

RIGHTS OF MASSACHUSETTS YOUTH REGARDING EXTENDED YEAR SPECIAL EDUCATION SERVICES

**Prepared by the Mental Health Legal Advisors Committee
June 2012**

When is a special education student entitled to extended year services?

Schools must provide extended year services (ESY) if it can be shown that there is a need for these services in order for the child to be provided with a free and appropriate education.¹ The IEP TEAM must review the need for ESY at least once each year, and record its decision in the IEP.²

What factors should be considered in determining the need for extended year services?

The primary factors that will be considered are whether or not a student will experience regression or a loss of skills over the summer, and whether or not the student will have substantial difficulty regaining these skills if summer programming is not provided.³ In addition, courts have set out other criteria for a team to consider when deciding about ESY.⁴ And, even if the student does not have a history of substantial regression over prior summer breaks, a student may still qualify for EYS if other conditions exist.⁵

How is the nature and length of the program determined?

The nature and length of the program will be determined by the student's needs, as some students will not require full-day programs to maintain their progress.⁶

What documentation will help determine the need for extended year services?

It is helpful to have an evaluation stating the need for summer programming, or at least recommendations by teachers, doctors, or other professionals with whom your child works.⁷

¹ 34 CFR 300.106(a)(2); 603 CMR 28.05(4)(d).

² DESE, Question and Answer Guide on Special Education Extended School Year Programs, http://www.doe.mass.edu/pqa/ta/esyp_qa.html.

³ 603 CMR 28.05(4)(d)(1).

⁴ See DESE, Question and Answer Guide on Special Education Extended School Year Programs, # 10, http://www.doe.mass.edu/pqa/ta/esyp_qa.html.

⁵ See DESE, Question and Answer Guide on Special Education Extended School Year Programs, # 11, http://www.doe.mass.edu/pqa/ta/esyp_qa.html.

⁶ See *David B. v. Berkshire*, 3 MSER 68 (1997).

⁷ See *Northampton Public Schools*, 7 MSER 256 (2001).

What can one do if the team won't write extended year services into a student's IEP?

If the special education team refuses to write ESY into the IEP, then one can submit an appeal to the Board of Special Education Appeals (BSEA). The state and federal regulations use slightly different language when discussing ESY, and so it will be helpful to look at both and choose the language that is most helpful to your situation.

What are the school's responsibilities?

The school is required to follow the proper procedures for determining whether ESY services are necessary, and determining the proper placement.⁸ It is the responsibility of the school district to ensure that these issues are discussed in an official TEAM meeting.⁹ The school district should also make their determination to allow for enough time prior to the summer for an administrative appeal if the parents disagree with the finding.¹⁰

Resources:

The federal regulation regarding EYS, 34 CFR 300.106, can be found at:

<http://idea.ed.gov/explore/view/p/.root,regs,300,B,300%252E106>

The state regulation regarding EYS, 603 CMR 28.05(4)(d), can be found at:

<http://www.doe.mass.edu/lawsregs/603cmr28.html?section=05#start>

DESE, Question and Answer Guide on Special Education Extended School Year Programs, 603 CMR 28.05(4)(d) (Dec. 5, 2002), http://www.doe.mass.edu/pqa/ta/esyp_qa.html

⁸ See *Southampton Public Schools*, 4 MSER 119 (1998)

⁹ See *id.*

¹⁰ See *Reinholdson ex. rel. Simon v. School Bd. of Independent School Dist. No. 11*, 2005 WL 1819976, 11 (D.Minn., 2005); *Reusch v. Fountain*, 872 F.Supp. 1421, 1433 (D.Md., 1994).