

## Blogs

# A Shortened School Day May Heighten the Risk for Disability Discrimination Claims

## EdLawConnect Blog

By Adam Newman and Karen Gilyard on 08.06.2014 | Posted in Special Education/504, Student Issues

The California Education Code establishes the length of minimum school days for students based on grade levels. The minimum school day for students grades four through twelve is two-hundred and forty (240) minutes or four hours per school day. Whereas, the minimum school day for grades one through three is two-hundred and thirty (230) minutes or three hours and fifty minutes per school day. (Ed. Code §§ 46141, 46112, 46113)

To comply with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), a school district or county office of education must ensure that it does not unnecessarily provide different facilities *and services* (*including length of the school day*) to disabled students as compared to nondisabled students. Specifically, a 2009 Office for Civil Rights (“OCR”) opinion analyzed a case involving a county office of education that operated three self-contained sites exclusively for students with severe disabilities. Students who attended one of these programs received instruction for five hours and thirty minutes per day. However, the school day at the sites in their home district where they otherwise would have attended ranged from twenty to seventy-six minutes longer. One of the students’ parents from the county program filed a complaint with OCR alleging disability discrimination, noting that his son received fewer hours of instruction than his nondisabled peers at school sites in his home district. OCR concluded that the student’s Section 504 rights were violated by placing the student in a facility that did not make available the same duration of instruction as provided to students at other district schools. (*Azusa (CA) Unified Sch. Dist.*, 109 LRP 24391 (01/30/09)) OCR required, among other things, that the district provide compensatory education for any student who was negatively impacted due to the shortened school day.

It is not sufficient for a district or county office of education to rely exclusively on the total number of minutes that students with disabilities spend in school each day. Rather, the district or county office of education must examine the number of minutes devoted to “instructional time,” which specifically excludes time for recess and lunch. Students with disabilities are entitled to instructional time that is as long as that instructional time provided to nondisabled students, unless an individual determination has been made otherwise through the IEP or Section 504 process.

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OCR has found that ending instruction *exactly fifteen minutes* early without individualized determinations regarding length of instruction was a violation of Section 504. Specifically, in *Pasco County (FL) Sch. Dist.*, III LRP 64900 (06/16/11), a parent claimed that her son, a high school student with autism and visual impairments, as well as all the other students in his self-contained class, were improperly being released fifteen minutes early from class each day. Significantly, none of the students' IEPs mentioned early release. The students' teachers noted that the class was being released early for safety reasons — they wanted to get the students to the bus on time. OCR found that the practice of releasing students fifteen minutes early each day was discriminatory, and that there was no provision in the students' IEPs that required early release.

The above should not be interpreted to mean that the provision of a free appropriate public education ("FAPE") requires in all cases the same amount of instruction or non-instructional minutes for disabled students as non-disabled students. Some students legitimately have disabilities associated with or without various health conditions that require shortened school days. Where this is the case, however, an IEP/504 team decision to shorten the length of a student's school day, i.e., reduce the student's instructional time, must be made on a case by case basis, and with parents or legal guardians making informed decisions that FAPE requires a shortened school day. These informed decisions should be explicitly referenced in IEP/504 meeting notes to document the individualized determinations and the underlying reasons supporting such determinations.

**Tags:** Civil Rights, Discrimination, Education Code, Instruction Day