



**STATE OF NEW MEXICO**  
DEPARTMENT OF EDUCATION - EDUCATION BUILDING  
SANTA FE, NEW MEXICO 87501 - 2786

MICHAEL J. DAVIS  
SUPERINTENDENT OF PUBLIC INSTRUCTION

MEMORANDUM

January 3, 2003

To: Superintendents  
Directors of Special Education  
State IDEA Advisory Panel Members  
Parent and Advocacy Organizations

From: Sam Howarth  
State Director of Special Education

Subject: Length of School Day and "Instructional Time"

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It has come to our attention that further guidance regarding length of school day is required. The minimum length of school days in New Mexico is defined in State law and the State Board of Education's Standards for Excellence.<sup>1</sup> In a memo dated November 11, 2002, Superintendent Davis stated that:

State law and the State Board of Education's Standards for Excellence establish the minimum length of school days for students in New Mexico's public schools and authorize local districts to exceed (but not go below) the minimums. Whatever a district decides, federal nondiscrimination laws require that students with disabilities have school days of the same length as other students unless a shorter day is educationally justified to meet a particular student's special needs, as determined and documented by the individualized educational program (IEP) team.<sup>2</sup>

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<sup>1</sup> See NMSA 1978, Sec. 22-2-8-1 (2000) and Sec. 10(H) of 6.30.2 NMAC

<sup>2</sup> Ibid.

These established minimums are equally relevant for students with and without disabilities and it is unacceptable to shorten the school day for any **group** of students for any reason.

In relatively rare instances, a shortened school day may be appropriate for **individual** students served through special education. Legitimate factors that may indicate the need for a shortened school day include the student's stamina, medical needs, and behavioral and/or emotional needs.

Any decision to shorten a student's school day must be made by the student's IEP team and be documented in the student's IEP with accompanying physician/psychologist recommendations, information from medical records, and/or other evaluation reports that were considered by the team in reaching its decision. Additionally, the IEP team must be able to clearly articulate in the IEP document that the decision to shorten the school day is educationally justifiable and the resulting plan offers the student a free and appropriate public education (FAPE) – that the full array of special education services in the student's IEP **and** the opportunity to progress in the general curriculum are provided. (Keep in mind that FAPE requires a plan of instruction likely to result in educational progress, not marginal educational advancement or regression.<sup>3</sup>)

It has come to our attention that in some districts, lunch, passing periods, recess, and/or teacher preparation periods are being counted as “instructional time” for some students. This practice is clearly outside the bounds of state standards and must stop. While we recognize that certain educational goals and objectives for certain students may be addressed during these times, this time cannot be used to shorten the student's school day.

Students with disabilities will benefit and learn during lunch, recess, and passing periods just as students without disabilities benefit and learn during these times. Some students with disabilities may need explicit assistance during these times and this should be reflected in the student's IEP. Lunch, recess, and passing periods may provide certain students unique opportunities to attain goals and objectives and may be used, as appropriately defined through the IEP, to attain educational outcomes. However, just because a student is learning during lunch, recess, or passing periods, does not mean that there exists an allowable justification for shortening the school day.

Similarly, students with disabilities cannot be dismissed from school early or made to start school late (other than for individual students as outlined above) in order to accommodate teacher planning time or for administrative convenience; in short, while we

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<sup>3</sup> See *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 3 EHLR 553.656 (U.S. Supreme Court, 1982).

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recognize that instructional planning time is critical and may be required, this time cannot be used to shorten a student's school day.

If you have further questions about length of school day for students with disabilities, please call the Special Education Office at 827-6541 and ask to speak to an available consultant.

CC: SEO Consultants  
SEO Memo file  
SDE Legal Counsel