



**NEBRASKA**  
DEPARTMENT OF EDUCATION

The Individuals with Disabilities Education Act (IDEA)

92 NAC 51 (Rule 51)

“Shortened Days” Guidance Document

September 2017

*This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document contact [nde.guidance@nebraska.gov](mailto:nde.guidance@nebraska.gov)*

**SPED**  
SPECIAL EDUCATION



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Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's individualized education program (IEP) team determines otherwise based on a student's unique, disability-related needs.

Shortening a student's day raises issues regarding the provision of a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), as well as potential discrimination under Section 504 of the Rehabilitation Act. The Nebraska Department of Education – Office of Special Education recommends that any offer of a shortened day as FAPE should be for a specific purpose and designed to meet a student's unique needs. A student's IEP should reflect team discussion of the continuum of services and placement, including shortened day and any alternatives considered as appropriate. IEP teams should exercise caution when placing a student on a shortened day as it may limit a student's ability to make adequate progress, to access the general education curriculum, to meet graduation requirements, and to receive a FAPE.

- 1) FAPE and the LRE
- 2) Compulsory Attendance and Length of the School Day
- 3) Appropriate Uses of a Shortened Day
- 4) Inappropriate Uses of a Shortened Day
- 5) Procedural Questions

- 1) FAPE and the LRE
  - a) FAPE: All students with an Individualized Education Program (IEP) are entitled to a free appropriate public education (FAPE). This includes students who are eligible for special education from the ages of 3 through 21 [20 U.S.C. § 1412(a)(1)(A) and 92 NAC 51, Section 004.01, FAPE is individually determined for each student with a disability. FAPE must include special education in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. The Local Education Agency (LEA) is required to ensure a FAPE is available to students enrolled in the LEA who are eligible for special education.

- b) LRE: The Individuals with Disabilities Education Act (IDEA) states that, to the maximum extent appropriate, all students with disabilities, 3 through 21 years of age, are to be educated with age appropriate peers, both with and without disabilities (20 U.S.C. § 1412(a)(5)). This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The LEA must have an array of services and a continuum of educational setting options available to meet the individual



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LRE needs of each student. An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an Individualized Education Program (IEP). The student's IEP must indicate the individualized LRE placement. The IEP team must consider to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. In addition, consideration must be given to any potential current or long-term harmful effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve his or her post high-school goals.

- 2) Appropriate Uses of a Shortened Day
  - a) 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. For example, if because of the student's medical needs, the student is physically unable to tolerate a full school day, a shortened day may be appropriate. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs.
  - b) When a student's school day is shortened, the student's IEP must include:
    - i) an explanation of why the student's disability-related needs require a shortened day, and
    - ii) a plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time.
  - c) The student should return to a full school day as soon as she or he is able, and under most circumstances, a shortened school day should be in place for only a limited amount of time. The IEP team must meet as often as necessary to review the plan and to determine when the student is able to return to school full-time.
  - d) Examples of brief, specific-purpose shortened days that may not result in less than FAPE in an LRE (this is not an exhaustive list):
    - i) Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery;
    - ii) Physician of a student transitioning to new seizure medications requests gradually increasing the length of day;



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- iii) Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.
- 3) Inappropriate Uses of a Shortened Day
- a) Managing Student Behavior and as a Means of Discipline
    - i) An LEA may not reduce a student's instructional time as a form of punishment or in lieu of a suspension or an expulsion. Attendance may also not be solely 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. In the case of a student whose behavior impedes the student's learning or that of others the IEP must include positive behavioral interventions, supports and strategies reasonably calculated to enable the student to participate in the full school day. School removals are not positive behavioral supports. On August 1, 2016, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued guidance in the form of a Dear Colleague Letter(DCL) that emphasizes the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies that the repeated use of disciplinary actions may suggest that many children with disabilities may not be receiving appropriate behavioral interventions and supports. When schools fail to consider and provide for needed behavioral supports through the IEP, it is likely to result in a child not receiving the free appropriate public education to which they are entitled under federal law.
  - b) Accommodating Transportation Schedules
    - i) An LEA may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than nondisabled peers in order to accommodate a transportation schedule. For example, it is not permissible for a school to release students with disabilities earlier than their nondisabled peers in order to schedule an earlier bus route. Any LEA that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity.
  - c) Administrative Convenience
    - i) A student's school day may not be shortened for administrative convenience including staffing shortages.
  - d) Accommodating Regularly Scheduled Outside Therapies



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- i) IEP teams may not shorten a student's school day based solely on a parent's request to accommodate regularly scheduled non-school medical or therapeutic appointments. Parents and schools should communicate regarding absences. When absences are frequent, the IEP team should meet to determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in the IEP. Schools must refer to their local attendance and excusal policies to determine whether absences are excused.
- e) Upon Parent Request
  - i) If a parent requests a change in the length of the student's school day, the LEA must respond to the parent's request. Schools must refer to their local attendance and excusal policies to determine whether absences are excused. 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.
  - f) As a Standard for All Students with Disabilities or For a Group of Students with Disabilities
    - i) Any decision to shorten a student's school day must be made on an individual, case-by-case basis by the student's IEP team.
- 4) Procedural Questions
  - a) Must an IEP team meeting be held before the school district shortens the length of a student's school day?
    - i) Yes. Shortening a student's school day is a decision that must be made through the IEP team process.
  - b) How should a shortened school day be documented in the student's IEP?
    - i) The IEP must include a clear description of the special education services, related services, and supplementary aids and services to be provided including the amount, frequency, location, and duration of services. The team would explain the total length of the school day and describe the extent that the team would meet to discuss the student's plan to return to an increased school day.





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- c) After an IEP team has implemented a shortened school day for a student, what obligation does the LEA have to monitor the shortened day program?
  - i) LEAs, through the IEP team process, should continuously monitor and review the student's progress and plan frequent IEP team meetings to determine whether a shortened school day continues to be necessary to meet the student's unique, disability-related needs. The student should return to a full day as soon as he or she is able, and under most circumstances, a shortened day should be in place for only a limited amount of time.
- d) What can a parent do if they disagree with an IEP team's decision to implement a shortened school day?
  - i) If a parent disagrees with the decision to implement a shortened school day, the NDE – Office of Special Education recommends that the parent request an additional IEP meeting to discuss their concerns. In some cases, parents may wish to reach out to Special Education Directors or other district special education contacts to resolve any disagreement. Parents may also contact the NDE to facilitate the resolution of any disagreements. In addition, parents may elect to participate in formal dispute resolution procedures, such as mediation, state complaints, or due process hearing. Mediation is a voluntary process conducted by a trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. The parent may also file a special education complaint with the NDE. The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day. Additionally, the parent may file a request for a due process hearing challenging the IEP team's decision. The request must be filed within two years of the decision to shorten the school day. For more information on dispute resolution options under the IDEA please visit <https://www.education.ne.gov/sped/dispute.html>.



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- 5) But what about students who are taking high school courses and earning credits toward graduation? When should they graduate?

When considering whether the student should be given a diploma prior to age 21, the IEP team may not rely solely upon whether a student has completed credits and coursework for graduation. It must also consider whether the student is prepared for further education, employment, and/or independent living.

The IEP team must consider whether the student's transition goals have been met and whether there is a need for continued transition services to help a student achieve the desired goal upon graduation and should identify the services needed to achieve that goal.

Transition services are a coordinated set of activities designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability in order to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transition services must be based on the student's needs, taking into account the child's strengths, preferences, and interests; and must include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.



There are a number of things to take into consideration when making decisions for students on IEPs that do not graduate at the age of 18.

First, the transition activities which must be addressed, unless the IEP team finds it unnecessary, are: (a) instruction; (b) community experiences; and (c) the development of objectives related to employment and other post-school areas. There is a tendency to confuse these three requirements with the post-school activities to which the three are to be directed, i.e., post-secondary education, vocational training, employment, adult services, independent living, etc. Many "lists" are available which can be seen as suggesting the IEP must address the latter directly rather than the former.

A second source of confusion is that by erroneously viewing the transition component of the IEP as a thing unto itself it is easy to forget that IDEA entitles the student who has a disability only to special education and related services.

The transition services to which a student is entitled must fit the definition of one or the other. Therefore, each required transition service must be either specially designed instruction to meet the students' unique needs (taking into account his preferences and interests) or it must be required to enable the student to benefit from that instruction. The fact that transition services must qualify as either special education or related services may not pose a significant limitation since one could argue that almost any transition service is necessary to enable the student to reap the benefits of all the special education she or he has had to date.

A third overly broad reading is the failure to recognize that "student's preferences and interests" refers to determining the student's needs, not to delineating the services to be provided (34 CFR 300.18(b)(1)(2)). One way to approach the question of student needs is to envision a typical weekday and a typical weekend after secondary school. Is the student still living in his or her parents' home? Has she gotten an apartment? Does he know how to find apartment ads in the classifieds? How to respond to an ad? How to locate the address?





When incorporating Vocational Rehabilitation into the students planning and day, it is important to understand the following... VR Staff are assigned to every school in the state to provide pre-employment transition services to compliment the transition activities that are being provided within the school. (Students ages 14 – 21)

The five pre-employment transition services include:

1. Job Exploration
2. Work Readiness Training
3. Counseling on Post-Secondary Training Options
4. Self-Advocacy
5. Work-Based Learning Experiences

VR Work-based learning experiences are provided to students outside of regular school hours, including, evenings, weekends, holidays, and vacations.

As we move forward with the 2017-18 school year, you can receive more information at <http://transition.ne.gov/>. Also, please do not hesitate to contact Amy Rhone, [amy.rhone@nebraska.gov](mailto:amy.rhone@nebraska.gov), Assistant Director of Special Education at the Department of Education should you have any further questions.