Rights of Students with Disabilities in Elementary and Secondary Schools

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1. Intro

This Resource Guide provides a comprehensive overview of the rights of students with disabilities in elementary, middle, and high school. The schools we are generally talking about throughout the guide are public schools, including charter schools, that receive federal funding.

Specifically, Section 504 applies to schools that receive federal funding from the U.S. Department of Education. Title II of the ADA applies to schools that are run by public school districts, including charter schools. The IDEA applies to all students within a certain age range across the state and generally makes public schools responsible for services.

Title III of the ADA applies to schools run by entities other than public schools, such as private schools. The rights of students in private schools are significantly different than students who attend public school and discussed specifically in section 26.

This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights.

2. Eligibility

Students may be eligible under Section 504, the ADA, and/or the IDEA. These laws have different eligibility criteria, which are explained below.

Section 504 and the ADA

There is no comprehensive list of disabilities. Any person is eligible who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or • Is regarded as having such an impairment.

Physical and mental impairments

A physical or mental impairment is any physiological condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, Musculoskeletal, Special sense organs, Respiratory (including speech) organs, Cardiovascular, Reproductive, Digestive, Genito-urinary, Hemic and lymphatic, Skin, and Endocrine. Or, any mental or psychological condition, such as: Intellectual disability, Organic brain syndrome, Emotional or mental illness, and Specific learning disabilities.

Major life activities

Examples of major life activities include caring for yourself, performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, learning, and working. This list is not comprehensive.

Record of an impairment

Having a record of impairment means there is a history of a mental or physical impairment that substantially limits one or more major life activities. This includes having been misclassified as having a mental or physical impairment. For example, a person that undergoes treatment for cancer has a record of an impairment, even if they are in remission.

Being 'regarded as' having an impairment

To be 'regarded as' having an impairment, you must:

- Have a physical or mental impairment that does not substantially limit a major life activity but that is treated by a school as constituting such a limitation,
- Have a physical or mental impairment that substantially limits a major life activity only because of the attitudes of others toward such impairment, or
- Not actually have a physical or mental impairment but are treated by a school as having an impairment.

However, the acting party must 'regard' the disability as a disability that qualifies under Section 504 to qualify. For example, if a student has a large facial birthmark and other students bully her because they mistakenly believe she has leprosy, the student would likely be protected by Section 504.

Transitory and minor impairments

Section 504 does not cover transitory (not permanent) and minor impairments. Therefore, if an impairment is minor and it has an actual or expected duration of six months of less, the impairment does not make a person eligible under Section 504. However, conditions that are in remission may not fall under transitory and minor (see below for more information).

Aids, medications, and medical devices

If you have aids, medications, or devices that help manage an impairment, that can be very beneficial! However, when determining eligibility, supports or mitigating measures may not be considered in the decision. Therefore, eligibility will be looked at as though the mitigating measure does not exist. For example, if you use a wheelchair that allows mobility, the wheelchair cannot be a part of the eligibility decision. Therefore, the decision would be based on your mobility capability without a wheelchair. Examples of mitigating measures include hearing aids, medication, prosthetic devices, crutches, and wheelchairs. The only mitigating measures that can be considered in determining whether someone qualifies as having a disability are ordinary eyeglasses and contact lenses.

Conditions in remission

If you have a condition that is episodic or in remission, the eligibility decision should be made based on when the condition is active. If the condition substantially limits a major life activity when active, you are eligible under Section 504.

Examples of conditions that may be episodic or in remission include epilepsy, hypertension, asthma, diabetes, major depressive disorders, bipolar disorders, schizophrenia, or autoimmune diseases.

Examples of impairments

There are no set impairments that automatically qualify under the statute. Each impairment is considered on an individual basis. However, some examples of possible qualifying impairments include:

- Anxiety
- Asthma
- Attention-Deficit Disorder (ADD)
- Autism
- Autoimmune Disorders
- Bipolar Disorder
- Blindness
- Depression
- Diabetes
- Dyslexia
- Emotional Disturbance
- Epilepsy
- Food Allergies
- Hearing Impairment
- HIV/AIDS
- Mobility Impairment
- Multiple Sclerosis

- Orthopedic Impairment
- Post-Traumatic Stress Disorder (PTSD)
- Speech or Language Impairment IDEA

To be a "student with a disability" under the IDEA, the student must:

- Meet the definition of one or more categories of disabilities, and
- Need special education and related services because of the disability or disabilities.

A student needs 'special education and related services' when the student requires specialized instruction to receive an educational benefit from the educational program. If a student only needs related services and not special education, a student does not qualify under the IDEA unless the related services qualify as 'special education.' A student with an impairment is not eligible for special education unless they have an educational need for such services. For example, if a student has anxiety and depression but it is not impeding academic performance, there may not be a need for special education.

Categories

The IDEA defines 13 categories of disabilities. These categories are the only categories recognized by IDEA, but the specific impairments included in the categories are not the only impairments recognized:

1. Autism
2. Deaf-Blindness
3. Deafness
4. Emotional disturbance
5. Hearing impairment
6. Intellectual disability
7. Multiple disabilities
8. Orthopedic impairment
9. Other health impairment
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment, including blindness

Determining eligibility

First, an eligibility team will look at many factors to determine whether a student is eligible. The team must draw information from a variety of sources and ensure that the information obtained is documented and carefully considered. Factors the team considers include:

- Academic ability (but the team cannot rely solely on this factor)
- Frequent absences
- Ability to access the general education curriculum

- Any educational improvements resulting from specialized instruction
- The services a student is already receiving
- Aptitude and achievement tests
- Parent input
- Feedback from the student, as appropriate
- Teacher recommendations
- Information about the child's physical condition
- The child's social or cultural background
- Adaptive behavior

Second, once the team has assessed a student, a group of qualified professionals, along with the parents, will decide whether the student is eligible. The parents should receive a copy of the evaluation report and the documentation of determination at no cost. This should also be provided in the parents' primary language.

Students making good academic progress

While academic ability is a factor in determining whether a student needs special education, it cannot be the sole factor. In addition, the mere fact that a student is 'gifted' does not disqualify them from eligibility for special education or related services. Therefore, even if a student is excelling academically, they may still need special education and qualify under the IDEA. Eligibility under Section 504, as discussed above, may also need to be considered.

Dual eligibility under 504 and the IDEA

A student can be dual-eligible under both Section 504 and the IDEA. If this is the case, the student should have an IEP and any accommodations that would be in a Section 504 plan should be incorporated into the IEP. Developing and implementing an IEP satisfies Section 504 requirements; however, if a student qualifies under the IDEA, the student must have an IEP. A parent cannot choose to have a Section 504 plan instead of an IEP.

3. Child Find

Child Find is the ongoing obligation of states and local school districts to locate, identify, and evaluate all children with disabilities residing in their area who may need special education and other related services. Child Find procedures must include children who are suspected of having a disability and in need of special education, even if they are advancing from grade to grade or in gifted programming, and children who are highly mobile, including migrant children and those who are unhoused.

IDEA & 504 Similarities

Section 504 echoes the language of the IDEA, targeting students who, because of their disability, need or are believed to need special education or related services. This requirement includes children who may or may not have an official residence, including children who are unhoused.

Additionally, districts are required to take appropriate steps to notify students with disabilities and their parents or guardians about their Child Find duty. The district's duty to find and identify these students may be triggered even if a parent does not request an evaluation.

Both the IDEA and Section 504 state that parents, a district, or a public or private agency may initiate a referral for a preplacement evaluation. The existence of an individualized health plan does not negate the obligation to evaluate or justify unreasonably delaying an evaluation.

IDEA & 504 Differences

Unlike the IDEA, Section 504 does not address when or whether districts need parental consent for initial evaluations. However, the Office for Civil Rights has concluded that parental consent is required because it is a necessary component of the evaluation phase. If a district suspects that a student may have a disability, it should initiate the Section 504 evaluation process even if they do not have an official medical diagnosis of a disability.

District Responsibilities

Districts have considerable discretion as to how they conduct their Child Find responsibilities. While districts are required to take steps annually to identify and locate students with disabilities who are not in public schools, Section 504 regulations do not specify how they must execute their Child Find activities with respect to students that are not enrolled in public schools. The Office for Civil Rights has noted that there are many means available to districts when locating students, including notices to private schools, state and local agencies, and notices placed in newspapers.

The district of residence is responsible for Child Find and evaluations. In Colorado, the district of residence is the district the child resides in on a day-to-day basis. There are exceptions for children with disabilities. For example, if the child lives at a regional center, facility school, state mental health hospital, or the Colorado School for the Deaf and Blind, the district of residence may still be the district in which the parent or guardian resides.

However, if the child has been placed by the Colorado public agency and lives at a regional center, mental health institute, facility/group home, and the parents have lost/relinquished their rights, then the child is considered a resident of the district they are living in.

Foster children's district of residence is the district that the foster care home is located.

If a child is unhoused, their district of residence is the district in which they are presently seeking shelter or are physically located. Children who are unhoused may also be considered to reside in the district in which they previously attended before becoming unhoused, or the district found to be in the best interest of the child.

Failure to Comply with Child Find

Failing to meet Child Find requirements may be a violation of a student's right to a free appropriate public education (FAPE). The failure to identify and evaluate may entitle the student to compensatory services accruing from the time the district should have first suspected the disability.

Signs a Child Might have a Disability

There are many circumstances in which a district should recognize a student's potential disability and begin evaluating them.

For example, if a student's behavior is increasing to the point that parents are called repeatedly to pick them up early or has repeated absences and the district is aware that the student might have a medical condition, the district may have reason to suspect a disability. If a student has had repeated psychiatric hospitalizations indicating that the child's emotional health concerns are occurring over a prolonged period, that information might be sufficient to create suspicion that the student meets IDEA or Section 504 criteria for a disability.

Student absenteeism may relate to circumstances other than a disability, in which case, the Child Find requirement may not be triggered; however, it is something schools should keep in mind as they are considering root causes of a student's absences.

There is no definite rule concerning whether and how the student's health or hospitalizations would trigger the Child Find requirement. Students who are attending school for the first time, for example, may need time to adjust. There is no specific rule regarding when a behavior rises to the level or lasts long enough that it becomes a reason to refer the student for an evaluation.

In general, if a child's behavior is both extreme and persistent, and the child does not respond to traditional, informal attempts to manage or intervene, educators should consider referring the student based on a possible behavior-related disability. In any case, if a parent or guardian requests an evaluation, the school needs to move forward with obtaining consent and evaluating and cannot delay an evaluation pending the outcome of interventions such as multi-tiered support services (MTSS) or response to intervention (RTI).

Districts should consider evaluating a child if they receive private reports diagnosing a student with a disability. If the district chooses to postpone an evaluation, it should document legitimate reasons for the delay.

Child Find in Correctional Settings

Unless a specific exception exists, all IDEA protections apply to students with disabilities in correctional facilities and their parents. This specifically includes children in youth facilities who have never been identified as having a disability prior to entering the facility. Students suspected of having a disability who need special education and related services must be evaluated in a timely manner, even if the student will not be in the facility long enough to complete an evaluation.

Note that there are additional exceptions for individuals who are in adult correctional facilities when Child Find may not apply. Specifically, if the individual was not identified as having a disability or needing an IEP in the placement prior to entering the adult correctional facility.

4. Evaluations

Applicable Laws

Section 504 of the Rehabilitation Act (Section 504) governs evaluation and placement of students and determines which students may receive a Section 504 plan.[1] The Individuals with Disabilities Education Act (IDEA) also governs evaluation and placement of students and determines which students are eligible for individualized education programs (IEPs).

Initial Evaluations

Under Section 504, a school must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education.

Under the IDEA, schools have an affirmative obligation to identify, locate, and evaluate all children with disabilities. This is known as the "child find" obligation. Because of this obligation, the school should be evaluating students that are potentially IDEA-eligible. However, parents may also request that their child be evaluated. If the school agrees that evaluation is needed, the child will be evaluated at no cost to the parents. Under both the IDEA and Section 504, schools must make decisions on an individualized basis, not based on:

- Presumptions or stereotypes regarding persons with disabilities or classes or such persons; or

[1] Note that Section 504 protections apply to students if they qualify as having a disability regardless of whether they have a Section 504 plan.

- Concerns about the costs of providing the related aids or services.

Parental Consent Required

Under the IDEA, the parent must first give their informed, written permission for evaluation. To be informed about the matter, the parent should receive prior written notice before being asked for permission. Prior written notice must include:

- Why the school wants to conduct the evaluation (or why it refuses to do so),
- A description of each evaluation procedure, assessment, record, or report used as a basis for proposing the evaluation (or refusing to conduct the evaluation),
- Where parents can go to obtain help in understanding the IDEA's provisions,
- What other options the school considered and why those were rejected, and
- A description of any other factors that are relevant to the school's proposal (or refusal) to evaluate the child.

While Section 504 does not specify whether parental consent is needed to conduct an evaluation, the U.S. Department of Education's Office for Civil Rights has issued guidance that a school does need parental consent prior to conducting an evaluation. A parent may refuse to consent to an evaluation, but if consent is refused, the school is not liable for a child find violation.

Under both Section 504 and the IDEA, if a parent refuses to consent to an evaluation, a school may (but is not required to) pursue due process procedures or mediation to try to evaluate the child.

Timing of the Initial Evaluation

A school must provide a parent with the consent form for evaluation within a reasonable amount of time. Once the parents receive the consent form, they must sign it and return it to the school. Then, initial evaluation under the IDEA must occur within 60 calendar days of receiving parental consent for the evaluation, or within the timeframe specified by the state. In Colorado, the timeframe is also 60 calendar days. Section 504 does not have a specific number of days, but generally follows the same timeline as the IDEA and state law.

Reevaluations

Under Section 504, schools must reevaluate students with disabilities: •
Periodically (i.e., generally, at least every three years), and

- Before any subsequent significant change in placement.

Under the IDEA, reevaluation must occur at least every three years. Additionally, a school may need to reevaluate a student with a disability:

- If the school determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or
- If the child's parents or teacher requests a reevaluation.

Requirements of an Evaluation

Under Section 504, tests and other evaluation materials must be:

- Validated for the specific purpose for which they are used,
- Administered by trained personnel in conformance with the instructions provided by their producer,

- Tailored to assess specific areas of educational need and not merely intelligence quotient (IQ),
- Selected and administered to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure), and
- For students who are English Learners, presented in an appropriate language based on the student's needs and language skills.

Under the IDEA, an initial evaluation must be full and individual, focused on an individual child's needs. The evaluation must use a variety of strategies and tools to gather information about the child, including relevant functional, developmental, and academic information. A full and individual evaluation includes:

- Health
- Vision and hearing
- Social & emotional status
- General intelligence
- Academic performance
- Communicative status
- Motor abilities

If a student is being re-evaluated under the IDEA, the IEP team must review existing data, conduct observations, conduct evaluations, and obtain parental input. Based upon the existing data, the team must identify what additional information is necessary to determine:

- Whether the child continues to have such a disability and the educational needs of the child,
- The present levels of academic achievement and related developmental needs of the child,
- Whether the child continues to need special education and related services, and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Interpreting Evaluations and Making Placement Decisions

Under Section 504, in interpreting evaluation data and making placement decisions, schools must:

- Draw upon information from a variety of sources, such as aptitude and achievement tests, teacher recommendations, the student's physical condition, the student's social or cultural background, and the student's adaptive behavior,
- Establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and
- Ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options. Under the IDEA, placement decisions must be made by an IEP team, which must include:
- The parents of the child with a disability,
- At least one regular education teacher of the child,
- At least one special education teacher (or at least one special education provider of the child), • A qualified, knowledgeable representative of the school, and
- The child with a disability, as appropriate.

5. Independent Educational Evaluations (IEEs)

An IEE is an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. The IEE requirement is specific to students who are eligible under the IDEA because Section 504 does not have an IEE requirement.

Requesting an IEE

A parent has the right to an IEE for their child if the parent disagrees with an evaluation obtained by the public agency or school. A parent has the right to request an IEE each time the school conducts an evaluation of their child, and the parent disagrees with the findings of the evaluation.

Paying for the IEE

A parent has a right to an IEE at public expense. This means that the school or public agency either:

- Pays for the full cost of the evaluation, or
- Ensures that the evaluation is otherwise provided at no cost to the parent.

If an IEE is ordered by an independent hearing officer as part of a hearing on a due process complaint, the cost of the evaluation must also be at public expense.

Criteria for an IEE

A school may establish certain criteria for an IEE, such as the location of the evaluation and the qualifications of the examiner. The school must inform you what the evaluation criteria are, and generally the criteria must be the same as that used by the school when they initiate an evaluation.

Schools often have a list of pre-approved independent evaluators who meet the school's criteria. You can use an evaluator from this list, or you may find your own evaluator. Note, however, that the school needs to approve your chosen evaluator before you have them conduct an evaluation to ensure the evaluator meets the school's criteria and will therefore need to be paid for by the school. If you pay for a private evaluation and the evaluator does not meet the school's criteria, the school may not have to reimburse you for that expense.

Denial of an IEE

A school can only deny an independent educational evaluation if the school files a due process complaint and the decision from the hearing officer finds that the school's evaluation was appropriate or that the evaluation obtained by the parent did not meet appropriate criteria.

If the school's evaluation was appropriate, the parent still has a right to an independent evaluation, but not at public expense.

If a parent obtains an evaluation at private expense, the results of the evaluation:

- Must be considered by the school in any decision made with respect to the provision of a free appropriate public education (FAPE) so long as the evaluation meets appropriate criteria, and
- May be presented by any party as evidence at a hearing on a due process complaint.

6. Least Restrictive Environment (LRE)

For academic settings, schools must:

- Educate each qualified student with a disability with students who do not have disabilities to the maximum extent appropriate based on the needs of the student with a disability, and
- Place students with disabilities in the regular educational environment operated by the school unless it is demonstrated by the school that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. In providing or arranging for

the provision of nonacademic and extracurricular services and activities, schools must ensure that students with disabilities participate with students without disabilities to the maximum extent appropriate. Nonacademic and extracurricular services and activities include:

- Counseling and health services
- Employment of students
- Recess, recreational activities, and athletics
- Special interest groups or clubs sponsored by the recipient
- Meals and transportation

Under Section 504, if a school operates a facility that is identifiable as being for persons with disabilities, the school must ensure that the facility and the services and activities provided in the facility are comparable to the other facilities, services, and activities of neighborhood schools.

Continuum of Placement Options

Schools must ensure a continuum of alternative placements that can meet a student's needs for special education and related services.

When deciding the LRE in the context of the IDEA, the placement team must consider:

- The continuum of educational placements,
- The supplementary aids and services the student needs to be educated in the LRE, and • The factors that determine the restrictiveness of placement, such as the student's behavior.

Finally, before being placed outside of a regular classroom environment, the placement team must consider if supplementary aids and services would enable education in a less restrictive educational setting. Examples of aids and services include extra time, shorter or modified assignments, slowerpaced instruction, physical adaptations, notetakers, allowing breaks, preferential seating, digitized materials, and altering instruction.

LRE Safeguards

Under Section 504, a school must establish and implement – with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities – a system of procedural safeguards that includes:

- Notice of the action being taken regarding identification, evaluation, or educational placement,
- An opportunity for the parents or guardian of the student to examine relevant records,
- An impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and
- A review procedure (i.e., an opportunity to appeal the hearing decision).

Under the IDEA, schools must have a complete explanation of all safeguards available under IDEA. Schools must send the procedural safeguards notice to parents once every year. In addition, schools must give a copy to parents:

- In their child's initial referral for evaluation, or when the parents ask for such an evaluation, and
- When a parent requests a copy of the procedural safeguards notice.

7. Free Appropriate Public Education (FAPE)

Under Section 504, FAPE can include the provision of general education or special education and related aids and services. This means special education is not necessary under Section 504, but related services must be provided if that is what a student needs to receive FAPE.

Under the IDEA, FAPE includes special education and related services that:

- Are provided at public expense, under public supervision and direction, and without charge,
- Meet the standards of the State Education Agencies,
- Include an appropriate preschool, elementary school, or secondary school education, and
- Are provided in conformity with an individualized education program (IEP).

In addition, the Supreme Court held in *Endrew F. v. Douglas County School District* that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Cost of FAPE

Schools must provide educational and related services without cost to students with disabilities or their parents or guardians, except for those fees that are imposed on students without disabilities or their parents or guardians.

Schools may provide the free services to students with disabilities themselves or through other qualified entities. If the school uses other qualified entities, schools must ensure that:

- services are provided at no cost to the students with disabilities or their parent or guardian, and
- students with disabilities have adequate transportation to and from the service at no greater cost than would be incurred by the student or their parent or guardian if the school provided the service.

Parentally Placed Students in Private School

If a school has made FAPE available to a student with a disability in a public school and the student's parents or guardians choose to place the student in a private school, the school is not required to pay for the private school. Disagreements between a parent or guardian and a school regarding whether the school has made FAPE available, or otherwise regarding the question of financial responsibility, are subject to due process procedures.

However, if a public or private residential placement is necessary to provide FAPE to a student because of their disability, the placement, including non-medical care and room and board, must be provided at no cost to the student with a disability or their parents or guardians.

Determining what is Appropriate

Under Section 504, the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual needs of students with disabilities as adequately as the needs of students without disabilities are met. Implementation of a Section 504 plan or an Individualized Education Program (IEP) is one means of providing an appropriate education under Section 504.

Schools must make decisions regarding FAPE on an individual basis, not based on:

- presumptions or stereotypes regarding persons with disabilities or classes of such persons, or
- concerns about the costs of providing the related aids or services.

Under the IDEA, a student's progress is measured in relation to their own potential. There is no bright-line rule for necessary educational benefit, nor does the IDEA require maximum educational benefits. Instead, courts should consider each student's potential on a case-by-case basis.

8. Unhoused or Homeless Students

The McKinney-Vento Homeless Assistance Act is a federal law enacted to provide support and protection for students who are unhoused. This includes provisions specifically aimed at addressing the educational needs of students who are unhoused, including those with disabilities. The term "eligible students" will be used throughout this handout to refer specifically to those students who are eligible under McKinney-Vento. McKinney-Vento covers anyone who is school-aged and living in a shelter, motel, car, outdoors, in an inadequate trailer or house, staying temporarily with friends or a relative due to economic hardship or loss of housing, or is living in any other unhoused situation.

Rights under McKinney Vento

Students with disabilities have the following rights under McKinney-Vento:

- Immediate Enrollment: Eligible students have the right to enroll in school immediately, even if they lack the usual documents required for enrollment, such as proof of residency, immunization records, or school records.
- Immediate Access to Free School Meals: These must be offered right away for eligible students.
- School Stability: Eligible students have the right to remain in their "school of origin" (the school they were attending when they became unhoused) or the school they last attended, even if they move to a new attendance area. The school district must provide transportation to ensure school stability.
- Access to Support Services: Eligible students are entitled to receive all the services and accommodations necessary to ensure their education is not interrupted.
- Dispute Resolution: McKinney-Vento provides dispute resolution procedures to address disagreements between schools and parents/guardians regarding enrollment, placement, or the provision of services for eligible students.
- IDEA/504: In addition to McKinney-Vento educational support services, students with disabilities may have additional rights to services under an Individualized Educational Program (IEP) or Section 504 plan.

Identifying Eligible Students

Schools have a responsibility to identify and support students with disabilities who are unhoused. They can do this by:

- Awareness and Training: Schools can provide training to staff to increase awareness of the unique needs and challenges faced by eligible students.
- Identification and Evaluation: Schools should implement procedures to identify students with disabilities who are unhoused and conduct evaluations, if necessary, to determine their eligibility for special education and related services.
- Individualized Education Programs (IEPs): Schools must develop or update an IEP for students with disabilities who are unhoused to address their unique needs and ensure they receive appropriate educational services.
- Section 504 plans: Schools must develop or update 504 plans for students with disabilities needing reasonable accommodations to access or benefit from their education.

- Collaboration with Agencies: Schools can work collaboratively with shelters, service providers, and community organizations to identify and support eligible students.

Transportation

McKinney-Vento requires school districts to provide transportation assistance to eligible students, including those with disabilities, to ensure they can continue attending their "school of origin" or the school they last attended. This transportation must be provided at no cost to the student or their family. Students with disabilities may have additional rights to transportation under the Individuals with Disabilities Act or Section 504.

Unaccompanied Students

Unaccompanied eligible students can work with their school district's McKinney-Vento liaison or coordinator to enroll in school. The school district must not create undue burdens to prevent eligible students from enrolling. This includes requiring the signature of a parent or guardian to enroll in school.

Additional Resources

In addition to the rights provided by McKinney-Vento, there may be other resources and supports available to eligible students. These can include:

- Local Liaisons: Every school district must designate a local education liaison for students who are unhoused who can provide information, assistance, and support to eligible students and their families. This assistance can include additional educational support, services including referrals to health, mental health, dental, and other needed services.
- Community Organizations: Various community organizations, shelters, and nonprofits may offer specific services, such as tutoring, counseling, or material assistance, to support the education and well-being of homeless students with disabilities. Eligible students can work with the school district's liaison to access these services.
- State and Local Programs: Depending on your location, there may be state or local programs that provide additional resources and supports for eligible students. These programs can vary, but a school district's liaison should have additional information and referrals.

9. Meaningful Parent Participation

The IDEA's procedural requirements for developing a child's IEP are purposefully designed to create a collaborative process, and explicitly place special emphasis on parental involvement as part of the child's IEP team.

The law requires schools to allow parents of students with disabilities to meaningfully participate in the creation and implementation of the student's IEP. If the school prevents parents from meaningful participation, the student may be denied FAPE, violating the IDEA.

Parent participation should go beyond giving a parent the opportunity to speak. The IEP team should consider parents' suggestions and, when appropriate, incorporate them into the IEP. Schools are required to approach IEP meetings with an open mind and be receptive and responsive to parents' positions and questions.

Under the IDEA, parents have a legal right to participate in meetings concerning identification and evaluation of their child, their child's educational placements, and any other meetings that may impact the student's FAPE. This includes meetings related to developing, reviewing, or revising their child's IEP. The law does not

require that parents be present for informal or unscheduled conversations involving school personnel, conversations regarding teaching methodology and lesson plans, or coordination of service provisions. Additionally, school personnel are not required to include parents in the development of a draft IEP, or the development of a response to a parent's proposal that will be discussed at a later meeting.

While no similar parent participation requirement exists under Section 504, it is considered a best practice to include parents. Decisions under Section 504 must be made by a group of knowledgeable people, and parents are often one of the best sources of knowledgeable about their child.

Determining who is the "Parent"

The word parent has a specific definition within special education law and is not limited to the biological parents of the child. Under the IDEA, parents may be:

- Biological or adoptive parents,
- Foster parents,
- Guardians authorized to make educational decisions for the child, and
- An individual acting in the place of a biological/adopted parent, who is either: legally responsible for the child's welfare, living with the child, or a properly appointed surrogate parent.

Student Participation

The IDEA requires that students aged 14 and older be invited to attend their IEP meetings, but their attendance is not required. Even if students are younger than 14, they should be included in their meetings, including those held to discuss 504 plans, IEPs, and evaluations. Student participation may take a variety of forms. They may attend entire meetings or parts of a meeting, expressing their goals and interests to the team. Even if it is not appropriate for a student to attend a meeting, they may meet with team members before to discuss their wants and needs or they may provide a letter or recorded video for the team to review.

Length of IEP Meetings

When parents and the school are not able to come to a consensus during an IEP meeting, it may be appropriate for the parents to ask for a continuation of the meeting. This means that the meeting will end, and the team will reconvene later. Similarly, schools have the right to adjourn a meeting after a reasonable time, even if the parents object. If an IEP date passes without a new IEP in place, the district is out of compliance with the IDEA. However, despite a common misconception, IEP's do not expire. If the IEP date passes, the student should not lose their special education services. The previous IEP should be implemented until a new IEP is developed by the team.

Information Parent Should Receive Prior to an IEP Meeting

Schools must notify parents about upcoming meetings regarding their child's IEP early enough to ensure the parent has an opportunity to attend and invite other relevant parties. While the IDEA sets no strict guidelines for timing, 10 school days is customary. IEP meeting notices must include the purpose, time, and location of the meeting, as well as who will be in attendance.

Because IEP meetings involve discussion of confidential information, schools must seek consent from the student's parents each time they wish to invite an agency representative to an IEP meeting. Schools may violate the law by including an individual in the IEP meeting that was not included in the notice. If a parent is

unable to participate in an IEP discussion because they were not given adequate and timely notice, this may be a violation of the IDEA.

Schools must also provide parents with a copy of any evaluation reports that will impact discussions and decisions made at the IEP meeting sufficiently in advance of the IEP meeting. This includes psychological reports, social and developmental histories, therapist reports, and any documents IEP members have generated for discussion at the IEP meeting. Schools are not required to generate written reports that are not documented in a written or typed format. This includes speech evaluations, curriculum-based assessments, informal teacher assessments, or observations that do not result in a written report.

When the IEP team is meeting to discuss transition services, the meeting notice must also state that the team intends to discuss the student's postsecondary goals and transition services, indicate that the student will be invited, and identify any other agencies that will be invited to send representatives.

When the IEP team is meeting to discuss a change of placement, including a Manifestation Determination Review (MDR), parents must be notified in writing of the date, time, and location of the meeting, as well as given a copy of the Procedural Safeguards.

Considering Parent Input

The IEP team should actively work to answer a parent's questions, consider both school and parentfunded evaluations, and listen to the parent's requests for preferred methods of evaluation or support with an open mind. However, the school is not required to incorporate all parental requests or opinions into the IEP. The law prevents schools from pre-determining the contents of an IEP or presenting a completed IEP to parents at the beginning of an IEP meeting, but this does not give parents veto power. Schools can prepare and present a draft IEP but must make it clear that proposed services are recommendations for review and discussion during the meeting. All options presented by members of the team should be seriously considered and discussed.

Holding a Meeting without the Parent

Parents are required IEP team members, and meetings should be scheduled at a mutually agreed upon time and place. Schools should be flexible in scheduling meetings to accommodate parental scheduling needs and ensure parent participation. If a parent is unable to physically attend a traditional IEP meeting, schools are required to provide alternative attendance methods, such as phone calls or virtual meetings. IEP Team meetings may only occur without a parent if the school is unable to convince the parent to attend. Both the parent and the district are expected to be reasonable when finding a mutually agreed upon time. It is uncommon for districts to agree to meet outside of teacher contracted times, but the district should be offering multiple times and dates.

When a school conducts an IEP meeting without the parents, the district must make multiple attempts to arrange a meeting with the parents and keep a record of these attempts. This includes detailed records of attempted telephone calls, copies of correspondence sent to the parents, and detailed records of visits made to the parents' home or place of employment.

IEP Negotiations by Email

IEP meetings are supposed to be a collaborative conversation, so it is likely a procedural violation to negotiate or make decisions over email. Minor IEP changes may be agreed upon through email, so long as the parent consents to these changes taking place over email. An example of a minor change is increasing the amount of OT services received from 20 minutes/week to 25 minutes/week or adding a provision that the student may earn free time in addition to a prize for desired behavior. It is appropriate to follow up with parents about agreed upon proposed changes to the IEP over email, and, if the parent is comfortable with it, drafts of an IEP

may be sent over email. However, requesting a draft of an IEP over email does not indicate consent for all IEP communication to be conducted over email.

Language Access

Under the IDEA and Title VI of the Civil Rights Act, districts are required to take any action necessary to ensure that parents understand IEP documents and proceedings. This includes translating vital IEP documents into the parent's native language.

Schools should also provide translators if necessary, so parents can meaningfully participate in all IEP meetings. The law requires districts to implement procedures that allow parents to participate in all meetings regarding identification, evaluation, and educational placement of their child, and the provision of FAPE to their child. Ultimately, schools must take any action necessary to ensure parents understand what is occurring during IEP meetings, the IEP document itself, and any evaluation reports or notices provided by the district. It is the responsibility of the parent to inform the school that they speak a language other than English and will need translations to their native language.

Schools may also need to provide translators for d/Deaf and hard of hearing parents.

Accommodations for Parents with Disabilities

Schools are required to provide parents with qualifying disabilities reasonable accommodations under Section 504 and the ADA so the parent can participate in IEP meetings.

For example, if the use of recording devices during IEP meetings is prohibited or limited, the district must make exceptions for parents who require a recording to understand the IEP or the IEP process. Schools may also provide more time for parents to review the IEP prior to the meeting or offer to meet and explain changes to the parent so that they may better prepare for the meeting.

The school is obligated to provide a means of communication that is effective and allows the parent to participate in meetings. Public schools must give primary consideration to the accommodation requested by the parent if it relates to effective communication.

10. Behavior Assessments and Plans

A functional behavior assessment (FBA) is a process that gathers information about behaviors of a student. These behaviors can be academic, social, or emotional and may include behaviors such as not completing assignments or class work, getting up from the desk frequently, hitting others or calling them names, or refusing to follow classroom norms and expectations. FBAs allow schools to gather information about the student, such as:

- What the challenging behavior is in observable and measurable terms,
- Where, when, and with whom the behavior occurs,
- What typically occurs before the behavior,
- What consequences reinforce or maintain the behavior (what typically occurs after the behavior), • What interventions and strategies have been tried previously and their effects, and
- What events make the behavior worse or more likely to occur.

All members of the student's IEP team are responsible for ensuring completion of an FBA. This usually includes the child's general education teacher, a special education teacher, a school psychologist, a social worker or counselor, school administrators, the child's parent(s)/guardian(s), and, if appropriate, the student.

Conducting the FBA

A variety of tools can be used to conduct an FBA; however, people trained in the use and interpretation of those tools must be included. An FBA should be designed to gather specific information from specific people. There are two techniques for information-gathering in an FBA:

1. Indirect. This includes reviewing a student's education records, conducting interviews, and completing questionnaires with and by the student, teachers, and parent(s)/guardian(s).
2. Direct. These are observations in settings where the challenging behavior is occurring.

The IDEA requires schools to conduct FBAs when a child with a disability has been removed from their educational placement for more than 10 days. The IDEA recommends, but does not require, an FBA for students at risk of suspension or those having been suspended less than 10 days.

Behavior Intervention or Support Plans

Once an FBA is conducted, the FBA team will put together a behavior intervention or support plan (BIP/BSP). A BIP/BSP contains strategies and supports that teachers and the school can use to assist a student with challenging behavior. These strategies can include:

- Changing systems
- Altering environments
- Teaching skills
- Appreciating positive behavior

The BIP/BSP must include teaching and reinforcing good behaviors that are supposed to replace the challenging behavior. The goal of the BIP/BSP is to make the challenging behavior irrelevant, inefficient, and ineffective.

Components of a BIP/BSP

1. Detailed description of the behavior,
2. Summary statement describing the function of the behavior,
3. Interventions used and their results,
4. Behavioral goals,
5. Plan for teaching and supporting the new behavior, including a crisis intervention plan, if needed,
6. Description of success, including criteria and consequences, 7. How fidelity of the plan will be measured, and
8. Follow-up activities.

A BIP/BSP generally targets 1-3 behaviors with interventions. Each intervention should specifically address a measurable, clearly stated targeted behavior. Interventions may include:

- Environmental modifications, such as allowing a student to sit in a certain place or providing a place to work free of distractions.
- Academic modifications, such as shortened assignments, taking oral tests, or working in small groups.
- Adaptation of curriculum materials, such as supplemental materials, providing sample tests, or teaching pre-requisite and study skills.
- Social skill instruction designed to teach a student more appropriate behavior, such as modeling, role play, coaching, behavioral rehearsal, feedback, or reinforcement.

- Individual or group counseling designed to improve the student's ability to function socially or emotionally, such as meeting with a counselor or a group to improve social skills.

11. Abbreviated School Days

Colorado law defines an abbreviated school day as any school day during which a child with disabilities receives instruction or educational services for fewer hours than most other students who are in the same grade and school district as the child with disabilities. This is true whether the abbreviated school day is planned or unplanned. These days may be more commonly known as shortened school days or informal removals. The student's school day is usually shortened for a variety of reasons that are typically related to their disability. This definition only applies to elementary and secondary schools, not preschool or higher education settings.

Examples of Abbreviated School Days

- The school calls a parent to pick their student up early every day, or most days.
- The school only allows a student to go to school for an hour every day due to behavior issues.
- The school will not allow a student to return to school due to behavior issues but does not label it a "suspension."
- The school sends a student home for violating a school policy but does not label it a "suspension." These are red flags that a student might need a MDR if these "informal removals" or "informal suspensions" are for related behaviors and go beyond 10 days.

Legal Protections

Schools must ensure parents receive proper notice, including their right to consent to, revoke consent, or oppose an abbreviated school day for their child.

Schools must hold regular meetings with the student's IEP or 504 team to discuss the value or need for continuing a shortened day. They must also have a plan in place for the child to return to a full day of school.

Additionally, the state law includes accountability measures that require the Colorado Department of Education (CDE) to provide a clear legal framework to ensure that every child has access to a full day of school, collect data about the frequency of which students are not attending a full day of school, and provide ongoing technical assistance to administrative units on this issue.

12. Manifestation Determination Reviews (MDRs)

An MDR is a meeting that schools are required to hold when considering the exclusion of a student with a disability for more than 10 school days. The process is required by the IDEA and Section 504. Notably, it is not a hearing.

Within 10 school days of a decision to change a student's placement, a review team, including the parent(s)/guardian(s) must conduct a review to determine if the behavior of concern is a manifestation of a student's disability. All relevant files and observations, including an IEP or Section 504 plan, if applicable, must be reviewed.

When an MDR is Required

Under the IDEA, MDRs must be conducted before a disciplinary change in placement, which happens when a student with a disability is excluded from their program for:

- 10 or more consecutive school days, or

- 10 or more cumulative school days in a school year, under circumstances that show a pattern of exclusion.

A student does not necessarily have to be formally suspended or expelled for 10 or more school days before the manifestation determination requirement is triggered. For example, in-school suspensions, bus suspensions, partial-day suspensions, and other forms of removal may count toward the 10 school days if the removal is related to the student code of conduct.

The 10-day trigger does not reset after each manifestation determination.

Additionally, the requirement to conduct a manifestation determination applies to students with disabilities who are not yet formally identified – i.e., students who do not have an IEP or Section 504 plan – if the school had knowledge, at the time of the removals, that the student had, or was suspected of having, a disability.

Section 504 similarly requires an MDR.

If a student is excluded for less than 10 days, parents/guardians can still request the school hold an MDR. This is a good opportunity for the team to convene and examine the student's behavior and determine how to prevent similar situations going forward. The school does not have to hold an MDR in this situation.

Conducting the MDR

The school must convene a group of people – often the Section 504 team or relevant members of the IEP team – to discuss: whether the misconduct was caused by, or directly and substantially related to: (1) the student's disability or disabilities, or (2) a failure to implement that student's 504 plan or IEP.

- If the group determines that the misconduct was a manifestation of the student's disability, then a change in placement is generally prohibited. However, this often triggers the need to further evaluate the student to determine if the student's current plan, services, and placement are appropriate.
- If the group determines that the misconduct was not a manifestation of the disability, then a change in placement is generally allowed. The parent(s)/guardian(s) must receive a copy of the procedural safeguards. The school may impose the same long-term suspension or expulsion as a nondisabled student would receive. Under the IDEA, a student is still entitled to educational services if they are suspended or expelled. Under Section 504, a student who is suspended or expelled is entitled to the same services as a student without a disability would receive in similar circumstances. Questions that are not relevant and should not be discussed during an MDR include: whether the student knew right from wrong, acted intentionally, or knew what they were doing at the time of the behavior.

Under the IDEA, the team must also consider whether the behavior was a result of the school failing to implement the student's IEP. If the team determines it was a result of a failure to implement the IEP, then a change in placement is generally prohibited.

Short-Term Removals

The U.S. Department of Education has indicated that short-term disciplinary removals from current placements may indicate that a child's IEP or Section 504 plan is not appropriately addressing the child's behavioral needs. Studies have shown that removals from school do not help reduce or eliminate behavior and can produce unintended or undesirable results. Instead, addressing the behavioral needs of the child is more likely to address the misbehavior. The U.S. Department of Education has also indicated that the 10 days specified are not "free days." Any short-term disciplinary removals may indicate a need for an IEP or Section 504 plan revision.

Common Issues Arising During MDRs

Some common issues that come up during MDRs are described below. These may be red flags indicating potential violations:

- There were behavior challenges that the IEP or 504 team did not address prior to the MDR. The team did not conduct an FBA, update the BIP, or did not consider or provide mental health services and accommodations.
- The review team did not include relevant members of the Section 504 or IEP team. Relevant can mean qualified, has knowledge of the student, interacts with the student, and/or has knowledge of the disciplinary incident.
- The team did not review all relevant files and observations, including input from the parent.
- The team did not allow or consider information from the student's outside providers when determining how the conduct relates to the disability.
- The team focused on the disability category rather than how the disability manifests in the student.
- The team only considered the student's primary disability rather than all disabilities of the student (whether or not those disabilities are identified on their 504 plan or IEP).
- The parent was not provided with sufficient notice of the MDR to prepare or invite others.
- The parent was not provided with notice of the purpose of the meeting and the possibility of a change of placement.
- The review team concluded prior to the meeting occurring that the behavior was not a manifestation of the disability and that they would proceed to expulsion. For example, if a parent receives notice that the student is being expelled prior to the MDR being conducted.

Challenging an MDR Determination

Under IDEA, you have a right to file a Due Process complaint. A complaint that concerns a disciplinary change of placement will be expedited. CDE's Q&A for Due Process Complaints has information on how to file a complaint. Alternatively, you may be able to file a State Complaint if you believe there were procedural errors regarding how the manifestation determination review was conducted. More information about this process is available at CDE's Q&A for State Complaints. You may also be able to resolve your concerns through Mediation.

Under Section 504, you have a right to file a complaint with the U.S. Department of Education's Office for Civil Rights (within 180 days of the alleged discrimination) or the U.S. Department of Justice. You may also be able to resolve your concerns through informal mediation or negotiation with the school district, which is required to have a Section 504 Coordinator and Section 504 Grievance Procedure.

See the section of this guide regarding dispute resolution for more information.

School Services Pending a Due Process Complaint

The IDEA has a stay-put requirement, which guarantees that the student stays in their current placement pending the resolution of a due process hearing regarding an MDR. This may be in an interim alternative educational setting as determined by the student's IEP team. The Supreme Court in *Honig v. Doe* has further stated that a student cannot be indefinitely suspended until the conclusion of the determination. Under Section 504, there is no similar guarantee, but the Office of Civil Rights has indicated that fair due process would include waiting for results before making any change in placement.

13. Expulsion

A student in Colorado may be expelled for:

- Continued willful disobedience
- Willful destruction or defacing of school property
- Behavior on or off school property that is detrimental to the welfare or safety of the other students or school personnel
- Habitually disruptive behavior
- Repeated interference with the school's ability to provide educational opportunities for other students
- Carrying a firearm or firearm facsimile
- False accusation against an employee of the educational entity to law enforcement or the school district.
- Each school district adopts their own policies, which include reasons why a student may be expelled. These policies may provide more detail and different language than the Colorado statute. It is important to look up your own District's policies when preparing for an expulsion hearing.

Factors to Consider Before Expelling a Student

The school should consider the age of the student, disciplinary history, whether the student has a disability, the seriousness of the violation, whether the violation threatened the safety of any student or staff member, and whether a lesser intervention would properly address the violation. C.R.S. § 22-33106(1.2). Failure to consider the student's disability throughout the disciplinary process, including expulsion, could result in a violation of the student's rights under federal law.

Expelling Students with Disabilities

A student with a disability eligible under Section 504 or the IDEA may not be expelled if the behavior was a manifestation of the student's disability or a failure to implement their 504 plan or IEP. See the section above for more information about MDRs.

If the student has a disability and has not yet been identified, behavior incidents may trigger the need to evaluate the student. If the school had knowledge that the student may be eligible under Section 504 or the IDEA, the student has the same disciplinary protections as a student who was already identified as eligible.

If the behavior was not a manifestation of the student's disability and the student engaged in behavior that would warrant expulsion under the school's generally applicable student code of conduct, then the student may be expelled. Students may still be entitled to educational services during the expulsion, which is discussed in detail below.

School staff should keep in mind that missing school is harmful to children for a multitude of reasons,[2] so the focus should be on supporting the student through various support systems, including creation of a behavior intervention or support plan.

Student Rights during Expulsion Proceedings

The student is entitled to advanced notice of the charges and evidence against them, a fair opportunity to be heard, and an impartial decision maker. A student may knowingly and voluntarily waive a hearing in writing.

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[2] Out-from-The-Shadows-1.pdf (ndrn.org).

The student must be permitted the assistance of a lawyer in major disciplinary hearings. A student's statement about acts that result in a mandatory expulsion cannot be used unless the statement is signed by the student in the presence of a guardian. A student must be given the opportunity to defend themself and permitted to confront and cross-examine the witnesses against him. The student must not be punished except based on substantial evidence.

During the Expulsion Hearing

A hearing officer, who is someone the school district has hired, will hear from a representative of the school regarding why expulsion is being sought. The student and student's parents are allowed to ask questions of the witnesses and present evidence on the student's behalf. If the student is not being expelled for a mandatory reason, the student may provide character evidence and evidence of other school behavior to assist the hearing officer in determining if expulsion is warranted. At the end of the hearing, the hearing officer will make a recommendation to the superintendent who will decide if the student will be expelled and for how long.

Preparing for an Expulsion Hearing

Make sure the school has provided you with notice of the charges against your child and what evidence they have against them.

Ask your child what happened and write down their version of the incident. Ask them what they have said to school district personnel and ask if they have given a written statement. As a note of caution, however, your child should not be making any statements about the allegations if they have been charged for the conduct at issue.

Collect your child's records, including IEPs/504 plans, MDR paperwork, and disciplinary history. Request your child's records from the school in writing.

Determine your argument(s). Look through your child's records and consider why your child should not be expelled. Were there procedural violations? Was the behavior a manifestation of their disability? Did the school investigate the incident? Was this their first behavioral incident? Do other students engage in the same behavior without similar consequences? Has the school tried alternatives such as putting a behavior plan in place? Is there a lesser consequence that could address this behavioral concern?

Find witnesses. Who else saw the incident? Who knows your child well and would make a good character witness?

At the hearing: present your child's side of the story (if different), present your main argument(s) against expulsion, and question witnesses (both the school's and yours). Emphasize your argument(s).

Appealing an Expulsion

The parent has the right to appeal the expulsion decision to the school board within 10 days of the decision. The board's decision is final, unless the parents challenge the board's decision in court. The parent must notify the board in writing within 5 days of receiving notice of their decision that the parent wants judicial review. The board must issue a statement of the reason for the board's actions to the parents. Within 10 days of the board's response, the student or parent can file a petition in state court requesting that the board's order be set aside. After a petition is filed, the court must notify the board, set the matter for hearing, and review the

hearing decision. A district court will have authority to review the actions of a board of education for an abuse of discretion.

School Services During an Expulsion

Under the IDEA, a student who is expelled is still entitled to a free appropriate public education (FAPE). The IEP Team would meet to determine appropriate services for the student during the period of expulsion, which includes specially designed instruction, related services, and participation in the general curriculum. The programming should allow the student to make progress on IEP goals and receive socio-emotional support so that the behavior does not happen again. In addition, when appropriate, the IEP team would complete a functional behavior assessment and either create or update a behavior intervention plan.

Under Section 504, there are no provisions requiring FAPE when a student is expelled. However, if services would be provided to nondisabled students who are expelled, they must also be provided to disabled students who are expelled.

14. Truancy

Truancy is the term used to define a student's frequent absences from school. Truant students are at higher risk for dropping out of school. Truancy can include unexpected absences, non-enrollment in school, a student who never attends or consistently misses a specific class, or chronic absences excused by parents with no medical reason.

In general, any unexcused absence from school is considered truancy, but each state has its own compulsory school attendance laws, including the age when a student may legally drop out and how many unexcused absences equate to legal truancy. A student's chronic absenteeism is a significant concern for school districts because it potentially impacts their child find duties, eligibility determinations, and placement decisions. In some cases, districts have been required to fund residential placements and potentially provide compensatory services based on their failure to refer a truant student for evaluation, or to address their absenteeism in their IEP/504 plan.

In Colorado, a student is habitually truant if their unexcused absences in one calendar month equals or exceeds 4 days, OR if their unexcused absences in one school year equals or exceeds 10 days.

Truancy Process

When a minor student is truant, the student and their parents will receive a court summons. Parents will attend Juvenile court, where the judge will likely issue a court order for the student to return to school. The order is filed against the parents, meaning the parents are responsible for getting their child to school. Parents may also face fines.

If the truancy continues after the court order, the court can hold the student and parent in contempt. Being in contempt can result in an additional charge. If the problem continues, both the student and parent can face jailtime, or the student may be removed from the home through child protective services.

Is my student considered truant if I am keeping them out of school?

If you are keeping your student out of school due to safety concerns, you may still be subjected to truancy charges. A judge may consider special circumstances surrounding truancy, but they do not have to. If you plan to keep your child out of school due to safety concerns, you should contact the school immediately. You should notify the school of why you feel your child is unsafe and call for an emergency meeting to address the unsafe

situation. If the student is unsafe due to their own behavior, you can request that the school create and implement (or update) a behavior plan.

Impact of Truancy on Child Find & IDEA-Eligibility

The IDEA requires that districts identify, locate, and evaluate all children with disabilities residing in their jurisdiction that either have, or are suspected of having, disabilities and therefore need special education. This is known as the Child Find requirement, and it is a legal obligation.

A district's obligation may be triggered when a student has significant absences, there is a reason to believe that the absences are related to a disability, and the student has demonstrated a need for special education services. If a judge or hearing officer views the truancy as a result of a social maladjustment or family/social circumstances, they will likely conclude that the district did not have a duty to refer the student for special education evaluation.

On its own, lack of attendance does not necessarily indicate that a student qualifies for special education. However, it may help to establish that the student has an impairment of some kind that results in the need for special education and related services, a crucial element to establishing eligibility under the IDEA.

Addressing Truancy in the IEP

For a student who is already eligible for special education and related services under the IDEA, and whose truancy is affecting learning, the duty to address the absences in the IEP may exist regardless of whether they stem from a disability. The IDEA compels districts to consider the use of positive behavioral interventions and supports to address that behavior when a child's behavior is impacting their learning. To properly consider truancy and absenteeism in the IEP, districts may need to reevaluate the student.

If a student is consistently absent and their truancy is affecting their ability to receive the services in their IEP, the district should take steps to address the issue. Failing to do so may amount to an IEP implementation failure.

15. Restraint and Seclusion

There are four types of restraint: physical restraint, seclusion, mechanical restraint, and chemical restraint. Physical restraint and seclusion may be allowed in situations that rise to the level of being an emergency. Mechanical and chemical restraint are not allowed in schools. All four types are discussed in more detail below.

Physical Restraint

Physical restraint is defined by Colorado state law as "the use of bodily, physical force to involuntarily limit an individual's freedom of movement." Under Colorado state law, physical restraint does not include, "holding of a student for less than one minute by a staff person for the protection of the student or others; brief holding of a child by one adult for the purpose of calming or comforting the child; minimal physical contact for the purpose of safely escorting a student from one area to another; or minimal physical contact for the purpose of assisting the student in completing a task or response."

Seclusion

Seclusion is defined in Colorado state law as, "the placement of a student alone in a room or area" from which their exit is involuntarily prevented. Unlike physical restraint, Colorado state law does not have any exclusions for seclusions that last under 1 minute.

Mechanical restraint

Colorado state law defines mechanical restraint as "any physical device used to involuntarily restrict the movement of a student or the normal function of a portion of his or her body." "Devices recommended by a

physician, occupational therapist, or physical therapist and agreed to by a student's IEP or Section 504 Team and used in accordance with the student's IEP or Section 504 [p]lan" are not considered mechanical restraints and are therefore allowed. Additionally, "[p]rotective devices such as helmets, mitts, and similar devices used to prevent self-injury" are not considered mechanical restraints so long as they are used in accordance with a student's IEP or Section 504 plan.

Chemical restraint

Chemical restraint is defined by Colorado state law as "administering medication to a student (including medications prescribed by his or her physician) on an as-needed basis for the sole purpose of involuntarily limiting the student's freedom of movement." Chemical restraint is never allowed. This does not include "prescription medication that is regularly administered to the student for medical reasons other than to restrain the student's freedom of movement."

When Restraint is Allowed

The use of a chemical, mechanical, or prone restraint upon a student is prohibited when the student is on the property of any agency or is participating in an off-campus, school-sponsored activity or event. However, there are limited situations in which a school may use restraint or seclusion.

If there is a reasonable probability that physical restraint or seclusion will be used on a student, the parents must be notified in writing of the restraints and restraint procedures. Depending on the length of time for which a student is restrained, the notification procedures are different.

- If the student is restrained for a time between one and five minutes, a parent or guardian should receive written notice on the day of the restraint. The notice must include the date, the student's name, and the number of restraints that lasted between one and five minutes.
- If the student is restrained for a time over five minutes, the administration should mail, fax, or email a written report of the incident to a parent or guardian not more than five calendar days after the use of the restraint on the student. The written report must include: any known antecedent to the student's behavior, a description of the incident, de-escalation efforts, alternatives that were attempted, the type and duration of the restraint, any injuries, and the staff present and involved in administering the restraint.

Restraint and seclusion cannot be used as punishment, discipline, or to gain compliance from a student. Colorado state law specifies that restraints shall only be used:

- In an emergency and with extreme caution, and
- After the failure of less restrictive alternatives or a determination that such alternatives would be inappropriate or ineffective under the circumstances.
- If property damage is involved, restraint may only be used when the destruction of the property could possibly result in the bodily harm of the student or another person.

School resource officers are not permitted to use handcuffs on a student at any time. These types of restraints may only be used:

- If the student is a danger to themselves or others, or
- If the handcuffs were used during the course of an arrest that requires the transportation of the student.

Schools must ensure that students with disabilities are not physically restrained or secluded:

- For behavior that would not result in the restraint or seclusion of peers without disabilities, or
- Based on assumptions or stereotypes about disability.

Examples of less restrictive alternatives:

- Positive behavior supports
- Constructive and non-physical de-escalation
- Restructuring of the environment

Protections

If physical restraint or seclusion is used, the school must ensure that:

- No restraint is administered in a way that inhibits or impedes the student from breathing or communicating
- No restraint is administered in a way that places excess pressure on the student's chest, back, or that causes positional asphyxia, and the student is carefully, continuously, and visually monitored to ensure breathing
- Restraints are administered only by staff who have received training in it
- Opportunities to have the restraint removed are provided to the student
- The staff administering the restraint removes the restraint when the emergency no longer exists
- The staff reintegrates a student in seclusion or clearly communicates to the student that they are free to leave the area used to seclude the student
- The student is reasonably monitored to ensure the student's physical safety

If physical restraint is being used, the person administering restraint can use only the amount of force necessary to stop the dangerous or violent actions of the student. A student must be released from physical restraint within 15 minutes, unless precluded by a safety concern.

If seclusion is used, the room in which the student is held must have at least one window. If a window is not feasible, monitoring must be possible through the use of video cameras. The seclusion room must be free of injurious items and must not be a room that is used by school staff for storage, custodial, or office space. The student must be allowed relief periods to access a bathroom. Any space used must have adequate lighting, ventilation, and size.

Staff Training

Schools must ensure that teachers and other personnel are trained regularly (i.e. at least every two years) about the appropriate use of effective alternatives to physical restraint and seclusion and the safe use of physical restraint and seclusion. The training must include:

- The health and behavioral impacts that restraint and seclusion have on a student
- Environmental management
- Nationally-recognized physical management and restraint practices, including techniques that allow restraint in an upright/sitting position and information about the dangers created by prone restraint

Staff also must be trained in methods to explain the use of restraint to the student who is to be restrained, and to the individual's family if possible.

Impact on FAPE

Use of physical restraint and seclusion have the potential to impact a student's receipt of FAPE under Section 504 and/or the IDEA.

For a student not identified as having a disability, instances of the use of restraint or seclusion may indicate the need to evaluate the student to determine whether the student has a disability.

For a student already identified as having a disability, instances of the use of restraint or seclusion may:

- Signal the need to re-evaluate the student

- Signal the need to conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP) for the student
- Signal the need to review and revise services, accommodations, etc. for the student
- Cause the student to miss the delivery of general or special education or related services, which in turn, may need to be made up
- Cause trauma that has an educational impact on the student (e.g., school avoidance, declining academic performance, etc.), and consequently, should be addressed

16. Different Treatment Based on Disability

Section 504 prohibits discrimination based on disability. This may include situations when people are treated differently in school because of their disability.

For example, schools may not, directly or indirectly, based on disability:

- deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service
- afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to or as effective as that afforded to others
- provide different or separate aids, benefits, or services unless necessary to provide a qualified person with a disability with aids, benefits, or services that are as effective as those provided to others
- aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an agency, organization, or person that discriminates based on disability
- otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Examples of Aids, Benefits, and Services

- Recruitment
- Admissions
- Enrollment
- Grading
- Gifted and talented
- STEM education
- Advanced courses
- Extracurricular activities
- Co-curricular activities
- Special education
- Discipline
- Scheduling
- Employment
- Facilities
- Resources
- Financial aid

Analysis for Different Treatment

There is a four-step analysis to decide whether a student with a disability was discriminated against by being treated differently based on disability:

1. Was the individual treated differently than individuals without disabilities under similar circumstances because of their disability?
2. If yes, did the different treatment result in the denial or limitation of services, benefits, or opportunities?
3. If yes, did the school provide a nondiscriminatory reason for its actions?
4. If yes, is there evidence that the stated reason is a pretext for discrimination?

Different treatment will only be found in cases where the person was treated different based on disability, it did result in denial or limitation of services, benefits, or opportunities, and the school cannot offer a nondiscriminatory reason for this or if it is determined that the reason given was pretext. If the school can provide a nondiscriminatory reason for the different treatment and it is determined not to be pretext, there will not be a violation based on this analysis. Pretext

Pretext is when the school may give a justification for different treatment, but that justification is not the real reason for the different treatment.

Examples of pretext:

- The asserted reason does not explain the recipient's different treatment.
- Witnesses contradict the recipient's stated reason for the different treatment.

- The recipient offers shifting reasons or explanations for the different treatment.
- The different treatment does not conform to the recipient's policies and procedures.
- The recipient has a history of discriminatory conduct toward individuals with disabilities.

17. Harassment

Section 504 discrimination and harassment (including bullying). The U.S. Equal Employment Opportunity Commission defines harassment as "unwelcome conduct" that is based on disability. While the term 'harassment' is used in this document, people often call it 'bullying' and the legal analysis is the same.

The School's Obligations

If a student with a disability is being harassed by other students, the school has an obligation to prevent or stop harassment. A school can violate Section 504 if:

1. A student is harassed by another student based on disability,
2. The harassment is sufficiently serious to create a hostile environment,
3. The recipient knew or reasonably should have known about the harassment, and
4. The recipient failed to respond appropriately.

A school is not responsible for the actions of a harassing student, but it is responsible for its failure to respond adequately. Responding to alleged harassment is the school's responsibility whether the student who was harassed makes a complaint or otherwise asks the school to act.

If a student with a disability is being harassed by an employee of the school, the school has an obligation to prevent or stop harassment. A recipient can violate Section 504 if:

1. An employee who is acting, or reasonably appears to be acting, in the context of carrying out his or her responsibilities engages in disability-based harassment against a student, 2. The harassment is sufficiently serious to create a hostile environment, and
3. The recipient fails to respond appropriately.

Hostile Environment

Harassment creates a hostile environment if the harassment is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's programs, activities, or benefits. In determining whether a hostile environment based on disability has been created, the following circumstances of a situation are generally considered:

- the type of harassment (e.g., whether it was verbal or physical)
- the frequency and severity of the conduct
- the nature of the student's disability, or perceived disability
- the age and relationship of the parties
- the setting and context in which the harassment occurred
- whether other incidents have occurred at the recipient
- other relevant factors

Responding to Harassment

Responding to alleged harassment is the school's responsibility whether the student who was harassed makes a complaint or otherwise asks the school to act. Once on notice of possible disability-based harassment, the recipient must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. During the investigation, the recipient may need to put interim measures in place, such as providing student(s) with an escort, enhancing staff supervision, and/or designating a safe place for an impacted student.

Corrective Action Required

Once an investigation is complete, the recipient must take corrective actions if it determines the behavior was disability-based harassment. The corrective actions must be (1) reasonable, (2) timely, (3) age-appropriate, (4) effective, and (5) tailored to the specific situation.

In addition, the response must be designed to (1) stop the harassment, (2) prevent the harassment from recurring, (3) eliminate the hostile environment, and (4) remedy the effects of the harassment on the student who was harassed.

Examples of corrective actions:

- disciplining the individual who engaged in harassment
- providing counseling services or compensatory education for individuals impacted by the harassment
- re-disseminating nondiscrimination and harassment policies and reporting mechanisms
- providing social and emotional learning programming for students
- mandating training for staff on identifying and responding to
- mediation or restorative justice

18. Retaliation

Section 504 prohibits retaliation. This means schools must not take an adverse action against an individual because they believe the individual engaged in or might engage in a protected activity.

Adverse Actions

An adverse action is an act of intimidation, threat, coercion, or discrimination that is likely to dissuade a reasonable person in the individual's position from engaging in a protected activity. Petty slights, minor annoyances, and lack of good manners do not typically constitute adverse actions. Examples of possible adverse actions:

- disciplining the individual differently than similarly situated individuals
- lowering the individual's grades, evaluations, or performance ratings
- taking away an activity, responsibility, or privilege from the individual
- demoting, cutting the pay of, or terminating the individual
- banning the individual from campus or restricting communications with staff
- making a false report about the individual to a law enforcement agency or to child protective services

Protected Activities

A protected activity can fall under one of two types according to Section 504:

- Filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing related to potential disability-based discrimination; or
- Taking actions in furtherance of a substantive or procedural right guaranteed by the statutes and regulations that prohibit discrimination based on disability.

To be a protected activity, the manner of the individual's protected activity must be reasonable, and the individual must have had a good faith and objectively reasonable belief, at the time that the individual engaged in the activity, that the individual was engaging in a protected activity.

Examples of protected activities:

- filing or threatening to file a grievance with a school
- filing or threatening to file a complaint with the Colorado Department of Education (CDE) regarding a violation of disability-related rights, such as failing to implement a student's IEP or Section 504 plan
- filing or threatening to file a complaint regarding a violation of disability-related rights or disabilitybased discrimination with the U.S. Department of Education's Office for Civil Rights (OCR) or the Department of Justice (DOJ)
- participating as a witness in an investigation conducted by CDE, OCR, or DOJ
- requesting an evaluation or reevaluation to determine eligibility for an IEP or Section 504 plan
- requesting more or different services, or a change in placement, for a student with a disability
- reporting that a student has been subject to harassment or bullying based on disability

Once an individual has been subject to an adverse action after engaging in a protected activity, there are three additional factors to consider in determining if it was retaliation:

- there must have been a causal connection between the protected activity and the adverse action; • the school cannot articulate a facially legitimate, non-retaliatory reason for the adverse action; and
- any stated reason provided by the school was pretext for retaliation.

19. Extracurricular Activities

Students with disabilities should have access to participate in extracurricular activities. Section 504 the Americans with Disabilities Act (ADA) have some requirements regarding extracurricular activities. A student's IEP team can also address these needs under the IDEA.

A school must provide students with disabilities an opportunity to benefit from the school district's program equal to that of other students.

Notably, this does not mean that all students are automatically allowed to participate in any extracurricular programs if they have an interest. Competitive or selective programs may still require a selection process, so long as the program criteria is not discriminatory. Thus, it must provide the same requirements for all students, regardless of ability, and must not be done in a way that screens out participants with disabilities. Schools may require a level of skill for a student to participate in a selective or competitive program or activity.

Protections

Schools must try to ensure that all students, regardless of ability, have an equal opportunity to participate in extracurricular programs. Schools must create a 'level playing field' by providing students with disabilities reasonable accommodations if they need such services to try out for, and participate in, athletic events.

Schools, educators, and coaches must ensure that they are evaluating each student individually and not making any assumptions about what limitations might exist for a student due to their disability. Just because one student has certain limitations due to a diagnosis does not mean that all students with the same diagnosis will have the same limitations.

To avoid violating their Section 504 obligations in the context of extracurricular activities, school districts should work with their athletic associations to ensure that students with disabilities are not denied the equal opportunity to participate in interscholastic athletics.

Section 504 does not require that schools provide separate programs so that students with disabilities can participate in extracurricular activities. However, students that are unable to participate traditionally as a team player may be allowed to take on a supporting role, allowing them to be part of the team in a capacity that works for them. Examples of this include allowing students whose disabilities prevent them from being on the basketball team as a traditional player to join the team as a ball boy/girl, water boy/girl, team manager, or social manager for the team. This allows the student to participate as a team member without requiring a fundamental alteration to the game and would need to be considered as a potential accommodation regardless of any other hierarchy or ranking system for determining which students will fill these roles. Determining what is appropriate for each student must be done on an individual basis.

Extracurriculars in an IEP

Under the Individuals with Disabilities Education Act (IDEA), an IEP can be provided to ensure that a student is getting access to a Free Appropriate Public Education (FAPE). IEPs are, by definition, individualized, so IEP teams can make recommendations and plans regarding the necessity of goals that are not academic in nature, including extracurricular activities. If the student needs additional support, aids, or supplements, this information should be documented in the IEP. If a need for participation in or transportation to extracurricular activities has been identified in an IEP and is being denied, this could potentially be a denial of FAPE.

Accessing Extracurriculars from a Segregated Placement

If a student is placed in a segregated school or program that does not have extracurricular activities, the school district who sent them to the segregated school or program is still obligated to allow them to participate in extracurricular activities offered by the district. This may mean that a student attends school at a segregated

program but participates in an after-school music group at the integrated neighborhood school they would attend had they not been placed in the segregated school.

20. Extended School Year

For some students with disabilities, the district is under a legal obligation to provide year-round services during the summer and school vacations beyond the regular school year.

1. Districts must ensure that extended school year (ESY) services are available as necessary to provide free, appropriate public education (FAPE).
2. ESY services must be provided only if a child's IEP team determines it to be necessary.
3. In providing ESY services, a district must not limit the services to a particular category of student with disabilities or unilaterally limit the amount, type, or duration of these services.

ESY services are special education or related services that are "provided to a child with a disability beyond the normal school year of the public agency; in accordance with the child's IEP; and at no cost to the parents of the child; and meet the standards of the state educational agency."

Determining Need for ESY

A student's IEP team determines whether ESY services are necessary for the provision of FAPE. Without an IEP, it will be difficult to establish the need for ESY, as except for students with disabilities in need of these services, districts have no obligation to provide this programming.

If the IEP team believes a student will experience any loss or regression in skills during the break from school, ESY services should be made available to the student. However, recoupment and retention are not the sole criteria for determining a child's eligibility for ESY services.

Because the purpose of ESY is to prevent regression, a student's placement in ESY may differ from their placement during the school year. ESY is based on an individual need, and no district or state should purport to offer uniform ESY for every student. The analysis applied to determine whether a student with a disability needs ESY consists of a regression-recoupment analysis. However, there are a variety of tests that districts can use beyond this analysis:

- Regression-recoupment analysis: ESY services are necessary when a child will experience significant regression in the absence of an educational program and the time it will take to relearn the skills is excessive. This is the primary ESY analysis, and all others are simply supplementary.
- Significantly jeopardized analysis: ESY services are necessary when the progress the student has made during the school year will be significantly jeopardized during the extended school breaks.
- Substantial regression analysis: This analysis requires a showing of the student's inability to maintain development levels due to the loss of skill or knowledge during the school breaks, and such loss of is of a severity that requires a period of review to reestablish that skill or knowledge.
- Additional factors analysis: Regression and recoupment is only part of the criteria for determining the need for ESY services. Districts should also consider whether a student's level of achievement would be jeopardized, and factor in any date showing past regression and rate of recoupment, predictive data based on the analysis of professionals and parents, and information regarding the student's home and community situation.

The analysis for ESY will likely take place toward the end of the school year. Because ESY services are intended to prevent regression rather than advance educational goals, a district will not act unreasonably by waiting until the spring to determine what skills a student would need to maintain over the summer.

There are additional factors the district may utilize to determine whether ESY services are necessary, including but not limited to:

- The degree of regression suffered in the past,
- The exact time of the past regression,
- The ability of the parents to provide educational structure at home,
- The child's rate of progress,
- The child's behavioral and physical problems,
- The availability of alternative resources,
- The ability of the child to interact with nondisabled children,
- The areas of the curriculum that need continuous attention,
- The child's vocational needs, and
- Whether the requested services are "extraordinary" for the child's condition as opposed to an integral part of the program for populations of students with the same disabling condition.

Timing of ESY

ESY is typically held during the summer months. However, there is nothing in the IDEA that would preclude a district from providing ESY services in times other than the summer, like after regular school hours or over school vacations. These additional times can be provided if the student's IEP team determines that the student needs the services to receive FAPE.

The IEP team has the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.

ESY for Students in Private Placements

Districts are not required to establish public programs for ESY services if the district does not offer any public programs for nondisabled students during the same time. A district must purchase private placements for ESY services, however, if no public program is available and the student's IEP requires those ESY services.

For students who are already attending private schools, the district may fulfill its ESY obligations by allowing those students to attend any ESY program offerings available at the private school. But if the private school does not offer ESY programming, the district must find another program that can fulfill the student's needs.

ESY and Denial of FAPE

For the failure to provide ESY services to be a denial of FAPE, the ESY services must be required to provide an educational benefit to the child. The IDEA does not guarantee the best possible education, but the services should be provided to every student when it is reasonably calculated to confer a meaningful educational benefit to the student, regardless of parents' demands. When a child's IEP identifies ESY as necessary, the district must provide the student with those services to provide FAPE to the child.

21. Compensatory Services

Compensatory services are used to address learning loss that occurs when a school fails to provide a student with services in accordance with their IEP or 504 plan.

Awards of compensatory services are based on a finding of a denial of free appropriate public education (FAPE). They are awarded when a student requires additional services to address any deficits caused by the delay or failure to offer appropriate educational services. Essentially, compensatory services aim to put the student in the position they would have been had the appropriate services been provided in the first place. Schools must make an individualized determination whether, and to what extent, compensatory services may be needed to make up for any services that were not provided.

Ideas for Compensatory Services

While some states tally the amount of time lost minute-for-minute when awarding compensatory services, Colorado takes a "qualitative approach," meaning the state will not calculate the exact number of minutes lost and provide that. Rather, the state will aim to put the student in the same position they would be in if the appropriate services had been provided.

The student's IEP will identify their present levels of academic achievement and provide measurable goals designed to meet the child's needs. The IEP provides a roadmap for whether compensatory services are necessary. Schools must make individualized determinations regarding compensatory services, meaning the IEP team should meet to determine appropriate services for each individual student. In determining compensatory services, the student's capacity for receiving additional services will necessarily be a factor to consider.

If compensatory services are being determined during an IEP or Section 504 plan meeting or during mediation, the team can think creatively about how to make up for the student's loss. For example, a district could pay for a summer camp that specializes in helping children with disabilities engage in social skills or reimburse a parent for therapeutic horseback riding lessons even if those were not specifically in the student's IEP or Section 504 plan.

If compensatory services are being determined by a state complaints officer through the state complaint process, there will be a specific award in the decision that will be based on the specific services in the student's IEP.

If compensatory services are required by the Office for Civil Rights through their complaint process, they generally order that the student's IEP or Section 504 team meet to determine specific services rather than making that determination themselves.

Determining Compensatory Services are Owed

Since these determinations are made on an individualized basis, it will depend on whether a student requires these services to remediate a loss of skills or lack of progress resulting from a disruption in regular learning. Some students may be able to make up for lost services without compensatory services.

Because a student's IEP or Section 504 plan provides the roadmap for schools to make these determinations, there are a few factors that may come into play when analyzing the necessity of compensatory services:

- The child's rate of progress on their IEP goals prior to the disruption
- The difference between IEP progress monitoring immediately before the disruption and immediately after the return to a regular learning program

- The accessibility of services offered to your student during the regular learning disruption
- Concerns raised by parents or guardians, the student, and outside service providers

Since compensatory services are determined on an individualized basis, these are just a few of the factors that a team may use in analyzing the need for compensatory services. The needs of the student are considered, rather than assigning a general rule to their situation.

If at any time during the learning disruption the parent refused services from the school or district, the district might be excused from providing or considering compensatory services. However, because these are individualized determinations, the parents' and child's circumstances should be considered before denying compensatory services. For example, if a parent refused speech therapy services because the school only offered services remotely and the family did not have a stable internet connection at home, that student may still be owed compensatory services.

Obtaining Compensatory Services

If you believe your child is entitled to compensatory services, you can ask for an IEP or Section 504 team meeting to discuss your concerns and whether the team believes they are owed compensatory services.

If that is unsuccessful, you can try contacting the special education director for your school district: Find Your Special Education Director in Colorado | CDE (state.co.us).

If you feel the need to go beyond the school or district level, you can also pursue dispute resolution, which may lead to your child being awarded compensatory services. Dispute resolution is discussed further later in this guide.

Timing of Compensatory Services

The timing of compensatory services is flexible. These programs are individualized, therefore the needs of the student are considered when determining timing. Compensatory services may be provided during the school day, over breaks, via one-on-one tutoring, or even through outside service providers. If these services take place during the school day, they should not interrupt your child's current IEP or Section 504 plan, unless agreed upon by the parent and the IEP or 504 team.

22. Comparable Services After Moving

When a student with an active IEP transfers to another school within the same state and within the same school year, the receiving district has an obligation to provide the student with free, appropriate public education (FAPE), including any services that are comparable to those described in the IEP from the previous district. This obligation continues until the new district either adopts the student's IEP from the previous district, or until the new district develops or implements a new IEP.

If a district does not adopt the latest IEP the transferring student has in place, it must provide these comparable services until it can develop an IEP that meets the IDEA's requirements. If the parents and the district cannot agree on what constitutes comparable services, they can use mediation or due process procedures to resolve the dispute.

School Obligations

If the parents and the district cannot agree on what constitutes comparable services, they can use mediation or due process procedures to resolve the dispute. A district that does not adopt a transferring student's IEP must provide comparable services until it conducts an evaluation. The district's obligation to provide

comparable services exists regardless of whether the old district has reviewed and revised the student's IEP. The receiving district is not required to provide an exact replica of the sending district's services, but if the receiving district strays too far from the existing program it may have violated its obligation to provide comparable services.

While districts are generally obligated to implement comparable services for transfer students until they adopt a new IEP, that does not mean that they are responsible for implementing every single promise that was made in the sending district's IEP. However, a district that fails to provide comparable services to a transferring student with a disability could find itself liable for reimbursement and/or compensatory services.
There is no proscribed timeframe in the IDEA for either adopting the transferring district's IEP or implementing a new one, however districts must take this action "within a reasonable period of time" to avoid any interruption to the student's services.

To properly provide comparable services, the new district must have information about the services the transferring student received from the sending district. The IDEA requires the new district to take reasonable steps to swiftly obtain the student's records, including their IEP and any other supporting documents relating to the provision of special education services to the child.

Summer Transfers

Districts have discretion to decide whether it's necessary under the circumstances to convene a student's IEP team before the first day of school for the student who transfers during summer break. If the district refuses a parent's request to convene the team, it must provide them with prior written notice justifying the decision.

Comparable services do, however, include extended school year services. A district who fails to provide comparable services to a transferring student with a disability could find itself liable for reimbursement and/or compensatory services.

Transmission of Disciplinary Records

The IDEA does not require the transmission of student disciplinary information when a student transfers from one district to another, but it does allow each state to decide whether districts must include disciplinary statements in student records and whether to transmit those statements when the student transfers. This state policy must apply to both disabled and nondisabled students.

23. School Transportation

Transportation is defined in the school context as "travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability." The transportation directives set forth in the IDEA ensure that children with disabilities are educated with students without disabilities to the maximum extent appropriate. Section 504 requires that students with disabilities receive the same access to transportation services as students without disabilities, regardless of need.

Determining Necessity of Transportation

The general student population does not have a basic entitlement to transportation; it is instead a matter of individual school policy. In districts that do provide transportation, most of their policies base eligibility on the number of miles a given student lives from the school. Beyond this policy of designated range, students may

enjoy some bus privileges. Transportation services must be made available to all similarly situated students equally, including students with disabilities.

Regardless of policy, students with disabilities may be entitled to transportation if needed for the child to benefit receive FAPE. Transportation is considered necessary if, in its absence, a child with a disability would be denied a genuine opportunity for equitable participation in a special education program. A child's IEP or Section 504 team determines if transportation is required to assist the child with a disability to and from school, and how that transportation should be implemented. The IEP or Section 504 team should describe the transportation services to be provided, including any transportation needed to provide the child with disabilities to participate in nonacademic and extracurricular activities. This transportation plan should consider whatever is necessary to afford the child an equal opportunity for participation in services and activities to the maximum extent appropriate to the needs of that child. The team generally does not have to consider convenience or difficulty to the parent when determining transportation services. Ultimately, it all depends on what the student needs to receive FAPE.

LRE & Transportation

The student's Section 504 or IEP team should consider the LRE for the student in the context of transportation and only consider separate transportation if needed for that student. Specialized transportation can also be considered if the student's behaviors present safety concerns that cannot be addressed through appropriate accommodations. Transportation of one student by themselves can be appropriate if the IEP or 504 team agrees this is what the student needs. Selection of drivers is solely the decision of the district and parent input does not determine personnel decisions, unless there are reasons a specific person would result in a denial of FAPE for the student.

Length of Bus Rides

Neither the IDEA nor Section 504 addresses the length of a bus ride. However, if a student is denied FAPE because of the length of the bus ride, this may be problematic. This can happen when the student must arrive late or leave early to accommodate the bus ride and therefore loses out on services. It can also happen if the length of the bus ride impacts the student's disability-related behaviors and therefore interferes with their ability to receive FAPE once they are at school.

Impact of Bus Suspensions

The impact that suspension has on transportation depends on the length of the suspension. Long-Term

Suspension

A long-term suspension is a removal from school for more than ten consecutive school days, or a series of separate suspensions that cumulatively total more than ten days during the year and constitute a pattern of exclusion.

The suspension of a student with a disability from transportation may constitute a change in educational placement if a district has been transporting the student, suspends them from transportation as a disciplinary measure, and provides no other form from transportation. When districts evaluate whether a bus suspension is part of a prohibited pattern of removals, it must consider prior instances in which the student was suspended from instruction. Long-term bus suspensions may result in the need for a district to conduct a manifestation determination review (MDR).

Short-Term Suspension

A short-term suspension is one that does not meet the definition of a long-term suspensions above. A district is not required to provide alternative transportation to a child with a disability when it subjects the student to a short-term removal from the school bus unless it provides transportation in this manner to students without disabilities. Short-term suspensions do not usually require an MDR.

When a Bus Suspension Becomes a School Suspension

A bus suspension counts as a day of school suspension for purposes of the IDEA and Section 504's disciplinary protections if the child receives transportation as a related service and the district does not provide the student with alternative transportation to school.

If transportation is not in the child's IEP or Section 504 plan, the child's parents have the same obligations to transport the suspended student to and from school as do the parents of a suspended nondisabled student. If transportation is not a related service in a student's IEP or Section 504 plan but the student requires transportation to receive FAPE, a district may need to revise the IEP or 504 plan.

Transportation of Private School Students

There are varying guidelines for students enrolled in private school depending on whether they were publicly placed there by an IEP team or parentally placed outside the IEP process.

If a student is placed in a private school by their IEP or 504 team, the school owes publicly placed private school students the same rights and obligations that it owes to public school students with disabilities, including the related service of transportation to conform with their IEP, at no cost to the parents. A district needs only to provide a student publicly placed in an out-of-district or private program with transportation services necessary to provide the student free, appropriate public education (FAPE).

Parentally placed private school children with disabilities are children enrolled by their parents in private schools outside the IEP or 504 process. Whether a student who is unilaterally placed by a parent in a private school is entitled to transportation services is not as straightforward as it is for students who are publicly placed and many are not entitled to transportation services.

24. Physical Accessibility

Section 504 of the Rehabilitation Act prohibits discrimination based on disability in any program or activity operated by recipients of federal funds. Title II of the ADA prohibits discrimination based on disability in places of public accommodation. Specifically, the Department of Education is the designated agency to carry out Title II compliance activities for public education systems, public institutions of higher education, vocational education (other than schools of medicine, dentistry, and nursing, and other health-related schools), and public libraries.

Schools must ensure that students and others with disabilities, including parents, are not denied access to programs or activities because of physically inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities, and parking spaces.

The precise requirements that schools must meet to ensure physical accessibility depend on the date a building (or facility) was initially built or altered. While a building does not have to made fully physically accessible because of its age, Section 504 and Title II require that every program or activity of the school is accessible. This may mean relocating the program or activity to an accessible portion of the building or another building altogether.

Examples of elements that have accessibility standards:

- Parking
- Signage
- Ground and floor surfaces
- Bathrooms and water fountains

- Stairs, ramps, elevators, lifts, etc.
- Accessible routes and doors
- Space or maneuverability allowances
- Surface composition, width, and incline

For more detailed information about these requirements, you may review the ADA Standards for Accessible Design.

25. Charter Schools

Students with disabilities have the right to attend any charter school. Charter schools may not discriminate against students based on their disability.

Requirements for Admission

Charter schools may have requirements for admission, but the Charter Schools Act [C.R.S. 22-30.5-104 (3)] and State Board Rule 1 CCR 301-88, Sections 2.02(D)&(E), prohibit discrimination based on a student's academic ability. As with other public schools, a charter school may create baselines of eligibility for enrollment that are consistent with their area of focus or grade levels, but the school's methods for determining eligibility cannot be designed, intended, or used to discriminate based on a child's knowledge, skills, or disability. For example, a charter high school may deny admission to a student not completing the 8th grade, but it cannot deny admission to a student who has an "unsatisfactory" score on state assessments.

Accountability Standards

Charter schools may be exempt from some state or local education regulations or policies. However, charter schools must follow all federal laws that apply to any other public school, such as the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act (Section 504). This includes ensuring that charter school data is included when reporting to the federal government every year on student progress and in the IDEA data reports submitted by State Education Agencies (SEAs) each year to the Office of Special Education Programs at the U.S. Department of

Education. This also includes reporting data to the Office for Civil Rights at the U.S. Department of Education for the Civil Rights Data Collection.

Reasonable Accommodations

Charter schools must make reasonable accommodations, including reasonable changes to policies and practices, to enable students with disabilities to participate fully at the school. A charter school's policies may not be applied in a discriminatory manner under any circumstances.

Enrollment Discrimination

Some examples of enrollment discrimination are when a school "counsels out" or dissuades student from attending. Additionally, enrollment discrimination can occur when a school tells a student it does not have appropriate teachers, service providers, programming, or placement, or that he or she does not fit school's model or would be better served by another school. These practices are not allowed.

IEPs and 504 Plans

Charter schools are responsible for developing and implementing IEPs and Section 504 plans for students with disabilities attending their schools. Section 504 plans are not substitutes for Individualized Education Plans (IEPs). Students attending charter schools have the right to receive all programs and services on their IEPs or 504 plans.

If a student is participating in a general education class at a charter school, the general education teacher must participate in the IEP meeting. In addition, at least one of the student's special education teachers or related services providers must participate in the IEP meeting. IEPs must be reviewed once a year. If a student has a 504 plan, a "group of knowledgeable people" must develop and review the plan.

Additionally, recent changes by the Colorado Department of Education, require a student's IEP Team to discuss the location where a student will receive services and why a charter cannot serve a student.

Disciplinary Protections

Under both IDEA and Section 504, the same requirements apply for disciplinary protections as apply in other settings.

26. Private Schools

Rights and entitlements of students in private school settings differ from those in public school settings. Whether or not the private school in question receives federal funds and who decided the student would attend the private school also impacts which laws and regulations apply.

Applicable Laws

Private schools that receive federal financial assistance are covered by Section 504 and Title II of the Americans with Disabilities Act. Section 504 defines "federal financial assistance" as any grant, loan, contract, or other arrangement where the federal Department of Education provides assistance through funds, services, federal personnel, real or personal property or interest or use in such property. A private school must comply with Section 504 if it receives federal funds directly or indirectly.

Private schools that do not receive federal funding are considered public accommodations covered by Title III of the ADA. These schools must comply with the ADA's general prohibition against discrimination by public

accommodations. These schools are not required to develop and implement IEPs or service plans for students with disabilities.

Contracts or state law may require private schools to comply with the Individuals with Disabilities Education Act (IDEA).

Religious organizations or entities controlled by religious organizations are generally exempt from these laws.

Placement by a Public School

Under the IDEA, a public school district must provide FAPE to eligible school aged children within its boundaries. The district evaluating the student may decide placement in a private school setting would be necessary to provide FAPE to meet the student's needs. Such placement would be at no cost to the parent. The district must cover tuition and other costs of the private school in this situation. A district seeking to place a student in a private school must conduct a meeting to develop an Individualized Education Program (IEP) for the student consistent with IDEA placement requirements.
A representative of the private school must be included in the IEP meeting deciding private school placement. Once a student is placed in a private school, the district has discretion to develop the IEP or have the school do so. When the private school develops the IEP, the parent and the district must be involved in any decisions regarding the student's IEP. The district is ultimately responsible for the provision of FAPE.

Students placed in private school by a public school district generally retain all the same right as students with disabilities in public educational settings.

The eligibility and exit criteria for students attending public schools also apply to students placed in private schools by a public school district. If the student is no longer eligible for special education and related services because of a disability, the district may exit the student.

Placement by a Parent

A parent may place their student in a private school on their own, but they should do so with extreme caution if they want the public school district to pay for it. A student is still entitled to FAPE if a parent places them in a private school unilaterally if the district's IEP was inappropriate to meet the student's needs. However, if the district's IEP was appropriate, or FAPE was otherwise made available to the child, the parents will be responsible for paying the cost of the private school placement.

Tuition reimbursement may be available where a court or hearing officer finds that the district was given the opportunity to but did not make FAPE available to the student in a timely manner prior to the private enrollment and the private placement is appropriate. There is never any guarantee in these circumstances, so parents should be prepared for a decision that does not allow them to get reimbursed for paying private school tuition fees.

A district is required under the IDEA to identify students with disabilities and may be required to develop an IEP for such students regardless of that student's attendance to private school. A district may use an IEP for parentally-placed students, but most instead receive a service plan that must be consistent with regulations under Section 504 and the IDEA.

A service plan is a written plan to describe the special education and related services, including location of services and necessary transportation the district will provide. Districts must develop, review, and revise a service plan consistent with requirements under the IDEA for IEPs. A service plan team must review the service plan at least annually to determine whether the student is achieving the annual goals set out in the plan. The team should make appropriate revisions following the review. Eligibility Requirements

Under Section 504, a private school that receives federal financial assistance may not discriminate against students with disabilities based on disability if the student can, with minor adjustments, be provided an appropriate education within that school's programs or activities. A student with a disability is qualified to attend a private school or program if they meet the essential eligibility requirements. A private school providing special education must do so consistently with Section 504's regulations for evaluation, placement, and procedural safeguards for students with disabilities.

Fees

A private school may not charge more for providing an appropriate education to students with disabilities unless an additional charge is justified by a substantial increase in cost to the school. There is currently no definition of "substantial increase in cost" under Section 504, nor any guidance from courts or agencies. For comparison, the "undue burden" analysis under the ADA's requirement to provide reasonable accommodations considers the cost of the suggested accommodation and the overall resources of the entity to provide the accommodation.

Reasonable Accommodations

The ADA prohibits discrimination by private schools against a person based on a disability or because of their relationship or association with a person with a disability. A private school discriminates when it excludes or otherwise denies equal goods, services, facilities, privileges accommodations or other opportunities to someone with a disability. Public accommodations, including private schools, are prohibited from surcharging individuals with disabilities for their service animals. The ADA also proscribes regulations for building and facility accessibility requirements.

Private schools must make reasonable accommodations and provide auxiliary aids and services to students with disabilities to ensure they are not excluded, segregated, or otherwise treated differently than other students. Unless the private school can show that providing such would fundamentally alter the nature of the good, service, facility, or privilege, or would result in an undue burden.

Reasonable accommodations must effectively meet the unique needs of the student with a disability to provide a level playing field to access and accomplish their education. The types of accommodations needed will depend on the student's particular needs. Determining reasonable accommodations should be an interactive process between the student and the school. Examples of reasonable accommodations include:

- Large print textbooks and other print materials
- Extra time to complete exams
- Recordings of classes and lectures
- Assistive technologies for reading like screen readers
- Low distraction work areas
- Assistance for note-taking

27. Dispute Resolution Options

As a parent or guardian, you have the right to pursue dispute resolution regarding your student's rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), Colorado's Exceptional Children's Educational Act (ECEA), and the Colorado Anti-Discrimination Act (CADA). Before pursuing any formal resolution processes, it

may be helpful to formally request in writing what you would like from your child's school district to resolve your concerns. You school should also have a Section 504 Coordinator and Grievance Procedure.

If you are already working with an education advocate or attorney, you should check-in with them about your legal options and advocacy strategy prior to pursuing any of these dispute resolution options.

If you are having a hard time with the school district during IEP meetings, you can attempt resolutions through a facilitated IEP meeting through the Colorado Department of Education (CDE). In this process, an impartial facilitator will come to your child's IEP meeting and help you and the IEP team develop your child's IEP. This option is unfortunately not available for students with Section 504 plans.

Formal Options

This chart provides information about various complaint options. For similar information in video format, you may watch this video.

PROCESS	JURISDICTION	TIMELINE	PROS	CONS
Mediation through CDE* *Mediation can be requested when filing any type of complaint, but it can also be requested without filing a formal complaint of any kind.	IDEA, ECEA (but can address any concerns expressed by the parent or guardian through mediation)	Mediation can be requested at any time and typically occurs within 30 calendar days of being requested	• Allows you to work together with the school district and an impartial mediator. • Allows you to have more of a voice in what you want for your child.	• If you agree to mediation after filing a complaint, any agreement you come to with the district will be conditioned on your complaints being withdrawn and dismissed. Thus, there will be no official finding by a third party.
State Complaint	IDEA, ECEA	Must be filed within 1 year of the alleged violation	• Generally best for procedural claims that lead to denial of a free appropriate public education (FAPE). • Allows CDE to investigate alleged violations and make official findings.	• This process is entirely in the hands of the State Complaint Office (SCO), and may or may not end up in your favor. • You do not get a say in the resolution terms.
Due Process	IDEA, ECEA	Must be filed within 2 years of the alleged violation	• Usually necessary for placement disputes when the District disagrees with you regarding what services your student needs to receive FAPE. • Mandatory resolution session where you attempt to reach a resolution with the District.	• This process generally requires that you hire an attorney. • Parents have a low success rate with due process claims. • You do not have a say in resolution terms.

OCR Complaint	Section 504, Title II of the ADA (public schools)	Must be filed within 180 calendar days of the alleged violation	• Easy process to file. • Generally best for students covered by Section 504 and not on an IEP. • Can raise issues such as harassment, retaliation, physical accessibility, equal access, and different treatment based on disability. • Can also raise claims based on race, national origin, color, sex, and age. • Potential to resolve concerns through OCR's mediation process (called Facilitated Resolution between the Parties (FRBP)).	• Short timeline to file. • OCR likely will not open your complaint if you have other ongoing complaints. • OCR complaints can sometimes take six months or more to resolve. • If not resolved through FRPB, you do not have a say in the resolution terms.
DOJ Complaint	Section 504, Titles II and III of the ADA (public and private schools)	No specified timeline, but often refers complaints to OCR, which does have a	• Easy process to file. • Generally best for students covered by Section 504 and not on an IEP. • Can raise issues such as harassment, retaliation,	• May take a while for your complaint to be acknowledged as received by DOJ. • DOJ complaints can take a long time to resolve.
		180-day limit for filing.	physical accessibility, equal access, and different treatment based on disability. Can also raise claims based on race, national origin, color, sex, • and age. DOJ has a mediation process you can use to try to resolve your • concerns.	• You do not have a say in the resolution terms. Often • refers complaints back to OCR.
CCRD Complaint	CADA	Must be filed within 60 calendar days of the alleged violation.	• Can raise claims of retaliation and disparate treatment. Can also • raise claims based on disability, race, creed, color, sex, sexual orientation (which is statutorily defined as "including transgender status" - i.e. Gender Identity), marital status, national origin, and ancestry. • CCRD has a mediation process you can use to try to resolve your concerns.	• Extremely short timeline to file. • Limited to protections afforded by CADA.

This handout covers administrative dispute resolution options and does not include information about filing a state or federal lawsuit. If you are considering filing a lawsuit, you should consult an attorney.

Appendix A: Preparing for an IEP meeting

An Individualized Education Program (IEP) meeting is a meeting to review and develop a plan for a child who needs special education support and services. The goal of IEP meetings is to create a unique plan that is designed to support a student with a disability for them to receive FAPE.

Here are some tips to help you prepare for the meeting.

□ Get Support.

- Although parents don't need representation at IEP meetings, If you think you need an advocate or an attorney to represent you and your child at this meeting, you should contact someone as soon as possible to ensure they have enough time to prepare and clear their schedule. Sometimes meetings can be rescheduled if you need time to seek help.
- If you don't have an advocate, you may be able to find one through The Arc of Colorado. Look for your county on the map and contact the appropriate agency. If you don't have an advocate, it is always helpful to bring someone with you that can support you, even if it's a close friend that can sit with you to provide emotional support and take some notes.

□ Review your child's records.

- You will want to review the current IEP (if there is one) and become familiar with your child's services.
- You should also review their most recent evaluation and any outside evaluations or other relevant records that might inform their educational needs.
- Think about your child's strengths and needs. It can be helpful to write these down and start an IEP meeting with a discussion about strengths.
- Be prepared to discuss new likes and dislikes. What has worked for you at home could also work well in class.
- Consider class sizes and how much time is spent in the general education classroom.
- If your child has a Behavior Support Plan, consider what is working for them and what needs updated. Stickers may have been a great reward at age 6 but do they work so well now?
- Related services: Consider what supplemental supportive services will help your child succeed in a traditional classroom.
- Transition services: If your child is 14 or older the team needs to look at vocational and advanced placements for after high school.

□ Tell the team in advance if there is something specific you would like to discuss.

- Write down what you want to discuss so you don't forget something important.
- The more prepared you are with how and what you are going to say, the more confident you will be at the meeting.

□ Think about who will be at the meeting. People present should include:

- The student (as appropriate),
- Parents or guardians,
- Regular education teacher,
- Special education teacher,
- School Principal,
- District Representative who can commit resources and make decisions, and
- Other people with information about the child such as a school psychologist, occupational therapist, physical therapist, or speech language pathologist.

NOTE: Review the list of meeting participants before the meeting and make sure all necessary personnel are going to be there. This list will be in the meeting notice. You should notify the school if you plan to bring anyone additional to the meeting such as an attorney or advocate.

□ What questions should I be asking myself before and during the IEP meeting?

- Is there an advocate, attorney, family member, or friend that I want to invite?
- Have I reviewed all of my child's documents?
- When was my child's last evaluation? Has anything changed since then? Is it time for a new evaluation?
- Does my child have enough support in school? If not, in what areas could they use more support? Are there things that work at home that might also work at school?
- Is this the right placement for my child? Is this the Least Restrictive Environment for them?

Appendix B: Preparing for a Manifestation Determination Review

A Manifestation Determination Review, (MDR) is a meeting that is scheduled when a student with a disability is disciplined and has been excluded from their educational program for 10 or more days. It can be a stressful meeting. Being prepared can take some of the pressure off and will help you advocate for your child with more confidence.

Here are some tips to help you prepare for the meeting.

□ Get Support.

- Parents do not have to be represented at these meetings. You will need to determine what is best for you and your child.
- If you think you need an advocate or an attorney to represent you and your child at this meeting, you should contact someone as soon as possible to ensure they have enough time to prepare and clear their schedule. Sometimes meetings can be rescheduled if you need time to seek help.
- If you don't have an advocate, you can find one through the Arc of Colorado's website. Look for your county on the map and contact the appropriate agency. If you don't have an advocate, it is always helpful to bring someone with you that can support you, even if it's a close friend that can sit with you to provide emotional support and take some notes.

□ Gather documentation, including, but not limited to:

- Your child's Individualized Education Program (IEP) or 504 plan.
- Your child's Behavior Intervention or Support Plan if they have one.
- Any Incident Reports or other documentation from the school or district about what happened.
- Threat or risk assessment paperwork if there was a threat or risk assessment.
- If possible, a letter from your child's therapist, doctor, or other outside professional written on your child's behalf about how the incident was related to your child's disability can also be very helpful.
- The district's discipline policy.

Note: You have the right to request your child's educational records and should do so in preparation for an MDR if you don't already have all of their records.

□ Craft your argument.

- You need to show the connection between your child's disability and the behavior.
- Talk to your child. Have them describe what happened and why they reacted the way they did. As a note of caution, however, your child should not be making any statements about the allegations if they have been charged for the conduct at issue. You should consult with the attorney representing your child in the case involving those charges before saying anything about the underlying alleged incident.
- If the discipline is related to the school not following your child's IEP, 504 plan, or Behavior Intervention or Support Plan, be prepared to discuss this. Note how, specifically, the plan was not followed.

Write up your talking points.

- These meetings can get emotional and stressful. Write down what you want to talk about so you don't forget something important.
- Read it out loud to a friend or a family member. Have them role play with you and help you get prepared for the hard questions that will come up in this meeting.
- The more prepared you are with how and what you are going to say, the more confident you will be at the meeting.

Think about who will be at the meeting. People present should include:

- Parents or guardians.
- Your child if they would like to be there.
- Relevant members of the IEP or 504 team.
- The educators that work closely with your child and are most knowledgeable about them.
- School psychologists or counselors that can speak about behaviors. □ What questions should I be asking myself before and during the MDR?
- Is there an attorney, advocate, family member, or friend I want to invite to this process?
- Do I have all of the documents I need?
- In what ways does my child's disability connect to the conduct that occurred?
- Does my child have enough support in school? If not, what are ways they could use more support?
- Is the MDR focused on whether the action was related to my child's disability?
- Is the MDR considering all of the student's disabilities (not just the primary area of eligibility)?
- Was there a robust discussion around implementation of the student's plan during the MDR?

Appendix C: Tips for Drafting a Complaint

When to File a Formal Complaint

If you believe you or your child's educational rights have been violated, you can file a formal complaint through the appropriate government agency. Anyone can file a complaint; you don't necessarily need a lawyer.

If you haven't already, it may be helpful to formally request in writing exactly what you would like from you or your child's school and try to resolve your concerns with school administration or district superintendent staff first. If they have repeatedly denied your request, are unwilling to offer a satisfactory resolution, or you have already tried mediation and it was unsuccessful, you may want to file a formal complaint.

If you are already working with an education advocate or attorney, you should check-in with them about your legal options and strategy before filing a complaint.

Jurisdiction and Deadlines

There are several different governmental administrative agencies that you can file a complaint with, but that agency will only consider investigating your complaint if they have jurisdiction over your legal issue.

In some cases, you can file a complaint with more than one agency. It is important to know which agency you should file your complaint with, because each has different complaint procedures and different deadlines. The laws that govern education rights for students with disabilities are the Americans with Disabilities Act (ADA), the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Civil Rights Act, the Colorado Exceptional Children's Education Act (ECEA), and the Colorado AntiDiscrimination Act (CADA).

See the table below to find out which agency has jurisdiction over your claim and how long you have to file a complaint.

AGENCY	JURISDICTION	DEADLINES	LINK
U.S. Dept of Education, Office for Civil Rights (OCR)	ADA Title II, Sec. 504	Must be filed within 180 days of the alleged violation	https://www2.ed.gov/about/offices/list/ocr/complaintintro.html
CO Dept. of Education (CDE)	IDEA, ECEA, PPRA	Must be filed within 1 year of alleged violation; 2 years for due process	https://www.cde.state.co.us/spedlaw/statecomplaint
Dept. of Justice (DOJ)	Sec. 504, ADA Titles II & III	No specified timeline, but often refers complaints to	https://civilrights.justice.gov/
		OCR which has 180-day limit for filing	
CO Civil Rights Division (CCRD)	CADA	Must be filed within 60 calendar days of the alleged violation	https://socgov07-site.secure.force.com/ColoradoCivilRights/

Process

Although the process and procedure for complaint filing and investigation differ slightly depending on the government agency you file your complaint with, all formal complaints must be in writing – either online or submitted by mail. It is important to carefully read the instructions for each government agency's complaint process so that you don't miss a step or deadline. For example, OCR will not even look at your complaint if you don't submit the required consent form with your complaint.

This is the general process you can expect for most kinds of complaints:

1. **Disagreement:** A student's educational rights are violated and there is a disagreement about how the school should resolve the issue
2. **Attempted Resolution:** Request made in writing, meeting with school or district staff, mediation but still no satisfactory resolution
3. **File Complaint:** Formal complaint filed with appropriate agency – may send a letter or email confirming receipt of complaint
4. **Response:** In most cases, the school or district will have an opportunity to respond to your complaint. You will receive a copy of their response.
5. **Investigation:** Agency will decide if they are going to begin a formal investigation into your complaint. If they choose not to investigate, you will receive a letter stating their reasoning. In most cases, you can appeal this decision within a specified deadline.
6. **Additional Information:** During the investigation phase, the agency may request additional documents from you or the school, and an investigator may interview you over the phone. Answer any questions truthfully.
7. **Decision:** The agency will write and send you a letter outlining their decision. The decision may include policy changes or recommended services that the school must provide, or it may determine that there was no legal violation.
8. **Appeal:** In some circumstances, you or the school may appeal a decision. If you can appeal, the decision or letter that the government agency sends will give instructions and a deadline that you must follow if you want to appeal.

Elements of a Complaint: The Basics

The easiest way to file a complaint with one of the government agencies mentioned above is to use the online complaint form that can be found at each of the links in the table. The online complaint form has blanks for all the basic information you need to include such as your name, address, date, information about your child and their disability, information about the entity you believe has violated your child's rights, etc. However, you can also write a letter and send it by mail; just make sure that you include everything listed on the online complaint form.

Elements of a Complaint: The Law

Although you don't have to be an attorney or an expert to file a complaint, once you have identified which federal agency has jurisdiction over the issue you are writing your complaint about, it will be helpful to have a basic understanding of the law. You do not need to explain the law in your complaint but understanding your child's rights can help you decide which facts about your case are the most important to include. Reviewing the relevant sections of this Resource Guide is a good place to start. Elements of a Complaint: The Facts

Informing the government agency about the facts of your case is one of the most important aspects of your complaint. Your complaint can be concise but think of it as telling a story – the investigator will need all the details! There are several parts: the alleged violation of your child's rights, failed efforts to resolve the issue, and your proposed solution for the school to fix the problem. Describe the violation:

Describe how your child's rights are being violated and the harm that has resulted. For example, if your child is being denied is being denied a specific seating arrangement so that she can adequately hear the teacher, describe what it is about your child's disability that necessitates an accommodation (has hearing loss which prevents her from hearing the teacher) and how your child has been harmed due to the school's refusal to accommodate (she has to teach herself the material taught in class and her grades are suffering). The standard that will be used is: if the facts as alleged were true, would there be a violation of the law? This is why it is important to include all relevant facts to show that the school has violated your child's rights.

Detail your efforts to resolve the issue:

Look over any emails, meeting notes, documents, or correspondence you have from your child's school or district. Outline each of your attempts to ask the school to accommodate your child as well as the school's response. Include dates and names of school or district staff you communicated with. It can help to create a timeline to keep track of when the problem started and the school's denial of your requests.

Explain your proposed solution:

Explain how you would like this issue to be resolved and what kind of accommodations, policy changes, or additional services you believe your child is entitled to that would allow them equal access to education at school. The accommodation or change you are seeking must be connected to your child's disability. For example, you could ask that your daughter sit in the front row of each class to ensure that she hears the teacher (connected to her hearing loss disability). Note that even if the government agency investigates your complaint and finds that the school has violated your child's rights, they do not have to adopt or recommend your specific request. They may allow another course of action that is still meant to ensure that your child receives the education they deserve under the law.

TIPS!

⇒ Create a timeline

⇒ Tell a story

⇒ Review meeting notes, emails, and documents ⇒

Be specific! Include dates, names of staff, etc.

Thoughts to Consider:

- **Keep track of deadlines!** There are few exceptions that allow you to file a complaint or appeal outside of the given timelines.
- Filing a complaint and waiting for the investigation and decision can be a slow process that takes several months. If you need a fast or immediate resolution for your child, other legal strategies might be a better fit for your situation.
- Double check that you have followed all of the given instructions to file a complaint with the specific government agency. If you miss a step or forget to submit part of the complaint materials, your complaint may be overlooked.
- Don't use legalese or words or terms that you don't understand in your complaint. The facts of your specific case are the most important part.
- Gather and review all the relevant documents, emails, notes, IEP or 504 plans, doctor's notes, and medical records that you have relating to your case. If your complaint is investigated, you may need these documents, and the process will be more efficient if you submit them in a timely manner.
- Filing a complaint with one of the government agencies listed in this handout is free. There are no filing fees.
- **Important!** You or your child may not be retaliated against for filing a complaint. If you file a complaint and believe that your child is being treated poorly by the school because of it, please reach out to an education advocate or staff at the government agency where you filed the complaint.

Appendix D: Attorney and Advocate Referrals

Attorney Referrals:

- ADVOCACYDENVER Law Center: https://www.advocacydenver.org/our-programs/law-center/
- Brown Education Law Group: https://browneducationlaw.com
- Education Law Offices: https://www.educationlaw.co
- Law Offices of Alexandra D Ferguson: https://www.alexandrafergusonlaw.com
- Robinson Disability Law, LLC: https://robinsondisabilitylaw.com
- Zweibel & Lucas Law: https://www.zwiebellaw.com

Advocate Referrals:

- Advocacy Consultants Network: https://advocacycnetwork.com
- Advocate 2 Educate: https://www.advocatetwoeducate.com
- Arc Chapters: https://www.thearcofco.org/the-arc-chapters
- El Grupo Vida: https://elgrupovida.org
- EmpowerED to Thrive: https://www.empoweredtothriveconsulting.com
- Peacewolf Advocacy & Consultation: https://peacewolfadvocacy.com
- PEAK Parent Center: https://www.peakparent.org
- Show & Tell: https://www.weshowandtell.org

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