

## Diving into the School Year: When Do Services Need to Begin?©

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On the first day of school, one of my teacher friends told her students that they would be easing into things during the first few days—just dipping their toes in the water, getting their feet wet, and becoming accustomed to the routine before really diving in. One of her students dutifully raised her hand with a concerned, yet excited look on her face. When called upon, she said she forgot her swimsuit, but asked if she should take her shoes off and when they would be setting up the pool. Needless to say, my friend decided to start the day by dipping her students’ toes in the subject of English...with the perfect lesson on figurative language.

The beginning of any school year is a time to dip our toes in the water. A honeymoon period. A syllabus week. A time for the students to meet the teachers, for the teachers to get to know their students, and for the routine to really become established. These delays in beginning school span from preschool all the way to university. But how long should this period last? And for children who receive special services, how long is too long?

It is not uncommon for school staff—especially related service providers or itinerant special educators—to use the first few weeks of the year to get their schedules in order and to use the last few weeks to wrap up loose ends. In fact, OSEP discovered through its monitoring in Pennsylvania that, even though related services had the same beginning and end dates as the IEP, personnel in at least one district were “delaying the beginning of services between two weeks and two months while others reported terminating services between two months and two weeks before school ends in order to complete files, paperwork and evaluations.”<sup>1</sup> While everyone does need time for transition, federal law also entitles students with disabilities to a free appropriate public education and equal access to educational services.<sup>2</sup> Especially when an IEP specifically lists dates and times for services, even down to the number of minutes, these extended periods of “getting situated” mean that students are missing out on valuable services to which they are entitled. Based on what it found in the study, OSEP determined that (at that time) Pennsylvania was noncompliant in the area of having adequate personnel on staff to provide FAPE.<sup>3</sup>

The question still remains: how long of an administrative delay is allowed before a student is officially denied FAPE, and consequently, eligible for compensatory services? Federal regulations provide that, for children with disabilities, an IEP must be in effect at the beginning of the school year, and if that IEP is developed during the school year, it must be implemented “as soon as possible following the development of

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<sup>1</sup> OSEP Monitoring Report for Pennsylvania, at 35, February 1, 2002, *available at* <http://www2.ed.gov/policy/speced/guid/idea/monitor/pa-20020201.pdf>.

<sup>2</sup> 20 U.S.C. §1412; 29 U.S.C. §794.

<sup>3</sup> OSEP Monitoring Report for Pennsylvania, at 35, February 1, 2002, *available at* <http://www2.ed.gov/policy/speced/guid/idea/monitor/pa-20020201.pdf>.

the IEP."<sup>4</sup> Since the regulations do not provide an exact time frame, hearing decisions vary regarding how long delays in services may last before constituting an illegal denial of service. As an example of less tolerance for delays, the Office for Civil Rights has stated in a case involving a Michigan school district that five weeks was too long to hire a new sign language interpreter when the previous interpreter resigned only the day before school started.<sup>5</sup> In that same case, the student's OT/PT services were also deemed to be unreasonably delayed because the student's school started two weeks later than the rest of the district and, even after school had started, the occupational therapists spent another two weeks in performing administrative details.<sup>6</sup> As a result, the school was required to make services available the first day of the year.<sup>7</sup> The Colorado State Educational Agency has also stated that, after a student health plan was developed, the District "should have been prepared to implement Student's IEP within two weeks."<sup>8</sup> Finally, a 27 day delay in implementing a student's IEP was also deemed too long, and so the student continued to receive five hours per week of extra services to make up for the delay.<sup>9</sup>

Once schools have been in session for one to two weeks or more, related services and substantive lessons should be getting started. Since it is important to ensure that students don't fall behind during this interim period as the school year begins, parents and staff should practice positive, open communication and avoid delay as much as possible. That way, students dive right into their lessons after getting off to a great start. Similarly, delays before and after winter and spring break and premature winding down of services at the end of the school year should be avoided as excessive loss of service may constitute a FAPE violation under IDEA or Section 504 and constitute a basis for compensatory services.

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<sup>4</sup> 34 C.F.R. §300.323.

<sup>5</sup> 20 IDELR 90 (Apr. 1993).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 6 ECLPR 7 (March 2008).

<sup>9</sup> *Madison County Bd. Of Educ.*, Alabama State Educational Agency, 25 IDELR 1033 (Apr. 1997).