

Extended School Year (ESY) Services during the COVID-19 Pandemic

This document has been created as a supplement to Technical Assistance Bulletin (TAB) #20-01, Serving Children with Disabilities under IDEA during school closures due to the COVID-19 Pandemic and TAB #20-03: Providing Continuity of Learning to Students with Disabilities during COVID-19. Please refer to these TABs for additional information and guidance on the provision of special education services to students with disabilities during this unprecedented time.

A flowchart to support the local school system or public agency (LSSs/PAs) in determining Extended School Year (ESY) services due to the extended school closure in response to the COVID-19 pandemic is included. This document also contains questions and answers that highlight the eligibility decision-making and documentation requirements for ESY services. Most students should already have an ESY services eligibility determination made by the IEP team for Summer 2020. However, there may be some circumstances related to the extended school closure in which the team has not made an ESY services eligibility determination. For these students, the LSS/PA should address ESY eligibility as soon as possible.

Extended School Year (ESY) Services during the COVID-19 Pandemic

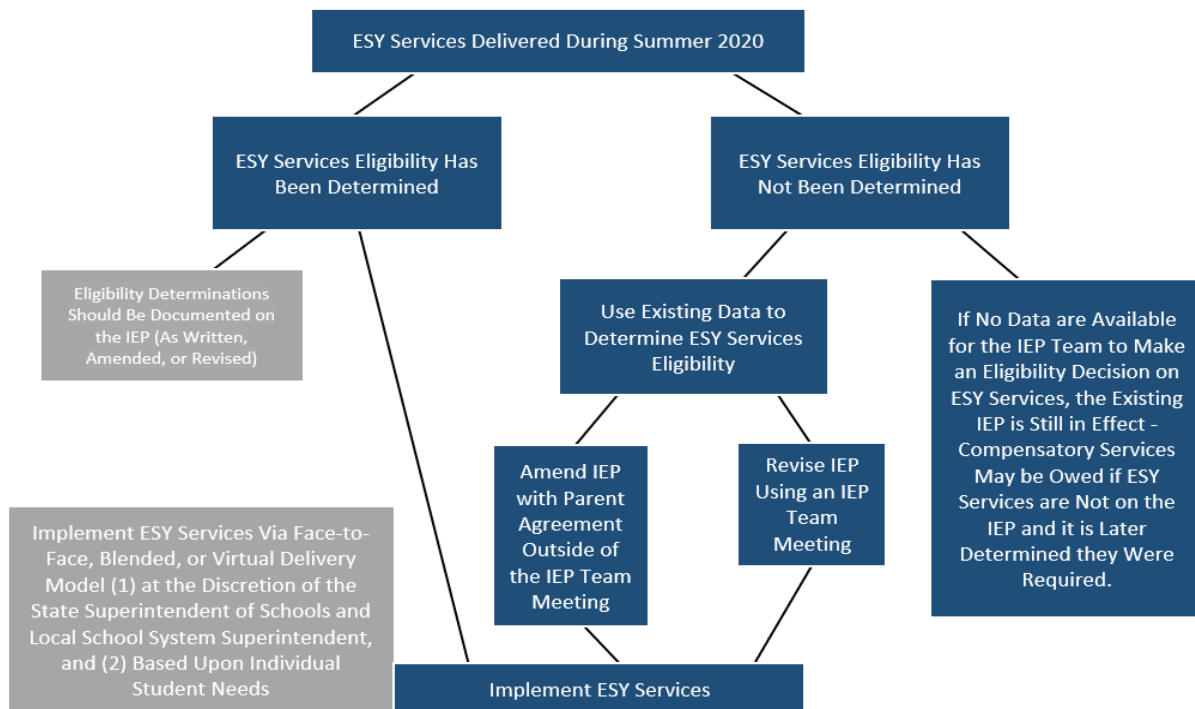


Figure 1. A flowchart to support LSSs/PAs in determining Extended School Year (ESY) Services during extended school closure due to the COVID-19 pandemic.

Questions and Answers

Q. What are Extended School Year (ESY) services and what is the difference between making the ESY determination and determining recovery opportunities to be provided because of the closure of school buildings due to the national COVID-19 pandemic?

A. Most students experience some regression of skill development made during the regular school year after extended breaks in the school year, such as during the summer months. Many of these students will recoup, within a reasonable amount of time, what they lost during the extended break in school once school resumes.

Some students with disabilities will not be able to recoup the skills lost during the extended break in school within a reasonable amount of time after school resumes. In order to ensure that these students maintain the skills growth they achieved during the regular school year, Extended School Year (ESY) services are provided to address specific areas of the IEP during extended periods of time that school is not in session, such as the summer months.

The determination of the need for ESY services is different than the decision that the student requires recovery opportunities as a result of the closure of school buildings during the national COVID-19 pandemic. The recovery opportunities should be designed to address the loss of skills or lack of progress that a student was expected to obtain during the regular school year, but did not obtain because the instruction was provided through virtual learning since the third quarter of the 2019-2020 school year.

Q. Will all students with disabilities be provided ESY services?

A. No. The ESY determination is individualized to the student.

Q. What is the LSS's/PA's obligation if the IEP team has not yet determined the student's need for ESY services during the summer of 2020?

A. If the IEP team has not made an ESY decision, and the parties are able to reach agreement with respect to whether the student requires these services, the IEP should be amended and the agreement documented. Amendment to the IEP occurs outside of the IEP team meeting.

If the IEP team has not made an ESY decision, and there is no agreement between the LSS/PA and the parent with respect to whether the student requires these services, the LSS/PA must attempt to convene the IEP team by alternative means, such as by teleconference, as soon as possible following the standard decision-making and

documentation requirements. This includes providing the parent with Prior Written Notice (PWN) of the ESY determination.

If the IEP team is unable to meet, the existing IEP must be implemented. If the existing IEP requires ESY services, those services must be provided.

If the existing IEP does not require ESY services, the IEP team must meet as soon as possible following the reopening of school buildings to make the determination. If the IEP team determines that the student requires ESY services, it must also determine the recovery opportunities that can be provided to the student during the regular school year to redress the loss of ESY services.

Q. What are the legal requirements for the IEP team when determining the need for ESY services?

A. When considering the need for ESY services, the IEP team must consider the following factors:

1. Whether the student's Individualized Education Program (IEP) include annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break in the regular school year and an inability to recover those lost skills in a reasonable amount of time when school resumes;
3. The presence of emerging skills or breakthrough opportunities;
4. Interfering behaviors;
5. The nature and severity of the disability; and
6. Special circumstances.

The IEP team must document the consideration of each of these factors, describing the data used as a basis for decisions made with respect to each factor.

Following the consideration of the above factors, the IEP team must determine whether the benefits the student gains during the regular school year will be significantly jeopardized if the student is not provided with an educational program during a normal break in the regular school year. If the answer is yes, the student requires ESY services. If the answer is no, the student does not require ESY services.

Q. Will the legal requirements for the provision of ESY services differ during the extended closure of school buildings due to the national COVID-19 pandemic?

A. No. Since Maryland resumed instruction after the initial couple of weeks of the national COVID-19 pandemic through virtual learning, the school year continues. Therefore, any student whose IEP requires ESY services must be provided with those services, to the

greatest extent possible, through the service delivery method (e.g., face-to-face instruction, virtual or other distance learning strategies, etc.) under the discretion of the State and local Superintendents, consistent with health and safety needs. Even if the student's ESY services plan was developed prior to the extended school closure, it is recommended that school staff review the existing plan and consult with parents on the service delivery model for Summer 2020.

Q. May some students require both ESY services and recovery opportunities due to the COVID-19 pandemic during the summer of 2020?

A. Yes; however, it is important to note that ESY services and recovery services are separate and distinct. These services serve different purposes and require separate eligibility analyses. Therefore, LSSs/PAs must follow the eligibility criteria and documentation for ESY services as outlined above. The DEI/SES will issue guidance on recovery services separately.