit meaningfully from a FAPE?

There must be at least one current IEP goal where significant concerns exist regarding skill maintenance during a break in services. Goal areas of concern should represent skills essential to the progress of the student.

The determination of the need for ESY services must be based on data. The IEP Team needs to evaluate the data to determine which, if any, goals represent areas of concern that may present significant difficulties in maintaining skills during breaks (see Section 4 for a discussion on data sources).

A student with a goal area of concern may be determined to need ESY services due to:

- 1) A serious potential for regression of skills beyond a reasonable period of recoupment;
- 2) The nature or severity of the disability; or
- 3) Critical stages or areas of learning.

- If there are no identified goal areas of concern, then ESY services are not needed for a FAPE.
- If there is one or more identified goal area of concern, then the following questions must be answered by the IEP Team:

1) Are there data that indicate to the IEP Team that in the identified goal area(s) of concern there is a serious potential for regression of skills beyond a reasonable period of recoupment?

Regression refers to the inability of the student to maintain an acquired skill in an identified goal area of concern when special education instruction or related services in an IEP goal area are interrupted and require an unreasonable amount of time for recoupment.

Recoupment is the student's capacity to recover those regressed skills to a level demonstrated prior to the break in instruction.

This is a two-part question: (1) there must be serious potential for regression of skills related to the goal area(s) of concern, and (2) the potential period of recoupment must be beyond a reasonable amount of time.

The IEP Team determines what a reasonable period of recoupment is for the goal area(s) of concern for each student. In making this determination, the IEP Team must consider the unique needs of the student, rather than basing the determination on a formula. This is because formulas do not provide the individualization needed for this type of decision. It is not possible to develop a formula that can take into account the unique needs of all of the students with disabilities in the state of Michigan. Any formula, by its nature, will inadvertently exclude someone from appropriate consideration for ESY services.

The IEP Team needs to take into account the fact that all students, whether in general education or special education, lose skills when there is a break in services. Students who lose skills over breaks in service, but who can recoup those skills with re-teaching in a reasonable amount of time, are not eligible for ESY services. This is the case with most students with disabilities.

The provision of ESY services cannot be limited only to those students who have actually experienced serious regression of skills requiring an unreasonable amount of time for recoupment. The IEP Team must assess the potential for such difficulties in regression and recoupment.

2) Are there data regarding the nature or severity of disability of the student that indicate to the IEP Team that there is a need to provide services in the identified goal area(s) of concern during breaks in the school year?

The IEP Team must consider whether the nature or severity of the student's disability requires highly-structured or consistent programming without substantial breaks in service in order to make progress in the identified goal area(s) of concern.

If a student requires more consistent or highly-structured programming techniques due to the severity of the disability, the student may be more vulnerable to the loss of essential skills when the school program is interrupted.

A student with severe disabilities may revert to lower-functioning levels or exhibit more behaviors which interfere with learning after a long break in programming.

A student's mental, emotional, or physical health, or the chronic nature of his or her disability, may also indicate the need for ESY services in order to maintain skills that otherwise would be lost and not recovered in a reasonable amount of time.

3) Are there data that indicate to the IEP Team that in the identified goal area(s) of concern, the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills?

A 'critical stage in learning' means that this learning must occur without delay and that learning the skills in the identified goal area(s) of concern will enhance the student's ability to function independently. For example, very young students with significant disabilities may require ESY services to prevent loss of critical language, behavior, or self-help skills they learned during the school year.

A 'critical area of learning' means an area of instruction that is essential to the student's development in becoming self-sufficient and independent. This includes skills that are essential for the promotion and maintenance of the student's self-sufficiency. Skills such as toileting and eating are essential for minimal independence; stable relationships, impulse control, and appropriate peer interactions are necessary for community living.

The critical stage/critical area of learning must be identified, and the following questions must be answered:

- a) Is there a skill that needs to be mastered immediately? If the student does not master the skill immediately, is the degree of mastery likely to be permanently reduced? What data support this?
- b) Is the student at a critical stage of development where there is a window of opportunity that will be lost if services are not provided? What data support this?
- c) Are there changes in the student's medical, physical, or sensory status that makes it possible to predict an accelerated rate of learning during the ESY period (critical stage)? What data support this?
- d) Is the skill in a critical area of learning and will a break in services result in the loss of a window of opportunity for mastering the skill? What data support this?

- If one or more of these questions on critical stages/areas of learning is answered yes, then the IEP Team needs to develop an ESY plan.
- If all of these questions are answered no, then ESY services are not needed for a FAPE.