

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

A TOOL FOR PARENTS/GUARDIANS



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EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

This resource handbook is not indicative of any or all strategies that may be utilized by individual advocates.

AdvocacyDenver
303-831-7733
www.advocacydenver.org

**Association for Community Living
in Boulder County**
303-527-0888
www.aclboulder.org

Disability Law Colorado
303-722-0300
www.disabilitylawco.org

Native American Disability Law Center
800-862-7271
www.nativedisabilitylaw.org

The Arc of Adams County
303.428.0310
www.arcadams.org

The Arc of Arapahoe & Douglas
303-220-9228
www.arc-ad.org

The Arc of Aurora
720-213-1420
www.thearcofaurora.org

The Arc of The Central Mountains
970-456-2065
www.arccentralmountains.org

The Arc of Colorado
303-864-9334
www.thearcofco.org

**The Arc of Jefferson, Clear Creek &
Gilpin Counties**
303-232-1338
www.arcjc.org

The Arc of Larimer County
970-204-6991
www.arclc.org

The Arc of Mesa County
970-245-5775
www.thearcmesa.org

The Arc of Pikes Peak Region
719-471-4800
www.thearcppr.org

The Arc of Pueblo
719-545-5845
www.arcofpueblo.org

The Arc of Southwest Colorado
970-422-2271
www.thearcofswco.org

The Arc of Weld County
970-353-5219
www.arcweldcounty.org

The Arc of West Central Colorado
970-216-7256
www.arcwcco.org

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INTRODUCTION

Many parents/guardians of children with disabilities have approached Colorado Arc chapters, including AdvocacyDenver and the Association for Community Living, and other advocacy agencies such as Disability Law Colorado and Native American Disability Law Center, with questions regarding educational rights under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (504).

We recognize that while some students have returned to in-person learning either full time or follow a hybrid or modified schedule; other students continue to participate remotely and some students are still waiting for technology and/or internet access. The following provides general information and steps you can take to preserve your child's rights regardless of where they are being educated. In addition, we have included checklists, sample letters as tools when you work with your child's school or district.

Secretary of Education April 27, 2020 Report to Congress

1. Schools can, and must, provide education to all students, including children with disabilities;
2. The health and safety of children, students, educators, and service providers must be the first consideration;
3. The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
4. Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
5. Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

Pandemic-related school disruptions have made this is a difficult time for everyone and it may be particularly challenging for parents who are now asked to aid school staff with educating their children who are on Individualized Education Programs ("IEP") or 504 Plans.

The IDEA suggests that removal from school (or the closure/interruption in school) for more than 10 days is a change of placement. Therefore, for the first 10 days a student is out of school, the district is not obligated to provide services unless they are providing general education services to all students. However, students with disabilities are entitled to a Free Appropriate Public Education ("FAPE"), and additional obligations are triggered once the closures/interruptions reach the eleventh day. Parents should take the following steps to help preserve their child's educational rights:

1. Keep a log of which IEP/504 Plan defined services are being provided, and those that are not. This will be useful for later discussion about any compensatory services owed to your child.
2. If you do not already have baseline documentation, be sure to request assessments your child took prior to the pandemic and document this so you have data to show any

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

regression that occurs during the closures. This will also be helpful when discussing compensatory services.

3. Keep in mind that the school is not obligated to provide services during breaks, holidays or during the summer, except when the child is eligible for extended school year. In addition, the school does not need to make up for services missed when your child is sick
4. Once there is a known return to school/instruction date, request an IEP/504 meeting to discuss your child's services when they go back to school.
5. Request an educational evaluation of your child's current needs and progress (or lack of progress) toward goals and discuss any compensatory services necessary to address identified gaps in services and regression relative to your child's goals.
6. If your child was suspended or expelled at the time of the school closure, make sure the end of suspension/expulsion date is accurate in the records and not listed as the date children returned to school following the closure.

PROBLEM SOLVING

If you have questions or concerns in relation to your child's IEP, Contingency Plan, or 504 Plan you are encouraged to request a meeting to discuss the plan. In addition, you are encouraged to:

1. Contact your child's school and discuss your concerns with your child's teacher or provider.
2. If issues are not resolved, contact the principal; the principal supervises general and special education staff. If issues are not resolved at that level contact:
 - Special Education Director for the district
 - Section 504 Coordinator for the district
3. If issues are still not resolved, other problem solving procedures are also available to parents:
 - IEP Facilitation (this is not required under the IDEA but is available in Colorado)
 - Mediation
 - State complaint
 - Request for Due Process

For more information about these problem solving options, go to the Colorado Department of Education:

<https://www.cde.state.co.us/spedlaw/mediation>

<https://www.cde.state.co.us/spedlaw/statecomplaint>

https://www.cde.state.co.us/spedlaw/quickguide_dr_processes_parents

U.S. Department of Education Office for Civil Rights:

<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>

INITIAL EVALUATION

The school district has an obligation to identify/evaluate children birth through twenty-one with a suspected disability. This is referred to as Child Find.

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

The school has 60 calendar days from receipt of parental consent to complete the evaluation and determine if your child is eligible under IDEA.

As a result of the pandemic, the initial evaluation and eligibility determination may not have happened within the 60 calendar day timeline for some children. If the school has not completed the initial evaluation, the family is encouraged to:

1. contact the school or district to define the plan and timeline for completing the evaluation and determining eligibility
2. discuss the evaluations that have been completed; and
3. determine whether additional evaluations or information is needed in order to determine eligibility.

When information is complete, the IEP team will convene and determine eligibility.

1. If the team (of which you are a member) determines your child meets the eligibility criteria as a student with a disability, the team has 30 additional days to develop an IEP/504 Plan and make an offer of a free appropriate public education. The IEP/504 Plan will be written in anticipation of your child's full time return for in-school instruction.
2. If your child continues remote learning, the Team may also develop a Contingency Plan. The Contingency Plan will identify services and goals that can be addressed remotely. These services must be implemented using the same FAPE standard that would be expected under in-person learning. This will require a creative approach to implementation because the standards and expectation under the IDEA and 504 have not been waived.
3. Families should ask the school to consider compensatory services to make up for the delayed eligibility.

It is important to note that a parent can request that their child be evaluated and the school cannot delay it or use response to intervention ("RTI") or multi-tier service system ("MTSS") as the reason for the delay. Remember that there are no waivers in place for timelines under IDEA. The 60 days to complete special education evaluations still applies once a parent has given consent for evaluations, even if the school is in a remote learning period.

REEVALUATION

Although work is being done to introduce tele-evaluation (like telehealth) some formal evaluations cannot be performed remotely. A re-evaluation occurs once every three years (unless the parent and district agree that a re-evaluation is not necessary). A re-evaluation might also be initiated to determine whether the educational or related services, including improved academic achievement and functional performance of the child warrant a re-evaluation.

1. Checklists like the BASC, Vineland, etc. can be completed at home and submitted, but the staff completing checklists must have worked directly with your child for the last 6 months.

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

2. Formal evaluation may not be needed to re-determine eligibility. The team could simply complete a review of records and determine that the child continues to be eligible under the IDEA based on that review.
3. Once students return to school, the team will be in a better position to familiarize themselves with your child and any changes they have experienced; or, if your child is new, get to know your child's strengths and needs. In either circumstance they can identify if any evaluations might be needed and to update goals, objectives, accommodations and services in the least restrictive environment.
4. If an in-person evaluation is necessary to determine what supports and services are needed and the district is in a remote learning environment, the district may need to consider contracting with outside providers for in-person evaluations.

PRIVATE EVALUATION

Sometimes a family will have an independent educational evaluation (IEE) completed that is paid for by the district or by the parent. Parents are encouraged to provide the school with a copy of the evaluation that was completed by a private provider. The school can and should consider the **private evaluation** when determining eligibility under IDEA. The team (which includes the parent) will determine if additional evaluations are needed and identify next steps to determine eligibility.

IMPORTANT TERMS

Contingency Plan

A Contingency Plan (Plan) is a temporary plan to address changes caused by health and safety restrictions that should include:

1. parent/guardian involvement in all decisions in relation to the Plan; and
2. decision making based on the needs and best interests of your child. Your child's special education case manager should work with you to develop a Plan that describes how your child's Individualized Education Program (IEP) will be implemented to the greatest extent possible in a combined (in-school and in-home) learning environment.

To help ensure FAPE, the Plan should:

1. provide the special education and related services identified on the student's IEP to the greatest extent practicable;
2. provide continued access to the general education curriculum; and
3. prioritize/identify those services most likely to enable the student to make progress on their IEP goals.

When developing the Contingency Learning Plan, School team should consider the following:

- Can the child operate the technology independently and/or with limited assistance?
- Is the content available and understandable?

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

- Can the digital content be utilized via various technology supports (e.g., built-in speech to text, text to speech, etc.)?
- Are the demands of executive function skills supported?

The team should recognize that it is important to build in supports to address the child's learning, attention, behavioral, sensory, physical needs and provide appropriate materials. Accordingly, some students may need short videos and work to practice independently; others may have little screen time and more hands on materials/manipulatives. Depending on the child's individual needs, the district may need to provide in-person one-on-one support. If the district is unable to provide district staff for that support, the district may need to contract with outside private service providers to implement the student's IEP services.

The Plan should include:

- Accommodations, including Assistive Technology: any instructional accommodations, devices or software, materials/manipulatives necessary to work on IEP goals and access instruction for remote learning.
- Identify the IEP goals that be worked on during remote learning
- How goals will be serviced remotely (i.e., provider, quantity, type, frequency, duration, and location)
- How goals will be progress monitored remotely.

It is important to remember that an IEP and a Contingency Plan are not the same. An IEP is an offer of a free, appropriate public education, a Contingency remote learning plan outlines what will be provided during remote learning as a result of the public health emergency. If you have concerns with the remote learning plan offered by the school, you are encouraged to schedule a meeting with the IEP team to discuss concerns and problem solve. This plan must continue to provide your child with a free appropriate public education. If the school is unable to meet your child's needs remotely, they must offer compensatory services when services can be provided safely.

Quarantine

Quarantine is when a member of school staff or a student is diagnosed with COVID-19, parents will receive notice stating that their child must stay home for 10-14 school days because of close contact with the member of staff or the student who tested positive. The obligation to provide your child with a free appropriate public education does not stop when learners are quarantined.

1. The school should provide a Plan that defines the provision of general education, special education and related services during the period of time your child is expected to stay at home.
2. If the school's Plan is for your child to return to remote instruction, the Plan should define technology that will be provided by the school, platforms for instruction and parent training that allows you to support your child at home.

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

Compensatory Services

Compensatory services are educational services that are awarded to students with disabilities to make up for services that they lost because of a school district's failure to provide an appropriate educational placement and/or services.

1. The IEP team (of which the parent is a member) will determine compensatory services that will be provided to make up for services missed during COVID 19.
2. If your child is in high school, it is important to consider the number of credits your child has earned and their course of study.
3. For students in early childhood education through high school, the IEP team will meet to discuss compensatory services (special education and related services). The team will not simply calculate the exact amount of services minutes identified on the IEP, instead the team will identify services that will place your child in the same position they would have been in if FAPE had been provided during COVID-19.
4. Because compensatory services are individualized, more minutes or fewer minutes may be needed to for the student to recoup academic, social emotional and or language skills.

Homebound (home/hospital instruction)

Homebound instruction is provided by the school district when the child is unable to attend school due to significant medical or physical condition. The IEP team (of which the parent is a member) makes placement decisions. School districts must provide a continuum of services and homebound (home/hospital instruction) is a placement along that continuum. Homebound is considered one of the most restrictive educational placements for students. For some children, homebound is appropriate because the child has a physical or mental condition that makes placement with other students prohibitive. The student's IEP identifies services (special education and related services) that will be provided in the home/hospital setting. Remember that the team must consider whether the placement is the least restrictive environment (LRE) for your child.

Homeschooling

Homeschooling is when the family determines to teach their child at home including deciding curriculum and the delivery of lessons. Like enrollment in private education, a parent does have the right to withdraw their child from public education and home school them. The parent is responsible for providing a curriculum and instruction. The parent is expected to make arrangements for their child to participate in state assessments. It is important to understand that the rights/protections under Individuals with disabilities Education Act or Section 504 of the Rehabilitation Act ends when you provide notice of your intent to homeschool and withdraw your child from public education. Accordingly, the district does not have an obligation to provide compensatory services for special education and related services that were missed during COVID-19. If a child is re-enrolled in public education, the district again has the responsibility to provide a free appropriate public education.

Revocation

Some school districts have developed “**temporary revocation**” procedures which allow the parent to revoke permission for special education and related services.

1. It is important that parents understand that a revocation means you are waiving your child’s right to a free, appropriate public education and due process rights under state and federal law (IDEA, ECEA, Rehabilitation Act).
2. Advocates and attorneys for parents **advise against parents agreeing to any revocation in relation to special education or related services.** Revocation means you are waiving your right to bring any claim against the district and any right to compensatory services. Compensatory Services: under the IDEA or Section 504 of the Rehabilitation Act, the IEP team or Section 504 team will determine compensatory services that will be provided to make up for services missed during COVID-19.

TEMPLATES AND CHECKLISTS

1. Sample parent letter requesting evaluation for eligibility under the Individuals with Disabilities Education Act
2. Schedule
3. Log for Services During Extended COVID19 School Closures
4. School Program Checklist

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

Letter Template

REQUEST FOR EVALUATION

Date

Parent Name
Address
City, State

Dear :

I am writing to you because my child (child’s name) is experiencing difficulties in school. My child is having difficulties with XXX (provide detailed information). For these reasons, I request that the school complete evaluations in the appropriate areas of concern to determine if my child has a disability as defined under Individuals with Disabilities Education Act.

I understand that you will need my written permission to complete an evaluation. The school will have 60 calendar days to complete testing and determine eligibility. If you would like to discuss the areas to be assessed or need additional information, please call me at home (your home phone) or at work (your work phone). Thank you very much for your assistance. I look forward to your prompt reply.

Sincerely,
name
contact information

Schedule

Time	Subject	Provider	Platform	User Name	Subject	User name	Password

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

LOG FOR SERVICES DURING EXTENDED COVID19 SCHOOL CLOSURES

This log is intended to help you keep track of information you may need in order to advocate for compensatory educational services for your child based on services not being provided during the school closures. You should track this data daily or weekly, depending on what works best for you. First you should make a note as to the first date that the school offered remote instruction: _____ the date that you had access to a computer _____ and the date you had internet for remote instruction _____.

Name of Child: _____

Date(s) of Service: _____

1. What services were offered today?

- Math
- Reading/Language Arts
- Writing
- Science
- Social Studies/Civics
- Speech/Language
- Counseling/Mental Health Services
- Occupational Therapy
- Physical Therapy
- Other: _____

2. How was the work provided?

- Worksheets
- Phone Call(s)
- Video/Audio Recordings
- Live Video
- Other: _____

3. Was your child able to access these educational services?

- Yes, and my child was able to complete the work
- Yes, but my child did not complete the work
- No, my child was unable to complete the work because of technical issues
- No, my child was unable to complete the work due to a lack of understanding the instructions or the content

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

4. Were you and/or your child contacted by anyone from the school or district?
- Yes, we were contacted by my child’s teacher
 - Yes, we were contacted by an administrator (principal, special education director, etc.)
 - Yes, we were contacted by another service provider (Speech Therapist, OT, PT, etc.)
 - No, we were not contacted today
5. If you answered “yes” to question #4, what was the nature of the contact with the school or district? (examples: conversation between student and teacher, discuss provision of OT services, explain assignment to parent so they could provide assistance, etc.) _____
- _____
- _____
6. Were any IEP/504 services/accommodations provided (that are not already mentioned above)?
- Yes
 - No
7. If you answered “yes” to question #6, please explain the services/accommodations that were provided (please be sure to include length of time for each service that was provided):
- _____
- _____
8. Have you seen any behavioral/emotional/social challenges?
- Physical aggression
 - Verbal aggression
 - Property destruction
 - Anxiety
 - Stomach pain
 - Elopement
 - Issues related to sleep
 - Refusing to complete schoolwork
 - Other: _____
 - N/A
9. If you selected any behavioral/emotional/social challenges, please explain in further detail:
- _____
- _____
- Any other issues or concerns? _____
- _____

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

SCHOOL PROGRAM CHECKLIST

The Arc chapters do not have an opinion as to whether or not your child should return to in school program or continue to participate in remote learning. The following is a checklist that serves as a tool of different information you may wish to consider as you make decisions in relation to your child.

School Name: _____ Number students in classroom: _____

Will the School follow their traditional calendar? _____

1. What time does the school day program start and end? _____
2. What are the benefits of in-school programming for the child?
 yes no Direct instruction
 yes no Learning with other children
 yes no Spend time/play with friends
 yes no Social development
 yes no Feeling of belonging
 yes no Physical exercise
 yes no Allowing parent to work
 yes no Breakfast and lunch program
Other: _____
3. Will I have the option to change to remote learning or in-school instruction at later date?
 yes no
4. If I need to withdraw my child who do I contact? _____
5. Does the School/District offer a hybrid option (e.g. some in school programming, some remote learning)? yes no Explain: _____
6. If I opt for remote learning, who do I contact for support with technology or questions in relation to the curriculum? _____

SCHOOL/CLASSROOM PLAN

1. What is the plan for the entire school if a member of staff or a student is diagnosed with COVID 19? _____
 - a. What is the timeline for notifying staff and parents? _____
 - b. Will staff and students be required to tested for COVID 19? yes no
 - c. Will staff and students be required to quarantine at home? yes no
2. Will student travel to the lunchroom for breakfast and lunch? yes no

3. Will high school students be allowed to leave campus for lunch? yes no
4. What universal precautions or protective steps are taken, and how often? _____

5. How will staff respond in the event a child removes their mask or approaches within 6 feet of another person? _____
6. Will my child attend specials, recess/physical education? yes no
7. How will special education services and related services be provided?

EDUCATIONAL RIGHTS OF CHILDREN WITH DISABILITIES DURING THE PANDEMIC

- a. In school _____
- b. Remotely _____
- 8. How many schools and students does each provider work with? _____
- 3. Will the school implement my child’s Individualized Education Program or Section 504 Plan or will the school develop a Contingency Plan?

CHILD AND FAMILY INFORMATION

- 1. Is my child willing and able to wear a mask for an extended period of time? ____ yes ____ no
 - a. If no, how long _____
 - b. Will he or she need a break ____ yes ____ no
- 2. Is my child able to follow rules in relation to social distancing? ____ yes ____ no
- 3. How is my child’s hygiene (e.g. frequent handwashing)? _____
- 4. Is my child able to accurately self-report symptoms (e.g. tooth ache; hot/fever)
- 5. What accommodations will my child need in order to participate in the school program?

- 6. Are there other people in my household at-risk for COVID 19 based on work or social activities? ____ yes ____ no
- 7. How will it impact my family if my child(ren) are online all day? _____
