

TOPIC BRIEF
EXTENDED SCHOOL YEAR (ESY) SERVICES

The IDEA has contained a reference to extended school year services from the time the law was reauthorized in 1997 and the regulations amended in 1999. In the comments to the 1999 regulations, the Office of Special Education Programs noted "... the requirement to provide ESY services to children with disabilities under this part who require such services in order to receive FAPE is not a new requirement, but merely reflects the longstanding interpretation of the IDEA by the courts and the Department...". The 2004 Reauthorization to IDEA maintains the ESY language, found in the regulations at 34 CFR 300.106. The regulations state:

- (a) General. (1) Each public agency must 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 Sections 300.320 through 300.324, 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 SEA.

The Analysis of Comments and Changes provided by OSEP with the 2006 revisions to the IDEA regulations provides useful information on ESY, see pages 46582 to 46583 of the Federal Register, Vol. 71, No. 156 for Monday, August 14, 2006. This Analysis is included in most copies of the Final Regulations released by OSEP on August 14, 2006.

The state standard in Connecticut has included both regression/recoupment criteria and nonregression criteria for determining if a child is eligible to receive ESY services. The Bureau provided information on ESY in Update 28 dated January 10, 2002 and included a specific reference to Reusch v. Fountain, 21 IDELR 1107 (1994). Reusch* contains a good discussion of the regression and nonregression factors which should be considered in determining whether or not a child may be eligible for extended school year services. These factors include:

- The nature or severity of the student's disability (nonregression);
- The student is likely to lose critical skills or fail to recover these skills within a reasonable time as compared to typical students (regression/recoupment);

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- The student's progress in the areas of learning crucial to attaining self-sufficiency and independence from caretakers (nonregression);
- The student's stereotypic, ritualistic, aggressive or self-injurious interfering behaviors prevent the student from receiving some educational benefit from the program during the school year (nonregression); or
- Other special circumstances identified by the IEP team such as: the ability of the student to interact with other non-disabled students; the areas of the student's curriculum that need continuous attention; the student's vocational needs; or the availability of alternative resources.

The provision of extended school year services is the exception and not the rule for students receiving special education and related services. Extended school year means services provided beyond the length of the regular school year as described in the IEP and is provided at no cost to the parents. Eligibility for ESY must be determined each year for individual students who may be eligible to receive these services.

The determination of whether or not a child will be eligible for an extended school year program and the content and location of the program are generally discussed at the annual review for the child. This should be done early enough to allow sufficient time for any dispute regarding the determination of eligibility for ESY services or the provision of ESY services to be resolved before the start of the extended school year program. All parents should be advised of the availability of extended school year services for eligible children in any parent or student manual or other description of services provided by the district to parents.

In summary, decisions regarding a child's eligibility for ESY services are to be made on an individual basis based on the needs of the child. ESY services cannot be limited to children in particular disability categories. The type of service, amount of service and duration of the ESY program for eligible children is determined by the needs of each individual child who is eligible for ESY services. It is important to remember that both regression and nonregression criteria should be reviewed to determine a child's eligibility for services and discussions regarding a child's eligibility for ESY and what that program should look like should take place early enough to allow any dispute to be resolved before the beginning of the ESY program in order for the child to receive a FAPE.

If you have any questions, please contact Theresa C. DeFrancis at (860) 713-6933.

*Reusch is out of the District Court in Maryland. Although the findings and decision of the court are not binding in Connecticut, it is illustrative of the questions the courts are asking about extended school year services and raises some important issues for our consideration. A copy is available from the Bureau.