Free Appropriate Public Education (FAPE)

Colorado Parent IEP Training Resource Document

COLORADO
Department of Education

What is a free appropriate public education?

Children with disabilities have the right to a **free appropriate public education (FAPE).** Eligible children with disabilities have the right to FAPE under:

- The Individuals with Disabilities Education Act (IDEA), and
- Section 504 of the Rehabilitation Act of 1973.

The right to FAPE applies to public early childhood, elementary and secondary education. The right to FAPE includes children who have been suspended or expelled.

Difference in FAPE under IDEA and Section 504.

A key aspect of FAPE under IDEA is the Individualized Education Program (IEP). IDEA requires an IEP designed to provide educational benefit. Section 504 does not require an IEP.

Section 504 prohibits discrimination against children with disabilities. Children with disabilities must be provided equal access to education. A Section 504 plan might be appropriate for a child with a disability who **does not need** specialized instruction but **does need** an accommodation or modification to access education programs to the same extent as children without disabilities.

What does FAPE under IDEA require?

- Special education and related services are provided free of charge.
- A child's IEP (plan of services) is individualized and "reasonably calculated to enable a child to make progress in light of the child's circumstances."
- A multidisciplinary team that includes the parents develops the IEP.
- The IEP outlines special education and related services that meet the child's unique educational needs.
- The child's services are provided in the least restrictive environment (LRE) to the maximum extent appropriate. Education in settings with nondisabled peers is a priority.
- Supplementary aids and services help the student learn in the regular classroom. These include accommodations and modifications.

What if I have concerns that my child's education program is not providing FAPE?

- Discuss your concerns with your child's IEP team. You can request an IEP meeting if you have concerns that need to be addressed by the IEP team.
- If you have questions about what is happening, ask your Special Education Director.
- Consider having a special education facilitator come to your IEP team meeting.
- Consider the IDEA dispute resolution options:
  - Mediation
  - State Complaint
  - Due Process Complaint

- A child with an IEP may be educated in a separate classroom for all or part of the school day. A child with disabilities is only removed from the regular education class if the child **cannot** be satisfactorily educated in the regular educational environment with the use of supplementary aids and services.
- The child has access to non-academic activities that are open to all students. This includes field trips, after-school activities, etc.

What does FAPE under IDEA *not* require?

- FAPE does not guarantee achievement.
- Services must be appropriate, not the best.
- FAPE does not require a specific class setting, program, or method of instruction.
- FAPE does not require offering participation in non-academic or extracurricular activities that are **not** open to all students. For example, a sports team that has tryouts or a production that holds auditions. (A child with a disability may be able to receive accommodations in order to participate in open tryouts or auditions.)
- Not every discrepancy between the services provided and what the IEP requires will result in a denial of FAPE. To result in a denial of FAPE there must be a material failure to implement an IEP.

Where can I learn more about FAPE?

- Learn more from the Colorado Department of Education's Parent IEP Training.
- Contact CDE's Office of Special Education.
  - **Phone:** 720-926-1453
  - **Email:** Parents_ESSUquestions@cde.state.co.us
- Contact the Special Education Director for your Administrative Unit.
  - Find Your Special Education Director
- US Department of Education, Frequently Asked Questions: Section 504 Free Appropriate Public Education (FAPE).
- Laws and regulations:
  - IDEA, 20 USC § 1401(9), 34 CFR § 300.17.
  - Colorado Exceptional Children's Educational Act (ECEA) Rule 2.19.
  - Section 504, 34 CFR § 104.33(a).
- Key U.S. Supreme Court Cases addressing FAPE:
  - *Board of Education of Hendrick Hudson Central School District v. Rowley*, *458 U.S. 176* (1982).
  - *Endrew F. v. Douglas County School District*, 580 U.S. 386 (2017).

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