

**How to Get
Extended School Year Services
With Fairfax County Public Schools**

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**From Parents Of Autistic Children of
Northern Virginia (POAC-NoVA)**

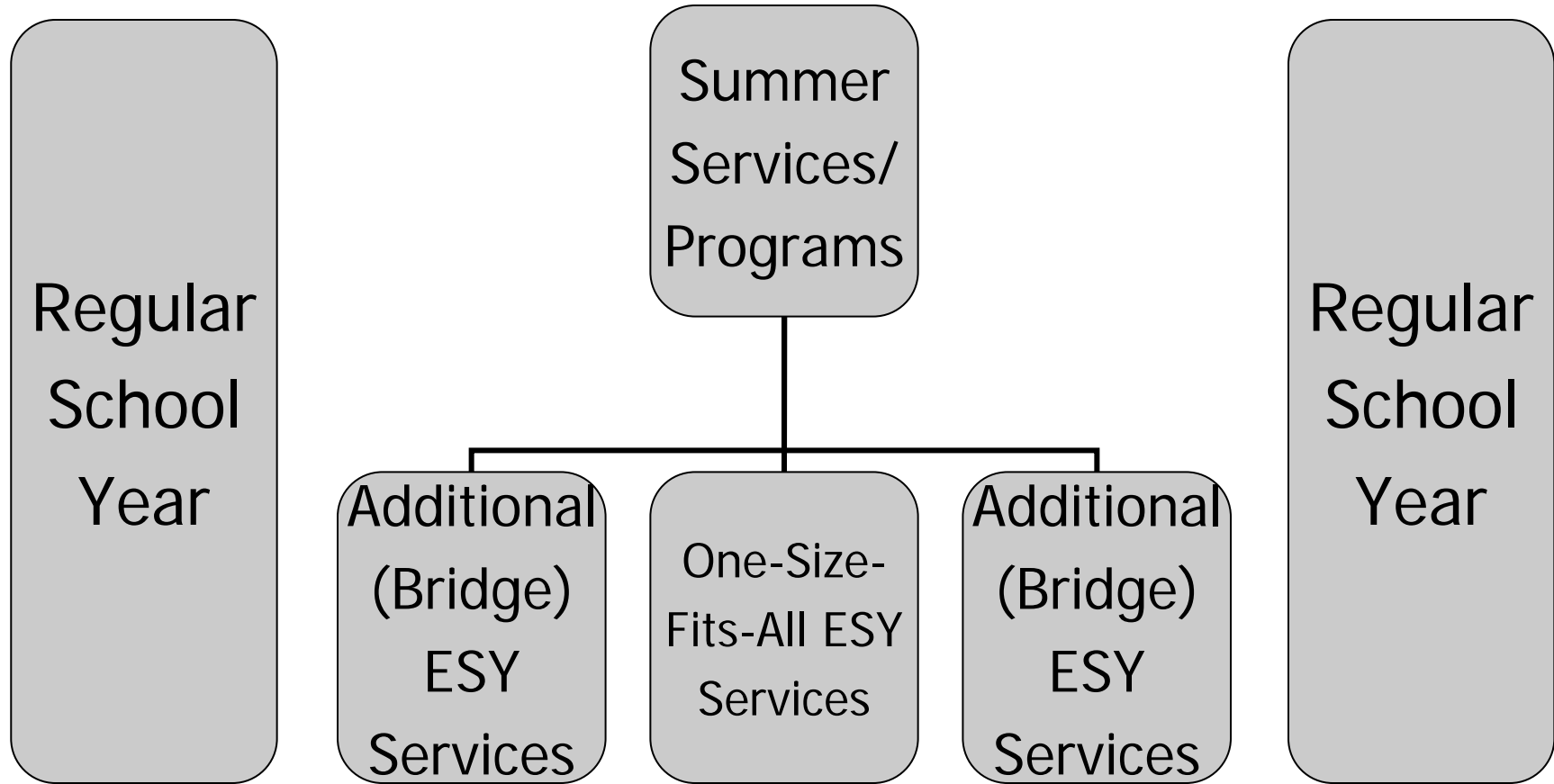
References

1. Virginia Department of Education (VDOE) Special Education and Student Services website especially for parents at <http://www.pen.k12.va.us/VDOE/sped/parents.shtml>.
2. “Regulations Governing Special Education Programs for Children with Disabilities” (7 July 2009) at <http://www.doe.virginia.gov/VDOE/Instruction/Sped/varegs.pdf>.
3. “Extended School Year Services Technical Assistance Resource Document” (December 2007) at <http://141.104.22.210/VDOE/Instruction/Sped/ESYdoc.pdf>.
4. “A Parent's Guide to Special Education” (2001) at http://www.pen.k12.va.us/VDOE/Instruction/Sped/parent_guide.pdf.
5. Fairfax County Public Schools (FCPS) IEP Form 105, Extended School Year Services Information Sheet at <http://www.fcps.edu/DIT/kam/docmgmt/forms/iep105.doc>.
6. I.E.P. Pop-Up Tool Chart from the National Center for Learning Disabilities and National Center on Low-Incidence Disabilities at http://www.handsandvoices.org/articles/education/popup/pop_index.html.

Types Of Summer Services

- **Summer Services/ Programs**
- **Extended School Year Services**
- **Additional/ Alternative (Bridge) ESY Services**
- “ESY services mean an individualized extension of specific special education and/or related services beyond the regular school year provided in order for the student to receive FAPE in accordance with his/her IEP. ” (#3, p. 20)

Possible Timeline



Federal IDEA Law (34 CFR Part 300)

- §300.106. Extended school year services.
- (a) General.
 - (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
 - (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320-300.324, that the services are necessary for the provision of FAPE to the child.

Federal IDEA Law

(3) In implementing the requirements of this section, a public agency may not—

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

- (b) Definition. As used in this section, 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.

Virginia DOE Definition of ESY Services (# 2, p.12)

“Extended school year services for the purpose of this chapter means special education and **related services** that:

1. Are provided to a child with a disability:
 - a. Beyond the normal school year of the local educational agency;
 - b. In accordance with the child’s individualized education program;
 - c. At no cost to the parent or parents of the child; and
2. Meet the standards established by the Virginia DoE.”

Virginia DOE Definition of FAPE (# 2, p. 61)

“Extended school year services:

1. Each local educational agency shall ensure that extended school year services, **including transportation to and from such services**, are available as necessary to provide a free appropriate public education, consistent with subdivision 2 of this subsection.
2. Extended school year services must be provided only if a child’s IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, **because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.”**

Virginia DOE Definition of FAPE, continued

3. “In implementing the requirements of this section, a local educational agency **may not**:
 - a. Limit extended school year services to a particular categories of disability;
 - b. Unilaterally limit the type, amount, or duration of those services, or
 - c. **Limit the provision of extended school year services to only the summer.”**

FCPS References on Services Duration

- From page 5 of FCPS SY 07-08 “ESY Services Resource Packet with Guidelines, Procedures, and Samples”:
 - Research (Cooper, Charlton, Valentine, & Muhlenbruck, 2000; Lauer, Akiba, Wilkerson, Aphorp, Snow & Martin-Glen, 2004) has identified factors which increase effectiveness of summer interventions:
 - **Elementary** - most effective interventions ranged from **44-74 hours**. (2004 study) Really, 44-84 > 210 hours (reading) and 46-75 > 100 hours (math).
 - **Secondary** - most effective interventions ranged from **60-120 hours**. (2000 study)
 - Significantly shorter and longer programs were less effective. (Both studies)
- However, 2004 Lauer study states on page 16, “Studies were not included if they examined out-of-school-time (OST) strategies designed for and delivered only to special populations such as special education students, English language learners, and migrant students. Although such OST strategies are important, they are too specific in strategy design and implementation for treatment in the current synthesis.”

What & When - Services Duration

- 2001 National Research Council report on “Educating Children with Autism” “recommends that educational services begin as soon as a child is suspected of having an autistic spectrum disorder. Those services should include a **minimum of 25 hours a week, 12 months a year**” at <http://www.nap.edu/openbook.php?isbn=0309072697&page=R1>.
- June 2002 Due Process Hearing by Camporini, FCPS was ordered “to implement a plan that will provide (student) with the recommended **NRC minimum of twenty-five hours per week of special education and related services**”.
- December 2001 FCPS Department of Educational Accountability ABA Pilot Program Year Final Evaluation Report (1998-2001) for the FCPS ABA pilot program from 1998 through 2001 called for “**30 hours of one-on-one instruction were provided per week for 50 weeks per year.**”

What Are ESY Services? (#3, p. 3-4)

- “A free appropriate public education (FAPE), for some students with disabilities, may require a program of special education and related services in excess of the normal school year.”
- “In general, ESY refers to special education and/or related services provided beyond the normal school year of a school division for the purpose of providing FAPE to a student with a disability.”
- “The IEP must address the provision of ESY services, if required, in order for the student to receive FAPE.”
- “ESY is not a separate planning process since it is part of the IEP process.”

What Are Not ESY Services? (#3, p. 5)

- “**Not** based on the category of the student’s disability - services must be based on the student’s unique educational needs;
- **Not** mandated twelve-month services for all students with disabilities;
- **Not** a child care service;
- **Not** necessarily a continuation of the total IEP provided to a student with a disability during the regular school year;
- **Not** required to be provided all day, every day, or each day;
- **Not** an automatic program provision from year to year;
- **Not** summer school, compensatory services, or enrichment programs;
- **Not** required to be provided in a traditional classroom setting; and
- **Not** a service to be provided to maximize each student’s potential.”

What Guidance from Recent Case Law? (#3, p. 8)

- “ESY services are only necessary to a FAPE when the benefits a disabled child gains during the regular school year will be **significantly jeopardized** if the child is not provided with an educational program during the summer months.”
- “Showing of actual regression is not required.”
- “Appropriate deference” must be given to the professional educators.”

IEP Team Procedures (#3, p. 14)

- “Must prohibit the postponement of the decision by the IEP team regarding ESY services until after the summer in order to gather data or to determine what would happen if the services were not provided;
- Should allow the decision by the IEP team regarding ESY services to be made early enough to ensure that the parents can meaningfully exercise their due process rights if they wish to challenge an ESY decision;
- Must ensure that the individual needs of the student are addressed and that the nature of the services provided will vary based upon those needs;”

Procedures for IEP Team (#3, p. 14-15)

- “Must not unilaterally limit the ESY services to a set number of days, hours of service, nor restrict the provision of ESY services for administrative convenience;
- Must not allow the availability of ESY services to be limited by the financial resources of the school division;
- Must not allow the denial of ESY services to those students who need the services in order to receive FAPE; and
- Must not limit ESY services to predetermined disability categories nor categorically exclude certain students with disabilities.”

ESY Services Criteria

- Verbiage from the Lawyer v. Chesterfield School Board (1993), which began the further definition of the ESY services criteria other than just regression. They include:
 - 1. Regression and recoupment - is the child likely to lose critical skills or fail to recover these skills within in a reasonable time;**
 - 2. Degree of progress toward IEP goals and objectives;**
 - 3. Emerging skills/breakthrough opportunities - will a lengthy summer break cause significant problems for a child who is learning a key skill;**
 - 4. Interfering Behavior - does the child's behavior interfere with his or her ability to benefit from special education;**
 - 5. Nature and/or severity of disability;**
 - 6. Special circumstances that interfere with child's ability to benefit from special education.**

Factors to Be Considered by IEP Team (#3, p. 15)

- **1. Regression/ Recoupment** – “The IEP team determines whether without these services, there is a likelihood of substantial regression of critical life skills caused by a school break and a failure to recover those lost skills in a reasonable time following the school break (e.g., **six to eight weeks after summer break**). It is noted that some regression in skills typically occurs with all students during school breaks, but such losses would not be considered substantial.”
- **2. Degree of Progress** - “The IEP team reviews the student’s progress toward the IEP’s goals on critical life skills and determines whether, without these services, the student’s degree or rate of progress toward those goals (or objectives or benchmarks, if required) will significantly jeopardize the student’s receipt of benefit for his/her educational placement during the regular school year.”
- **3. Emerging Skills/ Breakthrough Opportunities** – “The IEP team reviews all IEP goals targeting critical life skills to determine whether any of these skills are at a breakthrough point. When critical life skills are at this point, the IEP team needs to determine whether the interruption in services and instruction on those goals (or objectives or benchmarks, if required) by the school break is likely to significantly jeopardize the student’s receipt of benefit from his/her educational program during the regular school year without these services.”

Factors to Be Considered by IEP Team (#3, p. 16)

- **4. Interfering Behaviors** – “The IEP team determines whether without ESY services any interfering behavior(s), such as ritualistic, aggressive or self-injurious behavior(s) targeted by IEP goals, have prevented the student from receiving benefit from his/her educational program during the school year. The team also determines whether the interruption of programming which addresses the interfering behavior(s) is likely to significantly jeopardize the student’s receipt of benefit from his/her educational programming during the next school year without ESY services.” **Behavior plan?**
- **5. Nature and/or Severity of the Disability** – “The IEP team determines whether, without ESY services, the nature and severity of the student’s disability are likely to significantly jeopardize the student’s receipt of benefit from his/her educational program during the regular school year.”
- **6. Special Circumstances or Other Factors** – “The IEP team determines whether, without ESY services, there are any special circumstances that will significantly jeopardize the student’s receipt of benefit from his/her education program during the regular school year. Other factors cited in cases include:
 - ability of the child’s parents to provide the educational structure in the home;
 - ability of the child to interact with children without disabilities; and
 - areas of the child’s curriculum which need continuous attention.”

Virginia DoE Definition of Critical Life Skills (#3, p. 20)

- “A critical life skill includes any skill determined by the IEP team to be critical to the student’s overall educational progress, **including social and behavior skills.**
- In determining critical life skills for the specific needs of the student, the school division may consider those **skills that lead to independent living, including toileting, feeding, communicating, dressing, and other self-help skills.**
- In some cases, the school division **may consider and address academic and behavioral issues.**
- Depending on factors, such as a student’s age, ability, and the number of years the student has left in school, the **areas of reading, math, and written language could be considered critical life skills.”**

FCPS Critical Life Skills- IEP Form 105, Extended School Year Services Information Sheet (#5)

“Critical life skills are those skills that students require across environments to:

- Increase independence from caretakers, e.g., toileting, feeding dressing, personal hygiene, mobility.
- Increase independence in school or community, e.g., basic communication, social interaction, reading.
- Decrease or eliminate behaviors that interfere with functioning in the school or community, e.g., aggression, self-injury, impulsivity.”

Regression and Recoupment (#3, p. 16)

- “Does the student **need extensive review to demonstrate previously learned skills**?”
- What **inconsistencies** does the student demonstrate in **mastered or partially acquired skills**?
- Has the student reached a **critical point of instruction or behavior management** where a break in programming would have serious, detrimental effects?
- Does the student **demonstrate behaviors or deficits that would cause regression** if breaks in programming occur?
- Is there a degenerative medical condition that might cause regression?
- Will a break in programming jeopardize the student's placement in the least restrictive environment (LRE)?
- **It is important to note that the IEP team is not required to demonstrate previous student regression before ESY services are provided.”**

Regression and Recoupment (#3, p. 16-17)

- “**If no empirical data are available on regression**, then the need may be shown by expert opinion or prospective criteria established by the IEP team. This decision should be based upon an examination that includes, but **is not limited to**, the following:
 - Review of the current IEP goals (or objectives or benchmarks, if required);
 - Observation and data from teachers, therapists, parents, and others having direct contact with the student before and during breaks in educational programming;
 - Data and observations regarding the student’s performance after long weekends, vacations, and past summer breaks;
 - Assessment or information maintained on the student, including pretest and post-test data; and
 - Curriculum-based assessment, including pretest and post-test data; and other relevant factors.”

Information Sources (#3, p. 17)

- **“ESY services should not be granted solely on the basis of the student’s failure to achieve one or more of the IEP’s goals (or objectives or benchmarks, if required). ... IEP team must also review and consider the need for any related services including transportation. ... they may use the following types of information:**
 - historical data;
 - review of current and previous IEPs;
 - documented regression and recoupment time;
 - documented clinical evidence;
 - classroom observation;
 - progress notes; standardized tests;
 - samples of the student’s work;
 - behavior logs; parent interviews;
 - attendance information;
 - other objective evidence; and
 - expert opinions.” (School and/or parent)

What Can ESY Services Look like? (#3, p. 18)

- “The requirement regarding placement in the least restrictive environment (LRE) during the normal school year applies to ESY services.”
- “Qualified personnel must provide ESY services. ... Examples include:
 - the teacher and parent working together (materials could be sent home with progress periodically monitored by the teacher);
 - learning packages with staff monitoring;
 - home-based programs;
 - grouping students with similar goals;
 - school-based programs;
 - cooperative programs with other agencies;
 - multi-system shared programs;
 - contractual arrangements with service providers or agencies;
 - community-based programs; and
 - vocational settings.”

What Other Factors Considered? (#3, p. 19)

- **“Remember the critical question: Will the benefits a disabled child gains during the regular school year be significantly jeopardized if the child does not receive ESY? IF YES:**
 - Identify the specific goals (or objective or benchmark, if required) from the current IEP, since all goals may not be affected;
 - Determine the type, amount and duration of the special education and/or related services required based upon the goals identified (the amount, type and duration may differ for each identified service if more than one service is required). Do not forget to address any needed related services including transportation. **Decisions regarding services must be based upon the student’s need and not on existing programs;**
 - Determine the LRE in which the specific goal will be addressed;
 - Determine participation with peers without disabilities; and
 - Determine the person(s) responsible for providing services (i.e., special education teacher, speech/language pathologist, physical therapist, etc.).”

Regulations versus Reality



- From FCPS data for Summers of 2005 > 2006 > 2007 > 2008 > 2009:
- Total number of students- 163,768 > 163,971 > 165,740 > 168,384 > 173,573.
- Total number of special education students- 23,640 > 23,791 > 23,742 > 23,962 > 24,363.
- Total number of students with label of autism- 1,289 > 1,457 (13%) > 1,712 (18%) > 1,913 (12% change from previous year) > data not available for 2009 at this time!
- Total number of students with label of MR- 854 > 840 (-2%) > 870 (4%) > 883 (1% change).
- Total number of special education students getting summer program services- 5,337 (23%) > 5,249 (22%) > 5,639 (24%) > 3,449 (14%) > 3,939 (16% of 24,363) .
- Total number of special education students getting ESY services- 1,352 (25%) > 1,331 (25%) > 1,492 (26%) > 1,767 (51%) > 2,188 (56% of 3,939).
- Total number of students with autism with ESY services- 182 (17%) > 290 (22%) > 292 (20%) > 408 (23%) > 505 (23% of 2,188).
- Total number of students with MR with ESY services- 69 (6%) > 202 (15%) > 191 (13%) > 225 (13%) > 259 (12% of 2,188).
- Total number of special education students getting additional ESY services- 49 (5%) > 72 (5%) > 135 (9%) > 83 (5%) > 84 (4% of 2,188).
- Total number of students with autism getting additional ESY services- 26 (14%) > 16 (5%) > 26 (9%) > 34 (8%) > 34 (7% of 505)
- Total number of students with MR getting additional ESY services- 1 (1%) > 10 (5%) > 13 (7%) > 2 (1%) > 3 (1% of 259).

So What Do You Do Now!

1. Understand and be able to quickly reference the VA DOE and FCPS regulations and procedures.
2. Ask the principal or vice/assistant principal to attend the meeting and not just the local Procedural Support Liaisons (Was PRS).
3. In an ESY IEP meeting, explain:
 - a. Why ESY services are necessary for your child to receive a free appropriate public education;
 - b. Document and logically explain how your child's needs meet the VA DOE and FCPS ESY criteria; and
 - c. What ESY services duration is necessary for your child to receive a free appropriate public education.
4. Redirect the meeting back to the needs of your child to avoid predetermination, if the school staff want to talk duration of services before full consensus on your child's needs.
5. Request a prior written notice, if their response is not a reasonable compromise.

IEP Meeting Recommendations

- Recommend collaborative and team-building approach to schools and for IEPs.
- Principals are kings or queens of their buildings, so be nice.
- Teachers are the doctors for your child's educational care with the other support staff as the nurses or other specialists.
- Individualized Education Program recommendations:
 - Do your homework and understand the applicable Virginia DoE regulations and guidelines.
 - Take a man; any man!
 - Bring food, if meeting at lunch time.
 - Do not sign an IEP at the meeting; take it home to have someone else look at it and to mull it over before signing.

For more information, contact:

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Extended School Year services web link at

<http://www.poac->

[nova.org/base.cgim?template=ESY](http://www.poac-nova.org/base.cgim?template=ESY)