

# Shortened School Days and Informal Removals for Students with Disabilities

## Introduction

Students with disabilities have faced unprecedented challenges over the past three school years that have resulted in an increased number of behavioral concerns. To ensure that students with disabilities are receiving a free appropriate public education (FAPE) and that students and parents are provided the procedural safeguards identified in the Individuals with Disabilities Education Act (IDEA), the Tennessee Department of Education (department) reminds local education agencies (LEAs) of the following:

- LEAs must make determinations about shortened school days for students with disabilities on an individualized basis and use the appropriate procedures identified under the IDEA and state special education law.
- LEAs must ensure that district and school policies, procedures, and practices do not discriminate against students with disabilities and do not exclude students with disabilities from educational services, including access to the general education curriculum and to education and related services in the student's Individualized Education Program (IEP).
- LEAs must maintain accurate attendance records for all students, including students with disabilities, by documenting all removals and the reason for all removals, whether formal or informal, and considering whether those removals trigger the disciplinary protections of the IDEA.

## What is a shortened school day?

A "school day" is any day, including a partial day, that students attend school for instructional purposes. The minimum length of the school day is 6.5 hours for students in 1st-12th grades and 4 hours for students in kindergarten, according to State Board of Education Rule 0520-01-02-.31. Therefore, a "shortened" school day is any day in which a student attends school for less than the minimum length of the school day for any reason whatsoever.

## When are shortened school days allowed?

A student's IEP team may decide that a student needs a shortened school day to receive FAPE based on the student's individual needs. Before deciding to shorten a student's school day, the student's IEP team should consider if there are other ways to meet the student's needs, such as by adding supports or services or altering the student's schedule.

If the student's IEP team determines that the student requires a shortened school day to receive FAPE, the IEP team must document the reasons why in a prior written notice. The prior written

notice should document the IEP team's consideration of other services, supports, and placements and why the team rejected those options in favor of the shortened school day.

The IEP team should also consider adding a goal to the student's IEP related to the student returning to a full school day. For example, the IEP team may develop a plan to provide increasing or decreasing levels of supports or services, a timeline for collecting academic and behavioral data to measure the student's progress towards his or her IEP goals, and a date for convening a follow-up IEP team meeting to discuss the student's progress. The IEP team should regularly review all relevant data to ensure that the student continues to make progress toward the IEP goals and to consider whether the student can return to a full school day.

### **When are shortened school days not allowed?**

LEAs, schools, and IEP teams must not decide that a student needs a shortened school day based on administrative convenience, availability of resources, or blanket policies.

LEAs must ensure that transportation policies and procedures do not improperly shorten the school day for students with disabilities, regardless of whether transportation is listed as a related service in a student's IEP. If LEAs must arrange separate schedules for students with disabilities to ensure timely or safe transportation services, the LEA must adjust other portions of the student's schedule to ensure that the students are not lacking in educational services on the basis of their disability. For example, LEAs may arrange for students with disabilities to arrive to school earlier every day to account for the early dismissal or to be dismissed earlier than their non-disabled peers in one week and later than their non-disabled peers in the next week.

LEAs must also ensure that disciplinary policies and procedures do not discriminate against students with disabilities. LEAs and schools should not use shortened school days as the primary means of managing student behavior, as a form of punishment, or in place of a suspension or an expulsion. Similarly, LEAs and schools should not require a student to meet any conditions, such as demonstrating improved behavior or obtaining a medical or psychological evaluation, prior to returning to a full school day.

### **What is informal removal?**

An "informal removal" is any action taken by school personnel in response to a student's behavior that excludes the student from educational services for all or part of the school day and that is not officially coded as a suspension or expulsion. There is no minimum amount of time necessary to constitute an informal removal. For example, the United States Department of Education Office of Special Education and Rehabilitative Services has stated that an informal removal can occur when a student's behavior causes school personnel to request that the student will arrive to school late or leave school early, to exclude the student from instruction or services through the repeated use

of time out or office referrals, or to impose extended restrictions of privileges. See U.S. Dep't of Educ., [Dear Colleague Letter](#) (Aug. 1, 2016).

On the other hand, not every exclusionary disciplinary measure must be considered a "removal." A removal has not occurred if the student is afforded the opportunity to continue to be involved in and make progress in the general education curriculum, receive the instruction and services specified on their IEPs, and participate with non-disabled peers to the extent that they would have in their current educational placement.

### **What considerations should LEAs have about informal removals?**

Informal removals should not be treated differently than official suspensions or expulsions. LEAs must document all informal removals and must consider whether the repeated use of informal removals triggers the need to conduct a manifestation determination review (MDR). As a reminder, LEAs must conduct an MDR within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. A change of placement occurs when the student is removed from his or her current educational placement for more than 10 consecutive school days or when a student is subjected to a series of removals that constitute a pattern because (i) the series of removals total more than 10 school days in a school year, (ii) the child's behavior is substantially similar to the behavior that resulted in the previous removals, and (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Partial day removals can trigger the need to conduct an MDR. The department recommends considering partial day removals on a class-by-class or service-by-service basis. For example, if a school repeatedly requires a student to leave school early due to the student's behavior, and the student misses more than 10 consecutive math classes in a general education or special education setting or a total of more than 10 counseling sessions in a school year due to the early dismissal, then the department recommends the LEA conduct an MDR.

### **The State Attendance Manual**

The department's [Attendance Manual](#) states that students shall be counted present if they attend at least 50 percent of the scheduled school day. LEAs are reminded that the primary purpose of the Attendance Manual is to establish guidelines for measuring average daily attendance and average daily membership as it relates to LEA funding. The Attendance Manual does not change the rights of a student with a disability under federal or state special education law in anyway. In other words, **just because a student is coded as present in the LEA's Student Information System (SIS) does not mean that a removal from education services for less than half a day does not mean that the removal should not be documented, tracked, and properly coded.**

Regardless of what an LEA enters into the district's Student Information System (SIS), LEAs are responsible for ensuring that students with disabilities have access to educational services for a full school day, unless the student's IEP says otherwise, and that **any removals for behavioral or disciplinary purposes are documented and tracked.**

### **Conclusion**

LEAs should ensure that discipline is not being used as a means of disconnecting a student with a disability from FAPE. While LEAs can impose discipline on students with disabilities in accordance with their code of conduct, LEAs should ensure that students have an appropriately ambitious IEP, that all supports and accommodations are being implemented, that positive behavioral supports and interventions have been attempted, and that all procedural safeguards, including the right to a manifestation determination review, have been observed.

### **Contact Information**

If you have additional questions about shortened school days or informal removals, you can contact:

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