



# EXTENDED SCHOOL YEAR SERVICES



Presented by Kimona Hogan of Hogan Law Firm, LLC  
in partnership with  
Pyramid Parent Training Center

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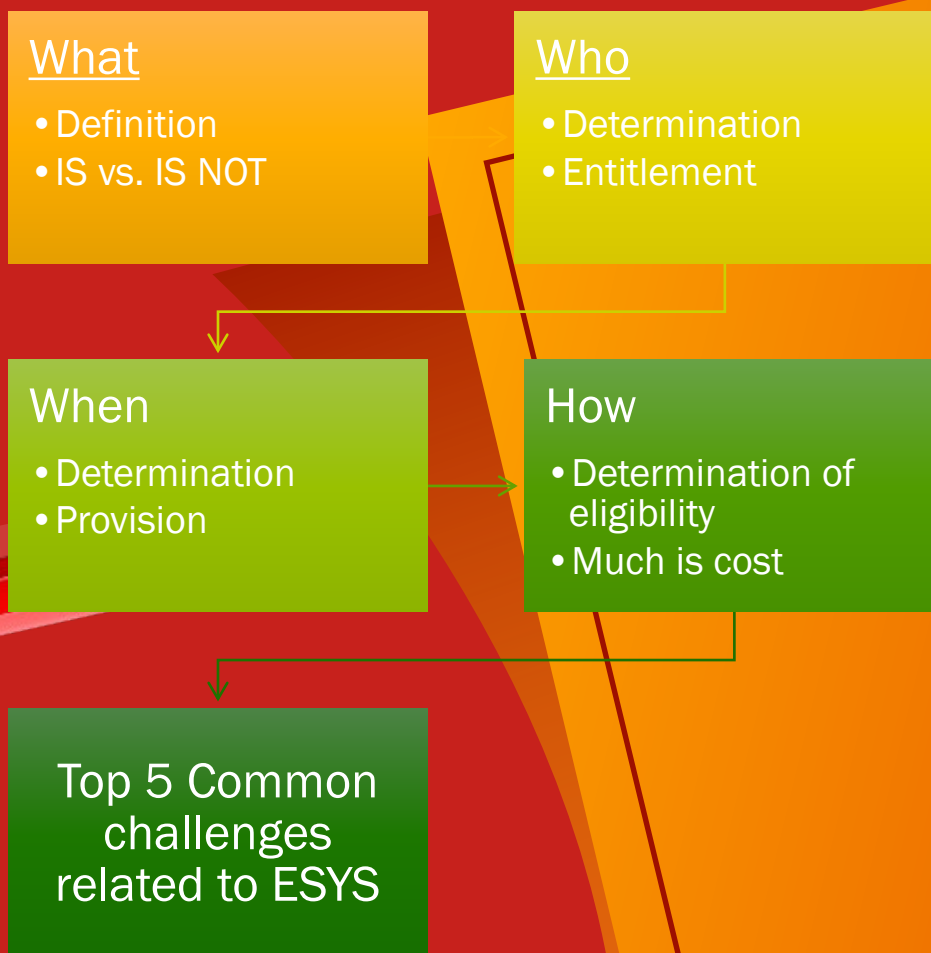
# Introduction

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“The reauthorized Individuals with Disabilities Act of 2004 is confusing to most parents, educators, related service providers, and even to many advocates and attorneys. Ignorance of the law can be as damaging as the child’s disability.”

- Wrightslaw: Special Education Law 2<sup>nd</sup> Edition

# What to expect



ESYS

# What

## Definition

Federal regulation

34 CFR 300.106

Although the Individuals with Disabilities Act (“IDEA”) does not contain any requirement for the provision of extended school year services (“ESYS”), the IDEA regulations define ESYS to mean “special education and related services that are provided to a child with a disability; beyond the normal school year of the public agency; in accordance with the child’s IEP; and at no cost to the parent.”

-34 CFR 300.106(b)(1)



# What

## Definition

Louisiana regulation

Bulletin 1706 §106

- Each public agency shall ensure that ESYS are available as necessary to provide FAPE
- ESYS shall be provided only if a student's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE
- In implementing these requirements, a public agency may not:
  - limit ESYS to particular categories of disability
  - unilaterally limit the type, amount, or duration of those services



# What

## Definition

Bulletin 1706 §106

Louisiana regulation

- **ESYS – special education and related services that**
  - **Are provided to a student with a disability**
    - **Beyond the normal school year of the public agency**
    - **In accordance with the student's IEP**
    - **At no cost to the parents of the student**
  - **Meet the standards of LDE**



# What ESYS IS and IS NOT

## Is ESYS the same as summer school?

Summer school services are only provided during summer break vs. ESYS are provided during breaks in the academic year

Summer school may be provided to both students with disabilities and non-disabled students vs. ESYS may be provided to only disabled students

However, an IEP Team may determine traditional summer school may meet ESYS needs for an individual student

✓	✗
Services provided during breaks in the academic year	Services provided only during summer break
Provided to students with disabilities on an individual-need basis	Provided to nondisabled students
Maintain learned skills- Designed to prevent significant regression of student's skills and knowledge	Develop new skills- Enrichment program
"Chevrolet"*	"Cadillac"*



# WHO?

A student's IEP team determines, on an individual basis, whether the student needs ESYS.

-34 CFR 300.106(a)(2)

[E]xtended school year services shall be provided only if a student's IEP Team determines, in accordance with §§320 through 324, that services are necessary for the provision of FAPE to the student

-Louisiana Bulletin 1706 §106(A)(2)

## Who determines ESYS?

Once the student's IEP team determines that ESYS are necessary, the IEP Team decides on the nature and extent of services, and the setting in which services will be implemented

**\*\*A DISTRICT MAY NOT CREATE BLANKET RULES THAT LIMIT THE AMOUNT OF OR TYPE OF ESYS AVAILABLE TO STUDENTS WITH DISABILITIES\*\***



# WHO is entitled to ESYS?

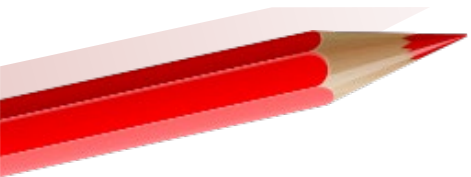
A student whose IEP Team  
determines that the student  
requires ESYS to receive  
FAPE is entitled to extended  
school year services



# When are ESYS determined?

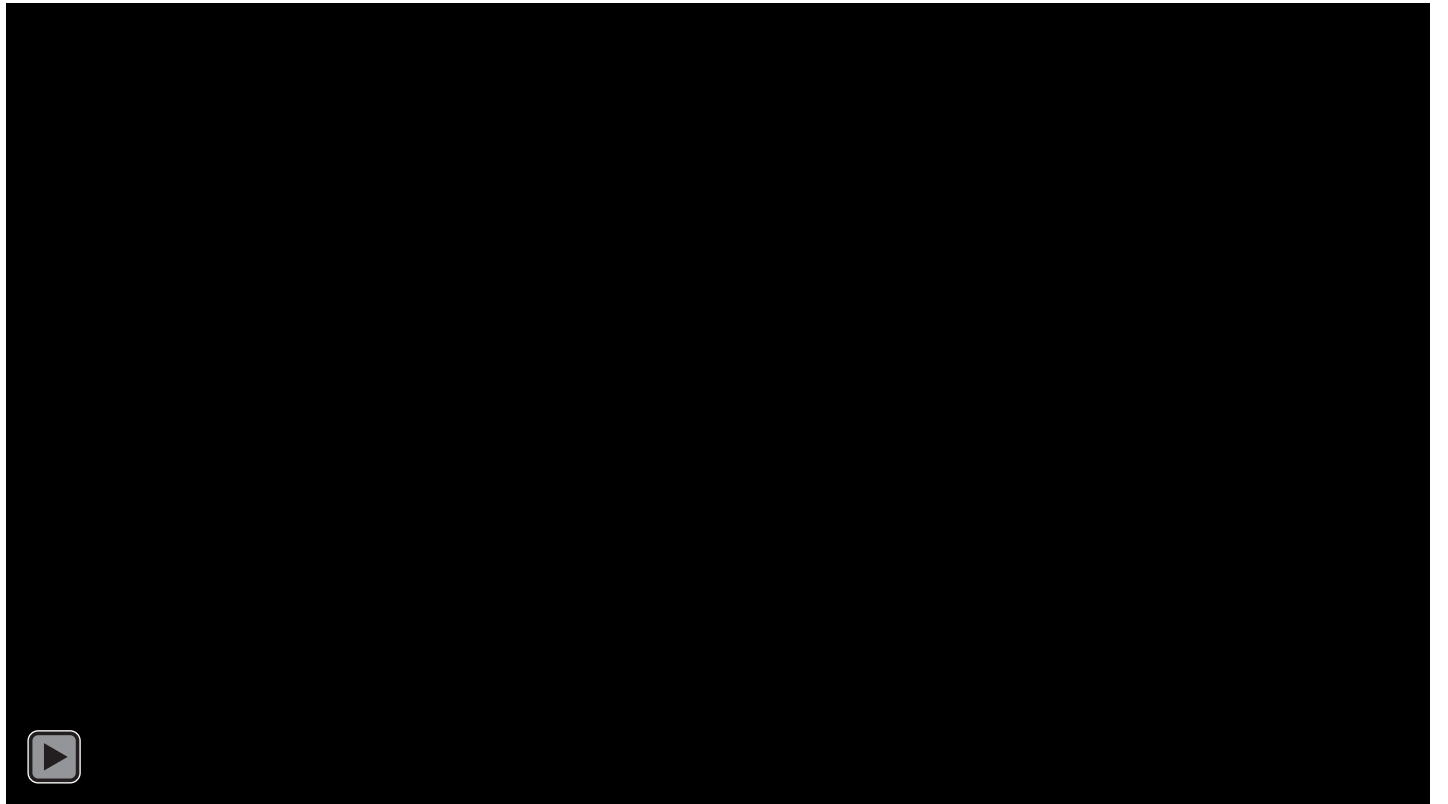


- ❖ Generally, the IEP Team decides ESYS issues at the annual IEP meeting
- ❖ Since the law nor accompanying regulations specify when an annual review must be held, annual IEP meetings can take place at any time throughout the year, as long as IEPs are effective at the beginning of the school year
- ❖ A school district is not required to conduct its annual review on or around the anniversary date of the last review or establishment of the IEP, as long as the requirement for review at least annually is met (Letter to Sheridan, 20 IDELR 1163 (OSEP 1993))
- ❖ If a student's need for ESYS does not become evident until sometime after the annual meeting has been held, the IEP Team should convene a new meeting





# When are ESYS provided?



- ESYS are provided to qualified students beyond the normal school year
- A school district is not restricted to provide ESYS only during summer months, but they may also provide ESYS during other school breaks, such as extended holiday, or winter or spring breaks, or via an extended school day – that is, before and after normal school hours

# How: Eligibility Determination

The state has flexibility to determine the ESYS eligibility analysis

Extended School Year Services (ESYS)

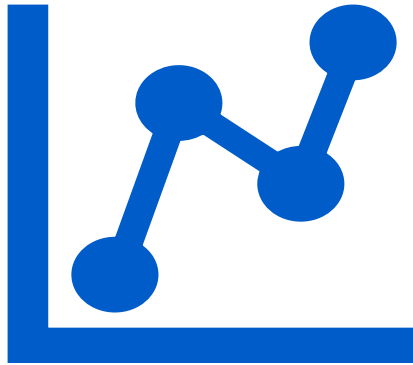
Criteria for Consideration: (Check all that apply)


- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2

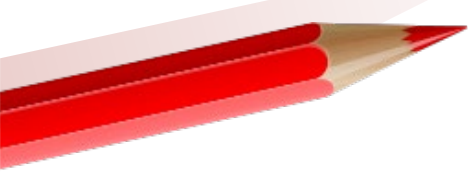
Special Circumstances

- Employment
- Transition to Part B (Preschool)
- Transition to Post-School Outcomes
- Excessive Absences
- Extenuating Circumstances

# Regression- Recoupment



- 
- Applied to all students with significant cognitive disabilities
  - Emphasis on student having difficulty maintaining and/or regaining critical skills after at least a 5-day break in instruction



The IEP Team must determine whether it is likely that the student will experience significant regression absent an educational program and whether the time to re-learn any lost skills will be excessive

# Regression-Recoupment

Extended School Year Services (ESYS)

Criteria for Consideration: (Check all that apply)

Regression - Recoupment

Critical Point of Instruction 1

Critical Point of Instruction 2

Special Circumstances

Employment

Transition to Part B (Preschool)

Transition to Post-School Outcomes

Excessive Absences

Extenuating Circumstances

- All students participating in LEAP CONNECT
- All students with significant cognitive disabilities
- All students who function like students with significant cognitive disabilities, including preschool-aged students
- Any student suspected of having difficulty in recoupment of skills


Regression-recoupment should not be used as the sole criteria for determining a student's ESYS eligibility

The 5<sup>th</sup> Circuit explained “[A] variety of nonregression-based factors – for example, ‘emerging skills’ and ‘breakthrough opportunities’ (as when a child is on the brink of learning to read) – can and should be incorporated into the eligibility analysis.”

# Critical Points of Instruction



## Critical Point of Instruction 1

- Applied to all students
  - Emphasis on skills needed to
    - Prevent loss of general education time
    - Prevent increase in special education service time
- 

## Critical Point of Instruction 2

- Applied to students pursuing critical life areas
- Emphasis on acquisition or maintenance of skills in critical life areas such as
  - Self help
  - Community access
  - Social/behavioral needs



# Critical Points of Instruction



## Extended School Year Services (ESYS)

### Criteria for Consideration: (Check all that apply)

- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2

### Special Circumstances

- Employment
- Transition to Part B (Preschool)
- Transition to Post-School Outcomes
- Excessive Absences
- Extenuating Circumstances

CPI-1 All students with disabilities, including preschool students

CPI-2 Students pursuing critical life areas

# Special Circumstances

## EMPLOYMENT

Students ages 16-21 shall be considered for ESYS when there is documentation that the student is in need of support to maintain paid employment

### Who to Consider for Employment Criteria?

Extended School Year Services (ESYS)

Criteria for Consideration: (Check all that apply)

- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2
- Special Circumstances**
  - Employment
  - Transition to Part B (Preschool)
  - Transition to Post-School Outcomes
  - Excessive Absences
  - Extenuating Circumstances

Students ages 16-21 who are in need of support to maintain paid employment during the summer months.

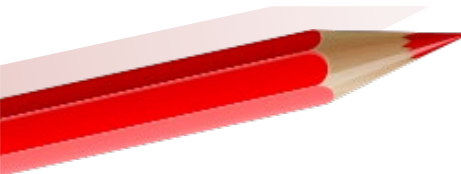
# Special Circumstances



## TRANSITION from EARLY STEPS to PART B (Preschool)

When there is evidence from the performance data on the Individualized Family Service Plan (IFSP) that the student will fail to maintain performance skills and will regress without ESYS

Who to Consider for Transition from Early Steps to Part B Preschool Criteria?



Extended School Year Services (ESYS)

Criteria for Consideration: (Check all that apply)

- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2
- Special Circumstances**
  - Employment
  - Transition to Part B (Preschool)
  - Transition to Post-School Outcomes
  - Excessive Absences
  - Extenuating Circumstances

Students transitioning from Early Steps to Part B preschool services who have spring/summer birthdays.

Must have an IEP

Use data from IFSP to determine eligibility

# Special Circumstances



## TRANSITION to POST-SCHOOL OUTCOMES

Any student who is in need of services to complete the action steps on the student's Transition Plan that are the responsibility of the LEA

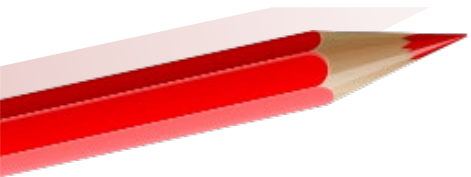
### Who to Consider for Transition to Post School Outcomes Criteria?

Extended School Year Services (ESYS)

Criteria for Consideration: (Check all that apply)

- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2
- Special Circumstances**
  - Employment
  - Transition to Part B (Preschool)
  - Transition to Post-School Outcomes
  - Excessive Absences
  - Extenuating Circumstances

Students who have transition plans and are expected to exit school at the end of the school year.



# Special Circumstances

## EXCESSIVE ABSENCES

Any student with a disability who has documented excessive excused absences during the school year for health related conditions without the provision of hospital/homebound services

### Who to Consider for Excessive Absences Criteria?

Extended School Year Services (ESYS)

Criteria for Consideration: (Check all that apply)

- Regression - Recoupment
- Critical Point of Instruction 1
- Critical Point of Instruction 2
- Special Circumstances**
  - Employment
  - Transition to Part B (Preschool)
  - Transition to Post-School Outcomes
  - Excessive Absences
  - Extenuating Circumstances

Students with documented absences during the school year of more than 25 days for health-related conditions without the provision of hospital/homebound services.

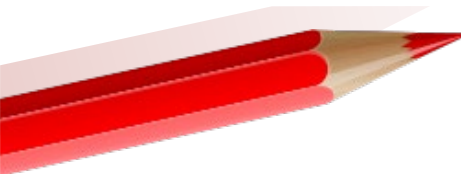
# Special Circumstances



## EXTENUATING CIRCUMSTANCES

Any student who does not meet any of the eligibility criteria who may experience unusual circumstances or situations when ESYS may be needed

### Who to Consider for Extenuating Circumstances?



Extended School Year Services (ESYS)
<b>Criteria for Consideration: (Check all that apply)</b>
<input type="checkbox"/> Regression - Recoupment
<input type="checkbox"/> Critical Point of Instruction 1
<input type="checkbox"/> Critical Point of Instruction 2
<b>Special Circumstances</b>
<input type="checkbox"/> Employment
<input type="checkbox"/> Transition to Part B (Preschool)
<input type="checkbox"/> Transition to Post-School Outcomes
<input type="checkbox"/> Excessive Absences
<input type="checkbox"/> Extenuating Circumstances

When a student does not meet the criteria for ESYS in any of the categories above, the teacher/instruction personnel shall determine if a break in instruction would negatively impact or cause the student to lose skills that will restrict the student's ability to function as independently as possible.

This should be rarely used.

# How much does ESYS cost?

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- ESYS should be provided “at no cost” to parents
- However, this does not preclude incidental fees that are normally charged to students without disabilities

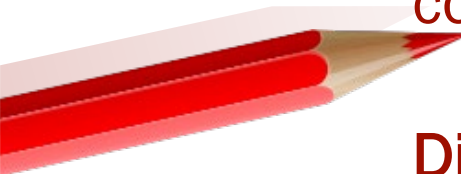




## Challenge #1

# Common Challenges related to ESYS

### Procedural violations do not automatically equate to denial of FAPE



IEP Team's refusal to consider whether child needed ESYS violated IDEA procedural requirements, but the errors did not deny student FAPE because the evidence did not establish that ESYS were necessary. The parents were ultimately denied reimbursement, along with attorney's fees and costs that they were seeking

**DiBuo v. Board of Educ. of Worcester Couty, 37 IDELR 271 (4<sup>th</sup> Cir. 2002)**



## Challenge #1

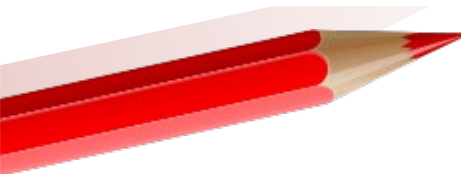
# Common Challenges related to ESYS

## When do procedural violations equate to denial of FAPE

- Class of students with disabilities alleged district failed to meet its obligations to provide them with an opportunity to obtain ESYS
- Procedural violations:
  - Failure to send adequate and timely notices to parents regarding ESY rights that fully and clearly explain such services
  - Failure to use a 2-step process to determine ESYS eligibility that precluded meaningful, independent review and excluded parents and teachers from participation and contribution
  - Sending of ESYS decisions too late in the school year, interfering with parents rights to seek administrative review within established time frames
  - Failure to address ESYS at every annual review as required under that state's education code
- Substantive violations:
  - Use of a standard for ESY eligibility, which was incorrectly limited to a regression-recoupment analysis
  - Providing fixed-length programs and neglecting to consider Least Restrictive Environment

# Common Challenges related to ESYS

## Cost



It was concluded that it was acceptable for the district to charge parents a \$15 materials fee to students who received ESYS because the IDEA did not preclude incidental fees normally charged to nondisabled students. However, it was noted that it would be inconsistent with the IDEA for the district to charge the parents a fee for the ESY program if summer school services were not a part of the ESY services provided to the child.

Letter to Sims, 38 IDELR 69 (OSEP 2002)

## Challenge #3

# Common Challenges related to ESYS

## ESYS and COVID-19

- A child's entitlement to ESYS continues to apply even if schools and other facilities are closed due to COVID-19
- Districts may consider providing ESYS during the regular school year, including during breaks or vacations
- IEP Team determinations regarding ESYS are prospective and not intended to make up for past denials of FAPE

COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Sevr., 77 IDELR 138 (OSEP 2020)

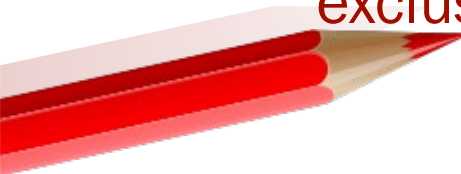


## Challenge #4

# Common Challenges related to ESYS

## Compensatory Education

When a district never had a meaningful discussion with the parents about ESYS, it was determined that the district significantly impeded the parents' opportunity to participate, resulting in a denial of FAPE. Compensatory education was warranted to remedy the district's exclusion of the parents from the decision-making process.



School Dist. of Philadelphia, 115 LRP 2750 (SEA PA 12/23/14)



## Challenge #5

# Common Challenges related to ESYS

### Burden of Proof

The burden of proof was on the parents of kindergartner with autism to demonstrate that the level of services proposed in the student's summer IEP was inadequate and significantly jeopardized the progress the student made during the regular school year



JH v. Henrico County Sch. Bd., 42 IDELR 199 (4<sup>th</sup> Cir. 2005)



## Challenge #5

# Common Challenges related to ESYS

### Are parents compelled to watch their child regress to qualify for ESYS

Although parents should not be compelled to watch their child regress in order to qualify for ESYS, parents were still required to show through the evidence that the lack of ESYS would significantly jeopardize the benefits received during the regular school year.



MM v. School Dist. Of Greenville County, 37 IDELR 183 (4<sup>th</sup> Cir. 2002)



# Common Challenges related to ESYS

## Evidence

- A statement from a speech-language pathologist that a 10-year old student with autism would be “at-risk of serious regression” if he did not receive a more individualized ESY placement was not enough evidence for the parents to prevail on their argument in this case
- A parent must submit affidavits from competent professionals, along with other hard evidence



# PYRAMID COMMUNITY PARENT RESOURCE CENTER

Pyramid Helpline 504-218-8922  
Fax Number 504-899-1445  
info@pyramidparentcenter.org



## PROGRAMS

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GLOSSARY PROJECT

ARTICLES

CALENDAR

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PYRAMID PARENT TALK  
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URSULA ARCENEUX  
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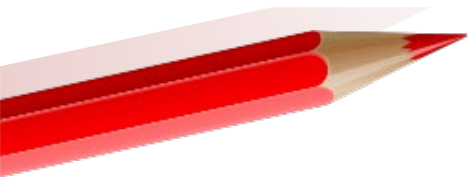
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