4.8 Extended School Year (ESY)

I. Definition and Overview of ESY Services

The traditional school year continues for approximately nine months or 174 instructional days in the Gadsden Independent School District. The term Extended School Year (ESY) services means special education and related services that are provided to a child with a disability beyond the normal school year of the school district, in accordance with the child’s IEP, and at no cost to the parents.

All students who have a current IEP must be considered for ESY services at least annually using the Addendum for Determining Eligibility for Extended School Year Services. The school district must provide ESY services if a student’s IEP team determines, on an individual basis, that these services are necessary for providing FAPE. In making this determination, the school district cannot limit ESY services to particular categories of disability and cannot unilaterally limit the type, amount or duration of those services. These requirements apply to all students with a disability between the age of three and the end of the school year in which the student turns 22.

II. Determining the Need for ESY

A. Regression-Recoupment

Regression-recoupment problems triggering the need for ESY services occur when 1) a child suffers an inordinate or disproportionate degree of regression during that portion of the year in which the customary 174-day school year is not in session, and 2) it takes an inordinate or unacceptable length of time for the child to recoup those lost skills (academic, emotional or behavioral) upon returning to school. However, a student cannot be required to fail or demonstrate a lack of progress for an entire year simply to prove need for ESY services. If no empirical data are available on regression, the need may be shown by expert opinion, parent input, or prospective criteria established by the IEP team.

B. Other Tests for Determining Need for ESY

Eligibility for ESY programming should not be based solely upon regression-recoupment analysis or upon a formula. In Johnson v. Independent Sch. Dist. No. 4, (10th Cir. 1990), the court identified the following list of factors that may need to be considered in this analysis. Tenth Circuit cases are binding in New Mexico.

1. Degree of regression suffered in the past.
2. Exact time of past regression.
3. Ability of parents to provide educational structure at home.
4. Child’s rate of progress
5. Child’s behavioral and physical problems.
6. Availability of alternative resources.
7. Ability of child to interact with nondisabled children.
8. Areas of child’s curriculum that need continuous attention.
10. Whether requested services are extraordinary for the child’s condition, as opposed to an integral part of a program for populations of students with the same disabling condition.

III. ESY Service Delivery Options

ESY services can be provided in a traditional classroom setting; however, the location and nature of service delivery can vary with the needs of the student. Other service delivery options could include, but are not limited to:

- School-based programs, grouping students with similar goals;
- Intra-school cooperative programs;
- A cooperative program with another community agency;
- Intensive tutoring three to four times during the summer to prevent regression;
- A week of intensive review just prior to the beginning of the school year; and
- Home-based service provided by the parent and supported by school personnel.

IV. Helpful Hints (from the Primer on the Provision of Extended School Year Services for Parents and Educators, NMPED, 2006)

- ESY services are intended to maintain skills already acquired, not to teach new skills.
- ESY is not the same as summer school, but some summer school programs could satisfy ESY requirements.
- New goals do not have to be written for ESY; ESY services address the maintenance of previously learned skills.
- Not all goals on the IEP need to be addressed during ESY – just those that are suspect for regression or other critical factors.
- The extent of regression required in order for a student to need ESY is made on an individual basis after a thorough review of the data gathered by the IEP team.
- A new IEP is not required for ESY services.
- When determining the need for ESY, the IEP team must consider whether the student requires related services in order to benefit from special education, either during ESY services, or during the coming school term.
• A student may not need ESY special education *per se*, but the student may need ESY *related* services in order to benefit from special education *when school resumes the next term*. In this instance, one or more related services may be the *sole component* of the ESY program.

• A student’s participation in ESY services one year does not automatically guarantee services the following year. The decision must be made *annually* for *each* student with an IEP.

• A parent can *reject* ESY services. The school should document that ESY was offered, but the parent decided against the services (list the decision and the reasons on the Written Notice of Proposed Actions).

• Section 504 (only) students are *very* unlikely to qualify for ESY. This is because if a student is so severe that they need ESY, he or she is most likely to qualify for services under the IDEA.

• Non-certified staff can be used to provide ESY services if they are *trained* and *supervised* by certified staff. Staffing options can include supervised practicum students, supervised student teachers, supervised paraeducators, or *contracted/purchased* services from agencies.

• ESY services must be tailored to the unique needs of the student and cannot be based solely on availability of services during the summer.

• The amount and duration of ESY services cannot be limited arbitrarily to the school’s summer school schedule.

• The IEP developed for a student who will reach *age three* during the summer must specify the student’s program upon the third birthday, including ESY services if needed by that particular student to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.

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