

EXTENDED SCHOOL YEAR ELIGIBILITY

22 Pa. Code §14.132

22 Pa. Code §711.44

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PURPOSE

This Basic Education Circular (BEC) represents the Pennsylvania Department of Education's (PDE) policy concerning timelines and other issues related to Extended School Year services for children with disabilities. It is based on the Pennsylvania Code (22 Pa. Code Chapters 14 (14.132 Extended School Year) and 22 Pa. Code 711 (§711.44 Extended School Year)), relevant federal regulations, and court decisions. This policy is effective immediately.

BACKGROUND

Armstrong v. Kline, and Other Federal Requirements

The federal court decision in *Armstrong v. Kline* (476 F. Supp. 583 (E.D. Pa. 1979)), established the mandate in Pennsylvania for Extended School Year programming for children with any varying degree of a disability who meets the court's eligibility standard. Local education agencies (LEA), individualized education program (IEP) teams, and hearing officers should refer to the Armstrong Remedial Order No. 2 Guidelines, the Pennsylvania Code (22 Pa. Code Chapters 14 (§§14.102 (a)(2)(x), 14.132), and Chapter 711 (§§711.3(b)(10) and 711.44)), and this BEC to determine whether a student qualifies for Extended School Year.

Federal special education regulations include a requirement that children with disabilities receive Extended School Year programs in certain circumstances from their school districts or public charter schools. Specifically, the Individuals with Disabilities Education Act (IDEA) (34 CFR 300.106(a)(2)) provides: "Extended school year services must be provided only if a child's IEP team determines, on an individual basis, ...that the services are necessary for the provision of a Free Appropriate Public Education (FAPE) to the child." According to IDEA (34 CFR 300.106(a)(3)), a public agency may not:

- (i) Limit Extended School Year services to particular categories of disability; or
- (ii) Unilaterally limit the types, amount, or duration of those services.

For all students with disabilities, Extended School Year eligibility must be considered at each IEP team meeting. This determination must be made even if the child's parents have not specifically requested that their child be evaluated for Extended School Year programming. This consideration also applies to students with disabilities who are placed by an LEA or public agency in an approved private school or other facilities. Approved private schools and other facilities must share necessary information with LEAs so that a timely decision can be made by the IEP team. However, the ultimate responsibility for timely IEP review and revision rests with the LEA.

POLICY ON TIMING AND METHOD OF EXTENDED SCHOOL YEAR DETERMINATIONS

A. Armstrong Group

The timing of an Extended School Year determination is dependent on whether the student is a member of the Armstrong group, as defined by the Armstrong Remedial Order No. 2 Guidelines. Students in the Armstrong group are those students with a severe disability, such as:

- Autism/pervasive developmental disorder.
- Serious emotional disturbance.
- Severe intellectual disability (mental retardation).
- Degenerative impairments with mental involvement.
- Severe multiple disabilities.

The parents must be notified by their LEA of the annual IEP team review meeting in order to ensure their participation. For purposes of an Extended School Year eligibility determination, the LEA must make the determination of the need in a timely manner so that children can receive the necessary services in compliance with FAPE. The IEP team review meeting must occur no later than February 28 of each school year for the Armstrong group (as described above). This date may require the LEA to reschedule the annual IEP team review, or conduct a separate Extended School Year IEP team meeting for this review (see 22 Pa. Code 13.132(d) and 22 Pa. Code 711.44(d)).

The Notice of Recommended Education Placement/Prior Written Notice, containing the IEP team's determination regarding Extended School Year eligibility, must be issued to the parents in a timely manner. For students in the Armstrong group, this must be no later than March 31 of the school year the Extended School Year determination was made. If the child has been determined eligible for Extended School Year, the program specifics must be included in the IEP (see 22 Pa. Code 13.132(d), and 22 Pa. Code 711.44(d)).

If a student with a disability in the Armstrong group transfers into the LEA after February 28, LEAs should remember, that if a student enrolls who has an Extended School Year program listed on his/her IEP from another Pennsylvania school district or charter school, that determination of eligibility and program content constitutes the student's pendant program and must continue to be provided until the parent agrees to a change, or a change is authorized through the special education hearing and appeal system. For a late enrolling student for whom an Extended School Year determination has not been made, the decision regarding Extended School Year eligibility or non-eligibility, and program content must be determined at the IEP team meeting.

B. Non-Armstrong Students

According to state and federal special education regulations, LEAs must consider the eligibility for Extended School Year for all students with disabilities at the IEP team meeting, not just those in the Armstrong group. Extended School Year determinations for children, other than those in the Armstrong group, are not subject to the timelines established for the Armstrong group. However, Extended School Year determinations must still be made in a timely manner in accordance with the requirements in the Pennsylvania Code (22 Pa. Code Chapter 14, and 22 Pa. Code Chapter 711). If the parents of those non-Armstrong students with disabilities disagree with the LEA's recommendation, the parents will be afforded an expedited due process hearing.

Whenever the parents of any student with a disability request that the LEA consider a student for an Extended School Year program, the request must be treated as a change in the provision of FAPE and an IEP team meeting must be conducted. Following the IEP team meeting, the Notice of Recommended Education Placement/Prior Written Notice, which indicates the team's recommendation concerning whether the student is or is not eligible, is to be issued to the parent.

C. Students who have Aged-Out or Received a Regular High School Diploma

If a student with a disability turns 21 years of age during the school term, that student may be eligible for Extended School Year services during the subsequent summer. The IEP team must determine whether that student is eligible for Extended School Year during the summer. If the IEP team determines that Extended School Year is a part of FAPE, that student must be provided with Extended School Year services during the summer after the end of the school term. At the completion of the summer Extended School Year program, the LEA would issue a Notice of Recommended Education Placement/Prior Written Notice exiting the student from special education.

Even though a student with a disability completes the necessary credits and fulfills his/her IEP goals and can graduate with a regular high school diploma, the IEP team may determine that student eligible for Extended School Year services during the subsequent summer. If the IEP team determines that Extended School Year is part of FAPE, that student must be provided with Extended School Year services during the summer after the end of the school term. At the completion of the summer Extended School Year program, the LEA would issue the regular high school diploma and notice of Recommended Education Placement/Prior Written Notice exiting the student from special education.

In either case, whether the student ages-out or graduates with a regular diploma and participates in the Extended School Year summer program, the LEA has fulfilled its duty to provide the student with FAPE.

NOTICE OF ELIGIBILITY AND CONTENT OF EXTENDED SCHOOL YEAR PROGRAM

The LEA's notice to the parents concerning Extended School Year eligibility or ineligibility must be by Notice of Recommended Education Placement/Prior Written Notice. The Notice of Recommended Education Placement/Prior Written Notice only needs to be issued if the LEA is:

- Proposing to add Extended School Year services to an IEP that previously did not have it.
- Proposing to delete the provision of Extended School Year services from an IEP.
- Refusing to initiate the provision of Extended School Year services requested by the parent.
- Proposing or refusing to change the provision of the Extended School Year program.

When Extended School Year services are offered by the LEA, the IEP that accompanies the Notice of Recommended Education Placement/Prior Written Notice must contain a:

- Description of the type and amount of Extended School Year service.
- Projected beginning dates and anticipated duration of service.
- Frequency.
- Location.

As with all IEP team decisions, the Extended School Year components of the IEP must be individualized to meet the specific child's needs, and must be developed with the participation of the parents at an IEP team meeting.

DATA AND OTHER SOURCES OF INFORMATION

The importance of making an Extended School Year determination based on data and other reliable sources is well established. It should be noted that quantitative data is only one of the types of information that can be used to make Extended School Year decisions. Predictive data, such as reports by parents, medical or other agency reports, observations and opinions by educators and others, can also provide a basis for an eligibility determination. Some examples of information that can be helpful in making an eligibility determination are listed in the Pennsylvania Code (22 Pa. Code §14.132(6), and §711.44(5)). Included in the regulations is guidance for the:

- Progress on goals in consecutive IEPs.
- Progress reports maintained by educators, therapists and others, such as guidance counselors or staff supervising extracurricular activities, having direct contact with the student before and after interruptions in the education program.
- Reports by parents of negative changes in adaptive behaviors or in other skill areas.
- Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- Observations and opinions by educators, parents and others such as guidance counselors or staff supervising extracurricular activities.
- Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

CRITERIA FOR ELIGIBILITY AND RELIANCE UPON OTHER FACTORS

As the Pennsylvania Code (22 Pa. Code §14.132(a)(2), and §711.44(a)(2)) requires, Extended School Year determinations can be based on the traditional regression/recoupment criteria as well as other factors, such as:

- The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
- The extent to which the student reverts to a lower level of functioning as evidenced by a measurable decrease in skill or behaviors which occur as a result of an interruption in education programming (regression).
- The extent to which the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (recoupment).
- The extent to which the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

- The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
- The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

If these factors make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives, or if the student otherwise requires Extended School Year services to receive FAPE, the student is eligible for Extended School Year.

For a child to be found eligible for Extended School Year, it is not necessary that the child have first experienced regression during an interruption in educational programming in order to receive Extended School Year during the subsequent program break.

The IEP team must make its decision concerning Extended School Year eligibility and program content at the time of the IEP team meeting, and in accordance with the timelines set in this BEC. Doing otherwise leads to indefinite delays in decision making,

so that due process is no longer a meaningful procedure for the parent seeking to challenge an IEP team's determination regarding eligibility and program.

TYPES OF EXTENDED SCHOOL YEAR PROGRAMMING

While many Extended School Year programs are held during the summer, children eligible for Extended School Year services can require weekend or even virtually continuous programming. It is also important to note that Extended School Year programs are not limited just to self-help and basic skills. Academic and vocational goals can also be part of a child's Extended School Year IEP, if appropriate. All decisions regarding types of programming must be made on an individual basis by the IEP team.

PENDENCY

The pendency provisions of state and federal law apply to Extended School Year eligibility determinations. Therefore, if an IEP team proposes by Notice of Recommended Education Placement/Prior Written Notice to change a student's Extended School Year eligibility status or previous Extended School Year program, and the parent requests mediation or due process, there must be no change in Extended School Year eligibility or program from the previous year, unless agreed to by the parties, pending completion of mediation or due process procedures.

Attached Resource: N/A

REFERENCES:

State Board of Education Regulations

- [22 Pa. Code Section 14.102\(a\)\(2\)\(x\)](#)
- [22 Pa. Code Section 14.132](#)
- [22 Pa. Code Section 711.3\(b\)\(10\)](#)
- [22 Pa. Code Section 711.44](#)

Federal Statutes

20 USC Section 1400, et.seq. (IDEA)

Federal Regulations

34 CFR Section 300.106

Other

Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979)

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