



## Policy Guidance

### Shortened School Day

Michigan Department of Education Office of Special Education  
May 2019

#### 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; and
- (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 Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017). See also *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (EDU 2017).

Schools have a fundamental obligation under the IDEA to provide a FAPE to all students, no matter the severity of their disability, and to address all areas of disability-related need. *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.*, 441 IDELR 393 (1st Cir. 1989), which guarantees a FAPE to all students with a disability no matter the severity. The *Timothy W.* zero-reject policy has been applied in Michigan as noted in the *Whitehall District Schools* due process hearing. *Whitehall Dist. Schs.*, 71 IDELR 97 (SEA MI 2017).

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). Absent a decision by the IEP team based on a student's unique educational needs, a FAPE includes the right to attend school for the full school day. 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*, 24 IDELR 704 (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.*, 49 IDELR 244 (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, and directly at

odds with the well-established zero-reject principle. Before deciding to shorten the student's day, the IEP team must consider other ways to meet the student's needs.

When a student's school day is shortened, the student's IEP should include:

1. An explanation of why the student's 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 (e.g., the student is medically fragile and lacks stamina, the student is recovering from an injury, or the student is currently unable to demonstrate safe behavior). 34 CFR §§300.320(a)(4)(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)(2)
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 she or he is able, affording a student a full educational opportunity as required by 34 CFR §300.109. Under most circumstances, a shortened school day should be in place for only a limited amount of time.

## 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. 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.

The IEP team must develop an IEP that addresses the student’s behavioral needs through annual goals, related services, and 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. Removal from school is not reasonably calculated to result in educational benefit.

Simply removing a student from school is NOT reasonably calculated to result in progress or educational benefit. The student may be lacking critical skills to successfully participate in school, and the IEP must address the skill deficits.

**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. 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 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 be successful attending the full school day (e.g., stamina, safe behavior, independence during unsupervised times)?
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 whole day of school?

## Compliance Implications

The MDE considers a shortened school day a critical compliance factor. IEPs missing this critical information, such as in response to the critical compliance inquiries above, will not be considered compliant 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 will be considered noncompliant. Further, IEPs that do not align the reasons for the shortened school day with the identified educational needs of the student and the specific link to increasing the student's skills will be deemed noncompliant and in need of corrective action.

## Additional Legal Resources

*Arcadia Unified Sch. Dist.*, 115 LRP 17613 (OCR 2014).

*Bay Village City Sch. Dist.*, 65 IDELR 275 (OCR 2016).

*Christopher S. v. Stanislaus County Office of Educ.*, 42 IDELR 30 (9th Cir. 2004).

*Dixie Elem. Sch.*, 115 LRP 10498 (SEA CA 2015).

*Gwinnett County (GA) Sch. Dist.*, 67 IDELR 158 (OCR 2015).

*Letter to Mason*, 72 IDELR 192 (OSEP 2018).

*Plainville Board of Education v. R.N.*, 58 IDELR 257 (D. Conn. 2012).