

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter E. Special Education**

#### **Part 130. Procedural Requirements and Program Standards**

#### **Subpart 19. Extended School Year**

##### **6 CAR § 130-1901. Purpose.**

(a) It is the purpose of this subpart to define extended school year services and delineate the criteria for eligibility for such services.

(b) It is further the purpose of this subpart to define the manner in which funds will be provided to local school districts for the provision of ESY services.

##### **6 CAR § 130-1902. Definitions.**

As used in this subpart:

(1) "Extended school year services (ESY)" means special education and related services that are:

(A) Provided to a child with a disability beyond the normal school year of the public agency;

(B) In accordance with the child's IEP;

(C) At no cost to the parents of the child; and

(D) Meet the standards of the Division of Elementary and Secondary Education;

(2) "Prospective performance review" means that, based on a review of the amount of time that it takes a child to acquire a skill, it can be expected/anticipated that even short breaks in programming will likely result in regression of a previously acquired skill that exceeds typical regression experienced by other children, or that acquisition of a new skill will be delayed beyond a reasonable time;

(3) "Recoupment" means the ability to regain or recover the level of skills attained prior to interruption of programming;

(4) "Regression" means a reversion to a lower level of functioning, as evidenced by a decrease in the performance level of previously attained skills, which occurs as a result of an interruption in educational programming;

(5) "Regression/recoupment disability" means the demonstration of regression beyond a reasonable recoupment period, for which there is assessed and/or demonstrated recoupment capacity; and

(6) "Self-sufficiency" means the demonstration of independence evidenced by the ability to acquire skills commensurate with assessed potential.

### **6 CAR § 130-1903. General.**

(a) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with subsection (b) of this section.

(b) Extended school year services must be provided only if a child's IEP team determined, on an individual basis, in accordance with 34 C.F.R. §§ 300.320 – 300.324, that the services are necessary for the provision of FAPE to the child.

(c) In implementing the requirements of this section, a public agency may not:

- (1) Limit extended school year services to particular categories of disability; or
- (2) Unilaterally limit the type, amount, or duration of those services.

(d) ESY services for eligible children with disabilities must be:

- (1) Determined and documented through the IEP process; and
- (2) Provided at no cost to parents.

(e) Not all children with disabilities need ESY services, nor does the provision of ESY services to a child mean that the child needs such services each year.

(f)(1) It is not required that all children with disabilities receive ESY services.

(2) The provision of ESY services is the exception and not the rule.

(g)(1) Most children with disabilities, like their nondisabled peers, benefit from school vacations.

(2) Breaks in formal programming allow most students to generalize school-learned skills and behaviors to their home and community, thereby facilitating new learning outside of the school environment.

(h) For children who have limited recoupment capacity, a break in programming may be detrimental rather than beneficial to the overall learning process.

(i) The key provision is that all children with disabilities, regardless of classification or severity level, have the opportunity for their IEP team to consider their need for ESY services in the provision of FAPE.

(j) The purpose of ESY services is to prevent regression relative to previously learned skills that cannot be recouped in a reasonable length of time when:

(1) Assessed and/or demonstrated recoupment capacity is present; or

(2) It can be expected/anticipated that even short breaks in programming will likely result in regression of previously acquired skills that exceeds typical regression experienced by other children, or that acquisition of a new skill will be delayed beyond a reasonable time.

(k)(1) If a child with disabilities does or will experience severe or substantial regression during the summer months in the absence of special education and related services, that child with disabilities may be eligible for ESY services.

(2) The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he or she is not provided an educational program during the summer months.

(l)(1) ESY services for eligible children with disabilities should not be confused with traditional summer school or with summer services typically made available to all children.

(2) ESY services provide a different focus from general summer school programs.

(m) ESY services provide for an extension of the IEP from the regular school year, in order to allow the child to maintain the progress achieved during the regular school year.

(n)(1) In providing ESY services to an eligible child, the public agency is acknowledging that the child's program does not end with the close of the regular school year.

(2) Further, the public agency acknowledges that the amount of time and services provided are to be determined on an individual basis.

**6 CAR § 130-1904. Guidelines for reasonable recoupment periods.**

(a) An analysis of materials pertaining to recoupment suggests a six-week interruption in educational programming may be detrimental to a child's progress.

(b)(1) The review further suggests the general guideline for a reasonable recoupment period may be five (5) or more instructional days for each two-week period of interruption in educational programming.

(2) This guideline may be used to compute reasonable recoupment periods according to the length of interruption in an educational program.

(c)(1) The length of interruption in instructional programming that causes a detrimental effect may vary, because regression/recoupment patterns vary greatly among similarly disabled children.

(2) While generalities are helpful, it is imperative that each child's functioning be considered individually.

**6 CAR § 130-1905. General criteria and eligibility.**

(a) An ESY program must be provided when it is determined by a child's IEP team that the child has regressed, or is predicted to regress, to such a substantial degree in a critical skill area that recoupment of such skill loss following a break in programming (typically summer breaks, but may include breaks during holidays) is unlikely or would require an unusually long period of time.

(b) ESY services would be appropriate to prevent significant regression in skills necessary for progress toward a child's self-sufficiency.

(c) The analysis of whether a child's level of progress would be jeopardized by a break in educational programming (typically summer breaks, but may include breaks during holidays) should proceed by applying not only retrospective data, such as regression and rate of recoupment, but also by considering predictive (prospective) data.

(d)(1) A child's ESY eligibility is premised on a construct of skill regression and a limited capacity for recoupment.

(2) The amount of regression experienced by a child during breaks in programming, considered along with the amount of time required to recoup those lost skills when school resumes in the fall, is an important consideration in assessing a need for continuation of educational programming during breaks in the school year or during the summer.

(e)(1) A regression/recoupment disability provides a basis for establishing criteria and eligibility standards for ESY services.

(2) A regression/recoupment disability, whether determined by retrospective means and/or predictive data, shall be relative to:

(A) The child's current IEP instructional goals and objectives; and

(B) His or her current functioning levels.

(f)(1) Regression/recoupment analysis is not the only measure used to determine the need for ESY services.

(2) A decision as to a child's need for ESY services must be based upon a multifaceted inquiry.

(g) Determination of the need for ESY services must be the result of a thorough analysis by an IEP team of formal and informal assessment data.

### **6 CAR § 130-1906. Determination of ESY eligibility.**

(a)(1) The question of a child's need for ESY services may be raised at any time by an IEP team/parent, including during any scheduled IEP meeting or annual review conference.

(2) For a child whose current IEP calls for ESY services, the question of a continuing need for such services should be included in any subsequent meeting held to review, evaluate, and/or revise the IEP.

(b)(1) The child's need for an ESY service or services must be stated in the IEP.

(2) The IEP team must specify which annual goal or goals, short-term objectives, and related services are to be implemented in the ESY program.

(c)(1) Eligibility for an ESY service or services must be determined on an individual basis by an IEP team.

(2) Public agencies must not invoke local guidelines and practices, which have the effect of considering eligibility for ESY services based upon a category, classification, or severity of disability.

**6 CAR § 130-1907. Factors to be considered.**

(a)(1) The following factors must be considered by a child's IEP team in determining his or her eligibility for ESY services.

(2) This list is not exhaustive, nor is it intended that each factor would impact on the planning for each child's IEP.

(b) Factors to be considered:

- (1) Degree (nature and severity) of the child's impairment;
- (2) Degree of regression experienced by the child (relative to IEP annual goals and short-term instructional objectives);
- (3) Recovery/recoupment time from this regression;
- (4) Ability of the child's parents to provide the educational structure at home;
- (5) Child's rate of progress;
- (6) Child's behavioral problems;
- (7) Child's physical problems;
- (8) Availability of alternative resources;
- (9) Ability of the child to interact with nondisabled children/youth;
- (10) Area or areas in the child's curriculum that need continuous attention;
- (11) Child's vocational (training) needs;
- (12) Whether the requested service or services are extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition; and
- (13) Other relevant factors as determined by an IEP team.

**6 CAR § 130-1908. Data collection.**

(a) The IEP team must determine a child's eligibility for ESY services by collecting and analyzing a variety of data, including, but not limited to, the child's:

- (1) Disability;
- (2) Educational history; and
- (3) Present educational functioning.

(b) Such an analysis would necessitate a review of the following:

(1) Current IEP, in particular, progress toward attainment of the annual goals and/or short-term instructional objectives, and related services;

(2) Criterion-referenced and norm-referenced tests, including pretest and post-test data of a student's progress;

(3) Activity on the part of professionals and/or parents that specifically addressed the maintenance of learned skills while programming was interrupted;

(4) Functional assessments used in natural environments (e.g., home, community, work, school);

(5)(A) Consideration of a database of regression/recoupment.

(B) Data will be gathered and documented periodically during the regular school year that reflect the child's regression/recoupment pattern following interruptions of instructional services;

(6) Parent, child, and/or service provider information, which must include success or potential success of ESY services;

(7) Consideration of pertinent medical data and additional psychological and educational data; and

(8) Areas of learning that are identified as an integral part of a skill area to reach the child's assessed potential, such as social, motoric, behavioral, academic, self-help, and communicative abilities.

## **6 CAR § 130-1909. Standards.**

(a) **Personnel.**

(1) ESY services personnel shall comply with the same licensure standards of the Division of Elementary and Secondary Education or other licensure boards, as appropriate, as they apply to regular school year personnel.

(2) The teacher–pupil ratios for instructional programs shall comply with those defined in 6 CAR § 130-1701 et seq.

(b) **Duration.**

(1)(A) The period of ESY services shall be defined annually on an individual basis, in consideration of each child’s needs, and shall be the responsibility of the IEP committee.

(B) Such services shall be provided within either:

(i) The period of time between the close of one (1) academic year and the beginning of the succeeding academic year; or

(ii) During the time period of any other breaks, such as Christmas or spring vacation.

(2)(A) The length of the school day for ESY services shall:

(i) Be defined by the public agency; and

(ii) Reflect the combined programming needs of its eligible children.

(B) However, adequate provision of services must be assured.

(c) **Least restrictive environment.** The educational setting for delivery of a child’s ESY services:

(1) Shall be chosen from a continuum of settings; and

(2) Must be listed in each child’s IEP.

(d) **Special education instruction.**

(1) ESY services are required to be provided only in the area or areas of a child’s IEP identified by the team as meeting the criteria for receipt of ESY services.

(2) Thus, a child may require only a specific goal and objectives be addressed through an ESY program, as compared to another child’s need for several or all areas of the IEP to be addressed.

(e) **Related services.**

(1) Related services are only provided to children with disabilities when it is required in order for the child with a disability to benefit from special education.

(2) Related services do not stand alone.

(3) A child with a disability may be eligible for an ESY service or services in an area of the IEP designated as a related service only if:

(A) The related service is identified as an area requiring ESY; and

(B) ESY service is provided in the corresponding special education instructional area for which the related service is provided.

**6 CAR § 130-1910. Funding.**

(a) Funds will be disbursed to local school districts on an established per-child per-day rate, to the extent that funds are available.

(b)(1) The Special Education Unit of the Division of Elementary and Secondary Education will calculate the average cost of a nine-month school program for children with multiple or severe disabilities, which include related services.

(2) The average cost of a nine-month program will be divided by one hundred seventy-eight (178) days (the average school term) to arrive at an average per-child per-day cost rate.