

## **PDE Issues -- New ESY Guidance**

On April 1, the Pennsylvania Department of Education issued a new Basic Education Circular (BEC) providing guidance regarding timelines and other issues related to Extended School Year (ESY) services.

Under the federal IDEA regulations, ESY services must be provided to a student with a disability if the child's IEP team determines, on an individual basis, that ESY services are necessary for the provision of a free appropriate education to the child. In addition, for all students with disabilities, ESY eligibility must be considered at each IEP meeting that is held, even if the child's parents have not specifically requested ESY programming. Federal and state regulations, however, are silent as to when a final decision regarding a student's eligibility for ESY services must be made.

The new BEC addresses the timing issue by breaking students into two groups: "target group" students and "non-target group" students. Target group students are students with a severe disability, such as autism, serious emotional disturbance, or severe mental retardation. For target group students, the IEP meeting at which ESY eligibility is determined must occur no later than February 28 of each school year. If the student is found eligible for ESY services, an IEP with program specifics must be issued to the parents. A NOREP also must be issued to the parents no later than March 31 of the school year, indicating ESY eligibility or noneligibility.

For non-target group children, i.e., all special education students who do not fall into the target group category, no timelines for reaching ESY eligibility decisions are specified. Rather, the BEC advises that ESY determinations regarding non-target group children should be made in a timely manner. Parents of non-target group children who disagree with the school district's recommendation regarding ESY services will be afforded an expedited due process hearing, even though neither state nor federal law provides for expedited hearings for ESY disputes.

While the timelines set forth in the BEC constitute the Department's policy, and not law, they are best practice. Making ESY determinations and providing program specifics in a timely manner ensure that in the event of disagreement between the parents and the district, the dispute can be resolved prior to the start of the summer when the student's ESY program would take place. A copy of the BEC regarding extended school year eligibility is available on PDE's website at [www.pde.state.pa.us/k12](http://www.pde.state.pa.us/k12).

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.