



New Mexico School Boards Association

POLICY SERVICE ALERT

To: Superintendents and Board Members
Date: March 1, 2022
From: John F. Kennedy, Policy Service Director
Re: USDE Office of Civil Rights Fact Sheet

On February 17, 2022, the U.S. Department of Education's Office for Civil Rights (OCR) released [*Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504*](#), a four page fact sheet reminding schools of their obligations under Section 504 to ensure free appropriate public education (FAPE) for students with disabilities, including schools' responsibilities to provide compensatory services for services missed while schools grappled with the challenges of the last couple of school years caused by the pandemic.

In the new fact sheet, OCR reminds schools that even with the unique challenges presented by the COVID-19 pandemic, students with disabilities retain their right to FAPE under Section 504. If a student with a disability did not receive appropriate evaluations or services, then schools must determine whether, and to what extent, compensatory services are required. The fact sheet includes factors to consider when determining the appropriate type and amount of compensatory services and makes clear that providing compensatory services to a student does not draw into question a school's good faith efforts during these difficult circumstances. It is a remedy that recognizes the reality that students experience injury when they do not receive appropriate and timely initial evaluations, re-evaluations, or services, regardless of the reason.

OCR's fact sheet builds on its regulatory and enforcement efforts to protect students' civil rights, and in responding to COVID-19, consistent with President Biden's Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers.

A number of school districts in New Mexico have been the target of OCR investigations over the last couple of decades, which have resulted in findings of non-compliance, and extended OCR oversight for a period of years. These investigations typically result from a parent complaint that the parent's child has not received the services required by a Section 504 plan (developed when the student is not eligible, or does not qualify for special education services under the IDEA, but still requires certain classroom or school-based modifications or accommodations, warranted because of the student's disability.)

Policy Services encourages members to review Sections I-2350 through I-2431 of the model policy manual. These provisions contain the policies, regulations and exhibits which specify the requirements of the special instructional programs designed to appropriately serve the needs of students under Section 504.

Policy Services also urges members to assess the degree of student need which may have gone unmet during the pandemic, and to actively seek to address it through compensatory services efforts, in order to avoid a federal complaint and investigation.