

“SHORTENED DAY”: APPROPRIATE AND INAPPROPRIATE USES CONCEPTS, GUIDELINES AND EXAMPLES

Diana Browning Wright

- **Key Concept:** The IEP team is required to assure the IEP constitutes a good-faith description of a free and appropriate public education (FAPE) in the least restrictive environment (LRE) for the student.

The IEP must provide “some educational benefit” and must delineate a plan for the student to make adequate yearly progress in:

- **general curriculum**
- **mastering IEP goals and objectives**

➤ Examples of inappropriate use of a shortened school day:

- If the team knows the student can not graduate due to missing credits as a result of the implementation of a shortened day described in the IEP;
- If the team knows this IEP designation of a shortened day is in lieu of a public or non-public school placement that could potentially provide a full day learning experience to meet IEP goals and allow progress in general curriculum;
- If the team knows this “shortened day” is in lieu of an appropriately developed and implemented behavior support plan.
- Even if a parent requests the IEP team develop an IEP for a shortened school day, the team is obligated to only allow implementation of a legally compliant IEP, and thus must refuse if the team believes the shortened day does not constitute FAPE in an LRE
- Any shortened day without a specified end date

- **Key Concept:** *If the parent is insisting on an inappropriate shortened school day, the IEP team does not capitulate if that would not be appropriate.*

If the IEP team knows that a shortened day will result in less than a free appropriate public education in the least restrictive environment, responsibility lies with the district to offer FAPE.

Shaffer v. Weast in 2004 was the Supreme Court Decision that stipulated that the burden of bringing action to an administrative law judge belongs to the party in disagreement. So, if the IEP team does not stipulate a removal option the parent wants but the team does not believe is appropriate, the parent must take the action, e.g., taking a district to hearing to dispute the failure of the IEP team to specify what they believed was appropriate, but they did not. If they don’t take action, the district is not required to take action to resolve it at dispute resolution or hearings. The IEP stands, even with a parent refusal to sign the IEP. However, prior written notice from the school district applies. See: [Prior Written Notice Explained](#).

- **Key Concept:** *If a hearing or court case concludes the district knowingly implemented an IEP that did not constitute FAPE in an LRE, “compensatory education” is increasingly being employed as a remedy.*

This results in financial hardships for districts in procuring the necessary number of hours or days of instruction which have been ordered.

GUIDELINES FOR USE OF SHORTENED DAYS

Diana Browning Wright

- ❑ **Make sure all “shortened days” are brief, for specific purposes, and are never in lieu of a behavior support plan if the student has behavior impeding learning of self or peers.**
 - Examples of brief, specific-purpose shortened days that probably do not result in less than FAPE in an LRE:
 - Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery;
 - Physician of a student transitioning to new seizure medications requests gradually increasing of length of day;
 - Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.
 - Student with school phobia, school refusal or selective mutism is in treatment. The therapeutic plan specifies a gradual transition to full day attendance with specific beginning and ending dates specified;
 - Student enrolls in school with no paperwork, though an IEP reportedly was developed in another state. A “suspected disability” of Emotional Disturbance is in question. Serious acting out is occurring. Student is placed on a “shortened day” or home teaching while the assessment is completed to establish eligibility and what constitutes FAPE in an LRE.

- ❑ **Do not allow IEPs that are inadequate to continue without resolution.** If the IEP team has not yet fully identified what constitutes FAPE for the student, including which “supplementary aids and supports” will support the LRE, the team is not excused from continuing the IEP development process. A Behavior Support Plan is one specification of supplementary aids and supports to allow FAPE to be delivered in the LRE. If the BSP is not effective for a serious behavior problem, in California a functional analysis assessment must be conducted and a positive behavioral intervention plan developed by the IEP team, if warranted. Continue seeking additional expertise until a shared vision of FAPE for this student emerges.
 - Examples of inadequate resolution. These IEPs are very likely to be regarded as not providing an appropriate FAPE with all necessary supplementary aids and supports as needed:
 - “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.”
 - “We don’t have anyone who knows how to develop a behavior support plan; Our specialist is on leave who does that; He is on a wait-list for a plan to be developed.”
 - “We tried writing a BSP last year, but no one would implement it, so we are shortening his day this year.”
 - “We tried a BSP last year and it didn’t work, so now we are shortening his day.”
 - “The suggestions in the BSP we wrote were fine, but we don’t have resources to do that, so we are shortening her day instead.”

❑ **Remind school personnel that there are other options to consider which may result in FAPE for a student when a full day program on campus is not viable and an alternative placement is not required to achieve FAPE.**

- Examples of shortened school days that may allow progress in general curriculum and mastery of IEP goals and objectives. Evaluation of whether these are the least restrictive solutions would still need to be made:
- Earning physical education high school credits for activities off campus such as in a home exercise program, through attendance at a gym or community night class. Credits are being earned through alternative programming. LRE issue: Have less restrictive supports been considered? Changes in staff, altering rules on suiting out, providing a peer buddy and other supplementary aids and supports should be ruled out.)
 - Volunteering or paid work experience placement off campus. IEP goals in transition are being addressed.
 - Assisting staff on campus related to IEP goals and objectives in social skills development, work experience or mastering a skill. IEP goals are being addressed through the activities. LRE issue: Can these goals be met with supplementary aids and supports in regular programs?
 - Attending day treatment afternoon programs at another site in which IEP goals and objectives in the social-emotional area are being taught. This placement was determined to constitute a FAPE component for the student.

❑ **Clarify limits on removals with all school staff:** A removal that is not noted on an IEP still constitutes a removal and therefore is subject to the 10-day limit on removals. On the 11th day a functional behavioral assessment and any necessary behavior support plan must be developed. If someone is called to pick up the child at school due to his/her behavior the child is removed for a partial day. This partial day counts toward the maximum number of removals. Further legal clarification on the method of counting removals is required. (Do we count hours toward a total equaling 10 days, or do we count each removal as a “day” for the purpose of establishing limits on removals?)

- Examples of removals for behavior:
- A parent wants to come to school and remove the child when behavior problems occur rather than having a disciplinary “suspension” occur. (A removal for behavior and a suspension for behavior both constitute removals subject to limitations.)

Alternative suggestion: If the parent wants to be involved in a removal, specify in a Behavior Support Plan, under Reactive Strategies, stages of parental involvement:

1. Have the parent talk to the child on the phone,
2. Parent comes to spend time sitting next to student in class, or,
3. Parent works with student in the office, then the parent leaves campus.
4. Student leaving campus is a last resort, counted toward the removal limit. IEP team monitors removals and revises BSP or proceeds to FAA and a Positive Behavior Intervention Plan if interventions on the BSP are “ineffective” and the behavior meets the criteria of “serious.”

- A parent is required to come to school to remove a child with behavior problems, though this removal is not referred to by staff as a “suspension.” (A removal for behavior and a suspension for behavior both constitute removals subject to limitations. Just because the staff do not view this removal as a punishment does not exempt this removal from counting towards the 10-day limit.)

Alternative suggestion: If removals have occurred more than a few times, develop a BSP to address the problem. In addition to changes in environment and the teaching of new replacement behaviors, specify in the behavior support plan how to utilize in school services in lieu of parental removal:

1. Counselor to utilize debriefing strategies with the student;
2. Allow student to spend time with a faculty “mentor” in another classroom until calm enough to return to class;
3. Allow aide or peer to calm student in other ways.

- **School removals are not positive behavioral support and can never be used alone.** When a behavior has risen to the level of “behavior impeding learning of the student or peers,” the IEP team will need consider positive behavioral supports as a component of a behavior support plan.

Suggestion: To eliminate the inappropriate use of “shortened days”, develop IEP teams and school site teams capable of developing a full continuum of behavior supports, including behavior support plans.