



## DISABILITY RIGHTS NEW MEXICO

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*Promoting and Protecting the Rights of Persons with Disabilities*

### **COVID-19, Return to In-person Learning, and Your Student's IEP**

By April 5, 2021, all schools in New Mexico are to be open for in-person learning, observing COVID-safe practices. Families also may choose to remain in remote learning for the remainder of the school year. Whatever your family decides, there are some questions that will likely need to be addressed in your child's Individualized Education Plan ("IEP"). This is true whether you or the school convenes the IEP team or there is a written amendment to the IEP. While DRNM cannot guarantee that the resources listed below will resolve any particular issue, they may help you to better understand your student's rights and what can be done if you feel they have been violated.

You can ask that these questions or requests be answered and documented in the Prior Written Notice of the IEP.

#### **If the student is returning to in-person learning,**

- How is that transition going to be supported by the school? Are there social emotional or behavioral needs that are going to need to be addressed? See <https://www.copaa.org/page/ReOpening>
- What new/additional accommodations or modifications are needed for the student to attend in person and observe COVID-safe practices? For example, is the student able to wear a mask, or are there alternatives that can be explored? Is there troubleshooting that needs to be done concerning social distancing? See [https://webnew.ped.state.nm.us/wp-content/uploads/2021/03/NMPED\\_COVID19ResponseToolkit\\_PublicSch030821.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2021/03/NMPED_COVID19ResponseToolkit_PublicSch030821.pdf)

Although the Job Accommodation Network has information for employees, not students, it also offers good ideas about accommodations that are particular to specific disabilities:

<https://askjan.org/a-to-z.cfm>

#### **If the student is remaining in remote learning,**

- Are there behavioral supports that need to be in place for the student to be able to access online curriculum? <https://drive.google.com/file/d/1Hf2WV8wvrHa7obsq5HBS1iWNjrocT-r2/view>  
<https://www.pbisapps.org/community/Pages/A-4-Step-Plan-for-Handling-Problem-Behavior-Remotely.aspx>
- What are some ideas for accommodations, modifications, and instructional supports that can be requested?  
<https://www.marshall.org/wp-content/uploads/2020/04/Accommodations-and-Modifications.pdf>  
<https://www.additudemag.com/distance-learning-accommodations/>

**In either case, the student's special education rights have continued to be in place, and they should be making progress toward IEP goals. So you can ask the IEP team to consider:**

- What decline in skills or lack of progress has the student suffered in the past year? How are the student's present levels of performance going to be assessed? *See* **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**, <https://webnew.ped.state.nm.us/wp-content/uploads/2020/04/Special-Education-FAQ-Final-4-1-20-ddc.pdf>
- If there has been a decline in skills or lack of progress, the school needs to address those gaps. There might need to be compensatory education or recovery services. *See* <https://webnew.ped.state.nm.us/wp-content/uploads/2020/04/Special-Education-FAQ-Final-4-1-20-ddc.pdf>; [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020\\_docs/compedhandout8-13-2020.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020_docs/compedhandout8-13-2020.pdf)
- Is the school considering retaining (holding back) the student?
- Is the student receiving all of the special education instruction and related services written in the IEP, rather than an abbreviated schedule of services established during remote learning?
- Is there an initial evaluation, re-evaluation, or evaluation of a new area of concern that you have been waiting on? There has been no waiver of the timeline on evaluations (60 days after you give informed consent) and re-evaluations (every three years). *See* <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

**Some collections of COVID-19 specific special education resources may be found at:**

**The New Mexico Public Education Department:**

<https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/covid-19-coronavirus/>  
<https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>

**The Council of Parent Attorneys and Advocates:**

<https://www.copaa.org/page/covid-19>

**Wrightslaw:**

<https://www.wrightslaw.com/info/covid.index.htm>

**The United States Department of Education:**

<https://www.ed.gov/coronavirus/program-information#spced>

You may also want to look at the new Procedural Safeguards Notice the New Mexico Public Education Department has recently published: <https://webnew.ped.state.nm.us/wp-content/uploads/2021/01/Eng-Procedural-Safeguards-12-23-2020.pdf>

This letter only contains general resources for parents and families, and is not meant to provide advice specific to any individual case currently being worked by DRNM staff. If you are a current client and have specific questions or concerns related to your student, you may of course call your assigned advocate or attorney at Disability Rights New Mexico. We are ready to help navigate this particularly confusing and difficult time for you and your student, and are honored to advocate with you for your student's educational rights.