



Guidance

Shortened School Day

Michigan Department of Education Office of Special Education

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Application

The contents of this guidance document apply to the education of students with disabilities eligible for special education under the *Individuals with Disabilities Education Act* (IDEA). Section 504 of the *Rehabilitation Act of 1973* (Section 504) provides additional protections against discrimination for students with disabilities. Therefore, it is also relevant to this analysis. The Michigan Department of Education (MDE), as the state educational agency (SEA), is responsible for general supervision of public agencies within the state to ensure the requirements of Part B of the IDEA are met pursuant to 34 CFR § 300.149. The MDE provides this guidance to the field in an effort to improve outcomes for students with disabilities and align the practice of schools with applicable federal laws.

Legal Standard

The IDEA mandates eligible students receive a free appropriate public education (FAPE) that includes special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge.
- (b) Meet the standards of the SEA, including the requirements of this part.
- (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved.
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§ 300.320 through 300.324.

34 CFR § 300.17

The United States Supreme Court has ruled school districts must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's unique circumstances. *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 197 L Ed. 2d 335, 349 (2017). See also *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re- 1*, December 7, 2017 (US Dept. of Educ.).

Schools have a fundamental obligation under the IDEA to provide a FAPE to all students, no matter the severity of their disability. Schools have an obligation to address each child's unique needs which adversely affect their educational performance, including academic, behavioral, emotional, physical, and functional. *Letter to Wentzell*, 69 IDELR 79 (OSEP 2016). The right to a FAPE is afforded to all eligible students, even students with the most severe cognitive or behavioral symptoms. This principle flows from the "zero-reject" policy in *Timothy W v. Rochester, N.H. School District.*, 875 F. 2nd 954, 88-1847 (1st Cir. 1989) which guarantees a FAPE to all students with a disability no matter the severity.

As part of the protections afforded under the IDEA, students with disabilities have the right to attend school for the same length of time in each school day as non-disabled students. *School day* has the same meaning for all children in school, including children with and without disabilities. 34 CFR § 300.11(c). This premise is grounded in the IDEA and bolstered by Section 504. Public agencies must comply with both the IDEA and Section 504 when a student is eligible for service under the IDEA. *Yankton Sch. Dist. v. Shramm*, (8th Cir. 1996). The failure to provide the same instructional time for students with disabilities is actionable under the IDEA and Section 504 as a denial of a FAPE. *K.F. v. Francis Howell R-III Sch. Dist.*, (E.D. Mo. 2018).

Implementation

The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's **unique disability-related needs**. It is the position of the MDE that affording a student less than a full school day, in order to eliminate the occurrence of a student's problematic behavior in the educational environment (rather than teaching new skills), is contrary to the IDEA's goal that an IEP result in appropriate progress. It is also directly at odds with the well-established zero-reject principle.

Before determining the need to shorten the student's day, the IEP team must consider and document other ways to meet the student's needs. This includes, but is not limited to, additional instructional and/or behavior supports, increased program and/or service time, and/or a positive behavior support plan.

Under most circumstances, a shortened school day should be in place for only a limited amount of time. When an IEP team determines the need to shorten a student's school day, the student's IEP should include:

1. An explanation of why the student's unique disability-related needs require a shortened day. 34 CFR § 300.320(a)(1).
2. A clear explanation of the unique need or skill gap prohibiting the student from attending a full day of school 34 CFR §§ 300.320(a)(4) and 34 CFR §§ 300.320(a)(5).
3. A clear connection to the growth and progress expected to be achieved by shortening the student's school day (e.g., the student is expected to recover from the physical or medical condition with rest and medical treatment). 34 CFR § 300.320(a)(3).
4. A plan for the student's return to school for a full day, which may include a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time. 34 CFR § 300.114.

The student must return to a full school day as soon as he or she is able, affording a student a full educational opportunity as required by 34 CFR § 300.109.

Clarifying Questions

May an IEP team implement a shortened school day for a student in order to manage student behavior or as a means of discipline?

No. Shortened school days may not be used to manage student behavior or as a means of discipline. Removing a student from school is NOT reasonably calculated to result in progress or educational benefit. The student may be lacking critical skills necessary to successfully participate in school. The IEP must address the skill deficits by providing supports and services necessary for the student to have a FAPE.

For students with disabilities whose behavior impedes his or her learning or the learning of others, the IEP team must develop an IEP that addresses the student’s behavioral needs through annual goals, related services, and/or supplementary aides and services.

The IEP should include positive behavioral interventions, supports, and strategies to enable the student to participate in the full school day. Removal from school is neither a service nor support for students with difficult behaviors and is not reasonably calculated to result in educational benefit.

A school district may not reduce a student’s instructional time as a form of punishment or in lieu of a suspension or an expulsion. In addition, a school district may not require a student to “earn” back the return to a longer or full school day by demonstrating good behavior. Attendance may also not be conditioned upon the student’s taking medication or receiving treatment, therapies, or other outside services.

Must a school district shorten a student’s school day upon request of the student’s parent?

No. If a parent requests a change in the length of the student’s school day, the school district must respond to the parent’s request by providing written notice, consistent with 34 CFR § 300.503(a)(b). However, any changes to the regular school schedule must be made by the student’s IEP team, which includes the parent. The only time it is appropriate to shorten the school day for a student with a disability is when the student’s IEP team determines a shortened day is required to address the student’s unique disability-related needs. This decision must be reflected in the student’s IEP, including documenting the reasons for the shortened day and providing a plan for returning to a full school day.

Critical Compliance Inquiries

During compliance activities, the MDE will inquire about the link between the shortened school day, the provision of a FAPE, and student progress by asking probing questions.

For example:

1. What skill is the student lacking in order to successfully attend the full school day?

2. How will removal from school meet the student’s educational needs? How will removal from school help close the skill gap? How will removal from school result in educational progress?
3. What services can the team provide to help close the skill gap and educate the student in the least restrictive environment, assist the student to be successful in school the entire day, and make progress in the general education curriculum?
4. What is the plan, including a timeline, to return the student to a full day of school?

Compliance Implications

The MDE considers a shortened school day a critical compliance consideration. IEPs missing this critical information, such as in response to the critical compliance inquiries above, may be considered noncompliant with the requirements of the IDEA. Any IEP that addresses a shortened school day through a conclusory statement or a checked box without addressing the critical compliance inquiries and without full consideration by the IEP team will be considered noncompliant. This is reflective by the content of the IEP 34 CFR § 300.324(a)(2)(i). Further, IEPs that do not align the reasons for the shortened school day with the identified unique disability-related needs of the student and the specific link to increasing the skills necessary for a return to a full school day, will be deemed noncompliant and in need of corrective action.

Additional Legal Resources

Arcadia Unified Sch. Dist., 09-14-1322, December 22, 2014 (OCR).

Christopher S. v. Stanislaus County Office of Educ., 384 F. 3d 1205, 03-15178 (9th Cir. 2004).

Dixie Elem. (CA) Sch. 2014110335, (2015).

Gwinnett County (GA) Sch. Dist., December 1, 2015 (OCR).

Letter to Mason, July 27, 2018 (OSEP).

Plainville Board of Education v. R.N., 3:09-CV-241(RNC) (D. Conn. 2012).