



STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION — EDUCATION BUILDING
300 DON GASPAR AVENUE
SANTA FE, NEW MEXICO 87501-2786

MICHAEL J. DAVIS
SUPERINTENDENT OF PUBLIC INSTRUCTION

Telephone: (505) 827-5800
Fax: (505) 827-6696
www.sde.state.nm.us

MEMORANDUM

To: School District Superintendents
Special Education Directors
Transportation Directors
State Board of Education Members
Others Interested

From: Michael J. Davis
State Superintendent of Public Instruction

Date: November 13, 2002

Subject: Shortened School Days for Students with Disabilities

The State Department of Education has recently received reports that a number of school districts have shortened the school day for some students with disabilities solely to accommodate transportation schedules or perceived limitations on the district's transportation capabilities. Although the extent of this practice is uncertain, it is clearly illegal and must be stopped immediately wherever it may be occurring.

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.¹ 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.² Specifically, it is clear that a school district may not shorten the school day for students with disabilities solely to accommodate transportation schedules or perceived limitations on the district's transportation capabilities.³

The State Board of Education's regulations require that school district transportation services comply with all applicable state and federal statutes and regulations, regardless of whether the district provides transportation directly or through contract arrangements.⁴ School districts and transportation contractors must therefore ensure that students with disabilities do not receive less

instructional time than other students solely to accommodate transportation schedules or perceived limitations on the transportation capabilities of districts or contractors.

Some students with disabilities may properly have their school days shortened for educational reasons related to their individual needs, as determined by their individualized education program (IEP) teams.⁵ Such decisions must be made on an individualized basis, must focus on a student's individual needs, and must be justified and recorded in the student's IEP. Depending on the structure of different programs, it is also possible that some students whose overall school days are shorter than those for other students may actually receive the same amount of instructional time within a shorter day.⁶ In all such cases, a student's individual needs control the decision-making process and the IEP must document the extent of any reduction in a student's school day and the educational reasons for it. Such individualized decisions should not be confused with decisions to shorten the school day for students with disabilities that are based on the perceived needs of a district's transportation system. That type of decision is clearly illegal and any district that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity.

References

¹ See NMSA 1978, Sec. 22-2-8.1 (2000) and Sec. 10(H) of 6.30.2 NMAC.

² See, for example, *Newport-Mesa (CA) Unified Sch. Dist.*, 23 Individuals with Disabilities Education Law Report (IDELR) 251 (Office for Civil Rights (OCR), U.S. Department of Education, 1995), and *Tustin (CA) Unified Sch. Dist.*, 23 IDELR 109 (OCR 1995) (shorter school days for students with disabilities that were not based on IEP team determinations of individual needs violated Section 504 of the federal Rehabilitation Act and Title II of the Americans with Disabilities Act).

³ See, for example, *Granite (UT) Sch. Dist.*, 19 IDELR 984 (OCR 1993) (10-minute shorter school day for students with disabilities to accommodate district's transportation schedule violated the Section 504 regulations at 34 CFR 104.4 and the ADA regulations at 38 CFR Sec. 35.130). This decision was issued by OCR's regional office in Denver, which has jurisdiction over New Mexico. At least six other decisions by other OCR regional offices have held that it violates federal law to shorten the school day of students with disabilities solely to accommodate the requirements or perceived limitations of a district's transportation system. There does not appear to be any decision that has held to the contrary.

⁴ See Sec. 2 of 6.41.4 NMAC, Standards for Providing Transportation for Eligible Students (2001).

⁵ See, for example, *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 17 IDELR 990 (U.S. Court of Appeals, Fifth Circuit, 1991) (four-hour school day was shown to be appropriate for a child with profound mental and physical disabilities), and *Turner-Kansas City (KS) Unified Sch. Dist.*, 24 IDELR 1184 (OCR 1996) (reduction in length of school day for fighting was not discriminatory where it was part of an agreed-upon behavioral management plan for an individual student).

⁶ See *Broward County (FL) School District*, 36 IDELR 134 (OCR 2001) (four-hour school day for students in regular extended school year (ESY) program included same amount of instructional time as five-hour day for students at center-based ESY program, whose additional support needs required another hour a day).