

## **Q&A: The Right to a Free Appropriate Public Education (FAPE)**

### **Which schools<sup>1</sup> must provide FAPE?**

A school that operates a public elementary or secondary education program or activity **must** provide FAPE to each qualified student with a disability who is in the school's jurisdiction, regardless of the nature or severity of the student's disability.

FAPE must be provided for children with disabilities between the ages of 3 to 21, including students who have been suspended or expelled from school, as well as those who have been removed from school without formal disciplinary action.

### **What does a FAPE include?**

Under Section 504 of the Rehabilitation Act, 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.”

### **Can the school require me to pay more to provide for my student with disabilities?**

No. 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:

- the services are provided at no cost to the students with disabilities or their parents or guardians; and
- students with disabilities have adequate transportation to and from the services at no greater cost than would be incurred by the student or his or her parents or guardian if the school provided the services.

### **Does a FAPE apply to students placed by their parents in private schools?**

No. 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.

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<sup>1</sup> In this document, “school” is a term used to include public K-12 schools, including charter schools.

However, if a public or private residential placement is necessary to provide FAPE to a student because of his or her 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.

### **When is an education considered 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.

### **What can I do if I am being denied a FAPE?**

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).

For Section 504 violations, 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](#). For IDEA violations, mediation can also be pursued through the [Colorado Department of Education](#) (CDE).

### **Where can I go for more information?**

- 34 Code of Federal Regulations (C.F.R.) Section 104.33
- OCR's [Disability Discrimination](#) Website
- OCR's [Policy Guidance Portal](#)
- Colorado Department of Education's [IEP page](#)