

Know Your Rights

A GUIDE FOR FAMILIES AND PARENTS OF STUDENTS RECEIVING SPECIAL EDUCATION SERVICES



The Individuals with Disabilities Education Act (IDEA) of 2004, concerning the education of students with disabilities, requires schools to provide you—the parents/guardian of a student with a disability, or suspected disability—with a notice containing a full explanation of the rights available to you under IDEA and the U.S. Department of Education regulations. In addition to the procedural safeguards and information provided by your child’s school, the New Mexico Public Education Department (NMPED) aims to offer easily accessible information in this document. Please view the latest version of the [Procedural Safeguards for Students with Disabilities and Their Families](#) for more detailed information.

Critical Updates

Public Schools in New Mexico have been operating under remote and hybrid learning models, since the onset of the COVID-19 pandemic. One broad exception has been that schools are allowed to provide school-based instruction and services to special education students in a ratio of 5 students to 1 adult. Beginning February 8, 2021, all schools – across all counties – are eligible to welcome all students back for in-person learning, following the hybrid model. There may be additional allowances for special education students, but school districts maintain autonomy in determining the logistics of their local strategies for small group instruction. Please consult with your local administration about their plans for expanded in-person learning.

What to Expect

You and your child should receive ongoing communications and opportunities for engagement from the school. The Office of Special Education Programs (OSEP) clarified that all rights guaranteed by the Individuals with Disabilities Education Act Part B (IDEA-B) for students with disabilities remain in effect.

Although the rights guaranteed to students with disabilities to access free and appropriate public education (FAPE) according to the IDEA-B remain in effect, protection from ever-present health risks presented by COVID-19 must be of paramount importance. Parents of a student with disabilities are encouraged to work with their local school team (case managers, head teachers, assigned assistant principals, counselors, teachers, etc...) and school district officials (special education office staff) to best navigate through unique circumstances that have the potential to compromise (in anyway) the health and safety of students, parents and special education personnel. Placing the health and safety of all parties involved in special education, while ensuring that students with disabilities have access to FAPE, is challenging and requires thoughtful collaboration from all involved parties. The NMPED is here to help.



What to Ask

Below are questions you might want to ask as your child prepares for in-person learning, along with considerations when receiving a response from your school. Please note that some responses may vary among school districts, as New Mexico public schools exercise local control over some school policies and procedures. [The NMPED Reentry Guidance with requirements and recommendations](#) can be used as a reference as you navigate these conversations.

Is attendance at a school site in a 5:1 student/teacher ratio available for my child?

Determinations around small group instruction are made by individual districts or charter schools. Please confirm local options with your school's administrator. If your child can attend a school site, make sure you discuss transportation.

Can my child's IEP team meet to discuss the changes in services caused by the pandemic?

School districts should convene an IEP meeting to discuss amendment of the IEP due to pandemic-related changes to your child's services or seek to amend your child's IEP without an IEP meeting. *School districts cannot amend your child's IEP without an IEP team meeting, unless you consent to amendment of your child's IEP without a meeting. This is your choice*, and you have the right to refuse amendment of the IEP without a meeting. In addition:

You should make sure that you are well-informed about any amendments to the IEP that are proposed by the school district in a meeting or in an amendment without a meeting. You have the right to request information—in advance of the meeting—needed to make an informed decision regarding your child's education;

IEP meetings should be conducted by phone or virtually due to the existing Public Health Orders. You should communicate with school staff about what technology you have available to participate in a phone or virtual meeting. Please visit [Parent Center Hub](#) for tips on Virtual IEP meetings.

Examples of possible considerations regarding remote learning:

- Modified screen time (sometimes less is more)
- Alternatives to online learning (use of packets, text books, consumable workbooks, videos, recorded books, etc.)
- Participation in hands-on activities to support and showcase skills development (puzzles, play dough, manipulatives, drawings, recorded demonstrations, etc.)
- Better balance of asynchronous and synchronous learning based on child's learning needs and caregivers' availability
- Innovative assessments (not paper/pencil or computer-based)
- Work plan or daily schedule created in partnership with parents/teachers to make remote learning more easily manageable for families and more meaningful for students
- Activity that uses a learning modality (visual, auditory, tactile/kinesthetic, smell or taste) that works well for your child
- Additional resources for classroom support can be found at [Early Childhood Technical Assistance Center](#) and [National Center for Systemic Improvement](#).



What is the status of my child's evaluation?

School districts are still required to provide timely evaluation (within 60 days of written parental consent) of children for special education eligibility and other purposes as needed, including reevaluations and transitions. *Due to the pandemic, evaluators must implement COVID-safe practices in conducting the evaluations, including social distancing and wearing face coverings by the evaluator and child.* In addition:

- Even though some parts of an evaluation may not be possible to conduct given the existing restrictions, the school district should ensure that evaluations are fully completed to the extent possible within the 60-day required period and to ensure timely review of the evaluation by the Eligibility and/or IEP team.
- You should provide your child's school district with additional available information addressing your child's need for special education from other sources (doctors, therapists, etc.) that can supplement the evaluation information for consideration by the Eligibility and/or IEP team.

What information is available about my child's progress?

Progress monitoring for students with disabilities is critical to ensure that students are receiving services that provide a FAPE. You can ask for all information about progress monitoring done for your child since the school closures. If your school district has not done any progress monitoring for your child, ask what will be done to assess whether your child made progress.

Will compensatory or recovery education services be provided due to the impact of the pandemic on my child's education?

It will be important for any discussions and decisions about whether your child should receive compensatory or recovery education services as a result of the loss, interruption or necessary change in services due to the pandemic. Reach out to your coordinator or school administrator for more details.

Who to Contact

It is normal to have questions about your child's education, generally, and especially during an unprecedented time such as the current health crisis and extended school closure. We recommend that your first contact always be your child's teacher or service provider. If you are unable to get the clarification or support you seek, then your school administrator or the Special Education Director for your school district should be able to assist you. In addition, you may choose to contact:

- **NMPED Special Education Division** (505) 827-1457
- **Parents Reaching Out (PRO)** (505) 247-0192 or (800) 524-5176
- **Education for Parents of Indian Children (EPIC)** (888) 499-2070
- **Disability Rights New Mexico (DRNM)** (505) 256-3100 or (800) 432-4682
- **Native American Disability Law Center (NADLC)** (505) 566-5880 or (800) 862-7271
- **Pegasus Legal Services for Children** (505) 244-1101

You also have the option of using any of the special education dispute resolution options offered by the NMPED Special Education Division.

These include mediation, facilitated IEPs, state complaints or due process hearings. For more information, please contact the Special Education Division at (505) 827-1457. Please also review the latest [dispute resolution parent friendly guide](#).

Additional Resources

Please visit the NMPED website for more information. You may refer to the special education [parent portal here](#). In addition, check out the following resources:

- [FAQ](#) – Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a Closure to Normal School Operations due to the Coronavirus (COVID-19) Pandemic 2020.
- [Guidance for Special Education Upon Reentry](#)
- Notice of the latest IDEA Procedural Safeguards (available in [English](#) and [Spanish](#)).