



## **WHEN IS YOUR CHILD WITH A DISABILITY ENTITLED TO EXTENDED SCHOOL YEAR (ESY) SERVICES?**

**IMPORTANT:** ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us or an attorney of your choice.

### **WHAT ARE EXTENDED SCHOOL YEAR (ESY) SERVICES?**

ESY services are specialized instruction and related services such as therapies provided to a child with a disability when school is not normally in session - for instance, in the summer or during school vacations. Early intervention programs for children with developmental delays under age three already operate on a 12 month basis.

### **WHO SHOULD GET ESY SERVICES?**

Preschoolers and school-aged children with disabilities are eligible for ESY services if the IEP Team determines that the services are necessary to provide the child with a free appropriate public education. Appropriate services must be individualized to meet the needs of the child, must take account of the child's potential as well as her problems and learning needs, and must be reasonably calculated to yield meaningful education or early intervention benefit.

Most often, it is children who lose skills or behaviors relevant to the child's IEP goals or objectives during program breaks (called "regression"), and who have

difficulty catching up (called "recoupment"), who are eligible for ESY. Preschool early intervention programs operate on a "stretch calendar" throughout the summer, which means that there are more but shorter program breaks. Many preschoolers who are sensitive to program interruption can tolerate these shorter breaks and can still make reasonable progress in their IEP goals. But if a preschooler cannot receive an appropriate education without ESY, she is entitled to the necessary additional services. If you are told by your early intervention agency that preschoolers are not eligible for ESY, contact ELC at the number below for help!

Some examples of children who may need ESY are children who have not yet learned and fully generalized an important skill or behavior and who therefore need help learning and practicing that skill in the formal educational setting; children whose disability makes them vulnerable to interruptions in the educational program and who are therefore at risk of withdrawing from the learning process; and children who have a degenerative condition and who need ESY to prevent or delay loss of skills or behaviors.

### **IS ESY LIMITED TO CHILDREN WITH "SEVERE" DISABILITIES?**

*No!* When considering the need for ESY services, the IEP Team must pay particular attention to children with disabilities that are thought of as severe (children with autistic spectrum disorder/pervasive developmental disorder, serious emotional disturbance, moderate or severe levels of mental retardation, degenerative impairments and severe multiple disabilities) and to IEP goals that are associated with self-sufficiency and independence from caretakers. But IEP Teams **may not limit** their consideration of need for ESY services to children with particular types of disabilities or particular IEP goals.

### **CAN SCHOOL DISTRICTS PLACE LIMITS ON THE TYPE AND AMOUNT OF ESY SERVICES THAT CHILDREN CAN RECEIVE?**

School districts also cannot limit the kind of ESY services children with disabilities can get (for example, a district cannot say we provide special education, but no therapies); the amount of services (for example, a district cannot say that

we only offer two periods/week of physical therapy); or the duration of those services (for example, a district cannot say we only offer three weeks of ESY in the summer). ESY eligibility and program decisions, like all other decisions about special education and related services for children with disabilities, must be made on an individualized basis by the IEP Team (which includes the parents), and the Team's decisions must be listed on the children's IEPs.

### **WHEN AND WHERE DO I APPLY FOR ESY?**

At the annual IEP meeting for every child with a disability, the IEP Team must raise and discuss whether the child needs ESY services. The IEP meeting to consider ESY for children with severe emotional disturbances, autism, moderate and severe levels of retardation or multiple disabilities must occur no later than February 28 of each school year. The IEP that should accompany the Notice of Recommended Educational Placement (NOREP) contains the IEP Team's ESY determination for these children. The NOREP must be issued by March 31 of the school year. The February-March deadlines do not apply for other children with disabilities, but a parent can request an IEP meeting to determine ESY eligibility at any time, and must get a written decision regarding ESY which can be appealed on a speeded-up basis.

### **WHAT MUST I PROVE TO GET ESY SERVICES?**

A child does not have to experience a year of lost skills or other damage to prove that she qualifies for ESY. Similarly, a parent does not need to prove that a child has lost skills or that her behavior has deteriorated in the past. Districts must consider the opinions of doctors, educators, parents, or others based on their observations of the child or their experience with other children with similar problems about what will happen if the child's program is interrupted. School districts should also consider the child's year-to-year progress in past IEPs.

It is important to plan ahead because data, reports, recommendations, and other information can be crucial to the agency's decision. Test results and "hard data" on skills lost and delays in regaining those skills are helpful, but are not required. Types of information that can also be helpful include evidence that the

child has not progressed on important goals in consecutive IEPs; reports, observations and opinions from educators, therapists, or others having contact with the student before and after interruptions in education; reports by parents of their experiences in the home; medical or other agency reports showing difficulties which get worse during breaks in educational services; and results of tests, curriculum-based assessments, ecological life skills assessments, and similar measures.

### **IS IT NECESSARY FOR THE ESY SERVICES TO BE LISTED IN THE IEP?**

**Yes!** The IEP should describe the goals, and if appropriate benchmarks, for the ESY program; all ESY services and their frequency; where the services will be provided and at what times; and the dates they will start and stop. If the child's ESY program includes related services (such as physical therapy or transportation), these must also be listed.

### **WHAT SHOULD I DO IF I DO NOT AGREE WITH THE IEP TEAM ABOUT ESY ELIGIBILITY OR SERVICES?**

If the school district does not agree to provide ESY services, or wants to provide fewer or different services from what the parent thinks are needed, the parent may try to resolve the disagreement through mediation, may request a pre-hearing conference, or can ask for an impartial hearing. For more details on possible "dispute resolution" options, checkout ELC's Fact Sheet *Resolving Special Education Disputes*, which can be obtained from our website or the telephone numbers listed below. But remember, if the school district or early intervention agency proposes a change in the ESY program that your child had last year, the proposal must be given to the family in writing. If the family rejects the change in writing and requests a hearing, the ESY program must stay the same unless a Hearing Officer decides that a change can be made.

## **WHAT KIND OF ESY PROGRAMS HAVE CHILDREN RECEIVED?**

ESY is not limited to basic and self-help skills. It can include academic or vocational programs. Some examples of ESY programs which have been provided to children are: tutoring, keyboarding, camp socialization programs, and summer school.

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