



Learning Loss

Special Education FAQs

for Districts and Schools

1. NEW! Can students who misbehave be removed from summer learning opportunities? Is a manifestation determination review (MDR) required to do so?

LEAs may require students to adhere to a code of conduct during the summer, just as they would be required to do during the school year. Likewise, LEAs may issue discipline in accordance with their discipline policies to students who violate the code of conduct. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act prohibit LEAs from discriminating against students with disabilities in all school-sponsored activities, including summer learning camps. Therefore, LEAs should take caution against removing a student with a disability from the summer learning camps due to a behavioral incident related to their disability. While a formal MDR is not required, it is recommended that LEAs still consider the following questions before removing a student with a disability from the summer learning camp due to a behavioral incident:

- Was the behavior a manifestation of the child's disability?
- Was the behavior a result of the school's failure to implement behavioral supports?

If the answer to either of these questions is yes, LEAs are encouraged to consult their board attorneys prior to removing the child from camp to ensure compliance with applicable civil rights law. LEAs should also consider what additional services or supports could be provided to the student to address any behavioral challenges going forward, while keeping safety for all a top priority. As a reminder, IDEA procedural safeguards, including the right to an MDR, still apply during the provision of any [extended school year or compensatory education](#) programming.

2. NEW! Are students who participate in the alternate assessment considered priority students for the summer learning programs?

Yes, students who participate in the alternate assessments are considered priority students for the purposes of offering seats in summer learning programs. According to the [Tennessee Learning Loss Remediation and Student Acceleration Act](#), "priority students" include students who score below proficient in math or English language arts on the student's most recent Tennessee comprehensive assessment program (TCAP) test. Students on the alternate assessment have "a significant cognitive disability which results in performance that is substantially below grade-level achievement expectations even with the use



of accommodations and modifications.”^[1] Therefore, a student who participated in the alternate assessment is considered to have scored below proficient on their most recent TCAP and is a priority student for summer learning programs.

If the student is also eligible for extended school year (ESY) and/or compensatory services, the school should consider convening the IEP team to determine a plan to ensure ESY and/or compensatory services are not replaced by the learning loss camp and that the student is not overburdened with excessive demands.

Furthermore, LEAs may not exclude a priority student from participating due to the priority student’s disability or the costs of staffing needs associated with the priority student’s disability. Students who participate in the alternate assessment may require additional supports or services to access these programs. LEAs are encouraged to leverage funds provided for summer camps and/or ESSER funds as needed to ensure each student whose parent(s)/guardian(s) choose to participate are afforded equitable access.

3. How should districts determine what services a student needs in a summer learning program, and how should those decisions be documented?

IEP teams should be consulted to determine what additional supports a student with a disability needs in order to access summer learning programs. Sample templates to document these supports can be found in the special populations school closure toolkit [here](#).

4. Will there be additional funds available to provide the necessary resources required to support our students with disabilities that would like to participate in the summer learning programs?

Districts should leverage their additional ESSER, ESSER 2.0, and ESSER 3.0 funds to ensure that all students, including students with disabilities and English learners, are able to access the summer learning opportunities. ESSER funds can be used for any purposes allowable under the IDEA to help recoup, support, or accelerate learning for students with disabilities, including compensatory services, extended school year services, and access to summer learning programs.

5. Are LEAs required to implement IEPs for students in the summer learning programs?

No, IEPs are only required to be implemented during the school year. However, any opportunities provided outside of the school year must be accessible to all students, including those with disabilities. The IEP team should review the student’s needs to determine any accommodations, modifications, and/or related services needed to ensure access to the instructional activities. This may include related services that a student normally receives through their IEP during the school year.

^[1] Alternate Assessment Participation Guidelines:

https://www.tn.gov/content/dam/tn/education/testing/alt/alt_guide_decision_making_tools_for_iep_teams.pdf



6. How will extended school year and compensatory services be impacted by summer learning programs?

Summer learning programs provide acceleration supports for Tier I/core instruction and should be made available to all priority students, including students with disabilities. Extended school year (ESY) is a service provided to students, at no cost to the parent(s)/legal guardian(s), for whom extended school breaks are determined to be detrimental to a student's progress. It is intended to maintain skills and/or behaviors so the student will not be spending additional weeks during the school year to return to the former level. The purpose of ESY is to help students maintain skills for the provision of FAPE. Compensatory services enable students to make progress and are a way to address the denial of FAPE as outlined in a student's IEP. Both are determinations made on an individual, case-by-case basis by the IEP team.

Summer learning opportunities do not replace ESY services and/or compensatory services; however, these services can be scheduled during summer learning programs. For example, compensatory education services can be provided during the intervention block to students for whom the IEP team determined there was a need while general education students receive tiered interventions. These decisions should be made in consultation with the IEP team based on the individual needs of the student to create a comprehensive yet reasonable plan to provide the needed services.

7. We want to provide the same summer learning opportunity for our Self-Contained students. If they choose to attend, would this need to be placed on the IEP as ESY? Would we have to uphold the entire IEP or just what we feel would be addressed for ESY such as the reading, math, physical activity, etc.?

Summer learning programs should be made available to all priority students, including students who traditionally receive modified instruction in a self-contained placement. The summer learning opportunities do not serve the same function as ESY services, nor should they replace them. If an IEP team determined that ESY services are needed to maintain skills for the provision of FAPE, those services should be provided as outlined in the IEP. Likewise, if a parent chooses to enroll their child in a summer learning program, the LEA must ensure the student is able to access that program. The IEP need not be updated to reflect the summer learning opportunities.

Care should be given to also balance the expectations for a student. If the IEP team determined that ESY services are needed and the parents choose to enroll in the summer learning program, the IEP team may want to consider:

- Scheduling ESY on the weeks prior or following the summer learning program
- Abbreviated day for the summer learning program (I.e. half day participation in summer learning program and half day receiving ESY services in accordance with their IEP)
- Abbreviated week or alternating days for the summer learning program to account for the ESY services
- Utilize the intervention block of the summer learning program to provide ESY services

8. Are LEAs required to implement Individualized Learning Plans for English Learners over the summer?

3



No, Individualized Learning Plans (ILPs) are only required to be implemented during the school year. However, any opportunities provided outside of the school year must be accessible to all students, including English Learners (ELs). The LEA must provide any accommodations, modifications, and/or related services needed to ensure that ELs have equal access to the instructional activities as their English proficient peers. This may include translation or interpretation services or ESL instruction/supports.

9. Must LEAs provide special transportation to and from summer learning programs for students with disabilities?

LEAs are required to take the steps necessary to afford student with disabilities an equal opportunity for participation in summer learning programs. Therefore, if a student requires special transportation in order to access the program, the LEA must provide it.

10. Must LEAs ensure continuity in the provision of RTI² during summer programs?

Interventions provided during the summer could be remediation-based or intervention-based and should be determined on a student-by-student basis and according to student data.

11. Will students with disabilities or those with suspected disabilities be retained if they score “approaching” or “below” on the ELA portion of the student’s most recent TCAP when the retention aspect of this bill goes into effect?

Beginning with the 2022-23 school year, a student in the third grade receiving a score of “approaching” or “below” on the ELA portion of the student’s most recent TCAP test may be promoted if they meet certain requirements set out in the law. This applies to students with and without disabilities. However, a student may not be retained based on their disability or suspected disability. Retention and promotion decisions must be made on a case-by-case basis and should be made in consultation with the IEP and/or 504 team to determine whether the student’s performance on the ELA TCAP was due to his/her disability. Such consultation should include but is not limited to a review of evaluation and eligibility data, input from the student’s teachers and parents, benchmark assessments, and classroom performance.

Likewise, a student may not be retained solely due to a suspected disability. If the LEA has reason to suspect a disability (e.g. the student is not making progress when provided research-based intervention, the student has been referred but not yet evaluated for special education, or parents have provided documentation of a disability), the student may not be retained if the reason for their TCAP performance may be due to the suspected disability.