

## STANDARDS FOR DETERMINING NEED FOR ESY SERVICES

- Courts have identified two different standards that districts should use to determine whether a student needs ESY services:

- 1) *Regression-recoupment analysis:*

- ESY services are necessary when a child will experience significant regression in the absence of an educational program and the time it will take to relearn the skills is excessive.

- 2) *Significantly jeopardized analysis:*

- ESY services are necessary when the progress the student made during the school year will be significantly jeopardized during extended school breaks.

The 10th U.S. Circuit Court of Appeals has identified the following factors that districts may also consider in addition to the regression-recoupment analysis:

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| • Degree of regression suffered in the past.                   | • Areas of child's curriculum that need continuous attention.  |
| • Exact time of past regression.                               | • Child's vocational needs.  |
| • Ability of parents to provide educational structure at home. | • 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. |
| • Child's rate of progress.                                    |  |
| • Child's behavioral and physical problems.                    |  |
| • Availability of alternative resources.                       |  |
| • Ability of child to interact with nondisabled children.      |  |

## Extended School Year Services

A district must provide ESY services when a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. 34 CFR 300.106(a)(2). *See also Letter to Harkin*, 213 IDELR 263 (OSERS 1989); and *San Francisco Unified Sch. Dist.*, 53 IDELR 31 (SEA CA 2009).

The term "extended school year services" means special education and related services that:

- 1) Are provided to a child with a disability:
  - i. Beyond the normal school year of the public agency;
  - ii. In accordance with the child's IEP; and
  - iii. At no cost to the parents of the child; and
- 2) Meet the standards of the SEA.

34 CFR 300.106(b).

## IEP DEVELOPMENT

- An IEP team determines, on an individual basis, whether ESY services are necessary for the provision of FAPE
- Once a district determines that a student is in need of ESY services, the district must conduct an IEP meeting and develop the student's IEP to reflect the student's educational needs. The district may not unilaterally determine that ESY services are necessary for the student
- Because the goal of ESY services is to prevent regression and recoupment of a student's IEP goals, a student's ESY services will likely differ from the services offered in the regular IEP