

## Chapter 74: Special Education

### *Rule 74.1 Educable Child Program*

#### 1. Educable Child

The Mississippi Department of Education (MDE), Office of Special Education (OSE) is directed to provide oversight through the Individuals with Disabilities Education Act (IDEA) and State Statute in the placement and funding of students with disabilities in private school/facilities. It is the policy of the MDE to ensure that Local Education Agencies (LEAs) meet the private school requirements in Mississippi Code Annotated, Sections 37-23-61 through 37-23-75 and IDEA 34 CFR §§300.130 through 300.148.

##### a. State Statute

The MDE shall have the authority to promulgate and enforce reasonable rules and regulations establishing standards for administration of the program contemplated by Mississippi Code Annotated, Sections 37-23-61 through 37-23-75, consistent with the maintenance of high quality programs for the benefit of the exceptional children served. The MDE shall require that the programs for which children are eligible for financial

assistance under Mississippi Code Annotated, Sections 37-23-61 through 37-23-75 be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success. State funds will not be used for the payment of medical services or for room and board charges.

##### b. Individuals with Disabilities Education Act (IDEA)

The MDE has adopted State Policies Regarding Children with Disabilities under IDEA Amendments of 2004. A Free Appropriate Public Education (FAPE), as outlined in IDEA 34 CFR §300.101, ensures that each student ruled eligible by a public agency is protected under IDEA. Each eligible student under IDEA shall have available a FAPE that uniquely emphasizes their special education and related service's needs.

The MDE shall require that each private facility/school adhere to the IDEA mandated requirements, which include the provision that IDEA funds may only be used for the excess cost to educate students with disabilities placed by a school district or DHS in a private facility/school. IDEA funds may not be used for the payment of medical services or for room and board charges. 34 CFR §300.704

## 2. Private Schools/Facilities

A private facility must gain approval from the MDE, OSE to provide appropriate special education and related services under the Educable Child Program. The school within the private facility must obtain an approval status from the MDE, OSE, and must be operated as an integral part of the facility, which provides twenty-four (24) hours a day monitoring, treatment, and education. The private facility must also hold a current license from the Department of Health designating approval as an Intermediate Care Facilities for Intellectual Disabilities (ICF-ID) or Psychiatric Residential Treatment Facilities (PRTF) facility.

- a. All private schools/facilities, parochial schools/facilities, speech, hearing and/or language clinics (hereinafter referred to as private facilities) that participate in the Educable Child Program will be accredited by a state or regional accrediting agency or approved/licensed by the MDE to meet educational standards in the state.
- b. All Private ICF-ID or PRTF (hereinafter referred to as private facilities) shall be certified/licensed by the designated state authority for such facilities.
- c. Out-of-state private facilities must hold an approval status from their state educational agency or a current accreditation status from a nationally recognized educational accrediting entity such as the AdvanceEd.

## 3. Fiscal

### a. Appropriations

State appropriated funds will be used to pay the educational cost as defined by the State Legislature and as State Funds are available for the required placement per child per school year if an approved private school operates as an integral part of the facility, which provides twenty-four (24) hours a day monitoring, treatment, and education utilizing the prescribed formula. Federal funds will be added to the appropriated State funds as available and/or needed to fund school district and DHS applicants. If state monies are not

sufficient to fund school district and DHS applicants, there will be ratable reduction for all applicants (including parentally placed applicants) receiving state funds under the Educable Child Program.

### b. Formula

Will be defined annually by MDE utilizing an approved formula methodology.

### c. Transportation

If transportation costs (i.e. defined as travel to and from school) are incurred by a private facility for an Educable Child Applicant placed by a public school district and placed by the DHS, the transportation rate will be determined annually by the MDE, OSE.

### d. Payments

Payments will be scheduled and published annually by MDE.

#### 4. Applications

##### a. School District Placed Students

The school district will pay an amount to be established annually in the OSE Ed Child Procedures for any Educable Child Application made by the district. The remainder of the total amount will be paid by the Educable Child Program, providing funds are available from State or federal sources (as allowed by IDEA) and the State Level Review Board has approved the Educable Child Applicant for financial assistance. The State Level Review Board's Decision does not change the Individual Educational Program (IEP) placement decision or continuum of services; rather it determines the Educable Child Program's financial involvement regarding the placement.

##### b. Department of Human Services (DHS) Placed Students

The Educable Child Program will pay the educational costs of an Educable Child Applicant placed by and in the custody of the DHS provided funds are available from State or federal sources (as allowed by IDEA) and the State Level Review Board has approved the placement for financial assistance. The State Level Review Board's Decision does not change the IEP placement decision or continuum of services; rather it determines the Educable Child Program's financial involvement regarding the placement.

##### c. Parentally Placed Students

*Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school. State Educable Child Funds may be used only. IDEA funds are not allowed as parentally placed students are not covered under IDEA. 34 CFR §300.130*

- i. With Medicaid Available Funding: The Educable Child Program will provide financial assistance for the educational costs to an Educable Child Applicant placed in an approved private facility when the student is determined to be eligible for Medicaid services. Funding will be based on the entitlement authorized by the State Legislature, through the annual appropriations bill, providing funds are

available from State sources and the State Level Review Board has approved the Educable Child Applicant for financial assistance.

- ii. Without Medicaid Available Funding: The Educable Child Program will provide funds as outlined in Mississippi Code Annotated, Section 37-23-69(a) for the educational costs for an Educable Child Applicant who is placed in an approved private school and the State Level Review Board has approved the Educable Child Applicant for financial assistance.

## 5. Hearing Procedures

In the event of disapproval by the State Level Review Board of an application for financial assistance under the Educable Child Program, the MDE will give notice to the Educable Child Applicant and notify the applicant of the right to request a hearing.

Source: *Miss Code Ann. Section 37-3-11 (Revised 03/2014)*

*Rule 74.2 Teacher Unit Approval (Repealed 9/2011)*

*Rule 74.3 Teacher Unit Allocation. Teacher Unit Allocation Methodology to Support Programs for Students with Disabilities*

1. The Teacher Unit Allocation Methodology gives consideration to two factors:
  - a. Educational Placement
  - b. Levels of Support

Each student will be assigned a weighted value based on these two factors. After calculation of the total number of weighted students, teacher units are determined by the following formula:

- a. Pre-K: 18 weighted units = 1 teacher
- b. K-2: 22 weighted units = 1 teacher
- c. Gr. 3-12: 27 weighted units = 1 teacher

## 2. Educational Placement

The first factor in determining the teacher unit allocation is the educational placement of students with disabilities. These placements represent options along the least restrictive environment continuum.

- a. Regular Education/Early Childhood Setting
  - i. Ages 3-5: Early childhood setting designed primarily for children without disabilities
  - ii. Ages 6-20: General/regular education classes for more than 80% of the school day. (Removed from general education for no more than 20% of the school day)
- b. Resourced

- i. Ages 3-5: Special education setting part time; remainder of time at home or in early childhood setting designed for non-disabled children
  - ii. Ages 6-20: General/regular education placement between 40-80% of the school day (Removed from regular education for 20-60% of the school day)
- c. Self-Contained
- i. Ages 3-5: Program designed primarily for students with disabilities
  - ii. Ages 6-20: General education class less than 40% of the school day (removed from regular education for more than 60% of the day)

### 3. Levels of Support

The second factor of the proposed methodology is the intensity of specially designed instruction received by the student from an appropriately licensed special education teacher and related services received from an appropriately licensed related service provider (except for transportation services). It is proposed that the following levels of support be reflected in the teacher unit allocation methodology:

- a. Minimal Support: The student receives specially designed instruction/supports for at least one period per week or less than 5 hours per week.
- b. Targeted Support: The student receives specially designed instruction/supports for at least one period per day or 5 to 12.5 hours per week.
- c. Sustained Support: The student receives specially designed instruction/supports for at least half of the school day or more than 12.5 to 24 hours per week.
- d. Intensive Support: The student receives specially designed instruction/supports for the full school day or all but one period per day, or more than 24 to 30 hours per week or more.
- e. Other Instructional Support

Adaptive Physical Educators are specifically trained to make adaptations, modifications, and accommodations in order to provide a safe, successful physical education experience for students with disabilities. The ratio for Adaptive Physical Educators is 48:1 with a minimum of 25. The maximum class size is 48 students.

Speech/Language Pathologists are responsible for organizing and implementing the assessment and services for communication and related disorders through various service delivery models. The ratio for Speech/Language Pathologists is 48:1 with a minimum of 25. The maximum class size is 48 students.

<i>Educational Placement</i>	<i>Levels of Support</i>			
	<b><i>Minimal</i></b> <5 hrs/wk	<b><i>Targeted</i></b> 5-12.5 hrs/wk	<b><i>Sustained</i></b> >12.5-24 hrs/wk	<b><i>Intensive</i></b> 24+ hrs/wk

Regular Education (removed less than 21% of the school day)	1.5	2.0	2.5	3.0
Resourced (removed 21-60% of the school day)		1.5	2.0	
Self-Contained (removed more than 60% of the school day)			2.0	3.0

*Source: Miss. Code Ann. § 37-1-3 (Revised 8/2011)*

*Rule 74.4 Hearing Procedures, IDEA*

1. In the event of funds being withheld in accordance with the regulations in the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA) and state regulations regarding students with disabilities, the State Department of Education will give notice to the appropriate school official (district superintendent, agency head, or director of private school) by certified mail which shall include notification of the right to request a hearing.
2. Within five (5) calendar days after receipt of the notice, the applicant may apply in writing to the Mississippi Department of Education for a hearing before a hearing officer with knowledge of special education federal and state regulations. The hearing officer will be designated by the Mississippi State Board of Education pursuant to Mississippi Code Ann. Section 37-1-5.
3. The hearing officer shall notify the appropriate school official of the time, place, and date of the hearing. The date shall be not less than five (5) calendar days from the receipt of the request for a hearing.
4. It shall be the responsibility of each party to secure the attendance of its witnesses, if any, and any expenses attendant thereto shall be borne by the party calling that witness. Two copies of any written evidence will be submitted: one copy for the hearing officer and one for the opposing party. Evidence submitted by the school official will be labeled P-1, P-2, etc. Evidence submitted by the department will be labeled D-1, D-2, etc. Evidence may be stipulated and entered as S-1, S-2, etc.
5. The hearing officer shall require that all witnesses be sworn before offering testimony. The hearing officer shall not be bound by the Common Law or statutory rules of evidence or by formal or technical rules of procedure and may conduct reasonable questioning of any witnesses. The hearing officer may limit the examination or cross-examination of any witnesses to keep the hearing focused on the issue of withholding of funds and may recess/reconvene the hearing if necessary.

6. The Department of Education shall make a record of the proceedings to include all documents introduced into evidence which shall be available for cost upon the written request of the applicant.
7. Within fifteen (15) working days of the conclusion of the hearing, the hearing officer shall make a recommendation in the following format: (1) purpose of the hearing, (2) summary of evidence presented, and (3) conclusions and recommendations, a copy of which shall be sent to the parties by certified mail.
8. The completed record along with the hearing officer's recommendation shall be certified to the State Board of Education which shall at its next regularly scheduled meeting consider only the record and shall not consider any evidence or material not included within the record in reaching its final determination.
9. If the State Board of Education shall affirm the Department's actions of withholding of Part B and 89-313 funds, the State Board of Education shall make its written findings and issue its order and notice shall be given the school official by certified mail. The decision of the State Board of Education is final.

Source: *Miss. Code Ann. § 37-1-3 (Revised 9/1990)*

*Rule 74.5 Hearing Officer Fees.* Recommended rates per professional hour and non-professional hour shall be determined annually by the recommendations of the Mississippi Department of Education Leadership Team and shall be posted on the website of the Office of Special Education.

1. Time spent as specified below may be billed at the recommended professional hourly rate:
  - a. Conducting the pre-hearing conference call which includes the following tasks:
    - i. Sending the initial letter setting up the pre-hearing call (form letter.)
    - ii. Conducting the pre-hearing conference call.
    - iii. Writing a letter summarizing the call.
  - b. Conducting the due process hearing which includes the following tasks:
    - i. Preparing and sending notice of the hearing to all parties.
    - ii. Conducting the hearing.
    - iii. Writing an opinion.
2. Time spent as specified below may be billed at the recommended non- professional hourly rate:

- a. Time spent performing clerical functions, including but not limited to, phone calls except as specified above, scheduling, preparing or sending documents, except as above, etc.
  - b. Time spent in travel from base to destination.
3. Usual and customary expenses include charges for the following:
- a. Long distance telephone
  - b. Audio recording
  - c. Faxing
  - d. Photocopying
  - e. Certified mail
  - f. Out of pocket costs (hotel, meals, mileage)
4. Costs Not Allowed
- a. Excessive time for research.
  - b. Time spent for billing purposes.
  - c. Transcribing phone calls or meetings.
  - d. Other expenses that is not documented and defined.

Miscellaneous time spent on the case should be included in the hourly rate for conducting the pre-hearing conference and for conducting the hearing.

#### 5. Additional Considerations

Extra time required to educate oneself on an issue should not be passed on as extra cost to the district. Excessive time spent researching the issue will not be considered a necessary component of writing the opinion. If the hearing officer is not familiar with pertinent case law, he/she should request that counsel for both parties submit briefs following the hearing, since clients are already paying for the research to be conducted by their attorneys.

Source: *Miss. Code Ann. § 37-1-3 (Revised 8/2011)*

*Rule 74.6 Transportation Management of Students with Disabilities.* In the event a school district cannot meet the transportation needs of students with disabilities on a regular school bus route, the State Department of Education will provide funding to the district for transportation of students with disabilities within the district or to the nearest adequate facility outside the district



in order to provide appropriate educational services. Payment shall be based upon the following formula:  $(1/2 \text{ of school district's annual per pupil transportation allotment} \times \text{number of students transported}) + (\text{round trip mileage transported} \times \text{total number of actual days transported} \times 20 \text{ cents per mile})$ .

Payment for transporting children enrolled as resident students at the Mississippi School for the Blind or Mississippi School for the Deaf shall be based on the same formula defined above. School districts may reimburse parents, guardians, etc., for the round trip to the Mississippi School for the Blind or Mississippi School for the Deaf and back home at the beginning of the school year and at the close of the school year. Transportation may also be provided on the same basis any time during the school year when the dormitories at these institutions are closed. School districts providing transportation for eligible day students assigned to the Mississippi school for the Blind and Mississippi School for the Deaf shall be eligible for funding based on the formula defined above.

If a child enrolled in either the Mississippi School for the Blind or the Mississippi School for the Deaf resides in a school district where there is an appropriate program for that child or where there is an appropriate program within reasonable driving distance which the district will make available to the child, then the transportation cost will be the responsibility of the Mississippi School for the Blind or the Mississippi School for the Deaf (depending upon which school the child is enrolled).

In the event that a state-supported university or college provides a special education program for children from any school district that is unable to meet the educational needs of those children, then the university based program shall be eligible for funding based on the formula defined above. Any assessment of one-half the per-pupil allotment shall be based on the child's resident district.

The maximum distance a student with disabilities may be transported or the maximum length of time for a special education transportation route will depend upon the Individualized Educational Program (IEP) for the respective child. For the purpose of payment, a student with disabilities is defined as any child properly tested and found eligible for a special education program receiving appropriate educational services as stipulated in the Individualized Educational Program (IEP).

Funding for the transportation of students with disabilities will be determined using prior year transportation data submitted on forms provided by the Mississippi Department of Education and based on the formula defined above.

No private contracts or use of vehicles other than school buses shall be submitted to the State Board of Education for approval.

Drivers transporting students other than members of the driver's immediate families must be trained and properly certified.

Source: *Miss. Code Ann. § 37-1-3 (Rev.12/2005)*

*Rule 74.7 State Application Preschool (Repealed 9/2011)*

*Rule 74.8 University Based Programs.* The University-Based Program is authorized in Sections 37-23-31 through 37-23-35 of the Mississippi Code. Any state supported university or college may apply for minimum program funds under these regulations.

1. Procedures

- a. When there is an organized program in a local school district for students with a particular exceptionality, then the university-based program will not enroll a student with that exceptionality from that district in the university-based program except in the following two situations:
  - i. the student is enrolled on a private tuition basis
  - OR**
  - ii.
    - a) if the local district initiates a placement because an IEP committee in that district has determined that the organized program in that district is not appropriate for that student,
    - b) that university-based program is an appropriate placement for that student, and
    - c) the IEP committee places that student in the university-based program.

Yearly placement decisions relative to whether a handicapped student is to be placed in a university-based program by a local district continue to be the responsibility of that local district.

- b. No later than April 15 each year, the State Department of Education (SDE) staff will notify the university-based program staff relative to which local school districts in the area served by the university-based program have organized programs for the exceptionalities currently being served in that university-based program. If a parent requests a university-based program to serve an exceptional child from a local school district that has an organized program, the university-based program staff will notify the parent that they are prohibited by state law from duplicating the program available in the local school district and will inform the local district of that child's need for educational service.
- c. When the university-based program staff is requested by a parent to serve an exceptional child from a local school district that does not have an organized program for that exceptionality, the child may be enrolled in that university-based program following SDE guidelines that apply to other state agencies. In that case, the university-based program is totally responsible for the education of that child including development of the IEP. It is suggested that local school district special education staff be kept abreast of the progress of this child and it is permissible for university-based program staff to invite district staff to IEP meetings.

- d. In the event there is a question as to whether the local district has an organized program for a particular exceptionality, the university- based program staff may contact the SDE staff responsible for the university-based program for a decision.
- e. An organized program is a program approved by the SDE serving a particular age range and exceptionality or exceptionalities. When the local school district has such a program and a child in that age range and with that exceptionality is identified, an IEP committee in that district makes the decision as to whether that organized program is appropriate for that child. No other entity can make that decision.

2. Application Steps

- a. Identify a teacher for this class(es) certified in accord with State Department of Education regulations.
- b. Identify a classroom facility in which to locate the class. It should be approximately the same size as a regular classroom in a public school district.
- c. Submit a proposal to the Bureau of Special Services describing the program according to regulations.

3. Upon receipt of this proposal, Bureau of Special Services personnel will review it and either approve it or work with university/college personnel to get it in an approvable form. The Bureau Director will write a letter indicating approval of acceptable proposals and indicating that university/college personnel may proceed with implementation. In the event that teacher certification and number of eligible children is not available when the proposal is submitted, tentative approval will be given until such time as this information is received.

During the implementation of a program, following proposal approval, it will be necessary for the university/college to submit a Class Data Sheet. This submission will occur each year. Any time the program changes, the proposal must be amended.

4. The Outline for the proposal which is to be submitted to the Bureau of Special Services is as follows:

- a. Title of the Program
- b. General Information
  - i. Number, age and exceptionality of students
  - ii. Length of School Day (must be full day program to receive full funding)
  - iii. Number of teachers requested, teacher's name (if available) and certification (if available)
  - iv. Location and description of the classroom(s)
- c. A list of program objectives
- d. An outline of program evaluation criteria
- e. A copy of the university/college approved policies and procedures as required

- f. An assurance that the university/college will comply with all applicable State Department of Education regulations relating to programs for handicapped children (it is the responsibility of personnel who operate this program to be familiar with all regulations).

Source: *Miss. Code Ann. § 37-1-3 (Revised 8/1991)*

*Rule 74.9 504 Program (Repealed 9/2011)*

*Rule 74.10 Special Grant Selection Criteria.* If during the school year a special education class exceeds the maximum enrollment according to the regulations in the Referral to Placement Handbook, Part II, a request for an exemption will be submitted to the State Department of Education. The maximum class enrollment for each type of special education program is as follows:

Resource Program	18
Self-Contained Program	14
Home/Hospital Program	8
Language/Speech Program	60
Preschool (ages 3-5) Home-Based Program	16
Preschool Community-Based Program	16
Preschool Combination of Home-Based and Community-Based Program	16
Preschool School-Based, Full-Day Program	14
Preschool School-Based, Single Half-Day Program	14
Preschool School-Based, Two Half-Day Programs	24

1. The request will describe the situation and provide justification as to why the exemption should be approved to include at a minimum the following:
  - a. the number of special education teachers in that school who serve students with disabilities, the enrollment of each teacher; and why appropriate services cannot be provided by one of those teachers in that school,
  - b. a clear description of why an additional class cannot be added to take care of the overload,
  - c. whether there is a school reasonably close by to which the children over the maximum could be transferred, and
  - d. other emergency, hardship, or special situations which justify the exemption.
2. State Department of Education staff (Exemptions Committee) will review the request for exemption and make a recommendation to the State Board as to whether it should be granted.

3. The State Board will consider requests at its monthly meetings.
4. A school district may appeal the denial of an exemption by requesting to appear before the State Board at its next meeting.
5. The State Board's decision on an appeal is final.

Source: *Miss. Code Ann. § 37-1-3 (Adopted 8/1993)*

*Rule 74.11 Exemptions, Maximum Enrollment (Repealed 03-24-2014)*

*Rule 74.12 Extended School Year*

## 1. GENERAL MISCONCEPTIONS

Careful study of the Crawford case, specifically including the Fifth Circuit's opinion, eliminates some misconceptions. An extended school year is:

- a. not a mandated 12 month school program for all students with disabilities,
- b. not required just because students with disabilities could benefit from it,
- c. not required in order that child care be available for students with disabilities during the summer,
- d. not required as a means of maximizing the educational opportunities for each student with a disability,
- e. not necessarily a continuation of the instructional program provided during the regular school year,
- f. not required to be provided all day, every day, nor each day during the week or month,
- g. not for more mildly students with disabilities (based on level of functioning), and
- h. not necessarily a traditional teacher/classroom/child operation. II.

## 2. DEFINITIONS

- a. Regular School Year - must be a minimum of 180 school days.
- b. Extended School Year - any individualized instructional program which is extended beyond the regular school year for students with disabilities who are enrolled in a school district's special education program.
- c. Mastery - the successful demonstration of an acquired skill, at the designated level of proficiency specified in the evaluation criteria defined for that skill, in the student's IEP.
- d. Regression - the loss, as a result of a scheduled break in instruction, of one or more mastered skills included in the short-term objectives of the student's IEP.
- e. Recoupment - following a scheduled break in instruction, the process of regaining a previously mastered skill through review and reteaching.
- f. Recoupment Time - the length of time required to regain previously mastered skills.

- g. Regression-Recoupment Syndrome - the name applied to the belief that, following a scheduled break in instruction, a student will have lost one or more mastered skills and that it will take varying lengths of time to relearn those skills.
- h. No Educational Benefit - regression because of summer vacation to such an extent that: (a) following review and reteaching, recoupment of one or more mastered skills does not occur during the first ten (10) weeks of instructions in the next school year or (b) the loss of one or more acquired critical skills addressed in the current IEP would be unusually substantial and severe.

NOTE: For a child who is not in regular attendance, during the first ten (10) weeks of instruction, sufficient time may be added to the recoupment period to make sure that the child has received ten (10) weeks of instruction.

### 3. POLICY

A review of the literature, as well as practical experience, indicates that both students with disabilities and students without disabilities regress during breaks in instruction. The amount of regression and the length of time required to recoup previously mastered skills varies widely among all students.

It is the policy of the State Department of Education that when necessary to insure a free appropriate public education (FAPE), each local school district shall offer an extended school year to those students with disabilities who's Regression-Recoupment Syndrome is so severe that it can be predicted that they will have gained no educational benefit from their previous year's educational program (as defined in the IEP) without an extended school year. The purpose of the extended program is to maintain each student's mastered skills so that the summer vacation periods will not render the previous year's educational program of no educational benefit.

### 4. PROCEDURE FOR SELECTION

#### a. General

The need for an extended school year must be considered on at least an annual basis at an IEP meeting. The IEP Committee must review available data relative to the student's mastered skills and educational history. Based on this review, the IEP Committee must predict whether the regression that will occur because of the lengthy break in instruction (summer vacation) will be to such a marked degree that recoupment of a previously mastered skill(s) will not occur during the first ten (10) weeks of instruction in the following school year or the loss of one or more acquired critical skills addressed in the current IEP would be unusually substantial and severe. It is possible that the extended school year may only include the maintenance of skills previously mastered as a result of a related service if loss of that skill will result in no educational benefit. Generally speaking, students with disabilities who require an extended school year will have severe problems in one or more of the following areas: (1) physical, emotional, communication, and self-help and (2) will need intensive instruction, including related services, across several of these areas. Conversely, when one considers how more mildly students with disabilities

function and what expectations are for them, it is likely that very few of them will require an extended program to derive educational benefit during the regular school year.

b. Suggested Data to be Reviewed at the IEP Meeting

The following list contains some of the information which may be helpful when preparing to make the decision about an extended school year:

- i. current and previous IEP,
- ii. checklists/curricula or other records showing when skills were mastered,
- iii. attendance information,
- iv. recommendations from professionals,
- v. behavioral logs,
- vi. video/audio tape information,
- vii. other assessment data.

c. Using the Data for Decision Making

After gathering available data, consider the following while making the decision as to whether an extended school year is to be provided for the child:

- i. Compare the mastery of IEP objectives prior to previous summer breaks with performance after summer breaks. If little or no regression was measured, then there is no indication of the need for extended programming.
- ii. If regression was noted and instruction was provided to reteach skills which were lost, note the time required for recoupment. If IEP objectives mastered the previous year were not recouped during the first time (10) weeks of instruction in the next school year or it is projected that the loss of one or more acquired critical skills addressed in the IEP would be unusually substantial and severe, the child is eligible to receive an extended school year.
- iii. Make sure that significant regression-recoupment in the past occurred because of extended breaks in instruction. Make sure that the regression was not caused by a lengthy absence or failure to review and reteach previously mastered skills. Significant regression-recoupment problems based on this information would not necessarily indicate the need for an extended school year.
- iv. Some skills which were mastered in the previous year's program may be of minimal importance to higher levels of functioning and may no longer be in need of emphasis. Predicted loss and lengthy recoupment of these skills would probably not indicate the need for an extended school year.
- v. When determining the content of the extended school program, only mastered skills will be considered for inclusion in the extended year program.

- vi. If a prediction of significant regression-recoupment problems cannot be made because the previous year's data is unavailable, an extended school year may be recommended if other data indicate the probability of significant regression-recoupment problems. In such cases, there should be recognized research which supports the decision. You may also consider what regression occurred during scheduled holidays and other times when the student was out of school for a week or more. This option should only be used for students who exhibit severe problems.
- vii. Determine whether performance within specific developmental areas, as identified on the IEP, is in an accelerated critical phase of acquisition so that the summer interruption in educational programming would cause significant problems in the mastery of that skill and subsequent skills.
- viii. If the IEP Committee determines that there is documentation that there is one or more critical skills addressed in the current IEP objectives and that loss of these acquired critical skills would be unusually severe or substantial, then ESY may be justified without consideration of the time period for recoupment of such skills.
- ix. A skill is critical when the loss of that skill is projected to result in any of the following unplanned occurrences during the first ten (10) weeks of the next regular school year:
  - a) Placement in a more restrictive instructional environment,
  - b) Significant loss of self-sufficiency in self-help areas as evidenced by an increase in the number of staff required to provide special education or related services, and/or
  - c) Loss of access to on-the-job training or productive employment.
- x. **DOCUMENTING THE DECISION**  
 On at least an annual basis at an IEP meeting, the decision regarding ESY services must be documented and maintained in the student's file. This decision is not irreversible. At any time that data maintained on the student indicates that the ESY decision was incorrect, IEP revision procedures must be followed to change the decision.

When it is determined that a student meets the criteria for an extended school year, the specific skill(s) to be maintained must be identified on the IEP. The IEP Committee must also address the amount of time per day, the number of days per week and the number of weeks that the instruction will be provided to maintain the skills. While students who require an extended school year generally need intensive instruction during the regular school year to show progress it is probable that mastered skills can be maintained across the summer with less instruction.

If a related service is required for educational benefit during the Extended School Year, skills to be maintained must be those listed within the IEP.



xi. POSSIBLE DELIVERY SYSTEMS

The IEP Committee must consider the unique needs of each student when deciding the type of educational programs required to maintain mastered skills. Some alternatives the district might consider are:

- a) the traditional classroom,
- b) an abbreviated school day or week,
- c) individual therapy (physical, occupational, counseling...),
- d) tutorial services,
- e) in-home training,
- f) continuation of private placement, or
- g) contractual agreements with other agencies. Educational programs must be provided by appropriately certified/licensed personnel.

xii. ESY HANDBOOK

The ESY handbook can be found at the following Website: MS Secretary of State Office, Regulations and Enforcement, Administrative Code, Title 7 Education.

Source: *Miss. Code Ann. § 37-1-3 (Revised 8/2011)*

*Rule 74.13 Medicaid Placements (Repealed 03-24-2014)*

*Rule 74.14 Pooling State Funds.* Designated state Educable Child Program funds from the Mississippi Department of Education (MDE) may be utilized to assist in providing a local or regional system of care in order to return a child with a serious emotionally disturbed disability to a community setting. Designated funds are the state moneys available to pay for the placement of a child who 1) has a disability and is diagnosed as seriously emotionally disturbed in accordance with regulations, and 2) has been placed in a private facility by a school district or the Department of Human Services (DHS), in accordance with regulations.

The designated state funds which would be used for a child's placement in a facility by a school district or DHS may be paid into a pool of funds from other state agencies. Such funds must be used for the implementation of a child's individualized plan of care. The individualized plan of care provided must be designed and provided in a manner which enables the child to successfully return to a community with the appropriate support for the child and family. The child's individualized plan of care must include the provision of a free appropriate public education in accordance with regulations. If there are sufficient funds to serve other children, due to cost savings as a result of serving more than one child at home and/or matching the pooled funds with federal dollars, the funds may be used to implement individualized plans of care for other children.

To ensure state funds from MDE are expended in a manner which will provide appropriate educational services, the information listed below must be submitted by the lead agency responsible for coordinating the system of care. The following information must be submitted to the Office of Special Education for approval prior to funds being paid:

1. A description of the local or regional system of care to be implemented including the responsibilities of each state agency and the school district(s) involved in the system,
2. The amount of funding to be provided by each state agency for the system of care and an assurance that the funds necessary to implement the system will be available,
3. The timeline for implementing the system of care,
4. The individualized plan of care for the child including the specific plan for support to ensure a free appropriate public education is provided, and
5. An assurance from the school district involved in the provision of the educational program for the child that an Individualized Education Program has been developed and services can and will be implemented in accordance with regulations.

If the school district responsible for providing a free appropriate education does not agree that an educational program can be provided for the child through a system of care, funds from the MDE for that particular child will not be utilized to support the system.

If, for any reason, during the implementation of the individualized plan of care, the district cannot meet the child's educational needs, the MDE, Office of Special Education must be notified by the district prior to an alternate out-of-district placement being made.

The Office of Special Education will then determine the reason(s) for the child's plan not being effective and notify the lead agency responsible for coordinating the system of care that the educational needs of the child can no longer be met by the district. If the district originally placed the child in a facility outside of the district, it will be responsible for determining the appropriate placement for the child. Such placements must be made in accordance with regulations. The district will be responsible for paying \$6,000 or 10%, whichever is greater, of the total cost of such a placement as required by regulations. Federal funds will be utilized to pay the remaining cost of such a placement in accordance with regulations.

If DHS originally placed the child in a facility, it will be responsible for the placement of the child in an alternate setting based on the recommendation of the child's IEP committee. The MDE, Office of Special Education will coordinate such a necessary placement with DHS. The MDE will be responsible for the educational costs and DHS will be responsible for the room and board cost as specified in state law and regulations.

Source: *Miss. Code Ann. § 37-1-3 (Adopted 9/1994)*

*Rule 74.15 Preschool (Repealed 9/2011)*

*Rule 74.16 Referral to Placement Process (Repealed 9/2011)*

*Rule 74.17 Resource Program Numbers (Repealed 9/2011)*

*Rule 74.18 State Plan (Repealed 9/2011)*

*Rule 74.19 Individuals with Disabilities Education Improvement Act.* School districts are required to follow the State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004).

For a copy, please visit the Mississippi Secretary of State's website at Regulations and Enforcement, Administrative Code, Title 7: Education K-12; Part # 34.

For a copy of the Mississippi Testing Accommodations Manual, please visit the Mississippi Secretary of State's website at Regulations and Enforcement, Administrative Code, Title 7: Education K-12; Part # 12.

Source: *Miss. Code Ann. § 37-1-3 (Revised 7/2009)*

*Rule 74.20 Testing Students with Disabilities Regulations (Repealed 9/2011)*