A LEGAL ANALYSIS OF EXTENDED SCHOOL YEAR:
FIELD SURVEY AND IDENTIFICATION OF
POTENTIAL GAPS AND INADEQUACIES

by

Sharon R. Booth

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APPROVED:

Philip R. Jones, Chairman

M. David Alexander

Bonnie S. Billingsley

Jean B. Arnold

Jimmie C. Fortune

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(ABSTRACT)

The courts have determined that for some handicapped children to derive
"educational benefit" from their schooling an extension of the school year, beyond
the traditional 180 day school year, may be required. The current study describes
Extended School Year (ESY) program implementation in the field, in the
Commonwealth of Virginia, and identifies potential gaps and inadequacies that
exist between implementation and case law.

A survey instrument was mailed to a purposive stratified random sample of
the directors of special education across large and small school districts (with a
student population) in the Commonwealth of Virginia. All forty-two of the school
divisions surveyed responded to the questionnaire. Data from the survey included
descriptive information regarding: the education and training of respondents;
services offered to handicapped students beyond 180 days; and criteria for making
an ESY determination. A two-year follow-up survey of the same school divisions
examined changes in the implementation of ESY services. Survey data were
analyzed to reveal points in case law that current practice does not address and
practice that is congruent with case law.
Significant findings from the survey included the practice by districts of limiting services offered to handicapped students to the traditional 180 day school year (1988 N=12, 28.6%; 1990 N=8, 19.5%) and conversely, the implementation of ESY services offered beyond the 180 day school year (1988 N=13, 31%; 1990 N=27, 64%). Virginia does not have a clearly defined precedent to follow in the 4th circuit; however, numerous circuit courts across the country have clearly indicated that a policy of limiting a child's education without respect to individual need, is a violation of the statutes governing services for handicapped students.

In May 1991, an executive summary of the findings was mailed to each director of special education for all school divisions in the Commonwealth of Virginia. The findings were described in reference to existing ESY case law nationwide. Finally, implications for LEAs in Virginia, limitations of the investigation, and directions for future research are discussed.
Dedication

To Kelly Pogue
Acknowledgements

Thanks and appreciation are extended to my committee, family, friends and colleagues for their support in this endeavor.
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Chapter I

Introduction

Severely handicapped children were often denied services in the public schools prior to 1975 when the Education for All Handicapped Children Act (EHA) was passed (Congressional Record, 1975). The passage of the EHA (now known as the Individuals with Disabilities Education Act [IDEA] P.L. 101-476, 1990) guaranteed handicapped children in the United States the right to a free appropriate public education (FAPE) by providing both funds and obligations for provision of a FAPE. The Act has defined a free appropriate education as "special education and related services that: 1.) have been provided at public expense, under public supervision and direction without charge; 2.) meet the standards of the state educational agency; 3.) include an appropriate preschool, elementary, or secondary school education; and 4.) are provided in conformity with the individualized education program". Essentially, the individualized education program (IEP) is the basis for provision of the FAPE. Although the Act offered guidelines for the development of the child's educational program through the development of the IEP, procedures for handling many of the specific substantive questions regarding service provision are not delineated. That is, "the point left unclear is just what needs of the the child are to be met -- and to what degree" (Mesibov, 1984).

Associated case law has sought to clarify the requirement of a free appropriate public education by establishing a standard ensuring that a handicapped child derive some "benefit" from that education (Board of Education
v. Rowley). Relying on the Congressional intent of the Act, the Supreme Court emphasized the importance of providing a "floor of opportunity" (i.e., access to an education) to handicapped children; and a "reasonably calculated individualized education program" to allow the child to "derive benefit" from the educational program. The courts have further specified that the education be "suited" to the child's needs and "appropriate to the learning capacities" of the child (P.A.R.C. v. Commonwealth of Pennsylvania).

In the wake of case law which has attempted to better define the parameters of the FAPE, questions arose regarding the assessment of need, appropriateness and suitability of the 180 day school year for some handicapped children. Furthermore, compulsory education policies have historically supported that school attendance is required in order to educate citizens to their maximum potential. It has been suggested by one author that limiting the education of certain handicapped children to 180 days may violate the intent of compulsory education laws in that these children may not be able to "accomplish stated objectives" from their education under those circumstances (Leonard, 1981). Consequently, parents and certain educators challenged the 180 day limit, advocating that the school year be extended for some handicapped children. Extended School Year (ESY) has been defined in the literature as "a 2 to 3 month summer education program conducted in addition to the traditional 9 month school program" (Stainback, Stainback & Hatcher, 1983) and in the courts as "an organized program beyond the regular 180 day school year" (Cordrey v. Eukert).
Support for ESY

ESY has been advocated for handicapped children for a number of reasons including: 1.) to promote skill maintenance and prevent skill loss; 2.) to accelerate the acquisition of new skills; 3.) to assist with generalization of learning; 4.) to provide the most effective and efficacious education system; and 5.) to provide handicapped children with recreational opportunities (Edgar, Spence & Kenowitz, 1977; Larsen, Goodman & Glean, 1981; Leonard, 1981).

Skill Maintenance. Skill maintenance or the prevention of loss of skills is often cited as the most important reason for offering ESY to handicapped students (Larsen et al., 1981). It is argued that summer programs must at the very least maintain skills in critical areas. Additionally, it is proposed that breaks in educational programming result in loss of skill or regression. Many special education teachers complained that students lost skills which they were performing well at the end of the school year by the beginning of the subsequent school year following the summer break. Furthermore, it has been proposed that handicapped students require an inordinate amount of time to recoup lost skills as compared to their non-handicapped peers with the inference being that loss of skills is more devastating for handicapped than non-handicapped students. In addition, it is generally suggested that the more severe the handicapping condition, the more likely that regression or loss of skills will occur. These factors prompted the recommendation that ESY be implemented for severely handicapped students based on evaluation of regression and recoupment of critical skills (Edgar et al., 1977; Larsen et al, 1981; Leonard, 1981). Goals for many
potential ESY candidates are often "self-sufficiency and independence from caretakers, it is unlikely that any real progress toward these goals can be achieved unless the regression/recoupment syndrome caused by the 180 day limitation can be prevented" (Stotland and Mancuso, 1981).

**Acquisition of New Skills.** Proponents of ESY also argued that extended school year programs can and should offer the opportunity for handicapped students to acquire new skills. This argument is founded on the premise that severely handicapped children learn new skills at a slower rate than non-handicapped children. Therefore, extended school year services would maximize the potential for acquisition of new skills through the provision of additional training opportunities for handicapped students. One viewpoint on the provision of ESY services is that summer programs be an extension of the regular school year in terms of the kind of programming, but that emphasis may vary in that acquisition of certain selected and critical skills may receive more emphasis during the extended school year (Edgar et al., 1977; Larsen et al., 1981).

**Generalization.** Generalization is defined as "the transfer of a response to situations other than those in which training takes place" (Kazdin, 1980). A somewhat different view or application of ESY involves using the extended school year to assist students in generalizing skills learned in one situation to other relevant situations. Generalization of skills is difficult to accomplish in non-handicapped populations and particularly difficult to achieve with handicapped populations (Stokes & Baer, 1977). These authors further contend that generalization should not be assumed to occur without systematic programming
to assure practice of skills in situations different from those in which the skill was acquired. Proponents of ESY argue that summer placements can and should be used to provide practice of learned skills in different environments than those in which original training and learning occurred. Indeed, summer programs are quite often conducted in a wider variety of settings and in more naturalistic settings than regular year placements (e.g., recreational facilities, camps, residential settings) (Larsen et al., 1981). Finally, developments in curricula for the severely handicapped incorporate procedures designed to facilitate the generalization process (Leonard, 1981).

**Efficacious Educational System.** Advocates for ESY have argued that restricting the school year of handicapped children to the traditional 180 days reduces the efficacy of the education system. Specifically, it is proposed that when ESY programs do not exist: students must relearn material following summer breaks which repeatedly drains precious resources in the school system; students may eventually have to be placed in residential settings at greater cost to the system; students may not reach their full potential without summer placements and consequently place a greater burden on families, communities and the social services system when they reach their majority and are unable to function self-sufficiently (Leonard, 1981). The year-round school movement supports similar contentions for all students, emphasizing that short breaks in programming (i.e., rather than the long summer break) reduces teacher and student burnout, reduces discipline problems, and reduces the amount of regression over the break (Gitlin, 1988). Also, considerable data from the effective schools movement
confirm that increased instructional time produces positive educational outcomes (Reith, Polsgrove and Semmel, 1979). These data may someday translate into expanded programs for all students, as recommended by the National Commission on Excellence in Education (1983).

**Recreational Opportunities.** Because the severely handicapped often have very limited access to recreational activities, summer programs are sometimes developed specifically to offer special education students recreational opportunities. These environments are often ideal for programming to promote generalization of skills acquired in other environments. Indeed, summer recreational programs provide more naturalistic settings than traditional classroom settings which could be quite useful in preparing the handicapped student to function self-sufficiently, in the real world. If schools are given flexibility to take advantage of the weather, siblings out of school, camping trips and other summer time benefits, they can enhance opportunities to practice skills in the naturalistic environment (Stainback, Stainback and Hatcher, 1983). Although it is certainly a worthy goal to provide severely handicapped students with expanded recreational services, some question the appropriateness of funding such services given limited special education budgets when monies might be spent on preventing loss of critical skills or acquisition of critical skills (Edgar et al., 1977). This concern however, can be alleviated through educational planning and programming within the recreational environment since some students do indeed need summer programming.
Opposition to ESY

While the current litigation primarily supports ESY services, some feel the courts have gone well beyond the expressed requirements of the EHA to require services (Healey and Reichman, 1988). Opponents of ESY have countered ESY advocates on the grounds that: 1.) regression or lack of progress is not caused by interruption in school services; 2.) vacations from educational services may provide beneficial effects; 3.) the cost of providing ESY services will cause undue burden on the educational system; 4.) services needed by severely handicapped children in ESY programs often do not clearly fall under the purview of the educational system; 5.) public education does not guarantee that a child will reach full potential (Makuch, 1981; Mesibov, 1984; Georgia Association for Retarded Citizens (GARC) v. McDaniels).

Breaks in Programming. The defendants in the landmark ESY case of Battle v. Commonwealth of Pennsylvania argued that although the plaintiffs did experience a regression in skills which coincided with breaks in school programming, this regression was not a direct result of the break in services. They proposed rather that the regression in skills was due to a combination of other factors including lack of education during the regular school year targeting functional skills, incompetence of teachers, or failure of children's parents to maintain the programming. Although the courts did not agree with the defendants' position, in this case, some educational experts concur that certain aspects of this argument still warrant consideration (Leonard, 1981).
Vacations Beneficial. While it is true that the origin of the summer break relates to our societal needs when we were primarily an agrarian society, the paucity of year-round schools is a testament to the overwhelming support to continue the present system. Teachers often do not choose to work during the summer so that they can use the time to develop professionally and attend to their families and personal lives (Gitlin, 1988). The GARC v. McDaniels case was replete with arguments in support of children taking a break from the school environment during the summer months. One theory put forth in that case was that teachers and students need to "recharge their batteries". A break from the monotony of the classroom routine re-energizes school personnel and students. A second theory from that case, propagated by opponents and proponents of ESY, is the occasion of the break presenting opportunities to practice learned skills in different settings. Opponents of ESY stress the value of skills that have transferred to the natural setting from the confines of the school setting. The third theory raised in the case was the benefit of less formal education that can only be obtained outside of school but is significant to the overall development of the child (Mesibov, 1984).

Cost. In the early 1980's, the National School Board Association (NSBA) filed an amicus curiae brief during the litigation of Crawford v. Pittman to demonstrate their opposition to ESY. They raised an objection to the financial burden that would be levied if programs were offered to some handicapped students. They suggested that "a balance be struck" in weighing the costly services for a few handicapped students against the educational needs of other
handicapped and non-handicapped students. Other courts have articulated that cost does play a role in the provision of FAPE (Mesibov, 1984). \textit{Bales v. Clark} emphasized that state and federal law do not prohibit cost from being subject to legitimate concerns. In a footnote, the \textit{Crawford} court clarified that certain funding issues would not be decided by that court including questions concerning "legitimate funding limitations". The \textit{Battle} court, quoting \textit{Mills v. Board of Education}, supported the contention that limited resources could be considered as long as the "the brunt of it cannot be permitted to fall more heavily on the handicapped". This reasoning could certainly be viewed as a caveat that costly services will be scrutinized and and may be limited by the courts in this time of scant resources for human services. One author suggested a "cost/benefit tradeoff" in support of ESY if children learn at an optimal rate comparable to the regular school year (Bartou and Johnson, 1986).

\textbf{Services Not Educational.} Since considerable ESY case law involves the severely handicapped, the type of services they need in an ESY are often related to goals of self sufficiency and may include services that are essentially non-educational; and rather medical and custodial in nature (i.e., toileting, dressing, feeding, physical therapy and residential care). A state director contends that the education community has been wrongfully saddled with all of these responsibilities through the EHA when in fact other human service fields should share in the responsibility "to ensure continuity of services and a guarantee of availability beyond school age" (Makuch, 1981).
**Full Potential.** While early ESY case law (i.e., *Armstrong v. Kline*) supported the notion that schools were to design programs to maximize potential in specific areas related to achieving independence from caretakers, later courts limited the scope somewhat. As a point of law, the question of guaranteeing a particular level of education has been addressed with the words of the Supreme Court in *Rowley*: the IEP should be "reasonably calculated to enable the child to receive educational benefits," however application of the standards from that case do not sufficiently address the severely handicapped (Lehr and Haubrich, 1986). In strong opposition to the contention that summer services may be necessary for a child to fulfill his potential, the NSBA protested on the grounds that funding ESY could drastically effect resource allocations intended for all students, not just handicapped students qualifying for services.

While the arguments over whether to provide ESY programs tend to range from the practical to the emotional, research does exist that examines the benefit of ESY. The conflicting testimony presented to courts hearing ESY cases lies testament to the difficulty of measuring many of the skills related to goals of self-sufficiency that have been the subject of regression and recoupment. The research does suggest that ESY does exist in many states. The research findings do not clearly support ESY programs (Kabler, Stephens and Rinaldi, 1983) but do offer insight into the complexity of identification, measurement and accountability related to this issue.
Existence of ESY

A recent study reviewed three surveys conducted between 1981 and 1988 to assess, in part, the existence of ESY programs nationwide. The 1981 survey sampled districts in Pennsylvania (NASDE, 1983); while the others surveyed two distinct groups nationwide: members of the National Society for Children and Adults with Autism (NSAC) (Wilds and Liacopoulos, 1988) and State Directors of Special Education (Alper and Noie, 1987). The review of the surveys suggested that SEA’s are increasingly (i.e., 90% in 1988) providing an education beyond the traditional 180 day school year based on the needs of the child. The authors noted that considerable variations exist with regard to eligibility for and length of ESY services. Finally, the authors made a comparison between the perceptions of Directors and consumers and found that state agencies believe ESY decisions are based on the needs of the individual child while the consumers view the decision to be based upon standards established for groups of children (Wilds and Liacopoulos, 1988).

Outcome Data

Prior to the courts defining and sometimes mandating ESY, an article was published that reviewed studies of summer programs for handicapped populations. A five-week program for educably and trainably mentally handicapped students in New York documented through teacher observation academic improvements in 56% of the students (Joiner, Lodato and Stillman, 1972); a summer program for emotionally disturbed and learning disabled students reported academic and behavioral gains (Spivack and Kosky, 1972); and
a six-week program for children with speech problems evaluated with pre and post programming tape recordings, documented a fifty percent improvement rate. The authors of the review conducted their own study of ESY programs with analog data from school districts in Washington. While the existing data did not lend itself to a controlled research design, the authors did express general conclusions:

1. the data supported that regression of skills does occur for this population; and
2. teachers noted that those who participated in summer programs were "more ready" at the start of the new school year (Edgar et al., 1977).

A 1983 review article criticized the findings of previous studies for making inferences regarding ESY because data from the end of the previous school year were not reported, limiting conclusions about regression and maintenance of skills (Kabler, et al., 1983). The authors further contend that non-handicapped students also regress and variation in loss of skills exists between students and may also be specific to the subject matter taught.

A controlled study with three autistic children utilized techniques for programming for generalization and rehearsal as a memory enhancement technique to investigate the effect of a break in programming for a particular set of materials. The more seriously handicapped youngster showed the greatest decrement in learning whereas the highest functioning student was quicker to regain mastery. Albeit a small number of students, the results do support the need for some autistic children to receive a periodic review to maintain previously learned material (Handleman and Harris, 1986).
In one investigation, the case law clearly influenced the research design and variables for study. McMahon (1983) conducted a preliminary study to identify characteristics of eligible students and benefit of summer programming to those students. The criteria for participation matched the court requirements of Armstrong v. Kiine. Evaluations were conducted at the beginning and end of ESY, two weeks after the cessation of the program and eight weeks into the school year. The author found that regression of skills coincides with a break in programming and an improvement occurs with the commencement of programming. He stated that this phenomenon appears to be "regression/recoupment disability syndrome described for this unique population."

While recognizing a need to further improve design to measure recoupment, the author contends that this study does support the effectiveness of ESY programs. A summer study conducted in Canada, without constraint from ESY case law and the Act, found that children who did not participate in summer programming were unable to perform as many new skills by November of the following school year as their peers who participated in summer programs (Barton and Johnson, 1986).

Numerous authors recognize the need for well controlled empirical studies to evaluate the effectiveness of ESY. Single subject design is probably best suited for the assessment of progress for individual children in ESY programs (Browder and Lentz, 1985; Handleman and Harris, 1984).
Implementation

Now that a mandate to provide ESY services exists in many circuits, the time has come to examine how this translates into policy and services. Authors conducting research on the effectiveness of ESY have recognized methodological flaws in existing studies and the need for identifying and examining variables of interest in the successful implementation of ESY programs (Browder and Lentz, 1985). However, the criteria for qualification, population served, and services offered are currently evolving and often are not adequately described or not described at all in the research. In addition, the skills targeted for ESY vary from student to student (e.g., toileting, mathematics), limiting research in design and generalizability. While effectiveness of programs may be of great import to future funding, more immediate issues for school personnel include: ESY policy and programming issues (i.e., responsibilities of the IEP committee, standards for eligibility, selection of skills to be targeted, time necessary to review and retrain skills, criteria for review of data, an understanding of ESY case law, ESY as it relates to FAPE, availability of related services, cost, focus and duration of services, type of delivery model) (Healey and Reichman, 1987; Browder and Lentz, 1985; Turner, 1989; Handleman and Harris, 1984).

Turner (1989) clearly articulates the need for districts to have explicit policies in place for ESY. He states that school personnel are "often compromised professionally" if guidelines are not established. He recommends inclusion of a definition of ESY, distinct from summer school; a stated purpose of ESY focusing on the aspect of skill maintenance and the detrimental effect of the break; the
identification of "critical skills" and evidence of "skill loss"; a clause that allows flexibility in making the ESY determination when unusual circumstances prevail; and the need to review empirical data.

Other authors also emphasize the importance of clearly defined eligibility criteria that guide practice. The decision of who qualifies should be data driven, based on accurate student data. (Larsen et al., 1981; Stainback et al., 1983; Browder et al., 1988). One study, examining the differences in severely or profoundly mentally handicapped students who qualified for ESY as compared to those who did not found the differences between the groups included: ESY students had more ambiguous goals, more severe physical impairments, and were younger than their non-ESY counterparts (Browder et al., 1988). Also, data can and should be analyzed to identify "patterns of regression" in reference to IEP objectives to determine "maintenance strategies". Collecting data at specific times throughout the year to document regressive tendencies is also critical to the eligibility issue (Browder et al., 1988). The focus of the programming is on those skills where regression is noted. This does not suggest that all IEP goals are implemented but rather, those requiring "maintenance". Related services such as transportation and physical therapy may also be necessary without cost to the parents. Further, services may be offered outside of the school environment (Turner, 1989).
Purpose

The purpose of this investigation was to review the issues comprising the ESY literature; and review the case law to determine implementation as envisioned by the judiciary. Second, a survey to evaluate the implementation of ESY was developed based on ESY literature and case law to assess present practices in the Commonwealth of Virginia. Finally, the author provided specific feedback to Virginia LEA’s based on findings from the survey and the relationship of the findings to the ESY case law.

Data and Literature Examined

A range of ESY practices are described from the data obtained through a mail survey. Updated practices are also included from a two-year follow-up survey. A comprehensive review of ESY case law from 1978 - 1991 is included.

Research Questions

Four research questions are answered through the case law, survey and discussion and the questions are as follows: 1.) What practices are advocated by the case law? 2.) What are the prevalent practices? 3.) Where is practice in agreement with case law? 4.) Are there points in case law not addressed by practice?

Organization

Chapter One is an introduction to the ESY literature and presents questions to be answered by the survey; Chapter Two is a review of the ESY case law;
Chapter Three contains methods for the conduct of the survey; Chapter Four presents the findings of the survey; Chapter Five provides conclusions and implications for practitioners and future research.
Chapter II

Case Law Review

Extended School Year cases have appeared in both state and federal courts over the past thirteen years. The United States Supreme Court has denied writ of certiorari each time a request has been made. The ESY case law primarily interprets federal statutes and regulations, examines previous cases, and considers facts related to serving handicapped students. Courts in all but two of the thirteen federal judicial circuits have deliberated ESY cases. This section reviews the existing case law in chronological order and identifies standards emerging from judicial decisions.

Early litigation

In January, 1978, a case filed on behalf of five handicapped children and their parents, challenged the underpinnings of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1974, in both content and procedures. The case, Armstrong v. Kline, addressed extending the school year for some handicapped students beyond the traditional 180 day limit established as Pennsylvania administrative policy. The outcome of that case and the proliferation of cases to follow, conceptually, and in numerous states literally, expanded services to meet the individualized needs of some handicapped students. A review of the ESY case law will be conducted to identify the critical issues and to examine legal standards established by the courts.

Two years after the enactment of the Education for All Handicapped Children Act, 20 U.S.C. § 1401-1420 (1978), the Armstrong case was filed in the U.S.
District Court of Pennsylvania. Concurrently, two other cases with similar issues were also on file. The relief sought by all plaintiffs was the right to a free public education beyond the traditional 180 day school year. The plaintiffs claimed that limiting an education to 180 days, violated their rights under state laws, the EHA and Section 504, in addition to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution. The five severely handicapped students who were the named plaintiffs in three separate class action suits, were combined in the Armstrong case and certified to create a class action on behalf of "all handicapped school aged persons in the Commonwealth of Pennsylvania who require or may require a program of special education and related services in excess of 180 days per year and the parents and guardians of such persons". The certification of the class action on behalf of all handicapped pupils in Pennsylvania, set the stage for the case to have far reaching implications. A review of Armstrong will serve to describe the plaintiffs and the issues that continue to fuel the debate over the 180 day rule.

The Armstrong court considered the unique learning characteristics of the named plaintiffs, the Congressional intent of the Education for All Handicapped Children Act, and state and federal regulations governing services to handicapped youth in their fact finding and subsequent ruling in favor of the plaintiffs. The handicapping conditions, educational classifications and placements of the five named plaintiffs were reviewed in the case. Armstrong, an eight year old classified as severely and profoundly impaired, was served as a day student in the public schools. An eighteen year old plaintiff, Richard H. was identified as
having a severe emotional disturbance, and was served in a five day a week, 180
day a year program. Mark, a nineteen year old, was classified as having severe
emotional disturbance and served in a twelve month residential program.
Another residential student, Sue, was twenty and classified as having severe
emotional disturbance and brain injury. The fifth plaintiff, Natalie, was
seventeen, served in a residential program and classified as severely mentally
retarded and orthopedically handicapped. The court described these students as
generally fitting two categories: severely emotionally disturbed and severely and
profoundly impaired by mental retardation with other handicaps.

Expectations for educational goals for these students was described as:
"attaining the highest level of self-sufficiency that the child can achieve".
Examples of goals that were part of the students educational program were also
described. These varied from learning mobility skills to avoid institutionalization;
to learning functional skills necessary for successful living in a group home and
working in a sheltered workshop.

While the importance of setting realistic goals was confirmed, practicing
skills mastered in the educational environment, across a variety of environments
with a variety of people to achieve generalization of the skill was stressed. The
effect of breaks in educational programming were considered in relation to the
handicapping condition. The expert witnesses in the case contended: "during the
breaks, these children regress to such an extent that the time required to regain
lost skills and development once programming resumes is so great that it renders
impossible progress and the learning required for reaching their otherwise
obtainable goals in the area of self-sufficiency." The defendants countered that skills lost could quickly be recouped with the resumption of programming. Other contentions purposed by the defendants included: regression of skills during breaks is coincidental; loss of skills is attributed to the non-functionality of the skills being taught; teacher incompetence; and parental failure to implement maintenance programs.

The Court found that it had to rely on expert testimony for information concerning regression of skills since statistically based studies were not available. The most salient facts included: individual children learn at differing rates whether handicapped or not, the time involved in relearning lost skills differs from child to child, and regression of skills is also a phenomenon found in normal children. These differences were further confirmed for children with similar handicapping conditions, including those of the plaintiffs. The expert testimony lead the court to conclude, that for some handicapped students, "including the named plaintiffs, interruptions in programming, because of regression and the length of time it takes to regain lost skills and behaviors, render it impossible or unlikely that they will attain that state of self-sufficiency that they could otherwise reasonably be expected to reach". The court pointed out that the defendants took issue with the theory that regression of skills was due to absence of programming, not with the ultimate possibility of the child's level of independence being compromised.

After reviewing the learning characteristics, current educational placement and programming, and other unique needs of the plaintiffs, the court concluded
that an education in excess of 180 days was necessary for these students to achieve goals of self sufficiency. The court then considered students other than the plaintiffs needing an education beyond the traditional school year. The court was unable to identify students in need of ESY services "by disability or characteristics" even though it was convinced that children with needs similar to the plaintiffs, did in fact need "more time than the normal school year" to achieve self-sufficiency. The court was unable to establish a set criteria for identifying specific children other than the named plaintiffs in need of ESY services. Rather, the court developed general guidelines and deferred the task to enable those familiar with a given student, to make the judgement on the basis of individual need.

The court found that the 180 day rule, prohibited the named plaintiffs and those similarly situated, from reaching educational goals to achieve self-sufficiency. The court relied upon legislative history in determining that Congress considered the achievement of goals of self sufficiency as the goal of the Act. The defendants were ordered to provide an education in excess of 180 days for the named plaintiffs. The court requested the two parties confer with educational experts on the length and terms of the appropriate relief to enable the court to enter a final order. In September, 1979, the court issued an Order enumerating guidelines for identifying students in need of programming in excess of 180 days. The Order (See Appendix A) included an introductory section reviewing the findings from the case, in addition to emphasizing ESY should be included in the IEP and that "an appropriate program of special education and
related services should be offered"; described the standard to be applied in making the ESY determination; identified relevant factors in making the determination; discussed issues related to the type and length of the program; sources of information that should be considered in making the determination; and in conclusion emphasized the importance of viewing the child as having changing needs over time. The court order made specific reference to the "sharp decline or regression in learning" experienced by some handicapped children who do not "easily regain or recoup their educational losses".

In January, 1980 the Armstrong case, on appeal to the U.S. Court of Appeals for the Third Circuit, was argued as Battle v. Commonwealth of Pennsylvania. The issue before the court was the validity of the 180 day rule under the EHA and the definition of "a free appropriate public education". This court too reviewed the educational purposes of the Act, the procedures of the Act, the responsibility of the state department of public education and the handicapping conditions and learning characteristics of the plaintiffs; including regression and recoupment issues.

The circuit court, in agreement with the district court, concluded that the defendant's policy of refusing to provide more than 180 days of education to be incompatible with the Act's emphasis on the individual. The Court reiterated the emphasis the Act places on the individual: "specially designed instruction...to meet the unique needs of a handicapped child" and the individualized written statement of goals and objectives known as the IEP (individualized education program). The court concluded that the 180 day rule "prevents the proper
formulation of appropriate educational goals for individual members of the plaintiff class". The Circuit court did not agree with the district court holding that the Act established certain educational goals. Rather, in referring to the legislative history of the Act, it found that "States are responsible in the first instance for setting reasonable educational objectives and reasonable means for achieving these objectives". The legislative history of the Act was further cited in disagreeing with the standard of maximization of self-sufficiency mandated by the district court. The circuit court found instead that the history "pointed only to a concern with increased self-sufficiency".

The case was remanded to the district court to determine if modifications were required in remedial orders promulgated, in light of the reasoning established by the circuit court. No modifications were deemed necessary because the State adopted a policy commensurate with the guidelines in the remedial order. The court likewise found that the language referring to the quality and ultimate goal of education in the existing State policy in Pennsylvania was compatible with the language of the Court of Appeals. The language of the State policy was as follows: "services which will ultimately enable them to participate as fully as possible in appropriate activities of daily living", whereas the Court referred to the educational goal as: "independent as possible from the dependency of others". A footnote following the standard established by the Court: "independent...from the dependency on others" states that the standard does not "establish an absolute goal" for the student or the States' resources. The States'
responsibility is rather, to provide a free appropriate education, "in the context of the States' reasonable evaluation of its budgetary resources."

In June, 1979, as Armstrong moved through the courts, the New Hampshire case of In re Richard K. was decided. The case involved an emotionally handicapped special education student who was being removed from his home environment due to physical and emotional neglect. The Division of Public Welfare sought custody of the child to meet the requirements established by a residential placement facility (i.e., that the child would not return to the conditions that existed at the time of the placement). The local education agency's "pupil-placement team" had in fact recommended through the IEP process, a year-round placement. However, the School Board would only agree to the placement for the school year. The School Board based their decision on the states' "blanket prohibition" to reimburse local education agencies for services beyond the 180 day school year.

The Court ruled that a standard limiting reimbursement to 180 days is "fiction, and a mere facade...and when applied in this case, is an arbitrary and capricious result with respect to the special education needs of this child". It further emphasized that federal statutes and regulations (P.L. 94-142) and state statute (RSA 186-A) mandate an education to meet the unique needs of the child. The policy in place was in direct opposition to this mandate. The Court granted custody to the Department of Public Welfare and ordered the local school district to pay for the child's year-round education. The state's existing formula was
summarily voided. The State Board of Education was further required to reimburse the local education agency for summer services.

**Early 1980’s**

The 1980 Wisconsin case of Anderson v. Thompson was decided in U.S. District Court. The issue of summer services was raised as a solution to a problem encountered by a learning disabled student transitioning from private to public school. While the court recognized the plaintiff "does suffer some academic regression during a break in her education ... and particularly during this summer" due to the change that will take place by changing academic environments, summer school was not ordered. The court was not convinced that the regression she would experience was more severe than that of a non-handicapped child. Furthermore, the court noted that even in the absence of summer programming in previous years, Monica had a "history of continuous educational progress", would "benefit from the outside world and [who] will not suffer irreparable loss of progress during a break in her educational programming".

Referencing Armstrong and Battle, the 1981 case of Bales v. Clarke was settled in the U.S. District Court of Virginia, part of the Fourth Circuit. The case involved a handicapped student whose parents brought suit in federal court to retrieve payment of fees incurred for the provision of summer services.

A review of the child’s educational history and needs were conducted to determine whether the King George County Schools had in the past and were currently providing a free and appropriate education as required by Virginia Code
(s22.1-214(A)). The court did not find that the child required summer services.

While the plaintiff cited Armstrong as support for summer services, the court emphasized that not all "severely handicapped students regress during the summer months so as require summer services". An examination of the evidence lead the court to conclude that the student's "regression was not extraordinary nor irretrievable".

Precedence established in the Anderson case, further supported the contention that the student should not qualify for summer services. Plaintiffs in the Bales case were unable to show "irreparable loss of progress during summer months". The thirteen year old student in that case had a history of making academic progress without summer services, leading the court to conclude summer services were not necessary to meet the requirements of a free appropriate public education.

In exploring the question of an appropriate education, the court in Bales described the plaintiff's parents as "seeking an ideal education for their child". The court found that while this was an admirable effort for a parent to make, it was not within the their legal rights. In making a statement about the limits of an education, the court cited Rowley, a case which would soon be granted writ of certiorari and upheld by the U.S. Supreme Court: "even the best schools lack the resources to enable every child to reach his full potential".

Finally, with regard to the major issue in the case of funding the child's education in a private placement, the plaintiffs could not establish that the services offered were inappropriate. The court found in favor of the defendants,
stating that the district had in the past and continued to provide an appropriate education.

The Eighth Circuit Court of Appeals in *Yaris v. Special School District of St. Louis County* affirmed that Missouri’s policy, categorically limiting an education for handicapped children to 180 days, is a violation of the FAPE requirement of the EHA and discrimination under Section 504. Subsequent to this finding, the plaintiffs and defendants petitioned the court, in 1985, for a funding order requiring the state to provide monetary assistance and make adjustments in existing schema (i.e., per pupil aid, flow through funds, contractual), as well as pay attorney’s fees associated with obtaining the order.

The district court considered the various issues in the funding order and determined that contractual funds would be adjusted for summer services. While the court realized that existing funding schemes did not "per se" limit use of these funds to the 180 day school term, the state was requested "to provide contractual services aid for summer programming on the same basis as the regular year", on a prorated basis when necessary. The court denied requests to: increase flow-through funds; provide exceptional per pupil aid during the summer months; provide back payments of funds expended in previous summer programs; and award attorneys fees.

At the district court level, the case of *Crawford v. Pittman*, upheld a state policy limiting an education for exceptional students to 180 days, based on the reasoning that the "extent and duration of services" is a matter left for the state to
decide. In 1983, the district court decision was reversed by the United States Court of Appeals for the Fifth District.

The case was brought before the court under the EHA as a class action suit on behalf of six handicapped children and their parents who alleged that due to regression of skills during the summer months, many skills mastered during the school year are lost at a rate that is "substantially more severe then that suffered by non-handicapped children". Several of the plaintiffs attended a year-round program funded by Title XX funds of the Social Security Act. When this funding source was curtailed, the Mississippi Department of Education began funding the center. Concurrently, the Center implemented the state's policy of limiting services on the IEP to nine months. Other plaintiffs who attended various residential placements also received services on a nine month basis. An individual consideration of the need for summer services was not conducted.

The court reviewed the procedures required under the Act and concluded that the district court's approach to resolving the issue through the invocation of the tenth amendment ensuring states rights, was "neither intimidated by the Act nor suggested by its legislative history". The court stressed the emphasis the Act places on addressing individualized needs and concluded, drawing on both Battle and Rowley, that limiting the "duration of special education programs are simply inconsistent with the Act".

The Crawford court again referenced the legislative history of the Act when addressing the issue of limited funds for handicapped services: expenditures must be made in an equitable manner that "cannot be permitted to bear more heavily
on the exceptional or handicapped child than on the normal child". Therefore, "lack of funds" does not excuse Mississippi from providing ESY services.

Georgia Association of Retarded Citizens (GARC) v. McDaniels was filed in 1980 and was eventually decided in 1984 two months after the U. S. Supreme Court granted certiorari, vacated judgement and remanded the case awaiting the findings of another special education case on the issue of attorney’s fees. While attorney’s fees were not an issue in GARC, the case had relevant implications with regard to Section 504 of the Rehabilitation Act.

 Defendants in the case; including the Georgia Superintendent of Schools refused, as a matter of policy, to consider an education in excess of 180 days. The plaintiffs in the case were a profoundly and severely mentally retarded (PSMR) child, his parents, the Georgia Association of Retarded Citizens and two separate classes certified by the court: 1.) "all handicapped children...who are mentally retarded, and who because of their special needs, require more than 180 days of public school programming" and 2.) the parents and guardians of these students. The court was asked to determine for members of the certified class, entitlement under state and federal statutes, to an education in excess of 180 days.

 Plaintiffs in the case argued that profoundly retarded students (PSMR) "regress after summer break" and training offered at home is not equivalent to that offered by professionals. State level defendants contended that these students: 1.) "need a break from the structured environment to recharge their batteries to become motivated to learn again"; 2.) "need to apply their learned skills in new situations; and 3.) "children benefit from informal learning". In the
midst of conflicting evidence, the court was able to find that PSMR children do regress during breaks in programming but the evidence was not convincing enough to order an injunction requiring services. The findings of Rowley were scrutinized by the court in concluding in GARC that neither the procedures of the Act had been followed, nor was the IEP "reasonably calculated to enable the child to receive educational benefits". Specifically, the court found that the State policy regarding an education in excess of 180 days, while neutral on its face, in effect precludes an individual consideration of needs, as required in the Act, from being made. The court noted the reasoning in Battle to support this conclusion: "the 180 day rule imposes with rigid certainty a program restriction which may be wholly inappropriate to the child’s educational objectives". This court noted similar language in Crawford: "rigid rules like the 180 day limitation violate not only the Act’s procedural command that each child receive individual consideration but also its substantive requirement that each child receive some benefit". It further noted that not a single child in the center where the named plaintiff attended school, qualified for summer services under the requirements of the Act. The local education agencies were found to have turned down requests for ESY based on the "ground of lack of funding rather than on lack of need". However, none of the plaintiffs were awarded ESY by the court.

On remand to the eleventh Circuit Court from the Supreme Court of the United States, the court clarified the issue of whether a claim could be heard under both the EHA and 504. In light of Smith v. Robinson, the court corrected a
previous finding stating that: "a plaintiff who asserted a valid claim under the EHA could not also proceed under the Rehabilitation Act".

The funding issue in GARC was based on the district's insistence on not offering services due to lack of funds. Quoting Crawford, the court reiterated their finding that limitations in funding should not "bear more heavily on the handicapped than non-handicapped".

Phipps v. New Hanover, was decided in 1982 by the U.S. District Court of the Eastern District of North Carolina, located in the fourth circuit. This case, brought under Section 504 of the Rehabilitation Act of 1973 and the Fourteenth Amendment, challenged the school district to provide the plaintiffs, three children handicapped by cerebral palsy, with a free appropriate education including summer educational services. In addition, plaintiffs claim that handicapped students are entitled to programs equivalent in "meeting their needs" as those offered to the non-handicapped. The case was not considered under the EHA due to the plaintiffs' failure to exhaust administrative remedies. Exhaustion of administrative procedures is required under the Act prior to a court considering a case involving educational services to a handicapped child.

The facts of the case indicated that these students had, in previous years, received summer services funded by a charitable foundation. A cessation of summer offerings by the corporation resulted in a claim "compelling the Board to offer a free program of services this summer". Even though summer services were required as a service on the IEP, defendants dispute the claim that plaintiffs will "substantially regress during the recess" without these services. In citing Battle
and GARC, the court found that in these cases, Section 504 was violated by the Boards' refusal to provide services during the summer. It therefore concluded that "on the merits" of the case, plaintiffs have a legitimate claim: "because of their handicaps they will substantially regress during the summer". However, in the courts' analysis of the EHA doctrine of exhaustion of administrative procedures, it determined that "resolution of these issues at the agency level...would serve the major purposes of the exhaustion doctrine" (i.e., evaluation of educational needs). It further found that exhaustion of administrative remedies in this case "would not be futile since there is no indication that plaintiffs could not prevail in the administrative proceedings". Finally, in resolving the issue of comparable summer services for the handicapped, the court concluded that services should focus on those "necessary to give the child a free appropriate education, not on 'comparability'". The court ultimately dismissed the claim due to the plaintiffs failure to exhaust administrative remedies.

Another 1982 case, Birmingham v. Superintendent of Public Instruction for the State of Michigan, again primarily dealt with funding summer services. State law specifically stated that agencies and local governments were not required to expand or begin new services without a "state appropriation" to cover costs. The court found that this increased funding legislation was not violated in the present case because the legislation applied only to services required by state law and the services in the present case were required under federal statute. Relying on the reasoning established in both Battle and GARC, the court found that under
federal legislation, summer services may be required to provide that which is
required under the Act: "a free appropriate public education".

An issue in Birmingham that had not previously been addressed by a court
was that of summer services, non-instructional in nature. In this case, an
autistic fourteen year old student had attended a summer camp for four
consecutive years. Loss of federal funds resulted in the discontinuation of the
services. A local hearing officer concluded that the services were necessary for the
child to receive an appropriate education. This decision was upheld by a state-
level hearing officer and affirmed by the trial court. In the U.S. Court of Appeals
for the Sixth District, plaintiffs argued that "special educational statutes and
regulations clearly contemplate that school districts should be required to provide
only programs which are primarily of an instructional nature and not to conduct
what is essentially a social services program". The court found that the "proposed
summer enrichment activities (camping, field trips, swimming, other sports,
playground and recreational activities, gardening and work skills training) fall
within the broad definition of special education and related services". The court
concluded that the length of services and the type of programs should be "flexible
so as to ensure that all children receive a free appropriate public education".

Another, primarily budgetary case also presented to the U.S. Court of
Appeals, Sixth District in 1983, was Tilton v. Jefferson County Board of
Education. Due to fiscal constraints, a year-round day treatment facility was
forced to close. The center was the only program available to the school district to
serve seriously emotionally disturbed students. Plaintiffs who sought a
Preliminary injunction to prohibit the closing of the center were students served by the treatment facility. At issue was whether the requirement of maintaining a child's placement during due process proceedings, as required under the Act, was violated by the closing of the center. Both the district and circuit courts agreed that the requirement of maintenance of placement does not apply when a facility is closed for fiscal reasons.

However, the Circuit Court did find that the transfer of students to a program limiting the school year to 180 days, was in violation of the Act. The court cited Battle and emphasized that an inflexible rule, limiting a child's education to 180 days "precludes the proper formulation of appropriate education". This finding did not change the courts conclusion that the closing of the center for "purely budgetary reasons" was permissible.

Predicated primarily on the findings from Armstrong, a district court for the state of Hawaii, in the case of Lee v. Thompson, appointed a master to oversee the implementation of a plan for ESY services. In 1981, the court ruled that the State Department of Education should consider at least five specific factors when making a determination of whether a child should qualify for ESY services. When the court found that only two of the factors were being considered, the state department was held in contempt and directed to consider all five factors. The state department then chose two different factors and claimed that all five factors could be subsumed under regression and recoupment. They further argued their standard was consistent with Armstrong.
The judge rejected a single standard based simply on regression and recoupment and instead emphasized that all five factors should be considered independently when determining a child's "entitlement" to services. The court enumerated these factors as follows: nature of the handicapping condition; severity of the handicapping condition; areas of learning crucial to attaining goals of self-sufficiency and independence from caretakers; extent of regression caused by interruption in educational programming; and rate of recoupment following interruption in educational programming.

By stating: "it could be viewed solely as a backstop to the specialized instruction which a handicapped child receives during the school year", the court clearly articulated its view that ESY goes beyond a stop-gap measure designed to prevent loss of skills. The Lee court chose instead to define ESY in terms of meeting individual needs through the IEP: "an extended school year could be regarded as one additional means of providing a handicapped child with specialized instruction in accordance with his individualized education program (IEP) under the EAHCA". The court further emphasized that the importance placed on "individualized evaluations...of needs", consistent with Rowley and the EHA, as the assumption underlying the criteria promulgated.

In 1983, a sixth circuit court determined that a 12-month education, consisting of "summer classes and continuous occupational therapy" was not required for an autistic child, Thomas Rettig. In the higher courts' decision not to order summer services in Rettig v. Kent the court utilized the benefit test of Rowley in stating: "the programs were not necessary to permit Thomas to benefit
from his instruction". The language of this court and implications of the findings are discussed in greater detail in Cordrey v. Eukert, a 1988 sixth circuit decision.

**Late 1980's**

Eight years after the court heard the first ESY case, the case of Alamo Heights Independent School District v. State Board of Education (1986), was brought before the United States Court of Appeals for the Fifth Circuit. The facts of the case involve a multiply handicapped student who lived within the boundaries of the Alamo Heights School District. In the years prior to the case, Steven first attended a twelve month Head Start program, then a half-day program at the Cerebral Palsy Center, and finally, a public school placement. After a year in Alamo Heights Independent School District, Stevens' mother requested summer services. That very summer, the district substantially limited summer programs to half-days for one month only, due to "cost and an apparent lack of interest on the part of teachers and eligible students in previous years". Steven did not attend summer services that summer and was reported to have regressed "in his ability to stand, point, and feed himself". The following summer, a request for summer services was again denied "without consultation with Steven's Admission, Review and Dismissal (ARD) Committee or with his teacher". The district refused services because the caretaker with whom Steven was to reside lived a mile outside of the district. Eventually, after several administrative appeals, a hearing officer ordered the district to "provide Steven with full summer services and transportation for all succeeding summers". The school district filed a complaint in federal court. The court found that a practice existed "of denying
summer services to handicapped children regardless of their needs" and issued an injunction to require the district to change the practice. The court also found that a "summer without continuous, structured programming would result in substantial regression of knowledge gained and skills learned, and, given the severity of Steven G's handicaps, this regression would be significant." The district contended that the standard to be applied is "severe regression" in the absence of summer programming, and that evidence presented did not support this standard. It is apparent that the school district does accept the findings of another fifth circuit case, Crawford, by not questioning that under the EHA a "blanket prohibition on summer services for handicapped children" is not allowable.

The court cited both Rowley and Crawford in reviewing the substantive requirements of the Act reiterating that: "the education...be sufficient to confer some educational benefit" and "each IEP must be reasonably calculated to provide some educational benefit." The court went on to clarify the relationship between the "some educational benefit" standard and ESY by stating that the standard "does not mean that the requirements of the Act are satisfied as long as a handicapped child's progress, absent summer services is not 'brought to a virtual standstill'". The Alamo Heights use of the "virtual standstill" language of Judge Van Deusen in Battle and the "some educational benefit" standard of Rowley set the stage for the court to briefly clarify the standard of the court: "if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the handicapped child may be entitled to year-
round services". The court did not view their clarification of this standard as a departure from previous rulings but rather, as the application of the Crawford standard to a specific child.

The court did find that Steven was entitled to summer services even in light of conflicting testimony regarding the child's regressive tendencies. There was however, a finding by the court "that Steven G. would suffer at least substantial regression" without ESY. The circuit court supported the contention that Steven did not require the regular school term services in their entirety, rather "adaptive equipment and consultative services" should be provided.

One other issue of interest in the case was the one-mile out-of-district transportation necessary for Steven to travel from the home of his daily caretaker to school. Since transportation is a related service under the Act, the court determined that, within reason, and when determined necessary to allow a particular child to benefit from his education, it should not be "arbitrarily limited by geographic boundaries". The out-of-district aspect of the transportation issue was negated on two accounts. Firstly, it was viewed by the court as a related service and, in the courts view, "does not cease to be a related service" in light of the location simply being one-mile outside of the district. Secondly, "there is neither evidence or argument that going a mile...would create...expense, disrupt efficient planning of bus routes,...additional time to transport students, or in any other way inconvenience other children on the bus route". The court found the distance to be reasonable and noted that transportation is required under the Act in those cases where the child needs the service to "benefit" from his education.
Post survey decisions

A 1988 New York ESY case, Holmes v. Sobel, involved an orthopedically handicapped eleven year old with Caudal Regression Syndrome. His handicapping condition caused his legs to collapse under the weight of his body. He used a bucket prosthesis, crutches and a wheelchair for ambulation. In school he received: adaptive physical education, physical therapy, occupational therapy and an education in the regular education classroom. His IEP goals emphasized independence and increased strength through ambulation.

For the ten years prior to the case, the child received summer services through the family court system. In 1987, the district’s committee on special education (CSE) met and determined, through the implementation of newly developed criteria, the child did not qualify for a twelve-month education and would therefore no longer receive physical therapy during the summer months. An impartial review was held at the mothers’ request. The hearing officer found the student eligible for services based on the testimony of two therapists who had worked with Adam. They described the regression of skills that would probably occur without the services and the number of months necessary to regain the skills. The therapists noted they had only observed regression of skills during short breaks since Adam had received physical therapy during the previous summers.

On appeal by the school district, to the Commissioner of Education, the decision was annulled. The Commissioner concluded: “there is no evidence that the student needs a ’structured learning environment of twelve months duration
to maintain developmental levels". Adam's mother then filed on his behalf in
district court to: 1.) require the district to provide physical therapy; and 2.)
request the court to declare the Commissioners' review a violation of the
"impartiality requirements" of the procedural safeguards required by the EHA.

The court cited Rowley in it's approach, emphasizing the decision of the court
must be based "on the preponderance of evidence", and the two prong test:
meeting the procedural requirements of the Act and the "reasonably calculated"
IEP. The facts of the case and testimony of expert witnesses led the court to three
separate conclusions regarding the plaintiff: 1.) "will experience severe regression
in his upper body strength and in his ambulation skills if he does not receive
physical therapy this summer, and that it will require a significant amount of
time to recoup these skills"; 2.) "it is likely that Adam's ability to perform regular
classwork and to function in the classroom without substantial assistance would
be adversely affected to some extent if he does not receive summer therapy"; 3.)
"this regression/recoupment syndrome will most likely prevent Adam from
making the amount of reasonable progress toward his goal of independent
ambulation that might be expected of a student of his motivation, intelligence and
ability". Based on these findings of fact, the court disagreed with the defendants
claim that the impact of the break on the child's education would be "minimal"
and instead found that his strength in his upper body could be so reduced that his
ability to perform the most basic fine motor tasks could be affected: "holding
books...writing or typing", ultimately having a "negative impact on his educational
performance". The plaintiff was able to prove "irreparable harm" in terms of
accomplishing IEP goals of independence. Further, the facts of the case could not pass either of the two-prong tests of Rowley. First, the procedural requirements of the Act were not met since the Commissioner of Education who annulled the findings of the administrative hearing officer was not, in the opinion of the court, in a position to provide an impartial review due to his position which involved "establishing and executing" education policy. Second, the IEP was found not to be "reasonably calculated" due to the ten month limit placed on services: "his overall learning process clearly indicates that his IEP for only ten months of physical therapy does not provide sufficient support services to enable him to continue to receive adequate benefit from special and regular instruction".

Another point of interest in the case was whether "related services" (i.e., physical therapy in this instance) is a required service in the absence of a student qualifying for special education. The court was unable to identify a "regulatory scheme" which clearly established that related services are not, when offered independently, special education. Therefore, a determination was made that in New York a child may receive a related service "as his or her sole special education program".

Finally, the court weighed the hardships of the findings for the plaintiff against the order for the defendant to provide physical therapy two times a week during July, August and the regular school year. The court concluded: the "balance tips decidedly in favor of plaintiffs", given the "serious setback in his progress toward several major goals of his IEP" that will occur in the absence of summer programming in comparison to the District for which there has been "no
evidence, or even an argument, that they will suffer any hardship". The provision of physical therapy was so ordered.

A District Court case out of the Fifth Circuit, Lewisville Independent School District v. Brooke P. was decided in 1990. Findings involved ordering ESY services for a mentally retarded autistic child and reimbursing parents for ESY services funded by the parents.

The district denied ESY services based on their conclusion that "no significant regression (had) been documented due to lack of extended programming" over summers and holidays. They further noted that "any regression would be recouped within eight weeks". However, the district failed to note that the student had received summer services outside of the district for four years prior to the parents seeking an administrative remedy to settle the ESY dispute.

At the administrative level, the hearing officer concluded "that it is more likely than not that Brooke would suffer significant regression in skills gained that she could not recoup in a reasonable time without the provision of extended year services". He did not require the parents to cease summer programming to allow the district to document regression of skills. Also, the hearing officer found that the school district expected the parents to provide extensive structure at home that would basically alleviate the need for services to be offered during the breaks in programming. He viewed this as "unrealistic" noting that "parents are not ordinarily educators trained to deal with the range of behavior expected from a child with Brooke’s disabilities". Finally, he concluded that "the Act requires
the school authorities to develop an appropriate educational program...that burden may not be shifted to the parents". He further emphasized that the ESY decision could not simply be based on a "standardized criteria", when a demonstrated need exists.

The district court ordered ESY finding that "Brooke’s skills and behavior learned during the school year would be significantly jeopardized, and she would experience severe regression in her skills and behavior in the absence" of ESY. Conclusions of law supporting the findings were drawn from Rowley (i.e., "benefit" standard), Alamo Heights (i.e., "educational benefit" achieved "will be significantly jeopardized") and Polk v. Central Susquehanna Intermediate Unit, (i.e., IEP’s "fostering self-sufficiency in handicapped students") as well as several other cases. Finally, the court stated that without ESY, Brooke would be denied FAPE.

Johnson v. Independent School District No. 4 of Tulsa County Oklahoma was decided in 1990 in the U.S. Court of Appeals for the tenth district. The plaintiff, Natalie, is an eight year old severely handicapped youngster. Her parents initiated the appeal process to secure summer services. The district court affirmed the finding of the school district whereby summer services for Natalie were denied. The appeals court however, found that the previous findings were based on "insufficient information to determine whether a child needs ESY".

A review of the plaintiffs educational record reveals that she is autistic with moderate retardation. The hearing officer noted that despite testimony from educators working directly with Natalie, the "record did not provide objective
documentation of improvement or lack of regression" and therefore, agreed that she did not qualify for services. The basis for his conclusion was twofold: "the legal premise that predictions of future regression are insufficient to compel the schools to provide" ESY and the data did not support the contention that Natalie "had in fact regressed". The district court found too that regression had not occurred based on the testimony of the teachers. However, the court noted the conflicting testimony of the outside experts who predicted "that such a summer program would prevent regression in the future" and discounted the testimony in favor of that presented by those who worked more closely with Natalie.

In a de novo review by the court of appeals, an examination of several ESY and related cases was conducted. The court described a "regression-recoupment" approach (Alamo Heights) in determining an ESY; a multi-faceted approach (Armstrong); use of "severe or substantial regression" (Crawford); and not confining analysis to "any one test" (Rowley and Yaris). The court chose to adopt a broader premise from Alamo Heights rather than a limited analysis which compares "benefits accrued" with jeopardizing progress in the absence of summer services. The court proposed that a myriad of factors be considered: "proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also include predictive data, based on the opinion of professionals in consultation with the child’s parents as well as circumstantial considerations of the child’s individual situation at home and in his or her neighborhood". This analysis would, as recognized by the court, also include the child’s mainstreaming and vocational needs, severity of the handicapping condition, importance of the
service requested to the programming needs of children with like handicaps. The court did not determine if Natalie qualified for ESY but rather reversed summary judgement for the district and remanded the case for further review. The previous litigants were described as having erred "by converting what should have been a multi-faceted inquiry into application of a single, inflexible criterion".

In the spring of 1991, petitioners asked the Supreme Court for writ of certiorari in an ESY case out of the Sixth Circuit, Cordrey v. Eukert. The case is complex, both in the multiplicity of issues raised and in number of findings from other cases that were brought to bear on the courts analysis of the facts. The parents claim their child's rights to a "free appropriate public education" was denied because he was ultimately refused ESY services. Another issue examined on appeal, was whether it was permissible for parents to waive rights afforded under the Act. Finally, the "proper standard by which a court should review a denial of an ESY" was examined.

The case involved a child with autistic-like behaviors and severe developmental delays. In 1982 the Cordreys began sending their son, Chance, to a private agency for summer services. After the second summer, they requested the District pay for ESY as a service in the IEP. Without meeting to review the IEP, "as required under the Act", the District identified an ESY program for Chance to attend. The following year, an evaluation of Chance's ESY needs were conducted. The psychologist concluded "that Chance would benefit from an ESY program, and faced an 'unacceptable' and 'untenable' risk of regression without one". He further stressed that "it was impossible to assess empirically or
psychometrically whether an ESY was necessary" because Chance had participated in ESY for the past several summers. Evergreen attempted to negotiate an agreement between school district personnel and the parents whereby the district would provide ESY services so long as ESY did not become part of the IEP or subject to the "stay put provision" of the Act. The purpose of this negotiation was to insure that should the Cordreys take the case through due process, ESY would not be included in the IEP services that must be offered to comply with the Act pursuant to the findings of a hearing or suit. The Cordreys then requested an impartial hearing to address their concern that ESY should be included in the IEP. The hearing officer found that Chance should receive ESY. This decision was overturned by the state-level officer stating that "the Cordreys had failed to demonstrate that Chance needed an ESY".

In federal district court, the Cordreys claimed the school district discriminated against their son "on the basis of his handicap". The district court did not rule on the discrimination claim but rather, denied ESY on the basis that "the Cordreys had failed to prove significant regression of skills without a summer program". While the court recognized that Chance "would benefit from" ESY, he "did not need an ESY". Furthermore, the court held that the school district "had not violated the procedural mandates of the Act" in the manner in which their IEP meeting was held, without the presence of the teacher, nor in their attempt to bypass a due process right in attempting to negotiate the "stay put provision".

The Cordreys appeal, to the U.S. Court of Appeals for the Sixth District, again included the discrimination issue in addition to denial of "FAPE", violation
of procedural rights, "and that the district court further erred in placing the burden of proof on this issue" on the parents. In addressing the discrimination issue under Section 504 of the Rehabilitation Act, the court reviewed relevant facts in the case. First, the district, disputing claims from the Cordreys to the contrary, states that any child "may enroll in its ESY program". Second, while it is true as alleged by the Cordreys, that handicapped children are segregated from their normal peers during summer programming. The district confirmed that in fact few "non-handicapped children attend school beyond the regular school year" limiting their ability to make available a mainstream environment. Finally, the Cordreys contended that not providing ESY to their son is discriminatory. The court finds that this issue is properly decided under the parents claim for ESY services within the EHA.

FAPE, as viewed by this court is the standard "for whether an ESY is necessary". Citing Rowley, the court emphasized that there is not "any one test for determining the adequacy of educational benefit conferred upon all children covered by the Act". Noting however that Rowley concerned a handicapped student in the regular classroom, the court shifted the focus to an earlier sixth circuit case, Rettig, involving another severely handicapped youngster. The Rettig court specifically stated that ESY: "would be appropriate if it would prevent significant regression of skills or knowledge retained by [the child] so as to seriously affect his progress toward self-sufficiency". Due to the child's regressive tendencies, even under the condition of having received summer services, the court determined "ESY was not necessary". Further analysis by the
court revealed "that under the standard in Rettig, a child must prove his need for an ESY empirically, based on evidence of prior regression and slow recoupment without summer programming". Appellants argued that they are not in a position to satisfy the standard because they have unilaterally ensured their child receive summer services over the past consecutive summers. The court noted a 1988 Third Circuit related services case, Polk v. Central Susquehanna Intermediate Unit, in which the court rejected "the rule that a child must first show regression in order to demonstrate need". Appellees emphasize however, "unless hard empirical data are required, parents can force a school district to provide an ESY by providing one for their child independently and thereby preventing the district from later showing that the child will not regress without it".

An exploration of data standards required by other courts was conducted: Alamo in which a child who received ESY over several summers "was entitled to an ESY under the Act"; Armstrong which noted that "empirical data, if any" only constitute one origin of evidence; and Bales which emphasized that to qualify for ESY, a student "must show an irreparable loss of progress during summer months". Lee was also discussed as appellants suggested that Rettig should be "broadened to the multi-faceted inquiry" of Lee which examines nature, severity, goals of self-sufficiency, regression and recoupment. The court was unable to discern a significant distinction between Rettig and Lee "since the regression/recoupment standard in Rettig is not limited to empirical proof". Thus giving way to the possibility of a broad range of inquiries.
The court recognized that neither the application of a "hard empirical proof" standard nor the often ambiguous "non-empirical expert opinion" standard are adequate in meeting the requirement of the Act: to confer "some educational benefit" to the student. The court further stated that "clarity and ease of application must give way" to a standard that recognizes the complexity of the issue. One standard described by the court is from the professional literature: "need for an ESY should focus not on ill-defined terms such as regression and recoupment, but instead on measurement of explicit criteria that affect a student's ability to maintain his progress toward his IEP goals" (Browder, Lentz, Knoster and Wilansky, 1988). Appellants' proffered guidelines from the Ohio Department of Education that focused on the IEP team examining failure to accomplish "short-term instructional objectives on the IEP due to interruption of instruction between school years". The court recognized these as consistent with the emphasis placed on "progress" and "benefit" in Rettig and reiterated the concern for professional judgement and "refinements in professional understanding" playing a role.

Subsequent to reviewing the standards from numerous judicial decisions, the court refocused on entitlement to ESY as a requirement of FAPE. The district states the purpose of ESY is "to allow the student to maintain the progress achieved during the regular school year". The Cordrey's again referred to Lee to "endorse a broader view" whereby the court rejected ESY as a "backdrop to the regular school year" and instead articulated that it should be "regarded as one additional means of providing a handicapped child with specialized instruction in
accordance with his [IEP]." The court appeared to place some credence in this view by stating the 180 day school year is "designed for normal teaming abilities" rather than the needs of the severely handicapped. However, the court then referenced Battle in clarifying that "needs are necessarily determined in reference to goals". Rowley was also cited to clarify once again that districts are not required to "maximize each handicapped child's potential" but rather to confer "some educational benefit".

The court described the problem as ascertaining a balance between the "heavy custodial responsibilities of parents during the summer vacation months" and "the heavy financial drain upon the public fisc by a liberal attitude toward providing ESY". The court proposes that schools should not be encumbered with custodial duties. With this view as its premise, the court then stated that "providing an ESY is the exception and not the rule under the regulatory scheme" and that those who want to include ESY in the IEP must "demonstrate, in a particularized manner relating to the individual child, that an ESY is necessary to avoid something more than adequately recoupable regression". In addition to embracing Rettig as the standard, the court emphasized the "necessary to confer benefit" issue; the "virtual standstill" in the absence of ESY from Battle as well as "the benefits...significantly jeopardized" issue from Alamo; and several contributions from Polk": benefit must be more than merely de minimus, gauged in relation to the child's potential" and may require "optimal benefit" where the "conferral of benefit" is more important than regression, in and of itself.
The salient facts of the case at the district level follow. The court noted that Chance lost skills "during the week or over the weekend" and throughout the year including breaks. The psychologist for the district concluded that "Chance did not need an ESY" and the psychologist hired to provide an independent evaluation of his need for ESY concluded that "his risk of regression without an ESY would be unacceptable". The appeals court finding was that "ESY would benefit him, but would not be necessary to preserve the benefits he was already receiving from his regular school year program despite his continual regression". The district court's conclusion that Chance was not entitled to an ESY under the Act, was affirmed.

**Summary**

**Litigation prior to Survey**

While the courts appear to be hammering away at the finer points of the debate (i.e., what data should be considered and under what circumstances a child should qualify) several basic premise appear to be established. First, it is clear that a district cannot have a policy limiting the number of days a child can receive special education and related services (e.g., *Yarig, Battle*). Second, the forum for the decision should be the school based IEP committee (i.e., *Armstrong and Lee*). Third, all of the due process procedures included under the Act apply (i.e., *Armstrong*).

**Litigation after 1988**

New issues in ESY cases continue to emerge: 1.) related services can be required even in the absence of special education (*Holmes*); 2.) parents do not have to cease unilateral summer placement in order to prove regression of skills.
(Lewisville); more than a retrospective analysis of the child's regressive
tendencies is required, in fact, a predictive approach analyzing numerous factors
is required (Johnson); and regression does not need to be shown, rather, a broad
range of inquiries is indicated (Cordrey).

While Virginia is not under a court order per se to provide ESY services, it is
prudent for school divisions to monitor the ESY case law to understand the points
the courts have agreed upon repeatedly. A practice of not serving students in ESY
programs could be viewed by the courts as tantamount to denying children access
to FAPE.
Chapter III

Method

The current investigation was conducted in the Commonwealth of Virginia. It is comprised of two surveys, both designed to collect information regarding ESY practices at the LEA level in Virginia. The initial survey was conducted in 1988, the second in 1990, thereby providing a longitudinal examination of ESY services provided.

Sample

The sample of interest was selected from the one hundred and forty-four school divisions in the state of Virginia including those in counties, towns and cities. Sample size was determined using a procedure established by Krejcie and Morgan (1970) with an alpha level of .10 and a 90% confidence interval. Using these criteria it was determined that a sample size of 42 school divisions was necessary.

School divisions were ordered by size of student enrollment based on statistics from the Virginia Department of Education, 1987. A stratified systematic sampling procedure was used to first divide school divisions into 6 unequal size categories or strata, inversely proportional to student enrollment, and then to randomly sample within each strata.

Seven school divisions were randomly sampled without replacement from within each size category. The make-up of the overall population of one hundred forty-four school divisions is such that there are fewer school divisions in the 3 categories of larger school divisions. However, based on knowledge of current
practices regarding ESY, it was hypothesized that the larger school divisions would be more likely to offer ESY services than the smaller school divisions and therefore would be a crucial group to sample thoroughly in this study. Therefore, the sample was constructed to purposively oversample from the larger school divisions. Consequently, each strata contained seven randomly chosen school divisions rather than an outright proportional sample which would have perhaps produced a more representative sample. Table 1 presents the breakdown of the sampling frame for school divisions by size category.

**Instrumentation**

**Instrument development.** A nine page, twenty-eight question instrument (See Appendix B) was developed to solicit information regarding current practices of the selected school divisions with regard to ESY. The questionnaire was designed to sample information from various domains regarding current practices as they relate to standards and precedents established through case law, legislation, and current research in ESY. More specifically, respondents were questioned about their knowledge of the concept of ESY in relation to their district as well as about current services and criteria for services delivery being utilized in their respective school divisions. Additionally, information regarding the training and qualifications of respondents was obtained. The questionnaire was divided into three sections: Part I, Information Questions -- which gathered information regarding respondents' position, field of study and training; Part II, General Questions -- which examined information about school policy and implementation practices of ESY; and Part III, Issues -- which gathered information regarding
Table 1
Sampling Frame for Survey Participants

<table>
<thead>
<tr>
<th>Size of School Division*</th>
<th>Number of School Divisions Represented</th>
<th>Number of School Divisions Randomly Selected for Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>17,001 - 125,000+</td>
<td>N=11</td>
<td>N=7</td>
</tr>
<tr>
<td>8,901 - 17,000</td>
<td>N=16</td>
<td>N=7</td>
</tr>
<tr>
<td>5,001 - 8,900</td>
<td>N=20</td>
<td>N=7</td>
</tr>
<tr>
<td>3,001 - 5,000</td>
<td>N=25</td>
<td>N=7</td>
</tr>
<tr>
<td>1,801 - 3,000</td>
<td>N=28</td>
<td>N=7</td>
</tr>
<tr>
<td>1 - 1,800</td>
<td>N=35</td>
<td>N=7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>N=135**</td>
<td>N=42</td>
</tr>
</tbody>
</table>

* Size of school division based on end-of-year membership 1985-86
** Only school divisions with student membership are represented in this Table.
specific factors from case law which school divisions may consider in determining a student’s eligibility for ESY services.

Initially, a pilot instrument was developed. Feedback was solicited from a focus group comprised of graduate students in Educational Administration, and from content experts including two practicing attorneys with expertise in educational law. Based on this feedback, additional questions were added, question wording was modified, and response categories were modified. The questionnaire was then piloted using two LEA’s from states in the fourth circuit other than Virginia (i.e., South Carolina and West Virginia). Both LEA’s offered ESY services thereby allowing the full questionnaire to be pre-tested in the presence of the author. Based on this pre-testing, the author met with the original focus group and the questionnaire format was revised to improve readability, the ease with which response categories could be selected, and skip patterns were established.

A one page, thirteen item follow-up questionnaire (See Appendix C) was comprised of selected key questions from the original twenty-eight item questionnaire and informational questions about the respondents. This questionnaire was designed to assess if significant changes had occurred in ESY policy and service delivery since the original survey was conducted.

Procedure

**Original Survey.** A cover letter assuring anonymity, the questionnaire and a thank-you card (See Appendix B) with two quarters (to be used toward the
purchase of a soft drink while the participant completed the questionnaire) were mailed to the individual assigned administrative responsibility for special education programs in the forty-two, randomly selected school divisions. The purpose of the assurances of confidentiality with respect to the name of participating school divisions was to encourage uncensored responses. The purpose of the survey, time involved in completing the instrument and assurances were all stated in the cover letter (See Appendix B). All return envelopes were coded with a means of positive identification for follow-up purposes. Follow-up calls to Directors of Special Education and an offer to send a second copy of the survey were made to all districts not responding within three weeks. Additional surveys with return envelopes were sent and finally, phone interviews were conducted with school divisions that did not return the survey within three months.

**Update Survey.** A letter (See Appendix C) describing the purpose of the follow-up survey, including assurances of confidentiality and the survey were mailed to the Director of Special Education in all original forty-two school divisions a year and ten months after the original survey. The one page information section completed as part of the original survey was attached as a reference to assist individuals in responding to whether they were the same individual who participated in that survey activity. Second copies of the survey and follow up calls were made to all non-responders two weeks after the survey was mailed.
**Executive Summary.** A report of the findings from the survey, described in reference to existing case law at the national level, was mailed to all one hundred and forty-four school divisions in Virginia. The summary report was mailed by the Director of Special Education for the Virginia Department of Education (See Appendix D).

**Analysis.** Data were entered into a computer program designed to tabulate percentages and frequencies of subjects endorsing response for each item on the survey. These data were integrated into a description of practices selected from the case law.
Chapter IV

Results

The results are comprised of frequencies and percentages representing administrators endorsing survey items for both the 1988 and 1990 surveys. Respondents were selected from a stratified random sample of school divisions in the Commonwealth of Virginia.

Survey Results 1988 Data

Description of Respondents

The return rate for the sample of 42 school divisions was one hundred percent. Thirty nine divisions (92.9%) responded by mail. The three remaining divisions (7.1%) were surveyed through a telephone interview after they failed to respond to a follow-up survey by mail and additional phone reminders. Forty divisions (95.3%) responded during the time period specified while the remainder completed the survey within a five month period. The majority (N=39, 92.8%) of the respondents were the special education administrator for their school division. The other three respondents titles were: Director of Diagnostic Services, Assistant Superintendent, and Director of Pupil Personnel Services. The professional background of the respondents represented three main areas of study: Special education (N=16, 38.09%), Counseling/Psychology (N=7, 16.8%), and Regular education (N=19, 45.2%). The educational level of the respondents included nine (21.4%) Masters’ degree level administrators, twenty (47.6%) Masters’ plus thirty hours, four (9.5%) Ed.S./CAGS and nine (21.4%) Doctoral level administrators.
The respondents' degrees were earned between 1961 - 1988 with twenty five (59.52%) respondents completing their degrees after the passage of Public Law 94-142, the Act which established "a floor of opportunity" for all handicapped children to attend school and have access to special education and related services; six after the Supreme Court decision in Rowley v. Hendrick Hudson School District which established "some educational benefit" as the standard by which progress for handicapped students should be measured; and eleven, after the Extended School Year (ESY) landmark case of Armstrong v. Kline, in which the court recognized that an appropriate education for some, may require an education in excess of the traditional 180 days.

**Additional Training Reported**

Only two (4.8%) of all respondents reported they did not have specialized study in school law, while 28 (66%) indicated their study consisted of participation in coursework in school law, and 28 (66%) participated in coursework specifically related to legal aspects of special education. Fourteen (33.3%) indicated they had taken coursework in both areas. The majority of the respondents (N=29, 69.0%) participated in training specific in special education law within the last two years. The primary means indicated for respondents to keep current in the area of special education law were through reading journals (N=30, 71.4%) and/or inservice training (N=26, 61.3%). Twenty five (60%) of the administrators learned of ESY through reading case law and another eleven (26.8%) through the Virginia Department of Education. Four (9.8%) of those surveyed reported that they
learned about ESY through this survey. Table 2 presents data regarding the professional training of respondents as reported in the 1988 survey.

Policy Issues

Twelve districts (28.6%) affirmed a district policy of limiting the number of days a student could receive special education or related services; thirty (71.4%) did not place such a limit. With the exception of one district, formal written policies for determining ESY placement were not reported to be in place. The district never submitted a written policy even though several requests were made by the researcher. Three districts (7.5%) indicated on the questionnaire, their policies were in the planning stages. Ten districts (23.8%) indicated they have an informal procedure in place to identify students needing ESY. Only one (2.3%) district described their informal procedure. Half of those surveyed (N=21, 50%) specified a distinction exists between regular summer school and ESY services for the handicapped pupil. The most common distinction between regular summer school and ESY services was the use of the IEP for ESY services (N=7, 16.6%). A summary of data from questions concerning key policy issues and practice, by size of district for 1988, appear in Table 3.

Provision of ESY Services

At least one district in each of the six district groupings surveyed served students in ESY services offered beyond the traditional school year. A total of thirteen (31%) districts served between one (N=2, 15.4%) and one hundred fifty students (N=2, 15.4%). Eleven (26%) school divisions reported that they had some students who did not participate in ESY services, even though they qualified.
Table 2


<table>
<thead>
<tr>
<th>Category of Training</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPE Admin. for District</td>
<td>39</td>
<td>92.8</td>
</tr>
<tr>
<td>SPE Background</td>
<td>16</td>
<td>38.1</td>
</tr>
<tr>
<td>Specialized Study in School Law</td>
<td>40</td>
<td>95</td>
</tr>
<tr>
<td>Masters Level or Higher Degree</td>
<td>42</td>
<td>100</td>
</tr>
<tr>
<td>Learned of ESY Through Survey</td>
<td>4</td>
<td>9.8</td>
</tr>
<tr>
<td>Learned of ESY Through Journal Articles</td>
<td>30</td>
<td>71.4</td>
</tr>
<tr>
<td>Learned of ESY Through SDE</td>
<td>11</td>
<td>26.8</td>
</tr>
</tbody>
</table>

Note: Over half of the respondents (N=24, 57%) were the same individual completing the survey in 1990 as those completing the survey in 1988.
Table 3
Key ESY Policies/Practices by Size of School Division: 1988 Survey

<table>
<thead>
<tr>
<th>District Size</th>
<th>Year</th>
<th>Limit # of Days</th>
<th># Served Beyond 180 Days</th>
<th># Make Distinction b/n ESY &amp; Summer School</th>
<th># Have Written Policy</th>
<th>Qualification Based on IEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1988</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>1988</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>1988</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>1988</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>1988</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>1988</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

| Total         | 1988 | 12             | 13                       | 21                                        | 0                    | 9                           |

Legend:
District Size 1 = 1-1,800.                District Size 4 = 5,001-8,900.
District Size 2 = 1,801-3,000.            District Size 5 = 8,901-17,000.
District Size 3 = 3,001-5,000.            District Size 6 = 17,001-125,000+.
Districts reported that student IEP's or separate lists could be used to document that students were actually participating in ESY programs. A breakdown of students served in ESY programs by district size is presented in Table 4.

**Purpose of ESY Program**

All thirteen districts (100%) serving ESY students reported maintenance of specific skills as a purpose of their ESY programs. Other purposes reported by these same thirteen districts included: skill development (N=4), reduction of self-abuse behaviors (N=1), generalization of skills to other settings (N=3), IEP requirement (N=1), minimizing regression (N=1) and parent involvement (N=1).

**Criteria for ESY Determination**

The director of special education has the primary responsibility for developing ESY criteria as reported by ten of the thirteen districts serving students in ESY programs. Ninety percent (N=9) of these districts also used additional criteria: guidelines set forth in court cases (N=5,50%); committee of experts (N=2,20%); and two (20%) used IEP's as a data base to establish criteria. Two districts (15.4%) serving students failed to report the personnel, cases or data used to develop their criteria.

The final decision for who was to receive services is made in the overwhelming majority of districts by the IEP Committee (N=11, 84.6%). Teachers, principals, central office staff, eligibility committees, and special education directors were also involved in these decisions in numerous districts.

Multiple issues were considered by the thirteen districts serving students in ESY programs in determining which students qualify for these services. Twelve
<table>
<thead>
<tr>
<th>Size of District (Students)</th>
<th>Year</th>
<th>Number of Districts</th>
<th>Mean # Served</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1,800</td>
<td>1988</td>
<td>2</td>
<td>2.7</td>
<td>1-4</td>
</tr>
<tr>
<td>1,801-3,000</td>
<td>1988</td>
<td>1</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>3,001-5,000</td>
<td>1988</td>
<td>2</td>
<td>30</td>
<td>25-35</td>
</tr>
<tr>
<td>5,001-8,900</td>
<td>1988</td>
<td>2</td>
<td>28</td>
<td>20-36</td>
</tr>
<tr>
<td>8,901-17,000</td>
<td>1988</td>
<td>3</td>
<td>64.6</td>
<td>11-150</td>
</tr>
<tr>
<td>17,001-125,000+</td>
<td>1988</td>
<td>3</td>
<td>92</td>
<td>1-150</td>
</tr>
</tbody>
</table>

| Total                      | 1988 | 13                  | 46.8          | 1-150 |
(92%) of the thirteen districts serving students used severe regression of skills caused by an interruption in programming to determine if a child should qualify for services. IEP goals and objectives were used by nine districts (69%) to determine who would qualify. The following items were considered by the districts in making their ESY determinations: severity of handicapping condition (N=7, 54%), recoupment time (N=6, 46%), nature of the condition (N=5, 38%), impact of the break of services on educational performance (N=5, 38%), consideration of the least restrictive environment (N=3, 23%), and cost to the school district (N=2, 15%). Additional items used to determine that an individual should receive ESY services were endorsed one time each (N=1, 7%): areas of learning critical to attaining goals of self-sufficiency, child's capacity for achieving goals of self-sufficiency, placement available, child's progress as an indicator of benefit from his current educational program, occupational therapist and physical therapist recommendations, and input from mental health/social service agencies.

In response to questions regarding the development of a policy specific to ESY, respondents again indicated that multiple issues should be used in considering ESY services. Table 5 summarizes survey results from the sampled school divisions regarding the critical case law issues to be considered when developing ESY policy.

**Implementation Issues**

In the majority (N=9, 69%) of ESY programs, specific goals and objectives were selected from the IEP for ESY programming. Two (15%) additional districts
<table>
<thead>
<tr>
<th>Questionnaire Variable</th>
<th>Nature/Severity</th>
<th>Regression</th>
<th>Recoupment</th>
<th>Goals of Self-Sufficiency</th>
<th>Progress/Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was the issue considered?</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>8</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Were established criteria defining issue used?</td>
<td>9</td>
<td>7</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Was current case law considered?</td>
<td>8</td>
<td>6</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Would you change your guidelines?</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
</tbody>
</table>

Note: Only divisions serving students in excess of 180 days responded to this set of questions.
actually adopted the child's IEP in its entirety. Six districts (46%) basing their
ESY delivery on the IEP, further stated that they also offer related services.

Four districts described their ESY programs as enrichment activities. Another
four districts sent work packets home. An additional district identified residential
programs as their mode of implementation of ESY services.

**Parental Notification**

Seven districts (46.7%) reported that they notified all parents of special
education students that their child might be eligible for ESY services at every IEP
meeting. Two other districts (13.3%) utilized informal contact. The remaining
school divisions employed a variety of methods of notification described as: staff
contact (6%); contact at certain IEP meetings (6%); end of year conference (6%);
home visits (6%) or letter of interest (6%). Three other districts (20%) notified
only students with specified handicapping conditions of their potential eligibility.

**Cost**

Seventy-six percent (N=10) of the districts serving students in ESY services
offered the services at no cost to the students. Three respondents (23%) indicated
that a fee was charged for ESY commensurate with the fee charged to regular
education summer school students (i.e., fee for courses and materials).
Additionally, eleven districts (78.5%) offered free transportation as part of their
ESY services.
Complaint Procedures

In nine districts, due process was described as the complaint procedure for handling ESY requests that were denied (64%). The other districts did not specify a complaint procedure.

Staff Attitudes

Attitudes of staff concerning working in the summer months were only reported by two districts (4.7%) as effecting the availability of services. The remainder of the districts did not report this as a problem.

Survey Results from 1990 Update

Description of Respondents

A two year follow-up survey of all 42 school divisions in the original survey, yielded a 100% return rate. Twenty-four (57%) respondents were the same individual within the school division who had completed the survey in 1988. The majority of the respondents, as was the case in the original survey, served as the administrator for special education (N=37, 88.1%). The remainder of the respondents all held administrative positions (e.g., Special Education Supervisor, Principal, Eligibility Coordinator).

Policy Issues

Only eight districts (19.5%) limited the number of days a student could receive special education or related services. One district again reported a written ESY policy in place. A copy of the policy was not submitted to the researcher even though a request was made. Eleven districts (26%) stated that an informal policy was in place. Five districts indicated their policy was in the planning or
preparation stages. Three of the five districts reported an actual date for completion of their written policy. One third of the districts surveyed (N=14, 33%) claimed a distinction was made in their district between regular summer school and extended school year services for the handicapped student. Responses to questions regarding key policy issues and practice for 1990 are summarized in Table 6.

** Provision of ESY Services 

A total of twenty-seven (64%) school divisions served between one (N=3,7%) and one hundred seventy five students (N=1, 2.3%). When analyzed by size of district, each of the six groupings sampled had at least three districts that served students in ESY services. Eleven school divisions (26%) had students qualify for services who did not participate in ESY services. In response to a question regarding the ESY decision to serve students, 73.8% (N=31) stated that this decision was based on the IEP. A breakdown of students served in ESY programs in 1990 by district size is presented in Table 7.

** Purpose of ESY Program 

The overall purpose(s) of their Extended School Year services for handicapped students varied. Nine districts (21%) described the purpose of their 1990 program as one designed to maintain existing skills and/or to prevent regression. Examples of the purpose of programs described by other districts included: remediation or recouement of lost skills (N=2, 4.8%); need (N=1, 2.3%); necessary to meet IEP goals and objectives (N=2, 4.8%); to provide additional
Table 6
Key ESY Policies/Practices by Size of School Division: 1990 Survey

<table>
<thead>
<tr>
<th>District Size</th>
<th>Year</th>
<th>Limit # of Days</th>
<th># Served Beyond 180 Days</th>
<th># Make Distinction b/n ESY &amp; Summer School</th>
<th># Have Written Policy</th>
<th>Qualification Based on IEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1990</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>1990</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>1990</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>1990</td>
<td>1</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>5</td>
<td>1990</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>6</td>
<td>1990</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>1990</td>
<td>8</td>
<td>27</td>
<td>14</td>
<td>0</td>
<td>31</td>
</tr>
</tbody>
</table>

Legend:
District Size 1 = 1-1,800.
District Size 2 = 1,801-3,000.
District Size 3 = 3,001-5,000.
District Size 4 = 5,001-8,900.
District Size 5 = 8,901-17,000.
District Size 6 = 17,001-125,000+.
<table>
<thead>
<tr>
<th>Size of District (Students)</th>
<th>Year</th>
<th>Number of Districts</th>
<th>Mean # Served</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1,800</td>
<td>1990</td>
<td>3</td>
<td>5.3</td>
<td>3-8</td>
</tr>
<tr>
<td>1,801-3,000</td>
<td>1990</td>
<td>4</td>
<td>5.2</td>
<td>1-16</td>
</tr>
<tr>
<td>3,001-5,000</td>
<td>1990</td>
<td>4</td>
<td>20.7</td>
<td>5-60</td>
</tr>
<tr>
<td>5,001-8,900</td>
<td>1990</td>
<td>7</td>
<td>11.3</td>
<td>1-50</td>
</tr>
<tr>
<td>8,901-17,000</td>
<td>1990</td>
<td>4</td>
<td>69.2</td>
<td>10-150</td>
</tr>
<tr>
<td>17,001-125,000+</td>
<td>1990</td>
<td>5</td>
<td>85.8</td>
<td>5-175</td>
</tr>
<tr>
<td>Total</td>
<td>1990</td>
<td>27</td>
<td>33.6</td>
<td>1-175</td>
</tr>
</tbody>
</table>
services to handicapped students (N=2, 4.8); and to fulfill the requirements of a grant (N=1).

**Tabular Summaries: 1988 and 1990 Results Combined**

Data for 1988 and 1990 have been combined in tabular form to allow for longitudinal comparisons. Tables 8-11, in Appendix E, summarize data from both surveys presented previously in separate tables by year of survey.
Chapter V

Discussion

The statutes and implementing regulations governing services to handicapped students are prescriptive in nature (e.g., handicapping conditions are defined, due process procedures delineated, the elements of an IEP identified). A hiatus sometimes exists between implementing the prescribed "letter of the law" (i.e., adhering to procedures) and actually meeting the "spirit of the law" (i.e., meeting the unique needs of handicapped students through a FAPE). Extended School Year is a service that frequently falls within that hiatus.

The courts recognize that the decision surrounding whether ESY is necessary to meet the unique needs of an individual child is one that involves consideration of the facts surrounding that particular child. School districts can basically follow procedures, in compliance with state and federal regulations, and not offer ESY to a single student. This can occur where systematic procedures for reviewing the needs of the student beyond the regular school year are non-existent. Virginia is a state without a clearly established precedent regarding ESY services at the Circuit or District court levels and therefore, a specific requirement does not exist to conduct such a review. However, over the past decade, ESY has become clearly established as a requirement for some handicapped children in the U.S. Court System. Court findings are based on the EHA and Section 504 of the Rehabilitation Act. Therefore, it is prudent for school systems in any state not under a clear dictate from the courts, to examine existing case law and make informed decisions about service delivery.
Three of the thirteen federal judicial circuits have ruled that school districts may not have a policy limiting the number of days a child may receive special education and related services. They have consistently struck down policies that categorically limit the school year to the traditional 180 day year. Conflicting rulings on the 180 day issue (i.e., limiting services to 180 days) do not exist across the U.S. court system. Also, each time the Supreme Court has been asked to hear an ESY case they have denied certiorari (with one exception, in which they remanded the case without considering the issues). One could argue that the Supreme Court recognized the consistency in the findings across the circuit courts and decided to let precedence in these cases stand or; perhaps the Supreme Court is allowing the debate to continue so that the issues are well defined before they make a ruling regarding ESY.

Significance of the Study, Survey and Case Law

The surveys in the current investigation served as a longitudinal examination of Extended School Year in the Commonwealth of Virginia from 1988 - 1990. The importance of the study is as follows: 1.) the survey represents the first extensive study in the literature describing ESY services in a state without a clear legal dictate; 2.) documentation exists that practices in numerous school divisions in Virginia are not congruent (i.e., gaps and inadequacies exist) with the status of ESY case law on a national level; 3.) the findings were disseminated to all special education directors in the Commonwealth of Virginia to serve as a reference for administrators in school divisions interested in a review of the case law in relation to a description of existing practices implemented by Virginia
school divisions. A description of ESY services across the Commonwealth of Virginia now exists. Prior to this investigation only assumptions could be made regarding the status of ESY in Virginia. This investigation structured a formal data gathering process to examine the implementation of ESY at the LEA level.

Significant findings from the survey confirm: 1.) written policies do not exist to guide practice at the local level in Virginia; 2.) some school divisions engage in the practice of limiting all handicapped pupils education to 180 days regardless of need, thereby categorically denying FAPE; 3.) districts that serve students beyond 180 days do not always make a distinction between summer school and ESY (i.e., charge fees, IEP not implemented, transportation not furnished, fixed number of days) wherein services are operated outside the requirements of the Act. A review of the case law across the U.S. Court System emphasized: 1.) categorically denying ESY is a violation of the EHA; 2.) the ESY decision should be based on the learning characteristics of the child but not limited to one standard (i.e., regressive tendencies, ability to recoup skills, whether a child is able to benefit, etc.). 3.) the IEP is the vehicle for ESY services; 4.) ESY is without cost to parents; 5.) funding formulae and limited funding do not excuse districts from considering ESY and; 6.) related services may be a necessary part of ESY services. A review of the findings from the survey describing practice at the LEA level relative to the case law, follows.
Case law and Practice

180 Days. Over the past decade, six federal courts across the country have clearly articulated that a policy categorically limiting a child's education to 180 days, without respect to individual need, is a violation of the Education for All Handicapped Children Act of 1975 (currently known as the Individuals with Disabilities Education Act, P.L. 101-467, 1990). The courts have consistently found such a policy invalid (Battle, Richard K, Yariss, Crawford, GARC, Tilton).

Based on the data provided by the 1990 survey, one in five (N=8, 19.5%) school divisions in Virginia maintain a policy of limiting the number of days a child may receive special education or related services. The 1988 survey reported more than one in four (N=12, 28.6%) districts placed a limit on the number of days a child could receive special education or related service. Actually, these are conservative projections of the number of districts that restrict services because an additional fourth of the districts, which indicated that they do not limit days a child may receive services, did not make a distinction between summer school and ESY and did not have children qualify for ESY services. Summer school is typically a remedial program, offered a set number of days, and often a fee is charged. Also, this statistic only improved marginally in the two year follow up survey where one in five districts indicated their district placed a limit on the number of days a child could receive services. Placing a categorical limit on services poses two problems: 1.) the district is subject to litigation which they will very likely lose and; 2.) some handicapped students may not be able to derive benefit from their education. Reimbursing prevailing parties attorney’s fees and
the general fiscal condition of most school districts across the country are compelling reasons to avoid litigation. Since the goals of many handicapped students are self-sufficiency and independence from caretakers, it is both in the student's best interest and in the interest of the state (i.e., institutionalization is extremely costly) to further progress toward these goals for students who qualify for services.

**Criteria for ESY Determination.** The initial ESY case, proffers the standard for ESY determination as one that is necessary "if regression caused by an interruption in educational programming, together with the student's recoupment capacity, render it impossible or unlikely that a student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach" (Armstrong). In addition, the court emphasized that the individual consideration of need for ESY must be made for all children even though certain handicapping conditions make a child a more likely candidate for services. The Anderson court used "irreparable loss of progress" as the standard for determination. Based on the evidence in Bales, this court too focused on regression of skills: "regression was not extraordinary nor irretrievable". Phipps recognized a legitimate claim had been brought before the court due to the "substantial regression" plaintiffs would experience. Five separate factors, each of which must be considered, were established for making an ESY determination in Lee: nature of the handicapping condition; severity of the condition; areas of learning crucial to attaining goals of self-sufficiency and independence from caretakers; extent of regression caused by an interruption in
programming; and the rate of recoupment following an interruption in programming. The Rettig court focused on the Rowley test of whether services are necessary for a child to derive educational "benefit. Alamo Heights set forth a general standard that focused on the regression factor alone. Relief in this case was predicated on the finding that the student would suffer "at least severe regression without continuous, structured educational programming." With deference to the individualized approach explicitly described in P.L. 94-142, criteria to assess need for ESY services based on an individual basis is indicated. Once the given standard was applied, students did not always receive ESY in the aforementioned cases.

In the current study, twelve of the thirteen districts serving students in ESY services (92.3%) used severe regression of skills caused by an interruption in programming in determining an individual should receive ESY services. Other indicators of an individualized approach include the use of IEP goals and objectives (N=9, 69.2%) and impact of the break on the child's educational performance (N=5, 38%) in making the ESY determination. However, based on the results of this survey, one in four school divisions do not have a procedure or policy for determining if a child needs ESY services. (Note: 1990 Update did not include questions regarding criteria for ESY determination. Only one district described a procedure for making an ESY determination).

**Individualized Education Program.** In the order promulgated by the Armstrong court, the IEP was identified as the document to describe ESY
services. The Lee court defined ESY in terms of meeting individual needs through the IEP.

Over two thirds of the respondents in 1990 (N=31, 73.8%) stated that the ESY decision was based on the IEP. In 1988, one sixth of those surveyed (N=9), identified implementation of the IEP as the distinction between ESY and summer services.

**Procedural Issues.** The Armstrong court determined the parents in the case were denied their rights because the State Department of Education refused to allow them to take the ESY issue to a due process hearing.

Nine of the districts surveyed in 1988 reported due process procedures as the forum for handling ESY cases denied (i.e., 64% of those offering services). The question was not posed in the 1990 update survey.

**Purpose.** The findings of the Battle court spoke of the 180 day limit on education as a barrier for the plaintiffs to achieve "reasonably set educational goals with respect to self-sufficiency, whether that be merely avoiding institutionalization or living in a community living arrangement or working in a sheltered workshop." In addition a concurring opinion by a judge in the case, made reference to the education of some students being brought to a "virtual standstill" during the summer break due to a severe "regression-recoupment syndrome". Numerous courts made reference to the "educational benefit" test of Rowley (Bales, Crawford, GARC, Lee, Rettig and Alamo Heights). In order to overcome these barriers that prevent a student's needs from being met and effect
the child's ability to achieve goals, the limits placed on the child's education must be removed.

All of the respondents in the 1988 survey who served students in ESY programs described the purpose of the program as maintaining skills. One fifth of the respondents in 1990, designed programs to maintain existing skills and/or to prevent regression. Other purposes described in either the 1988 or 1990 survey included: remediation or recoupment of skills; need; necessary to meet IEP goals and objectives; to provide additional services; fulfill grant requirements; skill development; reduction of self-abusive behaviors; generalization; and parent involvement.

**Cost.** The court in the Armstrong case made reference to the FAPE provision of the Federal Statutes, emphasizing a free education, without cost to parents, for handicapped children, including those who receive ESY services. In quoting a 1972 case (*Mills*) the *Crawford* court reiterated that limited funds "cannot be permitted to bear more heavily on the exceptional or handicapped child than on the normal child".

In the present investigation, three (23%) school divisions providing ESY services, charged a fee to parents. This number reflects close to one in four districts charge a fee for ESY services.

**Funding.** The states’ funding formulae in *Richard K.* was described as having an "arbitrary and capricious" effect when applied to the needs of the individual child. The states existing formula was voided. A funding order was actually enumerated in the 1984 case of *Yaris*, prorating funds for summer
programs and contractual services. "Lack of funds" in Mississippi (Crawford) and Georgia (GARC) did not alleviate those states from having to determine the need for and provide ESY services. Laws which prohibit local governments from expanding services without appropriations from the state, preclude ESY because ESY falls under the authority of federal statute, not state law (Birmingham). Finally, maintenance of placement may not apply when a facility is closed for fiscal reasons (Tilten).

The majority of school divisions indicated that local and state funding formulas do not affect their ability to provide ESY services. Specific information was not requested in the 1990 survey to conduct an adequate assessment of those districts that were effected by existing funding formula.

**Related Services.** Special education as defined in P.L. 94-142 includes within related services "transportation...and other supportive services...as may be required to assist a handicapped child to benefit from special education". Alamo Heights clearly illustrates that transportation is a related service that should be considered in the provision of summer services. The court ordered the district to provide out-of-district transportation from the caretakers home to the summer services site. Approximately eighty percent (N=11,78.5%) of those serving students in the present study, offer free transportation.

Finally, another related service that had the focus of the court was physical therapy. The court ruled that physical therapy must be provided during the summer months where progress toward IEP goals would be delayed (Holmes).
Six districts in the 1988 investigation, offered related services under contract during the summer months. Another five districts offered related services along with an instructional program. Other districts that offered the IEP in its entirety or identified certain goals for ESY services may also have offered related services. It would appear that those offering ESY services, also provide related services.

A summary of key legal issues presented in reference to findings from the survey, appears in Appendix F.

**Limitations of the Investigation**

Sixty nine percent of the respondents did not have students qualify for or receive ESY services. These respondents were only requested to complete the information section and a few general questions prior to being directed to discontinue. Several questions with implications for this portion of the sample were embedded in other sections of the survey (i.e., local and state level funding formulae and difficulties in recruiting teachers for ESY services). It was an oversight to not at least include an open-ended question inquiring as to the reasons for not offering ESY. This information would have been useful in analyzing problems like recruitment in an effort to generate solutions to existing barriers.

The findings of the survey can be generalized to other school divisions in Virginia (i.e., if weighted values are derived for each division size). However, a sampling of school districts from contiguous states would have enabled the investigator to interpret the findings in reference to school districts within the
fourth federal judicial circuit. These findings could have been compared to other circuits where ESY precedence has been clearly established.

While the anonymity guaranteed to respondents in the current investigation may have enabled the researchers to achieve a one hundred percent return rate for both mail surveys, and eliminate the threat of negative publicity for those without ESY services, a detailed report by school division, with names of contact persons, etc. is prohibited. A detailed report could have served as a guide to support school divisions interested in initiating or improving ESY services or as a plan for corrective action.

Implications for LEA’s

The findings from the survey suggest there is a wide gap in knowledge and services with regard to ESY (i.e., some learned of ESY through the original survey and others served in excess of one hundred children). The group of administrators completing the survey are well educated; holding a masters’ as a minimum degree. While it might be important to note that only half of these administrators earned their degree after the passage of P.L. 94-142, educators are required to pursue continuing education activities to maintain their certification. One mode of inservicing these administrators, in line with their primary information source at this time, is to supply them with professional journal articles. Another approach that fits with their past mode of staff development is to offer training through the state department of education.

Thirty-one percent of school divisions in Virginia offer ESY services. When examined collectively, a wide range of practices are represented with multiple
examples of procedures and practices based on existing case law. Considerable variability exists in the procedures used to identify students who qualify for services and purpose of the services. Existing practices could be assembled through an evaluation process, identifying models for districts that are not currently serving students.

Ten years after the landmark case of Battle was decided, the Virginia school divisions surveyed did not have written policies and procedures in place. Nearly ten percent of the sample reported they learned of ESY through this researcher's survey. The majority learned of ESY through reading case law; while about a fourth gained their knowledge of the area from the Virginia Department of Education. Since ESY litigation is burgeoning nationwide, the SEA may want to assume the lead in training LEA’s in policy development, and identifying school districts of varying sizes implementing ESY to guide those who are not. School divisions should monitor ESY litigation to update and improve criteria for entry. An ESY policy is warranted for a school district to avoid being "compromised professionally" (Turner, 1989). Not actually serving students in ESY services could be interpreted by the courts as tantamount to denying children access to FAPE.

**Directions for Research**

Two areas of research indicated by the literature are: 1.) single subject experimentally controlled studies to study regression and recoupment in handicapped children; and 2.) further study in the area of generalization and maintenance of skills. ESY could become a non issue for the majority of
handicapped students through strengthening skills at the time of mastery and periodically thereafter utilizing effective programming techniques to ensure maintenance of skills.

In response to federal statutes, emphasis on the unique needs of the individual child is the cornerstone of service delivery to students qualifying for special education services. In accordance with the findings of scores of court cases, this requirement is also the basis for making a determination for whether a child should qualify for ESY services. The decision regarding whether to provide a child with an extended school year is becoming increasingly complex as the trend of the courts appears to be moving away from "set criteria" to a "broad range of inquiries" (Cordrey). The direction in which the "inquiries" will take school divisions in making a determination for the need for ESY services is presently unclear. It is apparent that numerous issues that have been raised by the courts in an attempt to determine whether a student qualifies, are recurrent (i.e., regression, recoupment, impact of the break and generalization of skills). A technology exists, known as single subject design, for measuring and analyzing specific observable behaviors (Hersen & Barlow, 1976).

Single subject design lends itself to the study of the individual, when interventions can be systematically applied or removed. For example, in the school environment, baseline data regarding level of functioning with regard to a specific target skill can be collected prior to the initiation of an intervention designed to teach the acquisition of that skill, the intervention can be applied with continued monitoring of level of functioning with regard to that skill, and finally a
return to baseline can be accomplished by removing the intervention while continuing to collect data on level of functioning with regard to that skill. This paradigm can be applied to numerous behaviors and skills to assess the detrimental effects that breaks in programming (as measured by the return to baseline phase of the paradigm) may have for a particular child, and to adequately determine the need for ESY services on these particular dimensions. Utilization of this methodology would represent a significant step toward the use of empirical data to assist in determining the need for ESY services for a child. Additionally, implementing this technology as routine practice in the classroom would allow programming for generalization, thereby strengthening critical skills and planning for maintenance, and consequently reducing the need for ESY for all except those with exceptional needs during breaks from programming.

Finally, it is clear from current case law that in order to avoid potentially costly litigation, LEAs need to have an ESY policy in place that is distinct from regular/remedial summer services. Access to ESY services should be based on a consideration of individual need and include: implementation of programming targeting specific IEP goals, free transportation if necessary, access to procedural due process rights, and related services when indicated.
References


Anderson v. Thompson, 658 F.2d 1205 (7th Cir. 1981).


Battle v. Commonwealth of Pennsylvania, 629 F.2d 269 (3rd Cir. 1980).


Cordrey v. Euckert, 917 F.2d 1460 (6th Cir. 1990).
Crawford v. Pittman, 708 F.2d 1028 (5th Cir. 1983).


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*Polk v. Central Susquehanna Intermediate Unit* 853 F. 2d. 171 (3rd Cir. 1988).


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U.S. Congress (1975). Public Law 94-142 Education for All Handicapped Children


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aff'd, 728 F.2d 1055 (8th Cir. 1984).
APPENDIX A

Armstrong Court Order Facsimile
GUIDELINES FOR IDENTIFYING SCHOOL-AGED PERSONS IN NEED OF EDUCATION PROGRAMMING IN EXCESS OF 180 DAYS PER YEAR AND IT IS SO ORDERED.

I. Introduction

In June, 1979, the federal District Court for the Eastern District of Pennsylvania issued a decision in the class action lawsuit, *Armstrong v. Kline*. The Court ruled that certain handicapped students require a continuous program of special education and related services in excess of the normal 180 days school year and that any handicapped student who requires such a program is entitled to receive it from the Department of Education and their local school district without cost or other financial liability.

The *Armstrong* Court held that, under federal law, each handicapped student in the Commonwealth is entitled to receive a "free appropriate public education," and recognized that, to have meaningful access to a public education, handicapped children may require services or types of educational programs which are different from those needed by their nonhandicapped peers. Moreover, the Court found that each handicapped child is an individual with unique problems and individual learning characteristics. With these factors in mind, the Court held that a "free appropriate public education" for certain handicapped students necessitates a program of special education and related services in excess of 180 days per year.

The Court found that handicapped children, like their nonhandicapped peers, are educated with certain objectives in mind, and it is towards these goals that educational programming is directed. While goals or objectives may differ depending on the child and the nature of severity of his/her handicapping condition, an "appropriate program of special education and related services" must, in all instances, at minimum, be directed towards the attainment of self-sufficiency, independence from caretakers, and avoidance of institutionalization.

Therefore, to comply with the Court Order and to assure uniformity in decision making, the following guidelines have been developed and are intended for use by school district, intermediate unit, and Department of Education special education officials, parents and other IEP team members, and special education hearing officers who are involved with determining which handicapped students are in need of continuous programs of special education and related services in excess of the normal 180 day school year, and the type and length of the programs required. Any handicapped student who requires such a program is entitled to receive it without cost, and the need for and description of the program must be contained in the student's IEP.
II. Standard To Be Applied in Determining Which Children Require Programming in Excess of 180 Days Per Year

Some handicapped children are particularly vulnerable to interruptions in their special educational programs, and will show a sharp decline or regression in their learning and development if those programs are interrupted. "Learning" for handicapped children includes the acquisition of self-help, academic, socialization, and vocational skills, the control of inappropriate behaviors, and the development of appropriate behaviors which foster the learning experience. Certain of these "vulnerable" children cannot easily regain or recoup their educational losses if their programs are interrupted.

Since each handicapped child learns differently, progresses, regresses, and recoups at different rates and has a different capacity to obtain self-sufficiency, it is not possible to set down any absolute rules which automatically dictate that all children with a particular handicap or IQ level have a need for continuous programming in excess of 180 days per year; rather, that decision, as well as a determination regarding the amount of programming required, must be made on an individual basis. However, in analyzing the various factors which are relevant to determining a handicapped child’s needs and deciding whether he/she requires educational programming in excess of 180 days per year, the following is the standard which must be applied:

A handicapped student is entitled to an education program in excess of 180 days per year if regression caused by interruption in educational programming, together with the student’s limited recoupeon capacity, render it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of his/her handicapping condition.

III. Factors Which Are Relevant To Determining Whether a Handicapped Student Requires Educational Programming in Excess of 180 Days Per Year and the Type of Programming

As was stated above, the determination as to whether a child requires educational programming in excess of the normal school year must be made on an individual basis. However, there are certain characteristics or factors which alone or in combination make it more likely that a child will meet the standard described above and thus need such programming. Some of these factors are as follows:
1. **Nature of Handicapping Condition**

Although children who meet the above standard may have any handicapping condition or combination of handicapping conditions, children with certain disabilities, which require consistent, highly structured programs, may be predisposed to regression when their programs are interrupted. These same children may also have limited recoupment capacity. Such handicapping conditions include childhood autism, severe emotional disturbance, severe or profound mental retardation, degenerative impairments with mental involvement, and severe multiple handicaps. As part of the annual IEP review process of each child who has been diagnosed or described as having one of the above impairments, the IEP team shall consider the child's need for continuous educational programming in excess of 180 days per year.

2. **Severity of Handicapping Condition**

Although "vulnerable" children with limited recoupment capacity can exist among the more moderately impaired, they are more likely to be among the more severely handicapped. The most severely emotionally disturbed children, for example, are more likely to revert to lower functioning levels or to exhibit inappropriate behaviors, such as extreme withdrawal, anxiety reactions, or fetishes which seriously interfere with learning, when their program is interrupted. For many of these children, each successive interruption in programming and consequential regression also reduces the child’s motivation and trust and may lead to an irreversible withdrawal from the learning process. Severely or profoundly retarded children are more likely to have limited relearning capacity. Finally, these severely impaired students are most likely to have difficulty attaining the goals of self-sufficiency and independence from caretakers, and to need additional help and support to reach these goals.

3. **Areas of Learning**

Just as every child learns, regresses, and recoups at different rates, he/she may also learn, regress, or recoup certain skills or behaviors at different rates than others. Certain skills or behaviors are particularly essential to meeting the goals of self-sufficiency. For example, basic self-help skills, such as toileting or eating, are essential for minimal independence; the development of stable relationships, impulse control and appropriate peer interaction is necessary for community living. Therefore, if a child would suffer a significant regression/recoupment loss in a skill or behavior which is particularly crucial to reaching the goal of self-sufficiency and independence from caretakers, the child requires continuous education programming in that skill or behavior area.
Another relevant factor is the extent to which the child has mastered and consolidated an important skill or behavior at the point when the program is broken since behaviors or skills which have not yet been generalized, mastered, and consolidated are more easily lost, a child is more likely to regress in that skill or behavior area if his/her programming is interrupted before mastery and consolidation have been achieved.

4. **Capacity of Parent or Guardian To Monitor Programming and Prevent Regression**

A parent or guardian may be unable to maintain a child's level during a break in programming because of the complexity of the program, time constraints, lack of expertise, or other reasonable reasons, and this factor is relevant to whether a child can be expected to regress. Also relevant to a parent's ability to maintain skills during interruptions in programming is the child's stage of mastery of crucial skills or behavioral controls as of the point of the interruption in programming.

Where appropriate, school districts and/or intermediate units should consider offering parent training programs to help parents attempt to maintain their child's level during breaks in programming. School districts and intermediate units should also consider offering the provision of support services in the home, either directly or in cooperation with the Department of Public Welfare or Office of Mental Health/Mental Retardation, if such services will prevent the child's regression during a break in programming. School districts and intermediate units are free to utilize the resources of other public or private agencies in order to meet the child's needs, so long as there is no cost or financial liability to the child's parents or guardians.

5. **Extent of Regression or Recoupment**

Again, there is no precise measure of the amount of time which, if lost through the regression and limited recoupment characteristics of a child, necessarily dictates that the child receive education programming in excess of 180 days per year.

IV. **Type and Length of Program Required**

As with the determination of need for programming in excess of 180 days per year, the type and length of the program which a child requires must also be made on an individual basis. Certain children are unable to sustain more than a minimal number of short breaks in their program without suffering severe regression and disruption in their learning process. These children require a consistent program of special education and related services on a year round basis which does not significantly differ during the summer months from that provided
during the normal school year.

Other children can sustain short breaks, such as weekends or the traditional one week winter or spring vacation, without significant losses, and may only have a regression/recoupment problem when their program is interrupted for a longer period of time. Such a child requires a year round continuous program of special education and related services which is designed to maintain the child's level in those skill and behavior areas identified as crucial if the child is to reach his/her goals of self-sufficiency and independence.

It should be remembered that most handicapped children, like their nonhandicapped peers, will benefit from school vacations; breaks in formal programming allow most children to generalize into their natural environment the skills and behaviors learned in school. Further, for most children, "learning" takes place outside the formal school environment as well. For children who severely regress during a break in programming and have limited recoupment capacity, however, the break in programming is detrimental rather than beneficial to the overall learning process and the achievement of the goals of self-sufficiency and independence from caretakers.

The length beyond 180 days per year of a child's education program should be, at minimum, the amount of time necessary to provide the child a meaningful opportunity to achieve his/her goals with respect to self-sufficiency and independence from caretakers. The program itself should be consistent with the child's IEP and provide all programs and related services necessary to meet those goals.

V. Sources of Information for Determination

Reliable sources of information regarding a child's educational needs, propensity to regress, recoupment potential, and capacity for achieving self-sufficiency include the following:

1. Experience of persons who work with the child, such as teachers, parents, and therapists;
2. Empirical data, if any, maintained on the child, including pre- and post-test IEP data;
3. Medical, psychological, or educational records of the child from public and private sources;
4. Prognosis or opinions of educators, medical personnel, parents, and others who work with the child.

An actual experience of severe regression with significant recoupment time, particularly in the context of a formal special education program, is not necessary in order to establish that a child requires continuous programming in excess of 180 days per year. Such a prognosis can be made based on the type of data described above if it appears that the child demonstrates one or more of the
factors or characteristics described in Section III above.

VI. Conclusion

After consideration of the factors and characteristics set out in Section III, the relevant personnel shall determine whether the child requires a continuous program in excess of 180 days per year and, if so, the type and length of the program required. Such a determination, like other special education decisions, must be based on the individual child's unique needs. Since a child's needs may change over time, a determination that a child requires continuous programming does not remain fixed for his/her entire education career. Likewise, the initial decision may be that the child does not require such programming, but if later experience with the child in fact leads to a contrary conclusion, the child's IEP should be revised accordingly.
APPENDIX B

1988 Survey Instrument
Cover Letter
Thank-you Card
Part I Information Questions

1. Please specify your current position/title: __________________________

2. Do you serve as the administrator of special education programs for your school division?  
   Yes _____ No _____

3. Your highest level of education attained:  
   _______ Bachelors  
   _______ Masters  
   _______ Masters + 30  
   _______ Ed. S. or CAGS (Certificate of Advanced Graduate Studies)  
   _______ Doctorate

4. In what field and specialization did you obtain your last degree (e.g. Special Education Administration and Supervision, Educational Administration, Psychology, Special Education)? Please specify: __________________________________________________________

5. Year last degree obtained: _________________

6. Please indicate the nature of any training you have had in school law:  
   _______ Coursework in legal aspects of special education  
   _______ Coursework in school law  
   _______ School Board Attorney conducts in-service  
   _______ Have not had training in education law (Skip to question #8)  
   _______ Other, please specify: ______________________________________

7. Date of most recent training in Special Education law ____________  
   Please describe: ______________________________________________________

8. How do you keep abreast of current issues in special education law? Check those that apply:  
   _______ EHLLR (Education of the Handicapped Law Reporter)  
   _______ Journals (e.g. Exceptional Children)  
   _______ Special Ed. (e.g. ED. LAW)  
   _______ Education of the Handicapped  
   _______ Schools Advocate  
   _______ CASE Newsletter  
   _______ Counterpoint  
   _______ School Board Attorney  
   _______ Inservice Training  
   _______ Mental Disability Law Reporter  
   _______ Other, please specify: ______________________________________
   _______ None of the above
Part II  General Questions

9. Where did you first learn of Extended School Year (ESY): services offered beyond the traditional school year for certain handicapped pupils? Check those that apply:
   _____ School Board Attorney
   _____ Virginia Department of Education
   _____ case law
   _____ journal articles (e.g. Exceptional Children)
   _____ This survey is the first I have heard of ESY.
   _____ Other, please specify: ________________________________

10. Does your school division make a distinction between Extended School Year (ESY) and the regular summer school program with regard to handicapped pupils?
   Yes ______ Please describe difference: ___________________________________________________________
   No ______

11. Does your school division place a limit on the number of days a child may receive special education or related services?  Yes ______ No ______

12. A. Does your district have a written policy for determining Extended School Year placement?
   Yes ______ Date implemented ____________________________ (If yes, skip to *12.F)
   No ______  If no, please continue.

B. Does your school district have an informal procedure for determining ESY placement?
   Yes ______ Please attach description of informal procedure. No ______

C. Is policy currently in preparation or planning stage?
   Yes ______  No ______

D. Date targeted to implement policy?  ________________

E. If no plans exist for developing a policy, please check here ______

If your district does not have a procedure regarding extended school year, does not have a written policy and has not had children qualify or receive ESY services, you may stop here. Thank you for your participation. Please use the enclosed stamped, self-addressed envelope to return the survey.

*12. F. What is the overall purpose of your ESY program with regard to the individual child? Please check those that apply:
   _____ maintenance of specific skills
   _____ skill development
   _____ reduction of self-abuse behaviors
   _____ generalization (i.e. transferring mastered skills to other settings)
   _____ Other, please specify: ________________________________
G. Approximately how many children in your district participated in ESY programs offered beyond the traditional school year (e.g., summer breaks, Christmas break, spring break) during the 1986-87 school year? _____

How many students qualified for ESY services who did not participate? _____

Please provide source of information that could be used to document participation:

_____ IEPs
_____ Keep a separate list of those qualifying for ESY services
_____ Other, please specify: ____________________________

13. Please place a check in the box beside each of the following items you use to determine that an individual should receive ESY services and give an example of how you use each item checked:

☐ Nature of the Handicapping condition

☐ Severity of the handicapping condition

☐ Severe regression of skills caused by an interruption in programming

☐ Recoupment time needed to regain skills lost due to an interruption in programming

☐ Areas of learning critical to attaining goals of self-sufficiency

☐ Child’s capacity for achieving goals of self-sufficiency

☐ Placements available

☐ Cost to the school district

☐ Impact of the break on child’s educational performance

☐ Child’s progress as an indicator of benefit from his current educational program

☐ Parents ability to carry out programs

☐ Concept of LRE (least restrictive environment)

☐ IEP goals and objectives
Please list additional items you use to determine that an individual should receive ESY services and provide examples of how you use them.

14. Which of the following were used to develop your district's ESY criteria? Indicate all those that apply:
   - Special Ed. Director (or equivalent position)
   - Guidelines set forth in court cases
     - Armstrong case (also known as Battle v. Commonwealth of Pennsylvania)
     - Not sure of guidelines in Armstrong case
     - Guidelines set forth in cases other than Armstrong
     - Please specify cases other than Armstrong
   - Have not read other ESY cases
   - Committee of experts
     - List titles of those on the committee (e.g. School Board Attorney, University Professor):

   - Data based derivation. What data were examined?
   - Check those that apply:
     - Test scores from our school district
     - Data from another school district
     - Data from a published or unpublished study
   - Other data source, describe:
   - Other developed criteria, specify:

15. Who makes the final decision for who is to receive ESY in your school district? Indicate all that apply:
   - Child's special education teacher
   - Principal
   - School psychologist
   - School district central office staff
   - Eligibility Committee
   - IEP Committee
   - Special Education Director
   - Other, please specify:

16. How do attitudes of staff affect your ability to recruit staff to deliver ESY services? Check those that apply:
   - Easy to recruit
   - Difficult to recruit
   - Not an issue
17. A. How are parents of children in special education notified of their potential eligibility for ESY services? Check all those that apply:
   
   _____ Not formally notified
   _____ No one is notified
   _____ Written notification
   _____ All IEP meetings
   _____ Informal parent contact, exclusively
   _____ Other method of contact, specify: __________________________

   B. Please indicate which handicapped students are notified of their potential eligibility. Those with:
   
   _____ Any handicapping condition
   _____ Emotional disturbances
   _____ Mental retardation
   _____ Autism
   _____ Severe/profound handicaps
   _____ Learning disabilities
   _____ Physical handicaps
   _____ Other, please specify: __________________________

18. Is a fee charged to parents for your ESY services?  
   Yes _____ No _____ If you charge a fee, please describe what the charges are for: __________________________

   Is a similar fee charged to regular education students?  
   Yes _____ No _____ If yes, please describe what fee is for: __________________________

19. Are parents responsible for implementing home-based ESY programs? Yes ____ No ____

20. Does your local funding formula for special education services affect your ability to offer ESY?  
   Yes _____ No _____ If yes, please describe the way your services are affected: __________________________

   Does Virginia's formula prevent you from providing ESY? Yes _____ No _____

   Please explain response: __________________________

21. How are your ESY services delivered? Check all that apply:

   Work packets are sent home
   _____ "Enrichment activities" (i.e. swimming, fieldtrips, summer camp)
   _____ The child's regular school year program is adopted in its entirety, as delineated in the IEP and offered as ESY services
   _____ Only certain goals and objectives are selected from the IEP for ESY programming
   _____ Related services are offered under contract or other arrangement made by your school division
   _____ Related services are offered along with an instructional program
   _____ Other, please describe: __________________________

22. Is free transportation offered as part of your ESY services?  
   Yes _____ No _____

   If no, is reimbursement available for parents who provide transportation? Yes ____ No ____
23. Do you have a complaint procedure for handling a request for ESY services, that is denied?
   Yes ______ No ______  If yes, please describe: ________________________________

Part III  Issues

The following section will present numerous issues, one at a time, that might be considered in an ESY
policy. Each issue will be followed up by a series of questions.

24. A. How are the nature and severity of a child’s handicapping condition considered when
   making decisions for provision of ESY services:
      ______ Both nature and severity are considered together
      ______ Both nature and severity are considered separately (i.e. independently from one
            another)
      ______ Only nature (not severity) is considered
      ______ Only severity (not nature) is considered
      ______ Neither are examined. If neither are examined, please skip to question #25.

B. What criteria are used to define nature and/or severity of the handicapping condition in your
   school district? Please check those that apply:
      ______ Certain handicapping conditions are designated as potential candidates for ESY
            Prognosis or opinions of educators, medical personnel, consultants
      ______ Opinions of parents
      ______ Group empirical data (e.g. normative test data)
      ______ Data based derivation. What data were examined?
      Check those that apply:
         □ test scores from our school district
         □ data from another school district
         □ data from a published or unpublished study
      □ Other data source, describe: ____________________________________________

      ______ Other criteria, describe: ____________________________________________

C. Does current caselaw affect your use of the nature and/or severity of the handicapping
   condition in your efforts to qualify students for ESY services?
      ______ Does affect.
      ______ Does not affect

      If it does affect your efforts, please describe: __________________________________

D. How would you change your current practice with regard to the nature and or severity of the
   handicapping condition? Check those that apply:
      ______ No change
      ______ Would have written guidelines
      ______ Would use criteria other than those currently used

      If you would change your criteria, please describe criteria you would use.

      _________________________________________________________
25. A. Does your school district have a procedure requiring that the loss of skills, regression, be considered when making decisions for provision of ESY services?
   Yes _____ Regression is considered.
   No ______ If you do not examine regression (i.e., "loss of skills"), skip to question #26.

B. What criteria are used to define regression, loss of learned skills, in your school district?
   Please check those that apply:
   _____ Certain handicapping conditions are designated as potential candidates for ESY
   _____ Prognosis or opinions of educators, medical personnel or consultants
   _____ Opinions of parents
   _____ A regression-recoupment formula is used. Please describe: ____________________________

   Group empirical data (e.g., normative test data)
   _____ Data based derivation. What data were examined?
   Check those that apply:
   □ test scores from our school district
   □ data from another school district
   □ data from a published or unpublished study
   □ Other data source, describe: ________________________________________________________

   _____ Other criteria, please describe: _________________________________________________

C. Does current caselaw affect your use of regression (i.e., "loss of learned skills") in qualifying students for ESY services?
   _____ Does affect.
   _____ Does not affect.
   If it does affect your use of regression, please describe: ________________________________

D. How would you change your current practice with regard to regression, the loss of learned skills? Check those that apply:
   No change
   _____ Would have written guidelines
   _____ Would use criteria other than those currently used
   If you would change your criteria, please describe criteria you would use.

   ______________________________________________________

26. A. Does your school district have a procedure requiring that recoupment of lost skills or knowledge be considered when making decisions for provision of ESY services? Recoupment is considered:
   Yes _____ No _______ If no, skip to question 27.
B. What criteria are used to define recuperation of lost skills in your school district? Please check those that apply:

- Certain handicapping conditions are designated as potential candidates for ESY
- Prognosis or opinions of educators, medical personnel, consultants
- Opinions of parents
- Group empirical data (e.g., normative data)
- Data based derivation. What data were examined?
  Check those that apply:
  - test scores from our school district
  - data from another school district
  - data from a published or unpublished study
  - Other data source. Describe: ________________________________

- Other criteria, please describe: ________________________________

C. Does current caselaw affect your use of recuperation of lost skills, in qualifying students for ESY services?

- Does affect.
- Does not affect.

If it does affect your use of regression, please describe: ________________________________

D. How would you change your current practice with regard to recuperation of lost skills?

Check those that apply:

- No change
- Would have written guidelines
- Would use criteria other than those currently used

If you would change your criteria, please describe criteria you would use.

27. A. Does your school district have a procedure whereby the child’s ability to achieve goals of self-sufficiency are considered when making decisions for provision of ESY services?

Yes _____ No _____ If no, please skip to question #28.

B. What criteria are used to define goals of self-sufficiency? Please check those that apply:

- Certain handicapping conditions are designated as potential candidates for ESY
- Prognosis or opinions of educators, medical personnel, consultants
- Opinions of parents
- Group empirical data (e.g., normative data)
- Data based derivation. What data were examined?
  Check those that apply:
  - test scores from our school district
  - data from another school district
  - data from a published or unpublished study
  - Other data source. Describe: ________________________________

- Other criteria, please describe: ________________________________

-
C. Does current caselaw affect your use of the goals of self-sufficiency in your efforts to qualify students for ESY services?

_________ Does affect.
_________ Does not affect.

If it does affect your use of regression, please describe: ______________________

_________________________________________________________________________

D. How would you change your current practice with regard to considering a child's goals related to self-sufficiency? Check those that apply:

_________ No change
_________ Would have written guidelines
_________ Would use criteria other than those currently used

If you would change your criteria, please describe criteria you would use.

_________________________________________________________________________

28. A. Does your school district have a procedure requiring that the child's progress (e.g. is he benefiting from current educational programming?) is considered when making an ESY determination?

Yes ______ No ______ If no, please skip to end of survey.

B. Please describe the criteria you use to define progress/benefit in your school district:

_________________________________________________________________________

_________________________________________________________________________

C. Does caselaw affect your use of progress/benefit?

_________ Does affect.
_________ Does not affect.

If it does affect your use of progress/benefit, please describe: ______________________

_________________________________________________________________________

D. Would you change your current practice with regard to considering a child's goals related to progress/benefit?

_________ No change

If you would change your current practice, please describe change.

_________________________________________________________________________

Thank you for completing this survey! Please attach a copy of your ESY policy and return the survey in the stamped, self-addressed return envelope.
Dear

Your school division has been chosen through a process of random selection to complete the enclosed survey. Please take a moment to read the survey description.

The purpose of this survey is to describe the implementation of extended school year programs and services for handicapped pupils in Virginia. The concept of extended school year (referred to as ESY) has emerged through the courts as a necessary service for some handicapped pupils. Information obtained from this survey will be kept confidential. Your school division will not be identified by name with respect to any information you provide.

This data collection effort is part of my doctoral dissertation research in Administration and Supervision of Special Education at Virginia Tech. Both my committee and I agree that the confidentiality of school divisions be strictly maintained in any reporting of findings.

It would be extremely helpful if you, as the special education administrator, were to personally complete the survey. Field testing has revealed that the entire survey takes approximately twenty-five minutes to complete. There are several points throughout where the responder is directed to skip questions or exit based on different levels of involvement. I hope that works out about right for drinking the soft drink of your choice (50 cents enclosed), while you respond to the survey. I plan a follow-up contact with school divisions I do not hear from.

I will be available to answer questions at home 703/953-1295 or school 703/961-5975. If I cannot be reached when you call, please leave your name, phone number and message with the best time to contact you and I will return your call.

Finally, you are invited to express any opinions, concerns or questions you might have regarding ESY. Please use the back of this survey for any such comments. Thank you for your effort in completing this survey. If you could return your responses by June 17th, in the envelope provided, it would be greatly appreciated.

Sincerely,

Sharon R. Booth

Scanned by Virginia Polytechnic Institute and State University
Thanks
For Your Help!
APPENDIX C

1990 Survey Instrument
Cover Letter
EXTENDED SCHOOL YEAR SERVICES SURVEY, JULY 1990 UPDATE

1. Did you personally complete the original survey?
   Yes ___  No ___

2. Please specify your current position/title: ____________________________

3. Do you serve as the administrator for special education?
   Yes ___  No ___

4. Does your school division make a distinction between Extended School Year (ESY) and the regular summer program with regard to handicapped pupils?
   Yes ___  Please describe difference: __________________________
   ____________________________
   ____________________________
   No ___

5. Does your school division place a limit on the number of days a child may receive special education or related services?
   Yes ___  No ___

6. Does your school division have a written policy for determining ESY placement?
   Yes ___  Please attach written policy and skip to Question *10.
   No ___  If no, please check "no" and continue.

7. Does your school division have an informal procedure for determining ESY placement?
   Yes ___  Please attach description of informal policy.
   No ___

8. Is policy currently in preparation or planning stage?
   Yes ___  No ___

9. Date targeted to implement policy: ____________________________

*10. Did you provide ESY services to handicapped children this summer?
    Yes ___  Approximately how many children did you serve? ______
    No ___

11. Do you base your decision to serve handicapped pupils during the summer on the IEP?
    Yes ___  No ___

12. Approximately how many children qualified for ESY services this summer who did not participate? ______

13. Please describe the overall purpose of your 1990 ESY program? ______
    ____________________________
    ____________________________

PLEASE RETURN BY JULY 31, 1990. DON'T FORGET ATTACHMENTS (for #6 or #7). 1 THANK YOU!
July 16, 1990

Two years ago I mailed a questionnaire to your school division. The results of the survey were to serve as the data collection component of my dissertation. However, a two-year delay in writing up the results has necessitated a very short follow-up questionnaire to bring the original survey up to date. The purpose of the survey is to describe the implementation of extended school year programs and services for handicapped pupils in Virginia.

Please find enclosed the one-page questionnaire which I would like you to complete and return in the stamped, self-addressed return envelope provided. Also, in responding to Question 1, please refer to the information sheet (attached) which was completed by your school division as part of the original survey.

I do plan to send you the results once they are compiled. As before, information obtained from this survey will remain confidential with respect to the identity of individual school divisions.

I hope all goes well in your preparation for the new school year. If you would return your survey by July 31, 1990 it would be greatly appreciated. My office phone number at Virginia Tech is (703) 231-9712 if questions should arise. Thank you for your continued cooperation. I am extremely hopeful that I will again achieve a 100% return rate.

Sincerely,

Sharon R. Booth
Doctoral Candidate
Virginia Tech

Enclosures
APPENDIX D

Executive Summary for LEA's
ESY REPORT TO VIRGINIA SCHOOL DIVISIONS

Survey Results 1988 Data

Description of Respondents

A questionnaire survey of a sample size of 42 of the 144 school divisions in Virginia yielded a 100% return rate. Thirty-nine divisions (92.9%) responded by mail. The three remaining divisions (7.1%) were surveyed through a telephone interview after they failed to respond to a follow-up survey by mail and additional phone reminders. Forty divisions (95.3%) responded during the time period allotted by the surveyor, while the remainder completed the survey within a five month period. The majority (N=23, 54.76%) of the respondents were special education administrators for their school division. The educational level of the respondents included nine (21.4%) Masters' degree level administrators, twenty (47.6%) Masters' plus thirty hours, four (9.5%) Ed.S./CAGS and nine (21.4%) Doctoral level administrators. These degrees were earned between 1961-1988 with twenty-five (59.52%) respondents completing their degrees after the passage of Public Law 94-142, the Act which established a floor of opportunity for all handicapped children; six after the Supreme Court decision in Rowley v. Hendrick Hudson School District which established "some educational benefit" as the standard by which progress for handicapped students should be measured; and eleven, after the Extended School Year (ESY) landmark case of Armstrong v. Kline, in which the court recognized that an appropriate education for some, may require an education in excess of the traditional 180 days.

The professional background of the respondents represented three main areas of study: Special education (N=16, 38.09%), Counseling/Psychology (N=7, 16.6%), and Regular education (N=19, 45.2%).

Additional Training Reported

Only two (4.8%) of all respondents reported they did not have specialized study in school law, while 28 (66%) indicated their study consisted of participation in coursework in school law, and 28 (66%) participated in coursework specifically related to legal aspects of special education. Fourteen (33.3%) indicated they had taken coursework in both areas. The primary means indicated for respondents to keep current in the area of special education law were through reading journals (71.4%) and/or inservice training (61.3%). Twenty-five (60%) of the administrators learned of ESY through reading case law and another eleven (26.8%) through the Virginia Department of Education. Four
(9.8%) of those surveyed reported that they learned about ESY through this survey.

Policy Issues

Twelve districts (28.6%) affirmed a district policy of limiting the number of days a student could receive special education or related services; thirty (71.4%) did not place such a limit. With the exception of one district, formal written policies for determining ESY placement were not reported to be in place. Three districts (7.5%) indicated on the questionnaire, their policies were in the planning stages. Ten districts (23.8%) indicated they have an informal procedure in place to identify students needing ESY. Only one (2.3%) district described their informal procedure. Half of the districts surveyed (N=21, 50%) specified a distinction exists between regular summer school and ESY services for the handicapped pupil. The most common distinction between regular summer school and ESY services was the use of the IEP for ESY services (N=7,16.6%).

Implementation of ESY Services

At least one district in each of the six district groupings surveyed served students in ESY services offered beyond the traditional school year. A total of thirteen (31%) districts served between one (N=2,15.4%) and one hundred fifty students (N=2,15.4%) (See Table 1). Districts reported that student IEP’s or separate lists could be used to document that students were actually participating in ESY programs.

Purpose of ESY Program

All thirteen districts (100%) serving ESY students reported maintenance of specific skills as a purpose of their ESY programs. Other purposes reported by these same thirteen districts included: skill development (N=4), reduction of self-abuse behaviors (N=1), generalization of skills to other settings (N=3), IEP requirement (N=1), minimizing regression (N=1) and parent involvement (N=1).

Criteria for ESY Determination

The Director of Special Education has the primary responsibility for developing ESY criteria as reported by ten of the thirteen districts serving students in ESY programs. Ninety percent (N=9) of these districts also used additional criteria: guidelines set forth in court cases (N=5,50%); committee of experts (N=2,20%); and two
Table 1: Executive Summary
Students Receiving ESY Services

<table>
<thead>
<tr>
<th>Size of District (Students)</th>
<th>Year</th>
<th>Number of Districts</th>
<th>Mean # Served</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-8,999</td>
<td>1988</td>
<td>3</td>
<td>5.6</td>
<td>1-12</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>7</td>
<td>4.8</td>
<td>1-16</td>
</tr>
<tr>
<td>9,000-19,999</td>
<td>1988</td>
<td>4</td>
<td>29</td>
<td>20-36</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>11</td>
<td>10.7</td>
<td>1-60</td>
</tr>
<tr>
<td>20,000-125,000+</td>
<td>1988</td>
<td>6</td>
<td>93</td>
<td>1-150</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>9</td>
<td>78.4</td>
<td>5-175</td>
</tr>
</tbody>
</table>

Note: Data collapse the six groupings by size of district into three groups.

(20%) used IEP's as a data base to establish criteria. Two districts (15.4%) serving students failed to report the personnel, cases or data used to develop their criteria.

The final decision for who was to receive services is made in the overwhelming majority of districts by the IEP Committee (N=11, 84.6%). Teachers, principals, central office staff, eligibility committees, and special education directors were also involved in these decisions in numerous districts.

Multiple issues are considered by the thirteen districts serving students in ESY programs in determining which students qualify for these services (See Table 2). Twelve of the thirteen districts serving students used severe regression of skills caused by an interruption in programming to determine if a child should qualify for services. IEP goals and objectives were used by nine districts (69%) to determine who would qualify. Several districts considered multiple items in making ESY determinations.
Implementation Issues

In the majority (N=9, 69%) of ESY programs, specific goals and objectives were selected from the IEP for ESY programming. Two (15%) additional districts actually adopted the child's IEP in its entirety. Six districts (46%) basing their ESY delivery on the IEP, further stated that they also offer related services. Four districts described their ESY programs as enrichment activities. Another four districts sent work packets home. An additional district identified residential programs as their mode of implementation of ESY services.

Parental Notification

Seven districts (46.7%) reported that they notified all parents of special education students that their child might be eligible for ESY services at every IEP meeting. Two other districts (13.3%) utilized informal contact. The remaining school divisions employed a variety of methods of notification described as: staff contact (6%); contact at certain IEP meetings (6%); end of year conference (6%); home visits (6%) or letter of interest (5%). In four districts (26.6%) students of all handicapping conditions were the target of parental notification. Three other districts (20%) notified only students with specified handicapping conditions of their potential eligibility.

Cost

Seventy-six percent (N=10) of the districts serving students in ESY services offered the services at no cost to the students. Three respondents (23%) indicated that a fee was charged for ESY commensurate with the fee charged to regular education summer school students (i.e., fee for courses and materials). Additionally, eleven districts (78.5%) offered free transportation as part of their ESY services.

Complaint Procedures

In nine districts, due process was described as the complaint procedure for handling ESY requests that were denied (64%). Other districts did not specify a complaint procedure.
Table 2: Executive Summary Utilization (By School Division) of Issues Established by Case Law in the Delivery of ESY Services

<table>
<thead>
<tr>
<th>Questionnaire Variable</th>
<th>Nature/Severity</th>
<th>Regression</th>
<th>Recoupment</th>
<th>Goals of Self-Sufficiency</th>
<th>Progress/Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was the issue considered?</td>
<td>n</td>
<td>n</td>
<td>n</td>
<td>n</td>
<td>n</td>
</tr>
<tr>
<td>Were established criteria defining issue used?</td>
<td>9</td>
<td>8</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Was current case law considered?</td>
<td>9</td>
<td>7</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Would you change your guidelines?</td>
<td>8</td>
<td>6</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

**Staff Attitudes**

Attitudes of staff concerning working in the summer months were not reported by a significant number of districts (N=2, 4.7%) as effecting the availability of services.

**Survey Results from 1990 Update**

**Description of Respondents**

A two year follow-up survey of all 42 school divisions in the original survey,
yielded a 100% return rate. Twenty-four respondents were the same individual within the school division who had completed the survey in 1988. The majority of the respondents, as was the case in the original survey, served as the administrator for special education (N=24,57%).

Policy Issues

Only eight districts (19.5%) indicated the existence of a policy limiting the number of days a student could receive special education or related services. One district again reported a written policy in place. A copy of the policy was not submitted to the author even though a request was made. Eleven districts (26%) stated that an informal policy was in place. Five districts (12%) indicated their policy was in the planning or preparation stages. One third of the districts surveyed (N=14,33%) claimed a distinction was made in their district between regular summer school and extended school year services for the handicapped student.

Implementation of ESY Services

At least forty-two percent (N=3) of the districts in each of the six district sizes surveyed, served students in ESY services. A total of twenty-seven (64%) school divisions served between one (N=3,7%) and one hundred seventy five (N=1, 2.3%) students (See Table 1). Eleven school divisions (26%) had students qualify for services who did not attend ESY services.

Purpose of ESY Program

The overall purpose(s) of their Extended School Year services for handicapped students varied. Nine districts (21%) described the purpose of their 1990 program as one designed to maintain existing skills and/or to prevent regression. Examples of the purpose of programs described by other districts included: remediation or recoupment of lost skills (N=2); need (N=1); necessary to meet IEP goals and objectives (N=2); to provide additional services to handicapped students (N=2); and to fulfill the requirements of a grant (N=1).
Case Law and Practice

180 Days

Over the past decade, numerous federal courts across the country have clearly articulated that a policy categorically limiting a child's education to 180 days, without regard to individual need, is a violation of the Education for all Handicapped Children Act of 1975 (currently known as the Individuals with Disabilities Education Act, P.L. 101-467, 1990). The courts have consistently found such a policy invalid. Based on the data provided by the survey, one in five school divisions in Virginia maintain a policy of limiting the number of days a child may receive special education or related services.

Criteria for ESY Determination

The initial ESY case, proffers the standard for ESY determination as one that is necessary "if regression caused by an interruption in educational programming, together with the student's recoupment capacity, render it impossible or unlikely that a student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach" (Armstrong v. Kline 476 F. Supp., 1979). Five separate factors were established for making an ESY determination in Lee v. Thompson (EHLR 554:429, 1983): nature of the handicapping condition; severity of the condition; areas of learning crucial to attaining goals of self-sufficiency and independence from caretakers; extent of regression caused by an interruption in programming; and the rate of recoupment following an interruption in programming. The impact of the break continues to serve as the focus of ESY case law. A Fifth Circuit, U.S. Court of Appeals case, Alamo Heights v. State Board (790 F.2d 1153, 1986) set forth a general standard that focused on the regression factor alone. Relief in this case was predicated on the finding that the student would suffer "at least severe regression without continuous, structured educational programming." With deference to the individualized approach explicitly described in P.L. 94-142, criteria to assess regression on an individual basis would be indicated. In the current study, twelve of the thirteen districts serving students in ESY services (92.3%) use severe regression of skills caused by an interruption in programming in determining an individual should receive ESY services. Other indicators of an individualized approach include the use of IEP goals and objectives (N=9,69.2%) and impact of the break on the child's educational performance (N=5,38%) in making the ESY determination. However, based on the results of this survey, one in four school divisions do not have a
procedure or policy for determining if a child needs ESY services.

Cost

The court in the Armstrong case made reference to the FAPE provision of the Handicapped Children Act, emphasizing a free appropriate education for handicapped children, including those who receive ESY services. In quoting a 1972 case (Mills v. Board of Education, 348 F. Supp. 866), the Crawford v. Pittman court (EHLR 555:107, 1983) reiterated that limited funds "cannot be permitted to bear more heavily on the exceptional or handicapped child than on the normal child". In the present investigation, three (23%) school divisions providing ESY services, charged a fee to parents. This number reflects close to one in four districts charge a fee for ESY services.

Funding

A funding order was actually enumerated in the 1984 case of Yaris v. Special School District (EHLR 556:364) prorating funds for summer programs and contractual services. Cost to parents for ESY and funding formula that limit districts ability to provide ESY services are both viable issues in the courts. The majority of school divisions indicated that local and state funding formulas do not affect their ability to provide ESY services. Specific information was not requested in the current survey to conduct an adequate assessment of those districts that were effected by existing funding formula.

Related Services

Special education as defined in P.L. 94-142 includes within related services "transportation ... and other supportive services ... as may be required to assist a handicapped child to benefit from special education". A Texas case (Alamo Heights v. State Board of Education), settled by the Fifth Circuit, clearly illustrates that transportation is a related service that should be considered in the provision of summer services. That case did not deal directly with whether transportation should be provided, but rather, went beyond that issue in considering the special circumstances of the child. The court ordered the district to provide out-of-district transportation from the caretakers' home to the summer services site. Approximately eighty percent (N=11,78.5%) of those serving students in the present study, offer free transportation.
Another related service that had the focus of a state court in New York was physical therapy (Holmes v. Sobel EHLR 559:463). The court ruled that physical therapy must be provided during the summer months where progress toward IEP goals would be delayed. Six districts in the current study, offered related services under contract during the summer months. Another five districts offered related services along with an instructional program. Other districts that offered the IEP in its entirety or identified certain goals for ESY services may also have offered related services. It would appear that those offering ESY services, also provided related services.

In the Texas case of Alamo Heights v. Independent School District the issue of transportation was discussed. The issue under consideration was actually out-of-district transportation from the caretaker's house to the site of summer services. The court found that transportation does not "cease to be a related service simply because a parent requests transportation to a site a short distance beyond the district boundaries". This case clearly illustrates that transportation may be a service required for some children to benefit from summer services.
APPENDIX E

Summary Tables for 1988 and 1990 Survey Data
<table>
<thead>
<tr>
<th>Year of Survey</th>
<th># of Divisions</th>
<th>Mean # Served</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>13</td>
<td>46.8</td>
<td>1-150</td>
</tr>
<tr>
<td>1990</td>
<td>27</td>
<td>33.6</td>
<td>1-175</td>
</tr>
<tr>
<td>Size of District (Students)</td>
<td>Year</td>
<td>Number of Districts</td>
<td>Mean # Served</td>
</tr>
<tr>
<td>----------------------------</td>
<td>------</td>
<td>---------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>1-1,800</td>
<td>1988</td>
<td>2</td>
<td>2.7</td>
</tr>
<tr>
<td></td>
<td>1990</td>
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<td>5.3</td>
</tr>
<tr>
<td>1,801-3,000</td>
<td>1988</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>4</td>
<td>5.2</td>
</tr>
<tr>
<td>3,001-5,000</td>
<td>1988</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>4</td>
<td>20.7</td>
</tr>
<tr>
<td>5,001-8,900</td>
<td>1988</td>
<td>2</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>7</td>
<td>11.3</td>
</tr>
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<td>8,901-17,000</td>
<td>1988</td>
<td>3</td>
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<td>1990</td>
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<td>69.2</td>
</tr>
<tr>
<td>17,001-125,000+</td>
<td>1988</td>
<td>3</td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>5</td>
<td>85.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1988</td>
<td>13</td>
<td>46.8</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>27</td>
<td>33.6</td>
</tr>
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</table>
Table 10
Summary of Key ESY Policies/Practices Across All School Divisions by Year of Survey

<table>
<thead>
<tr>
<th>Year</th>
<th>Limit # of Days</th>
<th># Served Beyond 180 Days</th>
<th># Make Distinction b/n ESY &amp; Summer School</th>
<th># Have Written Policy</th>
<th>Qualification Based on IEP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>1988</td>
<td>12</td>
<td>28.6</td>
<td>13</td>
<td>31</td>
<td>21</td>
</tr>
<tr>
<td>1990</td>
<td>8</td>
<td>19</td>
<td>27</td>
<td>64</td>
<td>14</td>
</tr>
</tbody>
</table>

129
### Table 11
**Key ESY Policies/Practices by Size of School Division and Year of Survey**

<table>
<thead>
<tr>
<th>District Size</th>
<th>Year</th>
<th>Limit # of Days</th>
<th># Served Beyond 180 Days</th>
<th># Make Distinction b/n ESY &amp; Summer School</th>
<th># Have Written Policy</th>
<th>Qualification Based on IEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1988</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
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<tr>
<td>2</td>
<td>1988</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>1988</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>0</td>
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<tr>
<td>4</td>
<td>1988</td>
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<td>2</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>1</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>5</td>
<td>1988</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>0</td>
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<td>1990</td>
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<td>6</td>
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<td></td>
<td>1990</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>

**Legend:**

- District Size 1 = 1-1,800
- District Size 2 = 1,801-3,000
- District Size 3 = 3,001-5,000
- District Size 4 = 5,001-8,900
- District Size 5 = 8,901-17,000
- District Size 6 = 17,001-125,000+
APPENDIX F

Summary of Key Legal Issues:
Case Law and Survey Results
### SUMMARY OF KEY LEGAL ISSUES:
CASE LAW AND SURVEY RESULTS

<table>
<thead>
<tr>
<th>Issue</th>
<th>Cases</th>
<th>Related Survey Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>180 Days</td>
<td>Battle, Richard K, Yaris, Crawford, GARC, Tilton</td>
<td>Place Limit</td>
</tr>
<tr>
<td></td>
<td>12/42, 28.6%</td>
<td>1988: 13/42, 31%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1990: 8/42, 19.5%</td>
</tr>
<tr>
<td></td>
<td>Serve Beyond 180 days</td>
<td>1988: 27/42, 64%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1990:</td>
</tr>
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</table>

#### Criteria for ESY Determination

<table>
<thead>
<tr>
<th>Nature</th>
<th>Armstrong, Lee</th>
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<tr>
<td>1988: 5/13 serving, 38.5%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Regression/Recoupment</th>
<th>Armstrong</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988:</td>
<td></td>
</tr>
</tbody>
</table>

| Regression            | Anderson, Bales, Phipps, Lee, Alamo Heights | 12/13 serving, 92.3% |
|-----------------------|---------------------------------------------|
| 1988:                 |

<table>
<thead>
<tr>
<th>Recoupment</th>
<th>Lee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity</th>
<th>Lee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988:</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>7/13 serving, 53.8%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td>Issue</td>
<td>Cases</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Goals</td>
<td>Armstrong</td>
</tr>
<tr>
<td></td>
<td>Lee</td>
</tr>
<tr>
<td>&quot;Educational Benefit&quot;</td>
<td>Rettig</td>
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<tr>
<td></td>
<td>Bales</td>
</tr>
<tr>
<td></td>
<td>Crawford</td>
</tr>
<tr>
<td></td>
<td>GARC</td>
</tr>
<tr>
<td></td>
<td>Lee</td>
</tr>
<tr>
<td></td>
<td>Alamo Heights</td>
</tr>
<tr>
<td>Based on IEP</td>
<td>Lee</td>
</tr>
<tr>
<td></td>
<td>Armstrong</td>
</tr>
<tr>
<td>Due Process</td>
<td>Armstrong</td>
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<tr>
<td>Cost</td>
<td>Richard K.</td>
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<td>Crawford</td>
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<td></td>
<td>GARC</td>
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<tr>
<td></td>
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<td></td>
<td>Tilton</td>
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<tr>
<td>Related Services</td>
<td>Alamo Heights</td>
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<tr>
<td></td>
<td></td>
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<tr>
<td>Free transportation</td>
<td>Holmes</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
VITA

NAME: Sharon R. Booth
CURRENT POSITION: Program Specialist
DOB: 10/22/53

EDUCATION

University: University of Alabama, Tuscaloosa, AL
Degree: B.S.
Year Conferred: 1975
Field of Study: Sp. Education

University: Florida St. University, Tallahassee, FL
Degree: M.A.
Year Conferred: 1981
Field of Study: Sp. Education

University: Virginia Polytechnic Inst. & St. Univ., Blacksburg VA
Degree: Ed.D.
Year Conferred: Fall 1991
Field of Study: Admin & Supervision of Sp. Ed.

PROFESSIONAL EXPERIENCE


1981-1984. Trainer and Director, HCEED Outreach Project, Jackson, MS.

1984-1985. Program Coordinator and Program Specialist, Mississippi Protection and Advocacy System for the Developmentally Disabled, Jackson, MS.

1985-1986. Graduate student and Graduate Project Assistant, Virginia Polytechnic Institute and State University, Blacksburg, VA.

1988-1990. Division Director II, Division of Human Resources, Mississippi Department of Mental Health, Jackson, MS.

1990 to date. Program Specialist, Special Programs, Wake County Public School System, Raleigh, NC.

PROFESSIONAL AFFILIATIONS

Council for Exceptional Children (CASE, DLD, CCBD)
Phi Delta Kappa

PUBLICATIONS

