



# **ADDRESSING THE NEEDS OF STUDENTS WITH DISABILITIES DURING COVID-19**

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# Who We Are

- ACDL is Arizona's non-profit Protection & Advocacy agency
- Providing advocacy, information, referral services, community legal education and, in selected cases, legal representation to individuals with disabilities



# Training Information

- The purpose of this training is to provide general information regarding special education during COVID-19
- The information is provided in summary form and is **not** intended as a substitute for legal advice
- Federal and state law can change at any time, so please stay abreast of possible changes to the law

# HOW WE GOT HERE



# Timeline of COVID-19 Events Impacting Education

- Spring 2020 – COVID-19 begins spreading rapidly in the U.S., states begin declaring states of emergency and shutting down schools
- March 15, 2020 – Governor Ducey and Superintendent Hoffman announce statewide school closures through March 27, 2020
- March 27, 2020 – Governor Ducey signs into law House Bill 2910, which requires all public schools to offer students general educational opportunities for the duration of the statewide closure
- March 30, 2020 – Governor Ducey and Superintendent Hoffman extend school closure through end of the 2019-2020 school year



# Timeline of COVID-19 Events Impacting Education, ctd.

- June 24, 2020 – Governor Ducey issues Executive Order 2020-41, “Prioritizing Kids and Schools During COVID-19,” which allows public schools to offer education online for the 2020-2021 school year
- June 29, 2020 – Governor Ducey issues Executive Order 2020-44, “Protecting Public Health for Students and Teachers,” which required schools to delay the start of in-person classes until at least August 17, 2020, but allowed schools to begin the school year on their regularly planned start date through distance learning only



# Timeline of COVID-19 Events Impacting Education, ctd.

- July 23, 2020 – Governor Ducey issues Executive Order 2020-51, “Arizona: Open for Learning,” which requires the Arizona Department of Health Services to develop public health benchmarks for returning to in-person, teacher-led classroom instruction; requires schools to begin teacher-led distance learning instruction on the first day of school; requires schools to begin offering free on-site learning opportunities and support services for students who need a place to go during the day; requires schools to develop and implement a policy requiring face coverings for all staff and students over age five.



# Timeline of COVID-19 Events Impacting Education, ctd.

- August 17, 2020 – All public schools are required to begin offering school, either in-person or distance, by this date
- August 2020-December 2020 – Different Arizona public schools approach the school year differently, some offering only online options, others offering in-person options immediately, and others offering only online options until public health benchmarks indicate in-person learning is safe
- December 2020-January 2021 – Many AZ schools take an extended winter break/do not return for in-person learning immediately

# AREAS OF CONCERN



# COVID Outbreaks at Schools

- AZ Central tracked outbreaks resulting in school closures. First closure was a TUSD school on August 18, 2020 after two staff tested positive
- Since August 2020, there have been COVID-19 outbreaks in 168 schools just in Maricopa County
- Multiple Arizona school staff died of COVID-19, including a teacher in the Hayden Winkelman Unified School District in Gila County (June 2020, was infected along with two teachers with whom she shared a classroom); an IT worker in the Chandler Unified School District (October 2020); a coach in the Tolleson Union High School District (November 2020); a special education behavior technician in the Madison Elementary School District (December 2020); a teacher in the Apache Junction Unified School District (December 2020).



# Teacher Shortages/Strikes

- J.O. Combs Unified School District planned to open for in-person classes on August 17, 2020, but about 100 of the district's 600 employees called in sick, causing both in-person and virtual classes to be canceled.
- In Chandler Unified School District, 100 teachers called in sick on a Friday in December in protest of the district's decision to continue in-person classes despite rising community spread. Classes were able to continue, as the sick-out represented only a small fraction of the district's 2,000 educators.
- In the Peoria Unified School District, 30% of staff participated in a sick-out in January 2021, forcing 13 schools to close for the day.
- Just from August 2020 to September 2020, 750 AZ teachers resigned their positions. As of January 2021, 27% of teacher vacancies remain unfilled.



# Students Not Logging In

- Last spring, many families did not have access to the technology needed for online learning. By now, most schools have handed out devices and internet hotspots, but some families still struggle with connectivity and troubleshooting.
- Each school district was required to submit a “distance learning plan” to AZ Department of Education outlining how they will track attendance.
- Per an October 2020 AZ Republic article, an estimated 50,000 students left Arizona's public district and charter schools over the summer of 2020. That's 5% of all students in the state. Kindergarten enrollment is down by 14%. The number of families choosing to homeschool has increased, but not by that much, meaning it's possible some students simply are not going to school at all. Enrollment decreases have financial impacts for schools, which are funded based on attendance.



# On-Site Support

- Per Governor Ducey's Executive Orders, all public school districts and charters are required to offer on-site support services to students who need a safe place to go during the day to engage in distance learning.
- COVID outbreaks at on-site support sites
- Ill-equipped school employees staffing these sites, sending high-needs students home early
- Inconsistency in who is offered on-site support from district to district, school to school
- On-site support vs. in-person learning for FAPE

# **CONCERNS SPECIFIC TO STUDENTS WITH DISABILITIES**



# Problems with Virtual Format

- Is it even accessible? Interpretation, ability to physically navigate a computer, modified curriculum, etc.
- Provision of accommodations/supplementary aids and services? Scribes, paraprofessional services, behavior support, etc.
- Related services? Speech, OT, PT, nursing, etc.
- Attention/engagement
- Adult supervision



# Evaluations

- Timelines – school days vs. calendar days
- Reliability of virtual vs. in-person evaluations
- Lack of data collection re: schoolwork
- “All kids have regressed because of COVID” and the educational disadvantage argument



# Risks of In-Person Learning

- Many students with disabilities also have medical conditions that make them more vulnerable to acquiring and/or developing serious symptoms of COVID-19
- Students with some types of disabilities struggle with important risk-prevention behavior like mask wearing or social distancing
- Students being confused/overwhelmed with new rules at school, new staff, new schedules, new procedures



# Problems Faced by AZ Students with Disabilities During COVID

- Not able to access virtual instruction to get FAPE; can't safely attend school in-person
- Difficulty determining what challenges are disability-related vs. COVID-caused
- Inconsistent or non-existent data
- May be owed compensatory education, but time is of the essence and it will always be a fight

# COMPENSATORY EDUCATION



# Is Your Child Entitled To It?

- If your child has been denied a free appropriate public education (FAPE), your child is owed compensatory education
  - *Were services provided?*
  - *Were services tailored to your child's IEP goals and needs?*
  - *Were services provided effectively?*





# Who Decides?

- Parents and school
- Doesn't have to be an IEP meeting, but...
  - *Procedural safeguards*
  - *45-school day requirement (in guidance, AZ Department of Ed. has strongly recommended 30 school days for comp ed decisions)*
  - *All team members*



[Link to template letter requesting IEP meeting in chat box](#)



# How to Prepare for the Meeting

- Levels of performance before school closed (Q3 progress report)?
- Evidence of regression during closure/distance learning
  - *Video/audio recordings*
  - *Work samples*
  - *Anecdotes*
  - *Formal measurements*
- Calculate what wasn't provided
- Research possible programs/services



# Get Plan in Writing



- AZ Department of Ed has provided schools a template letter to use when making comp ed offer: [Link to ADE template letter in chat box](#)
- Schools could also use Prior Written Notice
- Separate from IEP
- Make sure delivery plan is included (especially important for students who will be changing schools, graduating, moving)
- CAUTION: Delivery during regular school day?



# After the Meeting

- Track provision of comp ed
- What if parents disagree with school decisions about comp ed?
- Have your child's ongoing needs changed?  
Reevaluation/changes to IEP needed?
- How will comp ed be provided if your child's school is not providing in-person services?



# Factors to Consider When Weighing Value of Compensatory Education Offer

- Scheduling
  - *Convenience | Transportation | Intensity | Time of Day*
- Effectiveness
  - *Group vs. One-on-One | Special Education Teacher vs. Other Personnel*
- Flexibility
  - *Changing needs | Upcoming change in schools or graduation*

[Link to ACDL Blog Posts on Compensatory Education in chat box](#)

# DISPUTE RESOLUTION



# Disagreements

- Independent Educational Evaluation
- Mediation
- State Complaint
- OCR Complaint
- Due Process





# Independent Educational Evaluation

(at public expense)

- “Evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”
- School district must either pay for IEE or file due process complaint
- One IEE per school evaluation, 2 year SOL
- Agency criteria—can be disputed
- District does not need to follow IEE, but must consider it





# Mediation

- Neutral third party facilitates communication
- Doesn't decide who is right/wrong
- Voluntary process
- ADE administers their mediation program
- Agreement is binding
- <http://www.azed.gov/disputeresolution/mediation/>



# State Complaint

- A way to notify the Arizona Department of Education (ADE) that a school is not complying with IDEA. Better for procedural violations, not substantive
- Any individual or organization may file a state administrative complaint—can't be anonymous
- Must be filed within 1 year of noncompliance
- <http://www.azed.gov/disputeresolution/state-admincomplaintsystem/>



# OCR Complaint

- Office for Civil Rights, US Department of Education
- Investigates violations of Section 504 and the ADA
- Complaint must allege discrimination based on disability
- 180 day SOL
- Facilitated Resolution Between Parties (mediation)
- <https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>



# Due Process Complaint

- An administrative hearing that is held before an impartial hearing officer/administrative law judge
- Each side has an opportunity to present evidence, witnesses, etc.
- Must be filed within 2 years of disputed action
- Can appeal to state or federal court
- <http://www.azed.gov/disputeresolution/due-process-hearing/>

# SCHOOL DISCIPLINE



# My child is facing discipline—now what?



- If your child has a disability, he or she has some procedural protections when it comes to school discipline
- What those protections are depends on whether your child 1) has an IEP, 2) has a 504 plan, or 3) has neither an IEP nor a 504 plan, but likely has a qualifying disability



# Protections for Students with IEPs

- A student with an IEP **can be** short-term suspended without any additional process, just like any other student
  - *Short-term suspension means a removal from school for ten or fewer school days*
  
- A student with an IEP **cannot be** long-term suspended or expelled without triggering additional processes required by IDEA
  - *Long-term suspension means a removal from school for eleven or more school days*
  - *Expulsion means a removal from school for the remainder of the school year or longer in accordance with local educational agency policy*



# Manifestation Determination

- If a school proposes to long-term suspend or expel a student with an IEP, the school must hold a **manifestation determination review** within 10 school days of the decision to remove the child from school.
- The manifestation determination review is a meeting of the child's IEP team members, at which the team must answer two questions:
  1. *Is the student's behavior caused by or does it have a direct and substantial relationship to the student's disability?*
  2. *Was the student's behavior a direct result of the school's failure to implement the student's IEP?*



# Behavior WAS a manifestation

- If the team determines the behavior was a “manifestation” of the student’s disability, then the student must be returned to his/her original placement.
- If a behavior is a manifestation of a child’s disability, the IEP team must determine whether the IEP is ineffective as written or if the IEP is not being implemented appropriately.
- The team must address these shortcomings. This often means a conducting a new Functional Behavior Assessment and writing and implementing a new Behavior Intervention Plan.



## Behavior WAS NOT a manifestation

- If the team determines the behavior was not a manifestation of a disability, the discipline can proceed as it would with any other student
- Discipline cannot be more severe for students with disabilities than it is for a non-disabled student who behaves the same way—that would be discriminatory and illegal
- **Students with IEPs are entitled to continue to receive the services in their IEP during the disciplinary removal in an interim alternative educational setting (homebound, alternative school, etc.)**



# Additional Procedural Safeguards

- Prior written notice is required with a significant disciplinary change in placement
- On the date on which the decision is made to make a removal that constitutes a disciplinary change of placement, the Local Education Agency (LEA) must notify the parents of that decision and provide the parents with the procedural safeguards notice
- If the team determines a behavior was not a manifestation and continues with discipline, or if a school determines the student's behavior constitutes one of the exceptions and a manifestation determination is not required prior to a disciplinary removal, parents have the right to an expedited due process hearing to challenge that finding



# Consecutive vs. Cumulative

- If a child has an IEP and the school proposes to remove him/her from his/her educational placement for more than 10 days (long-term suspension or expulsion), a manifestation determination review should be automatic
- Sometimes, a child with an IEP will engage in a behavior repeatedly, resulting in multiple short-term suspensions (2 days in October, 3 days in November, 2 days in December, 5 days in January, etc.)
- If these short-term suspensions amount to more than 10 cumulative days in a single school year and constitute a pattern of removal, this may be considered a change in placement and may trigger the need for an manifestation determination



# Exceptions to Discipline Protections



- Some types of behavior are not protected, even if the behavior is a manifestation of a student's disability
- If a student's behavior involves weapons, drugs, or serious bodily injury to another person, then the rule prohibiting expulsion or suspension of longer than 10 days does not apply.
- Instead, the student may be removed to an interim alternative educational setting for not more than 45 school days



# Protections for Students with 504 Plans

- Same as those described above, EXCEPT:
  - If it is determined that the student's behavior was not a manifestation of his/her disability, he/she may be disciplined in the same manner and for the same duration as students without disabilities, and he/she is not entitled to receive any services in an interim alternative educational setting.



# Protections for Students Who Do Not Yet Have an IEP or 504 Plan

- A child who does not have an IEP or 504 plan but has violated a student code of conduct may assert the same protections provided to children with IEPs/504 plans if the school had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.





# When does a school “have knowledge” that a child is a child with a disability?

Under IDEA, the school had knowledge if, before the behavior occurred:

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child...or
- (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.



# What if the school did not “have knowledge”?

- If the school did not have knowledge that the child was a child with a disability before the behavior occurred, the child can be suspended or expelled without services
- However, an evaluation for special education services can be requested during the time the child is subjected to these disciplinary measures
  - *The evaluation must be conducted in an expedited manner*
  - *Until the evaluation is completed, the child remains in the educational placement determined by school authorities—which can include suspension or expulsion without educational services*



# School refuses to conduct MDR? File a State Complaint

- A State Complaint is a way to notify the Arizona Department of Education (ADE) that a school is not complying with IDEA. Better for procedural violations, not substantive
- Any individual or organization may file a state administrative complaint—can't be anonymous
- Must be filed within 1 year of noncompliance
- <http://www.azed.gov/disputeresolution/state-admincomplaintsystem/>

# **DISCIPLINE DURING VIRTUAL LEARNING**



# Discipline During Virtual Learning

- What the student is wearing
- Background noise/disruption
- Objects seen in the background (e.g., weapons)
- Cyberbullying
- Refusal to turn on microphone or video
- Failure to log in/10-day drop





# Solutions

- Constant communication with teacher/school; loop in director of special education
- IEP meeting if needed to add new supports/services/accommodations
- Ask to see copy of current student code of conduct or evidence of new rules during virtual learning
- Document educational time that your child misses due to discipline
- Request help with technology, put everything in writing
- Assert manifestation determination right if needed



# Discipline When Students Return to Classroom

- New rules related to COVID

- *Masks/social distancing*

- *Bullying/stigma*

- *On-site opportunities vs. in-person classroom learning*

- Choice between in-person and virtual being taken away?

- Trauma and impact on behavior





# Solutions

- IEP meeting if needed to add new supports/services/accommodations; IEP or informal meeting to discuss transition back to classroom
- Request FBA regarding new problem behavior (e.g., refusing to wear a mask)
- Consider whether it is in your child's best interest to stick with virtual learning for the time being
- Dispute resolution through ADE
- File a complaint with the Office for Civil Rights



# Know a child in need of legal help with special education?

**Call the Arizona Center for Disability Law**

Phone: (602) 274-6287

Website: [www.azdisabilitylaw.org](http://www.azdisabilitylaw.org)

Our intake lines are open on  
**Monday, Tuesday, Thursday and Friday**  
from **9 AM to 1 PM.**