

SHORTENED DAY GUIDELINES

FAPE, LRE, and Educational Benefit

When considering shortening the day of any student receiving special education, an IEP team must be mindful of legal mandates regarding free appropriate public education (FAPE), least restrictive environment (LRE), and educational benefit. Under the IDEA, FAPE is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit (34 CFR §300.17). FAPE requires both access to the general curriculum and progress toward IEP goals and objectives as outlined in a student's IEP. Regarding LRE, IDEA establishes, "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled," and "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.114(a))." It is also mandated that student with disabilities participate with students without disabilities in nonacademic and extracurricular services and activities, including meals and recess periods, to the maximum extent appropriate to their individual needs. An IEP team is required to assure the IEP for each student constitutes a good-faith description of a free and appropriate public education in the least restrictive environment.

Consideration of shortened day

If supports exist that can allow a student to participate in classes and a regular school setting for a full school day, it is strongly recommended that those be offered in lieu of a shortened day in order to provide FAPE in the LRE and allow the student to receive educational benefit. Access and exposure to the general curriculum is maximized if a student is able to attend school for a full day. Opportunities for non-academic and extracurricular activities with non-disabled peers are reduced as well when the school day is shortened. It would not be possible in some cases to provide adequate interaction with non-disabled peers and progress toward social/ behavioral goals if a student does not participate in a full school day at a regular school setting. On the other hand, a placement must foster maximum interaction between disabled pupils and their nondisabled peers "in a manner that is appropriate to the needs of both (EC 56031; *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994))." This suggests there could be instances in which the negative impact of a student on peers might be a consideration yielding a shortened day determination, though this would not occur often and would generally be time-limited.

It is recommended that any offer of a shortened day as FAPE should be brief and for specific purpose, and designed to meet a student's unique needs. It is often prompted by the recommendation of a physician through written request. A student's IEP should reflect team discussion of the continuum of services and placement including shortened day and any alternatives considered as appropriate. It is best practice for IEPs of students placed on a shortened day to include language regarding reintegration and return to full day and method/criteria for determining reintegration to a less restrictive setting.

When considering shortening the school day of a student based on his or her individualized needs, the following cautions should be considered:

- Removal limits still apply. Take care that shortened days are not equivalent to removals, which are subject to IDEA and education code. Sending a student home for a partial day based on behavior is not considered shortened day as an offer of FAPE. This would be considered a removal.
- Any IEP offering a shortened day needs to carefully document that services and



placement are providing FAPE for the individual student in order to be defensible. Compensatory education may be determined appropriate if shortened days are not providing FAPE per a student's IEP.

- If a student is temporarily placed on a shortened day due to an IEP team decision, the LEA/district is required to offer transportation to the student to accommodate their modified schedule if that student is otherwise eligible for special education transportation.
- Make sure behavioral interventions don't deprive a student of necessary instructional time. A BIP should be crafted to minimize instructional disruption.
- Pay attention to unintended interruptions that can have unintended impact on instruction/ progress. Bus coming late every day or parent dropping student late every day may be considered impact on FAPE that IEP team needs to address, *even when transportation is considered a parent obligation.*

Examples and non-examples of appropriate use of shortened day

Use of a shortened day to provide FAPE may be appropriate for limited students, in limited circumstances, and for limited periods of time. Examples of appropriate uses of shortened day could include, but are not limited to:

- For a student with a recent brain trauma who is currently in recovery
- Upon recommendation of physician of a student who is transitioning her to new seizure medications, and is requesting gradually increasing of length of the school day
- For a recently adopted student from another country who is experiencing transition difficulties when parents and therapist request a gradual transition to school
- For a student with school phobia, school refusal or selective mutism who is in treatment, when the student's therapeutic plan specifies a gradual transition to full day attendance with beginning and end dates specified

In many cases, a shortened day will not provide a student FAPE in the LRE and/or will not provide a student with educational benefit. In these instances, a full day must be offered to support the needs of a student. Shortened day should only be considered when such an offer of FAPE can address the unique needs of a child and not for other reasons, such as schedules mandated by teacher contracts, availability and/or convenience of transportation, difficulty with implementation, or limited funding. Inappropriate uses of shortened day may include, but not be limited to:

- If the team knows the student cannot graduate due to missing credits as a result of an offer of a shortened day. Use of shortened day in this situation wouldn't meet criteria for allowing student to move from grade to grade, but could still occur on time-limited basis in limited circumstances with caution.
- In lieu of a full day program that could offer FAPE. An IEP team should not make an offer of shortened day if another public or non-public placement could provide a full-day learning experience to meet IEP goals and progress in general curriculum.
- In lieu of appropriate BIP or necessary behavioral supports.
- Upon parent request alone. The team is obligated to offer and implement a legally compliant IEP, and thus must refuse a parent request if the team believes the shortened day does not constitute FAPE in an LRE and provide a student with an opportunity to receive educational benefit.
- When FAPE has yet to be determined. Indefensible rationales: "We knew he shouldn't attend school only one hour a day, but we didn't know what else to do so now we are shortening his day." "We can't have him at our school. He gets in too many fights in the afternoon. He's fine in the morning, so we will only have him on campus for the first three periods." Having parent come pick student up in these temporary situations would be considered removal, so caution is warranted.



Alternatives to shortened day

Creative problem solving by an LEA and IEP team may be necessary to identify solutions or service arrangements that meet the needs of students without shortening the school day as appropriate. Some alternatives to a shortened day could include:

- PE credit earned outside the school setting for an appropriate physical activity substitution. In an IEP meeting changes in staff, changes in rules for dressing out, a peer buddy, and other supplementary services could be considered as additional alternatives.
- Volunteer or paid work outside the school setting in addition to a shorter school day. In this case, volunteer or paid work could be included to address IEP goals (such as transition or social skills), and on the job experience credit may be granted.
- School based activities outside of class time, such as assisting staff, or onsite work experience (if supporting IEP goals).
- Part time school/ part time intensive educationally related mental health treatment. A day treatment component might be required to address the student's social-emotional needs. The IEP team would document the combination of placements as offering FAPE in the LRE.

If you have concerns or questions regarding the use of shortened day as an offer of FAPE, please contact your program specialist. As mentioned above, shortened day may be an appropriate offer of FAPE in limited circumstances, and care must be taken to assure that an offer of placement and services also provides a student educational benefit in the Least Restrictive Environment.

