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Revisions to Extended School Year Regulation Do Not Change LEA Obligation to Consider Student Placement in Least Restrictive Environment

Federal and state law provide that extended school year (“ESY”) services – those provided to students with disabilities beyond the typical academic school year – are to be provided only if the student’s individualized education program (“IEP”) team makes an individual determination that they are necessary to provide the student with a free, appropriate public education (“FAPE”) in the least restrictive environment (“LRE”). Generally, this entails an analysis of whether interruption of a student’s programming during the summer may cause regression, when coupled with a student’s limited recoupment capacity.

With regard to the LRE component of this analysis, California law previously included language in its implementing regulations stating that if during the regular academic year a student’s IEP specified integration in the regular (general education) classroom, a local educational agency (“LEA”) was not required to meet that component of the IEP if the agency was not offering any regular summer school programs. However, as of January 1, 2023, that statement (as well as another applicable to agencies operating year round schools) has been notably deleted. In doing so, the State Board of Education explained that concerns had been raised that the regulation could be interpreted, *incorrectly*, to eliminate the required consideration of least restrictive environment in ESY.

In eliminating this language from the regulation, community concerns have arisen about potential increases in LEA costs for ESY and/or the forced creation of general education summer school programs. However, the California Department of Education (“CDE”) recently issued a statement clarifying that while “ESY services too must be provided in the LRE, it is important to recognize that ESY services are provided during summer months when, as a practical matter, the full continuum of placements may not be available.” This is an implied if not express acknowledgement that general education summer school programs may not be available with a particular local educational agency, and that nothing in the law requires the creation of a general education summer school program accessible to all students.

So what does this mean for LEAs and IEP teams considering ESY eligibility and potential student placement options? In short, the state has clarified that nothing has meaningfully changed. IEP teams continue to have an obligation to consider the LRE when evaluating all ESY placements for eligible students but LEAs are still not required to operate general education summer school programs for students whose regular school-year IEPs include integration in a general education setting in order to provide a FAPE for ESY.

To assist IEP teams in this process, however, we offer the following recommendations for best practices in ESY eligibility and LRE determinations:

1. Engage in specific discussion at IEP meetings about student needs, regression, and recoupment capacity with regard to the necessity of ESY services to provide a FAPE.
2. Analyze what specific services each student may require and determine how they will be provided and within what environment, taking into consideration LRE, if an IEP determines a student requires ESY services.
3. Encourage parents to actively participate in the discussion regarding ESY services.
4. Memorialize within the IEP notes the IEP team's specific ESY discussion, including parents' participation in such discussion.

We understand that the CDE intends to issue *Frequently Asked Questions* to address ongoing concerns about ESY, including specific consideration of the LRE concept, in the near future. We will provide updates, as appropriate, as further guidance and information becomes available.

Of course, should you have any additional questions regarding this revision to the regulations and how it affects your agency, please call any one of our six offices.

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