

AVOIDING ESY LANDMINES: MAKING APPROPRIATE ESY DETERMINATIONS

A Webinar Presented by:
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Monday, May 4, 2015 – 3:00-4:30 pm
Tuesday, May 5, 2015 – 10:30-noon

The Requirement for ESY: Where Does it Come From?

- The IDEA's regulatory provisions
- Relevant early court decisions

The Requirement for ESY: Where Does it Come From?

- Judicially created standards for determining the need for ESY
 - Regression/recoupment
 - Substantial regression
 - Consideration of multiple factors
 - Significant jeopardization of skills

Common ESY Legal Landmines

- Failing to train school staff on the ESY requirement and policies/procedures
 - “ESY? What’s that?”

Common ESY Legal Landmines

- Failing to address/adequately consider the issue of ESY altogether
 - “No one sees the need for ESY services, do they? Let’s move on to what’s next on the Agenda.”
 - “I’m just going to check the ‘no’ box for ESY services because the overall data do not indicate that he needs ESY. Does anyone have a problem with that?”
 - “We don’t really need to discuss ESY all that much because this is what the district offers.”

Common ESY Legal Landmines

- Failing to distinguish between ESY and summer school services
 - “Of course we provide for ESY. Anyone can participate in summer school.”
 - “Sorry, we don’t have ESY anymore since the school board cut our summer school program.”
 - “Since he’s going to summer school, we don’t need to address ESY, do we?”

Common ESY Legal Landmines

- Failing to establish ESY programs that are based upon individual needs
 - “Oh, how I wish we could provide more ESY because he really needs more. However, our budget has been cut, and we can’t afford it. I’m sure you understand.”
 - “Our ESY program runs from June 16 until July 19 for everyone.”
 - “But all of our LD students get ESY in the form of home packets.”
 - “We don’t provide ESY to students if they are in general education classes.”
 - “We don’t provide related services during ESY.”

Common ESY Legal Landmines

- Failing to consider eligibility for *all* students with disabilities
 - “Because your child is only mildly LD, we know he won’t qualify for ESY, so we don’t need to address it. Only our severe and profound students get ESY.”
 - “ESY services are only for students in wheelchairs or significantly cognitively impaired.”

Common ESY Legal Landmines

- Failing to consider all educational needs in making ESY decisions
 - “We don’t think he will severely regress academically over the summer break, so that ends the ESY discussion.”

Common ESY Legal Landmines

- Failing to ensure that the IEP team decides ESY
 - “We should defer the decision on ESY to the ESE director. She’s the one who always makes that decision.”

Common ESY Legal Landmines

- Failing to ensure all proper IEP team members are present to participate in the ESY decision
 - “Yes, I am the LEA Rep., but I don’t do special education and don’t know anything about ESY. You’ll have to ask someone else because I really know nothing about it.”
 - “Sorry I’m an hour late, but the principal just told me I needed to be here because I’m the only regular education teacher in the building. I’m not really sure what help I can give, since I don’t teach special education and don’t have anything to offer on ESY. So can I go now?”
 - “Since he’s in a private school right now and won’t be with us until next year, we don’t need to invite the private school teacher to the IEP meeting.”

Common ESY Legal Landmines

- Predetermining the ESY decision
 - “But in our staff meeting yesterday, I thought that we decided that he would not qualify for ESY.”

Common ESY Legal Landmines

- Failing to consider parentally-provided information/input as part of an ESY determination
 - “I have read the report that you brought in, Mrs. Jones, and you’ve got to be kidding me! This guy is a quack, and we’re not even going to consider his recommendations for ESY services.”

Common ESY Legal Landmines

- Failing to determine the need for ESY services in a timely fashion
 - “We will make the ESY determination at the end of May.”

Common ESY Legal Landmines

- Failing to use the proper standard for determining ESY eligibility
 - “It is clear that he needs ESY services in order to continue to progress over the summer, or at least to maintain the skills he has right now.”

Common ESY Legal Landmines

- Failing to recognize that the ESY analysis may not necessarily be limited to the summer break
 - “ESY services are only provided during the summer break.”

Common ESY Legal Landmines

- Failing to ensure the provision of ESY services by highly qualified providers
 - “We can’t find a highly qualified special education teacher for the summer, but we’ll find someone who will be there.”

Common ESY Legal Landmines

- Failing to follow up on commitments
 - “Uh-oh. We forgot to order those materials for the ESY program.”
 - “I just forgot to submit the ESY forms.”

Common ESY Legal Landmines

- Failing to consider LRE in the ESY analysis
 - “Since we don’t have summer programs for nondisabled students, ESY services won’t be provided with them.”



Questions?