



# Identifying and Overcoming Special Education Issues in a Virtual Setting

Presented by

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# Growth and Benefits of Virtual Programs

- The data that exists, is indicative of significant increase in enrollment in virtual programs.
- Data on level of participation of students with disabilities remains unclear
- **Potential benefits:**
  - Self-pacing
  - Greater student control of learning
  - Lack of peer distractions/conflicts
  - Option for students with health issues
  - Allows for instruction in remote rural areas

# Growth and Benefits of Virtual Programs

- **Potential benefits:**

Highly differentiated instruction

On-going feedback on progress

Flexible scheduling of work

Multimodal presentation of content

Possible cost savings (?)



# Challenges to Special Education in Virtual Programs

- A number of challenges, some more complex than others
- *Major problem*—the present IDEA legal framework is based on group instruction in brick-and-mortar public schools
- Another is that the inherent nature of virtual programs is such that they will not be able to meet the needs of some students with disabilities

# Types of Programs

- **Virtual/Online**—Asynchronous, requires student initiative, communication with teacher only by email/phone
- **Remote**—Likely synchronous, teacher provides instruction in classroom, remote students participate by camera/mic
- **Live Online**—ZOOM-based instruction, peers appear on platform from their homes, assignments turned in electronically

# Equity and Access Issues

- Non-discrimination mandate under §504 means that virtual programs cannot *categorically or arbitrarily* deny or exclude students with disabilities.
- A key issue will be virtual programs' admission or screening policies, which must be designed to avoid arbitrary discrimination.



- **Quillayute Valley (WA) SD, I 08 LRP  
I 7959 (OCR 2007)**

Contract virtual program that is part of a Washington district

Written criteria precluded modified curriculum, counseling, aide support, more than 40 mins/wk of sped services, some tech devices

Unwritten criteria did not allow admission if reading/writing ability below 6<sup>th</sup> grade or if student lacked ability to work independently

- **Quillayute Valley (WA) SD, I 08 LRP 17959 (OCR 2007)**

OCR found admission criteria discriminatory and not “reasonably necessary to achieve the mission and goals of the education program.”

Criteria that are applied only to students with disabilities are likely to be seen as discriminatory

**Note**—But, there are ways of incorporating some of the programs’ valid concerns in ways that do not violate §504 (more later...)



# Open Enrollment Virtual Programs

- **Model exacerbates problem of lack of fit of VP for certain students**

States must decide which LEA has the FAPE responsibility (*Dear Colleague Letter* (OSERS/OSEP 2016))—Likely, the open enrollment VP, if it is its own LEA

*Dilemma*—Open enrollment VPs may get students impossible to serve virtually, and expose VP to liability

# Open Enrollment Virtual Programs

- ***Commonwealth Connections Academy Charter Sch. (SEA Pennsylvania 2016)***

8<sup>th</sup>-grader with ADHD (OHI) transferred from regular district to the VP charter

Prior school's IEP had direct sp ed instruction in social skills, organizational skills, and math

VP provided software programs, live lectures, recordings of lectures



- ***Commonwealth Connections Academy Charter Sch. (SEA Pennsylvania 2016)***

VP also provided “virtual support” from a “learning support teacher”

Student did not take advantage of help, and started falling behind and failing

VP put him in “supplemental support program” but without IEP meeting

Then, parent rejected additional 1:1 support in the home



- ***Commonwealth Connections Academy Charter Sch. (SEA Pennsylvania 2016)***

HO found school failed to provide services comparable to prior IEP

HO—“Soon after enrolling it became apparent, the Student's attention and organizational deficits would interfere with online learning.”

Also, procedural violations

HO awarded 1000 hrs of comp ed



- ***Cincinnati Learning Sch. (SEA OH 2016)***

Teenager enrolled in online charter that offered resource room to supplement VP

IEP did not state an amount of resource time, and student often did not attend

Lots of missing work, logging in inconsistently

SEA found violation, as IEP did not state specific amount of services or face-to-face classes, leaving it up to the student



- ***Cincinnati Learning Sch. (SEA OH 2016)***

Despite escalating problems, school did not hold an IEP meeting

**Note**—If the VP places a high degree of responsibility on the student as a matter of policy, is that contrary to the IDEA?

But, in open enrollment situations, there are no criteria for admission

And, services must be stated on IEP (could be “minimum of...”)



- ***In re: Student with a Disability (SEA Pennsylvania 2016)***

Student with SLDs and ED enrolled in VP

But, student had a history of school avoidance, so he started not participating, and failed many classes

HO found denial of FAPE—VP did not reevaluate situation or amend IEP

“Charter continued to apply its online model to Student, a model which relies upon the child to access instruction.”



- **Open Enrollment VP Problems:**

Truant students enrolled by parents as an alternative to attendance

Students with off-task tendencies, low capacity for independent work, low motivation, school resistant

Parents not willing/able to function as learning coaches

Students that need significant hands-on instruction





# Compliance with Legal Norms in Virtual Context

- Virtual programs must assume all IDEA and §504 requirements apply to them (e.g., IEP progress reports under IDEA)
- But, those laws envision group instruction in brick-and-mortar schools.
- Some emerging cases show how the legal requirements might apply:



- ***Dear Colleague Letter (OSERS/OSEP 2016)***

“The educational rights and protections afforded to children with disabilities and their parents under IDEA must not be diminished or compromised when children with disabilities attend virtual schools that are constituted as LEAs or are public schools of an LEA.”

**Child-find** applies in VPs, although it presents “unique challenges” in VP context



- ***Virtual Community Sch. of Ohio, 62 IDELR 124 (OCR 2013)***

Fully virtual program not affiliated with a public school district

§504 plans developed informally by a §504 Coordinator after discussion with parent, sometimes after talking with prior school, but without §504 evaluation/meeting

Parents at times were asked to go to doctors to substantiate their children's disabilities



- ***Virtual Community Sch. of Ohio, 62 IDELR 124 (OCR 2013)***

No child-find process, no reevaluations, spotty notice of parent rights

§504 plans not examined “even though many plans would not have previously provided for placement of the student in an on-line educational environment.”

**Note**—OCR understands that IEPs and §504 plans will have to be adapted to “fit” into an online education setting



- ***Virtual Community Sch. of Ohio, 62 IDELR 124 (OCR 2013)***

**Discussion**—School website stated it was an “ideal scenario” for students with disabilities, including “students removed from school due to disciplinary reasons”

Might this be oversell? Can VPs be appropriate for any student?...

Any VP must have §504 policies/procedures

- ***Eley v District of Columbia*, 63 IDELR 165 (D.D.C. 2014)**

Application of stay-put—School argued move to regular school from a VP was not a change in placement, as IEP not changed

**Court**—“Clearly, shifting from what is essentially a completely individualized instructional setting separate from other students to a more traditional school setting does constitute a change in the plaintiff’s ‘then-current educational placement.’”

**Question**—Does this analysis apply in the COVID pandemic situation, where all students had to go home to receive services?...



- ***Tacoma Sch. Dist. (SEA WA 2016)***

District expelled high-schooler with ADHD and ODD, due to risk of violence

After emergency expulsion term, school moved student to its VP (no IEP meeting)

But, student produced little work and was mostly off-task

HO—VP inappropriate for student's unique needs, and provided no social interaction

- ***Wayne-Westland Comm. Schs.*, 64 IDELR 176 (E.D.Mich. 2014)**

Court grants injunction removing large, aggressive student from school, and placing him in a VP

**Note**—Court does not comment on how the VP would be appropriate for a highly non-compliant student...



# Least Restrictive Environment (LRE)

- LRE speaks to students' being educated alongside nondisabled peers—clearly based on group instruction in brick-and-mortar schools and physical exposure to peers
- LRE regulations require placement in campuses where the student would attend were they nondisabled, unless IEP requires another arrangement (in which case, they require placement in the school next closest to the home)—34 CFR 300.116

# Least Restrictive Environment (LRE)

- So how does LRE work in virtual settings? Some cases have applied the mandate traditionally:

- ***S.P. v. Fairview Sch. Dist.*, 64 IDELR 99 (W.D.Pa. 2014)**

Student with severe migraines alleged VP was inappropriate, denied him FAPE

School had made numerous attempts to accommodate his condition, absences, tardies

- ***S.P. v. Fairview Sch. Dist.*, 64 IDELR 99 (W.D.Pa. 2014)**

He had previously been provided a hybrid VP with some school attendance, but he neither attended school, nor worked well on the VP

School finally fashioned a fully VP, fashioned on the VP parents preferred, but parents lost faith in the program after student did not perform

Expert for parents raised LRE, arguing VP was a highly restrictive placement

- ***S.P. v. Fairview Sch. Dist.*, 64 IDELR 99 (W.D.Pa. 2014)**

Expert argued VP did not allow learning of behavior and social interaction with peers

**Court**—Student’s condition made him incapable of attending program other than VP

It applied traditional LRE analysis, finding that school had made “extraordinary” efforts to accommodate student prior to determining “the most restrictive option” was needed

- ***Hernandez v. Grisham*, 78 IDELR 12 (D.N.M. 2020)**

Parents of IDEA students brought claim challenging state rule limiting in-person instruction in districts with high COVID numbers

Rule did not violate due process, as it was necessary to protect public's health and safety

Court noted that “there is no general right to an in-person education under the Constitution.”



- ***Hernandez v. Grisham*, 78 IDELR 12 (D.N.M. 2020)**

Responding to the claim that at-home instruction violated LRE, the Court held that since *all* students are educated at home, that becomes the mainstream setting for purposes of the LRE analysis.

*Note*—The court takes the unusual position that COVID closures change what the regular setting is. But is not LRE ultimately about the degree to which a student with a disability is exposed to nondisabled peers?



- ***Does traditional LRE analysis really apply in the virtual context?***

Does it matter that most programs are choice-based programs? Does the parent waive LRE if they choose the private school?...

Or, must IEP teams limit admissions to VPs only to students who require the most restrictive environment in light of their needs?...This “traditional” application would minimize the VP option for students with disabilities

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- ***Does traditional LRE analysis really apply in the virtual context?***

Or, does the virtual environment allow for *virtual* interaction with peers? Virtual LRE?

***A continuum of virtual placements*** exists, where some VPs allow for interaction with peers, others have some, others have none


Is the law saying that virtual interaction is not as valuable as physical interaction? It really has not addressed the issue...



# Appropriateness Disputes Involving VPs

- As VPs enter the arena of placements, they will also enter the world of FAPE litigation, which may focus on some of the unique aspects of VPs
- ***Benson Unified Sch. Dist.*, 56 IDELR 244 (SEA Arizona 2011)**

Parents of a student with multiple chemical sensitivities disputed the District's proposal to change her from homebound services to VP



- ***Benson Unified Sch. Dist.*, 56 IDELR 244 (SEA Arizona 2011)**

School argued the VP offered a superior curriculum; parent argued the VP offered too little one-to-one instruction, that neither parent was able to serve as “learning coach,” and that student would be exposed to print chemicals

- ***Benson Unified Sch. Dist., 56 IDELR 244 (SEA Arizona 2011)***

Student's treating psychologist testified she lacked the ability to "self-motivate"

**HO found for school**—HB teacher indicated student was responsible and requiring more independent work would be beneficial

And, program would be print-free and a paraprofessional could serve the function of "learning coach" (implications?...)


- ***School Dist. of Pittsburgh v. C.M.C. (W.D.Pa. 2016)***

Teen with Asperger's and anxiety had fear of school after an altercation

District proposed a mostly VP

Court found student was not a good candidate for a VP, as she was obsessed with computers and the internet

And, the VP offered no social interaction



- ***Virtual Community Sch. of Ohio, 43 IDELR 239 (SEA Ohio 2005)***

Parents of a low-functioning child with Down's alleged that a VP failed to provide an appropriate IEP or confer a FAPE, and sought reimbursement for private placement

Parents had sought out VP after disputes with a regular school

VP required parents to play significant role



- ***Virtual Community Sch. of Ohio, 43 IDELR 239 (SEA Ohio 2005)***

After a time, VP team felt that student required more intensive instruction and hands-on assistance, and sought a change in placement to another regular school

Then, parents argued lack of staff training, inappropriate IEP, failure to provide and maintain technology

Parent stopped participating, student stopped completing any of the VP work



- ***Virtual Community Sch. of Ohio, 43 IDELR 239 (SEA Ohio 2005)***

**HO found for VP—**“When parents elect to enroll their children in a virtual school they assume the responsibility of their new role as education facilitator and eyes and ears for the teacher.”

HO found all tech issues were promptly addressed, and denied reimbursement (equitable grounds?...)

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- ***Virtual Community Sch. of Ohio, 43 IDELR 239 (SEA Ohio 2005)***

**Discussion Point**—What should a school do if a parent opts for at-home instruction, but despite best efforts, it's just not working for the student?



- ***DOE State of Hawaii, 112 LRP 31884 (SEA Hawaii 2012)***

Student with cognitive, hearing, health impairments, and behavior problems was placed in a District-operated charter school that offered a hybrid VP and bricks-and-mortar program (main portion of instruction took place online)

Parents serve as “learning coaches,” but get training and assistance in that function

Quickly, problems developed in both parts of program



- ***DOE State of Hawaii, 112 LRP 31884***  
**(SEA Hawaii 2012)**

Student did almost no VP work, and was frequently absent or tardy to school portion

Program made various attempts to provide additional assistance and services to both parent and student, with little results


Team concluded student needed the structure and face-to-face services of a regular campus program and proposed a change in placement

- **DOE State of Hawaii, 112 LRP 31884 (SEA Hawaii 2012)**

**HO found for school**—Student needed highly structured and consistent program, and his behaviors “posed too great of a challenge for the parent as a ‘learning coach.’”

HO held student required a structured placement on a regular campus

**Note**—A potentially typical VP dispute scenario, after a difficult student is initially accepted, but then problems develop...

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- ***DOE State of Hawaii, 112 LRP 31884 (SEA Hawaii 2012)***

**Discussion Question**—Disputes over proposed placements in a VP or proposed changes in placement *out* of a VP—which will be more common?...

# Degree of Individualization

- VPs must be prepared to offer a high degree of individualization to students, based on their IEPs and evaluation data
- Changes to the IEPs must be made to reflect the accommodations, services, aids, and supports that the student will need to work in the VP
- Lack of proper individualization may lead to FAPE disputes, **and** equity-based challenges
- A word on amounts of online instruction vs. amounts on prior IEPs

# The Fit of the Current Legal Framework

- The current legal framework envisions brick-and-mortar schools and group learning
- Legislation tends to lag behind innovation, and plays catch-up, after period of confusion
- Next IDEA reauthorization must address VPs (LRE application, LRE in parent choice placements in VPs, higher expectations on parents, factors relevant in making determinations of appropriateness for VPs, among others)

# Related Services in VPs

- Services necessary for student to benefit from their special education (34 CFR 300.34)
- Some services will “come with the territory” of VPs—parent training, technology training, tech setup, tech monitoring, consultation with parents
- Some may be provided virtually or by videoconferencing—Speech therapy, counseling

# Related Services

- Could admission criteria include requirement that student not need any hands-on related services? Unlikely



# Behavior, Social, or Motivational Issues

- VPs give students greater flexibility and control over their learning experience, but also place greater responsibility on students
- Thus, VPs may not be appropriate for younger students or other students who are dependent learners and have difficulties assuming the responsibilities of VPs.
- This factor plays into admission decisions (and later disputes)

# Behavior, Social, or Motivational Issues

- VPs may have to include tech safeguards to address off-task behavior, work completion
- VPs must plan for interventions that make sense in a virtual context, such as increased monitoring of students, increased contacts with parents, training of parents on tech and supervisory role
- **Social skills issues**—Most challenging to address in VPs, may signal need for non-VP



# Factors Relevant to Appropriateness of Virtual Program

- Attendance problems or school avoidance
- Ability to remain on task with minimum prompts
- Social skills deficits requiring live interaction with other students
- Need for significant hands-on instruction
- Need for life-skills instruction
- Ability to work independently
- Previous performance in virtual programs



# Factors Relevant to Appropriateness of Virtual Program

- Ability and willingness of parents to play expected role
- Need for alternate schedule
- Compliance problems
- Emotional problems
- Academic ability
- Ability to work with technology (with training and support)

# Potential Cons of Online Programs

- If student is not motivated to participate, teacher has limited options to keep student on-task
- Parent involvement needed to ensure student logs into system
- Online programs may be less reinforcing than live attendance, creating off-task behaviors
- Limited options to deal with students that resist online instruction
- Limited BIP options
- Limited social interaction with peers

# Potential Cons of Online Programs

- May not be a good option for all types of students (those that need hand-over-hand, have limited response, significant cognitive impairments)



# Addressing the Increased Role of Parents

- Parents in many VPs assume new roles as monitors and facilitators of their child's educational programs when they agree to participate in the online program (*Virtual Comm. Sch. of Ohio* (OCR 2005)).
- Ability and willingness of parents to play this role, with assistance, is a factor in whether the VP will be appropriate for the student



# Addressing the Increased Role of Parents

- Role must be clear in **written policies**
- **Needs Assessments** can help identify whether parents, with training, can master the tech and monitoring roles
- If parents are failing in their roles, IEP team should meet, and propose more supports
- If even with more support, parents cannot perform minimum role, VP may not be proper



# VP Written Policy Ideas (See Materials)

- **Mission and Goals** provision (see OCR decisions)
- **Equity and Access Statement**
- Provision on **IEPs and 504 Plans**, and need to determine whether VP is appropriate for student, reevaluations of appropriateness
- **Factors relevant to appropriateness**
- **Related services**
- **Parent Roles and Needs Assessments**
- **Accessibility**
- **Equipment**

# First OSEP COVID Guidance (March 12, 2020)

- **What quality of services must be provided during closure?**

Schools “must ensure that, *to the greatest extent possible*, each student with a disability can be provided special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504.” (Question A-1).

# Issues in COVID Comp Services

- **Deciding the COVID comp questions will require addressing complicating factors**

One complicating factor will be parents who have failed to take advantage of online services, and whether that should weigh against providing compensatory services

Federal courts have addressed this factor in various comp services cases over the years



- **Deciding the COVID comp questions will require addressing some complicating factors**

On situations where parents are not responding to communications to initiate or continue with at-home educational services:

Generally, state agency guidance will advise documenting communications and responses between staff and parents, and trying multiple communication channels (email, phone, text, letters)



- **Deciding the COVID comp questions will require addressing complicating factors**

Generally, states also advise documenting how the school attempted to address any barriers or obstacles to at-home services (e.g., tech tutorials, tips on motivating the student, setting up structure)

But, does the obligation to offer FAPE mean students and parents that have simply refused virtual services during COVID closures are entitled to full COVID comp?... Federal courts have generally taken parent/student refusal into consideration in determining comp awards



- **Another complicating factor...**

Some students with behavioral issues, severe AU, severe ID, social skills deficits, or multiple disabilities might not be good candidates for online learning inherently. Should they be penalized for not participating?...

These students might prove to be the ones that benefit least from online-based instruction, and who may need most

Generally, online instruction demands high degree of on-task attention, independent work, self-motivation, some tech ability, self-redirection, self-structure

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- ***Crucial Initial Question*—Can the student realistically be provided a FAPE with virtual/remote services?**

If the data indicates the student cannot realistically receive a FAPE remotely, the IEP team should indicate so, and consider offering a live instructional program as the offer of FAPE

If State allows parents to choose remote learning anyway, develop a remote program, with the caveat that it may not yield appropriate progress

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student realistically be provided the necessary IEP services?**

Team must try to duplicate the special education services in a virtual format

As we'll see in the cases, hearing officers and courts tend to want to see the same amounts of time and frequency of services as in the live IEP

Think of options for providing inclusion assistance virtually



# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student realistically be provided the necessary IEP services?**

Remember that a viable remote learning option is coming into the actual live classroom, with 2-way audio and video capabilities

*Note*—This option addresses concerns over equality of instructional times, full school day, and is probably preferable from a social standpoint

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student realistically be provided the necessary IEP services?**

The amount of virtual sped instruction provided must be sufficient to afford appropriate progress (i.e., meet IEP goals), as with the live services

*Note*—IEP teams must realize that some students may require more sped instruction in the virtual setting due to the difference in instructional model

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student be provided the necessary related services?**

Most related services can be provided on a teletherapy basis (speech, OT, PT, counseling, etc)

Amounts and frequency should be the same

*Note*—Teletherapy may require providers to obtain an additional parental consent to teletherapy...

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student be provided the necessary related services?**

For some students, some parent training may be necessary as a related service for the virtual program

Parents may need training on accessing the technology, logging on, strategies to keep student on task and motivated, maintaining a private quiet learning space at home

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student be provided the necessary accommodations?**

The IEP team must review the accommodations normally provided in the classroom and see if they are applicable in the virtual setting

Some accommodations may need to be redesigned to "fit" or make sense in the virtual setting (e.g., "make notes from peers available" may change to "copy of teacher notes," "reteach difficult concepts" may change to "point to helpful online resources")

# Ideas for IEP Teams Dealing with Students Opting for Remote Learning

- **Can the student be provided the necessary behavioral interventions?**

Behavioral interventions must be considered if the student exhibits behavior that impedes their learning or that of others. See 34 CFR 300.324(a)(2)(i).

Some students may engage in different behaviors in the virtual setting than in the classroom, and the BIP must so reflect

# Discipline in Virtual Setting

- **Initial Question**—Do the IDEA discipline rules apply equally to at-home misbehavior during online/virtual instruction?

I.e., is there any waiver of the IDEA discipline rules during COVID?

# Discipline in Virtual Setting

The recent Congressional stimulus bill (CARES Act) included a provision requiring Secretary DeVos to report to Congress about any need for waivers or flexibility in implementing IDEA

In her report, DeVos said no waivers were necessary with respect to FAPE or LRE, and that schools could provide access to FAPE with various at-home services.

*Note*—This would seem to indicate that the discipline regulations, which are related to FAPE, are fully applicable during COVID



# Discipline in Virtual Setting

- **What is a “removal” in the virtual context?**

Likely, a removal or exclusion from virtual or online services

Thus, 3 days of exclusion from virtual services should be interpreted as equal to 3 days of at-home suspension

And, the limit of 10 “safe” removal days per school year would also apply

# Discipline in Virtual Setting

- **What is a “removal” in the virtual context?**

But, this form of suspension would be available for behavior that creates a serious disruption to the online educational environment

*Note*—Schools may want to consider additional Code of Conduct provisions applicable in the unique context of the online/distance learning environment.

# Discipline in Virtual Setting

- **What is a “disciplinary change of placement” in the virtual context?**

Likely, a removal or exclusion from virtual or online services of more than 10 consecutive school days

Or, a series of short-term removals that are more than 10 days total and create a “pattern” (due to total amount, proximity of removals to one another, size of each removal, and similarity of underlying behaviors).

# Discipline in Virtual Setting

- **What is a “disciplinary change of placement” in the virtual context?**

Disciplinary changes in placement would require prior MDR IEP meeting and finding of “no-link”

# Discipline in Virtual Setting

- **What if a student starts displaying inappropriate behavior in the virtual context for the first time?**

Recurring misbehavior would give rise for the need to conduct an FBA and develop a behavior plan for virtual setting

And, for some students, the continued virtual setting can generate new stresses and behaviors

# Discipline in Virtual Setting

- **How to go about developing behavior interventions for virtual setting?**

A different format for behavioral intervention...

Positive reinforcers can be applied virtually

Referrals to campus administrators can happen virtually

# Discipline in Virtual Setting

- **How to go about developing behavior interventions for virtual setting?**

Consequences might be more difficult to apply (could be loss of privileges, if possible), private discussion, silencing of microphone, demerits that can lead to grade reductions or loss of privileges, emails to parents)

# Discipline in Virtual Setting

- **Does the Code of Conduct apply equally at home?**

Perhaps not—Some behaviors, such as possession of inappropriate items that appear in the background of the screen, should not be viewed as if the student possessed the item at school

E.g., media case of student whose BB gun was in the background in his room during an online lesson



# Discipline in Virtual Setting

- **Does the Code of Conduct apply equally at home?**

If online programming will continue, or parents have the option of home programming, school boards will want to consider adding “virtual” behaviors to the Code of Conduct

Misuse of platform, sharing of inappropriate material on platform, leaving the screen during instruction, disrupting instruction electronically, virtual dress expectations, etc...

# Discipline in Virtual Setting

## • What about parental behavior during virtual instruction?

School should set forth commonsense ground rules:

Private area for instruction, avoiding interruptions, assisting with timeliness of login, refraining from having family members viewing, not communicating with teachers during lessons (set up virtual teacher-parent conferences instead), assisting in ensuring proper student behavior and participation during lessons

# Discipline in Virtual Setting

## • **What about serious misbehavior?**

Since student is already in an interim alternative setting and cannot attend a live IAES, such a removal may have to wait until school reopens to live instruction

Or, schools could create a virtual disciplinary alternative program (placements of >10 consecutive school days would require MDR)

# COVID-Related Cases

- The cases provide lessons on what was and is expected legally during COVID virtual learning to comply with IDEA

They also show us how COVID comp services will work, in terms of calculation

Also, how procedural requirements were expected to work

*Open question*—whether the situations will be analyzed differently for parents that insist on virtual learning even if the school has opened...



- ***Thoughts on Emerging COVID Cases***

HOs seem to demand that schools provide the same frequency/amount of IEP services during online periods

Schools have to demonstrate their efforts to get resistant students to participate, including contacts with parents, IEPT meetings

IEPT must be willing to adjust services to address struggling students during online periods



- ***Thoughts on Emerging COVID Cases***

Schools should inform parents that it will address potential need for comp services when school and student returns to face-to-face instruction

Prepare a protocol for considering COVID-related comp services (data points, process, IEPT meeting)

# Challenges to Services During COVID Closures

- ***L.V. v. New York City Dept. of Educ., 77 IDELR 13 (S.D.N.Y. 2020)***

A September 2019 pendency order required the school provide a 5-year-old with in-person ABA, OT, PT and a dedicated aide.

School provided student a tablet device, which the student could not sit long enough to use, and computer-based services (but home did not have reliable wifi)

# Challenges to Services During COVID Closure

- ***L.V. v. New York City Dept. of Educ., 77 IDELR 13 (S.D.N.Y. 2020)***

”[The district] has not adequately explained how its computer-based services are a satisfactory substitute for [the child] during the COVID-19 pandemic, nor conducted an evaluation of how remote services can be delivered to [the child] to meet his individual needs.”

Court held there was a failure to take student’s unique circumstances into account in offering services (which were what was offered thousands of students).





- ***L.V. v. New York City Dept. of Educ., 77 IDELR 13 (S.D.N.Y. 2020)***

So court orders in-person services “to the extent that they can be performed safely in light of the current COVID-19 pandemic, in compliance with guidance from health authorities.”

Court also orders an AT IEE, in case certain services cannot be provided in-person

*Note*—How does one conduct an AT evaluation if in-person assessments and observations are not feasible safely?...

- ***L.V. v. New York City Dept. of Educ., 77 IDELR 13 (S.D.N.Y. 2020)***

Moreover, parent gets to pick private providers willing to provide in-person services at District expense (in case District staff are not willing).

Court also orders an AT IEE, in case certain services cannot be provided in-person

Court declines to create a fund for parents to use for private services



- ***District of Columbia Pub. Schs., 78 IDELR 26 (SEA DC 2020)***

Student with OHI missed some OT and specialized instruction during COVID closure

HO found school made services available, but student could not access a computer or hot spot

Parent could show no authority indicating school had an obligation to provide the student with a laptop or wifi hotspot during the pandemic



- ***District of Columbia Pub. Schs., 78 IDELR 26 (SEA DC 2020)***

Moreover, missing OT services were consultative only

*Note*—Although many school districts decided to provide laptops to students that had no access to one, HOs have not ruled that LEAs had a legal obligation to provide them. See also, *District of Columbia Pub. Schs., 77 IDELR 82 (SEA DC 2020)*(no authority for HO to order laptop be furnished to student)

AT devices under the IDEA are those that “increase, maintain, or improve the functional capabilities of a child.” 34 C.F.R. §300.5.

- ***Lenape Reg. High Sch. Bd. of Educ., 77 IDELR 268 (SEA NJ 2020)***

Parent that chose home instruction due to COVID requested that LEA provide one-to-one nurse, as required by the IEP at school.

18-year-old student had diabetes and seizure disorder, was provided a 1:1 nurse at school to monitor seizures and glucose levels.

HO noted that IEP required 1:1 nurse not to access learning, but to maintain health and safety



- ***Lenape Reg. High Sch. Bd. of Educ., 77 IDELR 268 (SEA NJ 2020)***


*Note*—Of course, the nurse was required in the IEP only while the student was at school. The decision does not explain why the parent would not have been able to access public assistance or insurance coverage for health services in the home.



- ***Lenape Reg. High Sch. Bd. of Educ., 77 IDELR 268 (SEA NJ 2020)***

And, parent indicated that she wanted the nurse so she could sleep during the day, so she could take care of medical needs at night

HO found that parent was not entitled to an emergency order, as risk of harm to student was speculative




- **Brookings Sch. Dist., 120 LRP 24079 (SEA South Dakota 2020)**

Parent of IDEA high-schooler filed a state complaint alleging that the school unilaterally changed student's placement to at-home services when schools closed due to COVID.

Also alleged that the school failed to provide the sp ed services called for in the IEP during the school closure.

District developed a "Special Education Distance Learning Plan" for the student, but parents rejected the plan and demanded in-person services.






- **Brookings Sch. Dist., I 20 LRP 24079 (SEA South Dakota 2020)**

Instruction was provided through Read 180 software, with accommodations and a laptop with headset, while sp ed was provided through ZOOM and video lessons, and staff communicated daily with parent.

Not all minutes of speech therapy were provided per the terms of the IEP, and minutes of sp ed instruction were also fewer while at home.

SEA noted that the data indicated the student made progress on his IEP goals.



- **Brookings Sch. Dist., I 20 LRP 24079 (SEA South Dakota 2020)**

Parents insisted distance learning was not effective and required much assistance from them.

SEA agreed with District that in-person services were not possible during the period of COVID closure, which was based on Governor's orders.


SEA finds that the move to at-home services was not a change in placement (without explanation).

Discrepancies from the IEP were “minor” and did not impede student from making progress.

- **Brookings Sch. Dist., 120 LRP 24079 (SEA South Dakota 2020)**

*Notes*—Here, the SEA did not address the parents' allegations that they were forced to provide substantial assistance to the student during the closure because there was no documentation of such efforts.

What if the parents had kept daily logs of the assistance? Is this a valid factor in determining the adequacy of at-home services? See ***Breanne C. v. Southern York County Sch. Dist., 55 IDELR 3 (M.D.Pa. 2010)***(evidence that parents were spending up to 3 hrs/day helping student with work masked her academic deficits and was validly considered).



- **Brookings Sch. Dist., 120 LRP 24079 (SEA South Dakota 2020)**

*More on Parent Assistance*—Cases addressing voluntary placement in virtual programs have acknowledged that parents are reasonably expected to play a role in ensuring student participates. Is this expectation reasonable in the situation of non-voluntary moves to virtual instruction in the home due to COVID?

- ***Wayne Township Bd. of Educ., 121 LRP 1713 (SEA NJ 2020)***

Parents of 8<sup>th</sup>-grader with AU challenged virtual instruction plan and enrolled him in an out-of-district full-time virtual AU and ABA program

They sought emergency relief from HO

HO held parents were unable to show irreparable harm (necessary for emergency relief)

- **Wayne Township Bd. of Educ., 121 LRP 1713 (SEA NJ 2020)**

*Note*—The LEA, however, was only offering 2 hrs/day of virtual instruction, which the parents asserted the student was unable to access due to his disability. Is there evidence that the abbreviated instruction provided sufficient structured programming for progress?

The decision might be different in a regular DP hearing, rather than in an emergency request situation

# Failure to Adjust At-Home Services

- ***District of Columbia Pub. Schs., I 20 LRP 33834 (SEA DC 2020)***

Although the IEPT had agreed in April 2020 that behavior support services (BSS) were needed for a student (ADHD, SLD), they were not added to the IEP in the form of a BIP until June, when BSS were also added

Meanwhile, during the COVID closure, the student had experienced significant problems with distance learning, missing many assignments and exhibiting extreme problems keeping on-task and self-initiating.


# Failure to Adjust At-Home Services

- ***District of Columbia Pub. Schs.*, 120 LRP 33834 (SEA DC 2020)**

HO found that the delay in incorporating the needed services during the closure amounted to a denial of FAPE, which warranted comp services

Acknowledging the difficulty in ascertaining the needed comp services based on lack of BSS, HO ordered independent tutoring (150 hrs) and counseling (20 hrs) in the school setting






- **Norris Sch. Dist., 120 LRP 30203 (SEA California 2020)**

7-year-old with AU and speech-language impairments was provided access to FAPE by means of “material packets” and checks with parents during COVID closure

After the student refused to participate in the “material packets,” school did not attempt any direct instruction thru videoconferencing or other options, as staff assumed student would be averse to such services



- **Norris Sch. Dist., 120 LRP 30203 (SEA California 2020)**

For about 2 months, no services were provided beyond the packets

HO found that LEA could have collaborated with the parents to find ways to provide direct instruction, including providing parent training, but LEA did not hold an IEP meeting

HO ordered comp speech (40 hrs), tutoring (77 hrs), and behavior services (49 hrs) by qualified providers chosen by the parents

- **Norris Sch. Dist., 120 LRP 30203 (SEA California 2020)**

*Procedure Note*—Although HO holds, citing 9<sup>th</sup> Circuit’s *Hawaii DOE* decision, that the change to at-home services did not constitute a change in placement, it faulted the LEA for not providing the parent with prior written notice (PWN) when it moved the student to at-home services, as it constituted a change in the “provision of FAPE.” See 34 C.F.R. §300.503(a)(1).

(It should be noted that not all states were in consensus that the PWN requirement applied to the move to at-home services at the time of COVID school closures).

- **Norris Sch. Dist., 120 LRP 30203 (SEA California 2020)**

*Example*—In the case of **Newport-Mesa Unified Sch. Dist., 120 LRP 26588 (SEA California 2020)**, the HO held that the PWN requirement did not apply under the circumstances of the COVID pandemic, since “the statute contemplates notice of decisions particular to a student, not decisions that are systemwide.”

(It should be noted that not all states were in consensus that the PWN requirement applied to the move to at-home services at the time of COVID school closures...)

- ***East Windsor Bd. of Educ., 121 LRP 2530 (SEA Connecticut 2020)***

5<sup>th</sup>-grader with AU was provided limited direct instruction during COVID closure, in part because he resisted learning and non-preferred activities

From March to May 2020, parent argued about suggested strategies and it was challenging for her to assist the student at home, given his resistance

But, HO noted that the LEA did not convene the IEP team to address the student's behaviors or offer alternatives

- ***East Windsor Bd. of Educ., 121 LRP 2530 (SEA Connecticut 2020)***

HO noted that behavior improved after a June 2020 IEP revision, which was indicative that revising the program in the Spring 2020 semester might have made a difference

*Note*—Although the HO found that there was a denial of FAPE from March to June of 2020, she did not order comp, instead ordering an IEP team review or IEP amendment, if needed

The team appeared to rely on the parent to provide significant assistance to the student in the home even though she had other kids to care for. To what degree can schools expect parents to assist with remote learning during a closure?

# Failure to Provide Services “to the Greatest Extent Possible”

- ***Long Beach Unified Sch. Dist.*, 120 LRP 33840 (SEA California 2020)**

16-year-old with ID was provided 4 hrs/day remote academic instruction, rather than the 5 hrs/day set forth in IEP

District pointed to difficulties arranging for services during the period of COVID closure

HO noted that while the circumstances were “unavoidable,” comp services were warranted

# Failure to Provide Services “to the Greatest Extent Possible”

- ***Long Beach Unified Sch. Dist.*, 120 LRP 33840 (SEA California 2020)**

HO ordered 45 hrs of private speech services and up to 10 wks of private reading instruction

*Note*—Of course, it is difficult to argue that a reduction of 20% of specialized services is not a material implementation lapse. Here, however, the parties held a 9-day DP hearing to litigate the issue.



- ***Watertown Bd. of Educ.*, 77 IDELR 298 (SEA Connecticut 2020)**

During a 6-month COVID closure, LEA provided 13-year-old with AU some self-guided services and occasional virtual sessions

School argued it was relieved of responsibility to provide the full panoply of sped and related services during the COVID outbreak

HO noted, however, that while FAPE could be provided differently during the closure, the FAPE duty itself was not reduced

- ***Waterton Bd. of Educ., 77 IDELR 298***  
**(SEA Connecticut 2020)**

HO noted that student was particularly susceptible to interruptions in his education, making sporadic services like no services at all for him

HO found that staff attempted to provide what they could, and did not deserve the “vitriolic” attacks from the mother

HO awarded 40 hrs of speech and 8 hrs of music therapy as COVID comp

- ***Waterton Bd. of Educ.*, 77 IDELR 298 (SEA Connecticut 2020)**

*Procedure Note*—This HO also takes the position that the LEA’s move to remote instruction upon the COVID closure did not require PWN “because all students are receiving an alternate mode of instructional delivery of the general education curriculum.”

The divergence of opinions on the PWN issue demonstrates that the application of IDEA procedural requirements to general school closures related to a pandemic remains hopelessly unclear...

- ***In re: Student with a Disability, 121 LRP 1638 (SEA Wisconsin 2020)***

8<sup>th</sup>-grader with Down Syndrome was placed in a private therapeutic school before COVID, and when the pandemic hit, the school provided synchronous remote instruction in small groups, with peer interaction and staff support

Parents wanted her to receive virtual instruction from the District, although it offered a primarily asynchronous virtual program without as many supports

- ***In re: Student with a Disability, 121 LRP 1638 (SEA Wisconsin 2020)***

HO found that the LEA's chosen private program was appropriate, as it provided synchronous services with opportunity for interaction and staff support/feedback

The parents' LRE argument was no help, as the IEPT had properly concluded, prior to COVID, that the student required a more specialized program than the LEA could provide



- ***In re: Student with a Disability, I2I LRP I638 (SEA Wisconsin 2020)***

*Note*—Another way to look at the LRE argument might have been to point out that the private program allowed for at least *virtual* peer interaction, while the LEA’s asynchronous program provided none at all.

Another example of how the present-day LRE provisions and framework are a poor “fit” for online/virtual programs...

- ***Blue Hills Reg'l Technical Sch., 120 LRP 21862 (SEA Massachusetts 2020)***

Case involves an 18-year-old senior with SLDs.

Parent is disputing graduation, arguing that appropriate reading services were not provided during the school's COVID closure (parent asserts district provided only one ZOOM session with a reading interventionist not trained in program).

District argues it provided access to a sped "virtual reading coach" and offered compensatory reading services (by parent's preferred instructor) for those hours missed (16.5 hrs)).

- **Blue Hills Reg'l Technical Sch., 120 LRP 21862 (SEA Massachusetts 2020)**

District moved to have case dismissed.

HO notes that parent is alleging a denial of FAPE during the school closure, in that services consistent with the IEP were not provided at home, and that dismissal without a hearing would be inappropriate.

*Note*—One would think that the HO will assess the denial of FAPE claim taking into account the District's offer of COVID comp services.

*Note*—Yet, graduation may be validly delayed.





- ***Blue Hills Reg'l Technical Sch., 120 LRP 21862 (SEA Massachusetts 2020)***

*Note*—Is there a duty to implement *all* IEP services per the terms of the IEP during a period of COVID closure? Does not USDOE guidance envision that might not be possible, and that comp services may be necessary at a later time to remedy the shortfall?...

# Parent/Student Refusal to Cooperate with At-Home Services

- ***Department of Education, State of Hawaii, 77 IDELR 300 (SEA Hawaii 2020)***

Upon COVID closure, school officials sought an appropriate program to meet the needs of a student with multiple disabilities and complex needs

The parent, however, refused to cooperate, rejected meetings, cancelled scheduled meetings, refused to work with certain service providers, failed to respond to emails, and failed to provide necessary consents

# Parent/Student Refusal to Cooperate with At-Home Services

- ***Department of Education, State of Hawaii, 77 IDELR 300 (SEA Hawaii 2020)***

HO noted that the school was unable to get outside agencies involved without the parent's consent

“Respondent's failure to implement student's IEP-2/5/20 was caused primarily by Parent I's refusal to attend team meetings and sign consents for Student to enter the programs proposed by the DOE.”

# Parent/Student Refusal to Cooperate with At-Home Services

- ***Department of Education, State of Hawaii, 77 IDELR 300 (SEA Hawaii 2020)***

Parent asked HO to order the home program she was implementing informally, but he held that she had failed to prove it was appropriate for the student's many needs

The HO thus declined to provide relief and dismissed the parent's complaint,




- ***District of Columbia Pub. Schs., 77 IDELR 82 (SEA DC 2020)***

LEA offered student with SLDs and speech impairments virtual services to implement his IEP during COVID closure

After student missed a number of sessions, the school offered makeup speech sessions

HO noted that student missed sessions although he was provided a laptop



- ***District of Columbia Pub. Schs., 77 IDELR 82 (SEA DC 2020)***

“Petitioner did not present any authority to support the view that a hearing officer should penalize a school district for a student’s absence in this context.”

*Note*—The offer of makeup sessions, despite questionable reasons for absences, saved the school from liability on this point.

# Issues Regarding Remedies

- ***Lake Stevens Sch. Dist., 77 IDELR 208 (SEA Washington 2020)***

Parent of an 11-year-old student with ID, AU, ADHD, Anxiety, Mood Disorder, and speech delay sought an order of compensatory services

LEA agreed that student was not provided a FAPE during the pandemic and needed a residential placement, but none was presently available due to COVID

# Issues Regarding Remedies

- ***Lake Stevens Sch. Dist.*, 77 IDELR 208 (SEA Washington 2020)**

HO held that an award of comp services, at the present time (August 2020), would be speculative

“It is simply impossible at this time to reasonably estimate when the Student might be able to return to an appropriate educational placement. Accordingly, it is concluded that awarding the Parents what amounts to an open-ended compensatory award going forward is not reasonable or supported under the law.”



# Issues Regarding Remedies

- ***Lake Stevens Sch. Dist.*, 77 IDELR 208 (SEA Washington 2020)**

HO finds that comp services must be determined “once the student returns to school.”

He thus ordered the IEP team to address comp services within 20 days after the student returns to an educational placement able to implement his IEP.

# Issues Regarding Remedies

- ***Lake Stevens Sch. Dist.*, 77 IDELR 208 (SEA Washington 2020)**

*Note*—This type of remedy may simply lead to another piece of litigation if the parties disagree on the amount/type of comp services to be provided.

Moreover, other HOs have not been so reluctant to award comp services prior to school reopening...


# Initial COVID Comp Cases

- **Georgetown ISD, 121 LRP 3995 (SEA TX 2020)**

District closed due to COVID on 3/23/2020

Although the District initially offered the parent the option of teletherapy speech, only one session was provided

Thereafter, teletherapy speech was discontinued for “ethical and equity reasons”



- **Georgetown ISD, I2I LRP 3995 (SEA TX 2020)**

Speech was delivered only through online activities, and progress could not be measured

During the COVID closure, dyslexia services were provided through a different computer-based program (Nessy), but he was incorrectly placed at a lower level in the program for a month

During that month, student only accessed the Nessy program 140 mins and there was no measurement of progress on English goals

- **Georgetown ISD, I2I LRP 3995 (SEATX 2020)**

Initially, inclusion, social skills, and “behavior communication support” were provided through synchronous online services

In April, District proposed an IEP Amendment offering reduced online social skills services, 60 mins/wk online dyslexia services, 7 indirect speech consult sessions per 9-wk grading period, 30 mins/week inclusion support through Google Hangout

HO noted that “the District prepared the Amendment without input from student’s mother,” who disagreed with Amendment

- **Georgetown ISD, 121 LRP 3995 (SEA TX 2020)**

At a subsequent ARD, parent wanted dyslexia services 4X/wk, objected to the Nessy program, requested weekly direct speech therapy, but the ARDC declined

HO found that in March, the District “modified Student’s IEP and special education services without Student’s mother’s consent.”

HO also noted that “the District has yet to meet to determine whether the student needs compensatory services...”

- **Georgetown ISD, 121 LRP 3995 (SEA TX 2020)**

He noted that the District was waiting on a full grading period after return to school before deciding on comp services

At the start of 2020-21, the District provided direct online speech and dyslexia services

HO held that the District had the ability to provide direct speech teletherapy, but chose not to do so, and thus did not make every effort to provide the IEP services

- **Georgetown ISD, I2I LRP 3995 (SEATX 2020)**

Dyslexia services during the closure were inappropriate, as they were entirely computer-based, contrary to the Dyslexia Handbook (and the program was incorrectly set for the student)

HO similarly held the District had the capacity to provide direct dyslexia instruction through Google Hangouts, but chose not to do so

Lastly, the fact that the District could not measure the student's progress in reading and speech was indicative that he did not make progress during the period of closure



- **Georgetown ISD, 121 LRP 3995 (SEA TX 2020)**

HO stated that the proposed IEP amendment “was a unilateral proposal made without parental input.”

HO grants compensatory education

*Procedure Note*—Where in the IEP amendment regulation is parental input required *prior* to the LEA proposing the amendment? Isn't the procedure one where the District may unilaterally propose an amendment and the parent may agree or disagree? See 34 C.F.R. §300.324(a)(4)

- **Georgetown ISD (SEA TX HO Steve Elliot—11/18/20)**

Here, the district proposed an amendment, the parent disagreed, so an ARDC meeting was held—all within a month of closure

Despite the SEA's qualitative comp guidance, the HO offers hour-for-hour comp

*Note*—Is it inappropriate for Districts to wait until some time after students return to make an appropriate qualitative comp determination? The HO here seems to fault the District for following that method... Does not the HO's approach force the disfavored quantitative approach to comp determinations?



- ***Thoughts on Emerging COVID Cases***

HOs seem to demand that schools provide the same frequency/amount of IEP services during online periods

Schools have to demonstrate their efforts to get resistant students to participate, including contacts with parents, ARDC meetings

IEP teams must be willing to adjust services to address struggling students during online periods



- ***Thoughts on Emerging COVID Cases***

Schools should inform parents that it will address potential need for comp services when school returns to face-to-face

Prepare a protocol for considering COVID-related comp services (data points, process, ARDC meeting)



- ***Los Angeles Unified Sch. Dist., 77***  
**IDELR 116 (SEA California 2020)**

The IEP of a 22-year-old high school senior with Autism contained a variety of transition services, including hands-on instruction in vocational, social, and community skills, job training, community-based instruction, and volunteer activities in the community.

When COVID hit, student was unable to engage in community volunteer and work training activities.



- **Los Angeles Unified Sch. Dist., 77  
IDELR 116 (SEA California 2020)**

IEP team met, made no changes to the IEP, and indicated that student “will continue to receive educational services by participating in distance learning until July 31, 2020.”

Although student made “minimal” progress on her vocational, social skills, or community skills goals, the IEP team made no determination of comp services, and planned to have her age out of the program.



- **Los Angeles Unified Sch. Dist., 77 IDELR 116 (SEA California 2020)**

HO noted that her in-person community instruction and vocational training during the closure was none, as she received 30 mins/wk of non-interactive virtual community instruction (“visiting interesting places online”).

The online program, overall, provided less than half of the instructional minutes per week, and none of the services most important for successful transition.

- ***Los Angeles Unified Sch. Dist., 77***  
**IDELR 116 (SEA California 2020)**

HO ordered compensatory transition counseling services, which could be provided remotely during the pandemic.

“There is no evidence when hands-on training will again be available, and Student has demonstrated a need for an immediate remedy.”





- ***Porter Township Sch. Corp., 120 LRP 2926 I (SEA Indiana 2020)***

*Note*—Despite the federal courts’ preference for a qualitative approach to comp services, some hearing officers still fall back to the quantitative hour-for-hour formulation

Here, a student’s IEP normally required 30 mins/wk of speech therapy (ST) services.

During the COVID closure, no actual services were provided.



- ***Porter Township Sch. Corp., I20 LRP 2926 I (SEA Indiana 2020)***

Therapist uploaded assignments, materials, conversation and speech tasks that student could access through school's online portal

The student did not respond, and completed no tasks (despite school's contacts with the parents).


SEA found violation, required hour-for-hour comp for missed ST sessions (270 mins comp ST).



- ***Porter Township Sch. Corp., 120 LRP 2926 I (SEA Indiana 2020)***

*Note*—The SEA did not comment on the fact that the student failed to do any of the tasks that the therapist assigned (and therapist called parents) Is that not a valid consideration in making the COVID comp determination?...


And, other courts and States lean toward a qualitative approach, as the more individualized method for determining the comp remedy



- **Denver Pub. Schs., 120 LRP 29273 (SEA Colorado 2020)**

3<sup>rd</sup> grade sp ed student (SLD, OHI, Speech) did not receive the 40 mins/wk of “direct specialized literacy instruction” required in IEP during the COVID closure.


Although student missed 260 mins of the specialized instruction, the student progressed well.



- **Denver Pub. Schs., 120 LRP 29273 (SEA Colorado 2020)**

Applying a qualitative analysis, the SEA concluded that the lapse in services was “only a short gap in services, during the weight of the COVID-19 pandemic, which did not impact the student’s ability to benefit from his special education program given the demonstrated educational progress.”

Thus, it found no denial of FAPE.



- **Denver Pub. Schs., 120 LRP 29273 (SEA Colorado 2020)**

*Note*—The amount of missing specialized services was almost the same as in the Indiana SEA case, but the exact opposite approach and result.

Was this a “minor discrepancy”? No, but student did work and progressed

# Special Education in Online and Virtual School Programs

by

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## The Growth of Online/Virtual Public Education

Public schools' provision of instruction in a learning environment where students are not in attendance in a classroom setting, and the teacher provides course content by means of course management applications, multimedia resources, internet, video-conferencing, other alternatives, or combinations thereof, is a rapidly growing phenomenon. See, e.g. Muller, *Virtual K-12 Public School Programs and Students with Disabilities: Issues and Recommendations* (NASDSE Policy Forum Proceedings Document, July 2010). NASDSE reports a 60% increase in K-12 online enrollment from 2002 to 2007, with current estimates of online enrollment of up to one million across the U.S. *Id.* at 1. The number of state-level virtual schools also increased significantly over that timeframe, with 15 virtual state-level schools and 12 states with K-8 virtual public school options.

While it is clear that online/virtual instructional options are expanding, it is much less clear whether special education students are benefitting in particular from that expansion. It is also not clear how exactly how the requirements of the existing legal framework apply and are implemented in these programs.

## Special Education and the Benefits of Virtual Instruction

Little is known about the participation of students with disabilities in these programs. Two studies indicated that students with disabilities are choosing to participate in online educational programs, but the numbers are unclear. *Id.* at 2. Moreover, the studies' survey respondents pointed to the benefits of such programs, but also to the need for additional guidance on policy and practice for providing special education in a virtual form.

Educators and experts that have studied virtual instruction have identified the following effective features of virtual programs for serving students with disabilities:

- On-going feedback, self-pacing, and a higher potential for individualized instruction
- Greater opportunity for students to control their learning
- Multimodal presentation of content
- Social interaction via alternative means
- Lack of peer distractions or conflict
- Online archiving of student work for ease of assessment and progress monitoring
- Potential for highly differentiated instruction
- Alternative option for students with severe allergies, chemical sensitivities, chronic health conditions, and other types of impairments that make attendance in regular schools difficult or impossible
- Additional choices and flexibility for students and parents
- Availability of specialized instruction in rural or staff-shortage areas
- Lack of stigma associated with separate school settings
- Possible cost-savings

## **Challenges in Virtual Special Education**

- **Equity and access issues for various types of students with disabilities**

As schools expand their online instructional offerings, the issue of access and equity will arise naturally. See e.g., Rose & Blomayer, *Access and Equity in Online Classes and Virtual Schools*, Research Committee Issues Brief, North American Council for Online Learning (NACOL) (2011). As part of the public schools' programs, online/virtual programs must be administered in a fashion that is not discriminatory on the basis of disability in order to not be in violation of Section 504 of the Rehabilitation Act. This does not mean that all students with disabilities have a right to participate in online programs—the IEP team must decide whether that can be an appropriate placement within which to implement the student's IEP. And, it is clear that for some students, online programs may not be able to meet their unique needs. Schools cannot, however, arbitrarily deny



students with disabilities access to online programs, or design online programs in a way that will categorically exclude students with disabilities. This issue is likely to form the basis for litigation in the future, as parents become aware of, and interested in, virtual programs for their kids.

An additional access issue is the screening process for applicants to online programs. The screening process must be designed in a way that does not categorically or arbitrarily deny access to students with disabilities. Moreover, any screening process must be joined to the IEP team decision-making with respect to placement.

The Office for Civil Rights (OCR) addressed the issue of admission criteria to virtual programs in its investigation and findings in *Quillayute Valley (WA) Sch. Dist., 108 LRP 17959 (OCR 2007)*. There, a Washington district contracted with a public online school to offer a virtual program to some of its students. The virtual program, however, applied written criteria to prospective applicants with disabilities. Particularly, the criteria set forth the following services and accommodations it would not provide to disabled applicants:

- modified curriculum
- counseling to address behavior goals
- translator support
- paraeducator support
- more than 40 minutes per week of special education instruction
- certain assistive/adaptive technology
- extended time beyond six weeks past closing to complete work
- tutoring

In addition, the program also applied unwritten criteria to applicants that precluded students with disabilities from admission if they had a documented (1) inability to compete school work independently, or (2) reading or writing ability level below 6<sup>th</sup>/7<sup>th</sup> grade. The unwritten criteria were not applied to nondisabled applicants. The program denied admission to an applicant with behavior goals, a behavior plan, need for special education instruction of 275 minutes per week, lack of ability to perform independently, and lower reading/writing abilities, which led to an OCR complaint. OCR found that the criteria worked to deny admission to disabled applicants solely on the basis of disability by categorically disallowing particular services, accommodations, and supports. It also found that the criteria in question were not “reasonably necessary to achieve the mission and goals of the education program.” In applying its

unwritten criteria only to applicants with disabilities, OCR found that the program treated them differently than nondisabled applicants.

*Note*—Certainly, it appears clear that applying a categorical exclusion of a variety of services, supports, or accommodations as part of admission criteria will be found discriminatory on the basis of disability from an access and equity standpoint. But, it bears noting that the unwritten criteria on the student’s documented ability to work independently is a factor that would appear to be reasonable for IEP teams and 504 Committees to determine if the online program is appropriate to meet the students needs. Moreover, such a criteria could be legitimately related to a written program goal to increase self-motivation, self-discipline, and ability to work independently. Thus, virtual programs may want to articulate such goals in their written policies and admission criteria. Lastly, admission criteria that are applied only to students with disabilities, and not across the board to all applicants, are likely to be seen as differential treatment in violation of §504, and likely, IDEA.

*Admission and Screening Processes and Policies*—In Rose & Blomayer, *Access and Equity in Online Classes and Virtual Schools*, Research Committee Issues Brief, North American Council for Online Learning (NACOL) (2011), the authors state that “[i]t is the responsibility of all educational programs to prove the necessity and validity of their screening process, especially if there is a differential impact on specific protected groups of students.” Legally, in an IDEA or §504 action or complaint, the parent generally would bear the burden of proving the invalidity of a program’s admission criteria, but the point is well taken. Virtual programs must thoughtfully develop their admission criteria and policies to ensure that they do not discriminate on the basis of disability in assisting IEP and §504 teams in determining whether the program could be appropriate to confer a FAPE on individual students, based on their unique needs. *See attached Sample Policy Language.*

- **Open Enrollment Virtual Schools**

In situations of open enrollment virtual schools, the problem of potential lack of fit of particular student applicants is amplified, since, ostensibly, such a school cannot deny enrollment to any student. In *Dear Colleague Letter, 68 IDELR 108 (OSERS/OSEP 2016)*, the USDOE stated that “in situations where the State designates a virtual school as its own LEA, consistent with 34 CFR § 300.28, and the child attends that virtual school LEA, but the child's family resides in a different LEA in the State, the State has the discretion to determine which LEA is responsible for ensuring that the requirements of Part B are met with respect to

the child, so long as the State designates one LEA that is responsible for ensuring the provision of FAPE to the child.” Thus, USDOE’s position is that States must determine a responsible LEA for purposes of IDEA compliance. In most cases, if an open enrollment virtual program is its own LEA, the State may simply decide that the program is the responsible LEA. But, the problem remains that the unique nature of online programs may not be appropriate to meet the needs of some students, but the virtual program may be required to admit any student. This can cause disputes such as in the following case:

In the case of *Commonwealth Connections Academy Charter Sch.*, **116 LRP 43676 (SEA Pennsylvania 2016)**, an 8<sup>th</sup>-grader with ADHD (OHI) transferred from a public school district to the online charter school. The student’s IEP from the prior school contained direct instruction in social skills, organizational skills, and reduction of anxiety. It also included a behavior plan and goals. For math, an area of weakness, the IEP included daily direct instruction in a small group. Although the charter school agreed to implement the prior district’s IEP, it addressed academic needs with software programs, participation in live lectures, and review of recorded live lectures in math, science, and language arts, as well as “virtual support” from a “learning support teacher.” The student, however, did not take advantage of the support consistently, and he began to fall behind in his classes. The charter thus added a math software program, but there was no direct live instruction in math. Despite the program and attempts at modifying the work, the student was failing most classes, and he appeared to have regressed in his math grade equivalencies. The charter school recommended that he be placed in its “supplemental support program,” and made that change in program without an IEP team meeting or prior written notice. After a reevaluation, the school added a one-to-one support staffperson in the home for 600 minutes per week, as well as supports from a BCBA service, but the parent rejected the services. The student ultimately performed poorly in academics.

The hearing officer found that the charter school failed to provide IEP services comparable to his previous school’s IEP, and that it committed serious procedural violations in not explaining why certain services would not be provided and making numerous changes to the student’s program without IEP team meetings. Crucially, the charter school failed to provide direct live instruction in math. The hearing officer noted that “soon after enrolling it became apparent, the Student's attention and organizational deficits would interfere with online learning.” The failure to provide the IEP services, moreover, resulted in poor performance and a denial of FAPE. The hearing officer ordered the school to pay for a third

party to provide nearly 1000 hours per year of compensatory education services, until the transfer IEP goals were met.

*Commentary*—Notice that the hearing officer concedes that it quickly became apparent that the student’s attention and organization deficits would interfere with online learning. The fact that the student’s deficits and needs were incompatible with the inherent nature of the online program could have been ascertained prior to the placement. But, if a virtual program is structured as an open enrollment program with no application process, it is inevitable that students will enroll who are simply not a proper fit for an online educational program.

States should consider situations such as in this case when planning open enrollment online programs with a “no-refusal” enrollment policy. If students whose needs are plainly incompatible with online education enroll, it may be nearly impossible for the online program to provide them a FAPE without enlisting significant additional live and direct instructional services, potentially from a distance and at considerable additional inconvenience and expense.

Similarly, in the case of *Cincinnati Learning Sch.*, 116 LRP 39184 (SEA Ohio 2016), a teenager enrolled in an online charter school that offered attendance in a resource room setting to supplement the online program. The student’s IEP called for resource room assistance, and the school assigned him to attend the room, but the student often did not attend as assigned. The IEP, however, did not state a specific amount of resource room time. At the end of a semester, the student had incomplete grades in four of his classes due to work not being turned in, and he was logging in inconsistently for his online work. He was thus in danger of not remaining in “good standing” with the school. The SEA found a violation of IDEA, stating that “the Student’s daily schedule does not indicate that any specific time was assigned to the Student to enable him to receive the services written in his IEP. The Student was given the flexibility to determine when, or if, he would go to the resource room or to other face-to-face (general education) classes. The Community School is required to provide the services stated in the IEP at a minimum, whether the Student signs-up to receive services or not.”

*Commentary*—Importantly, the SEA noted that the school did not convene an IEP team meeting to address the student’s problems or ensure that he was receiving his resource room assistance. Likely,

the very nature of the program puts emphasis on students' taking the initiative to do their online work and take advantage of any supplemental instructional offerings. Note also that in this school, the online program can be supplemented with traditional classroom instruction, which expands the possibilities for meeting more kinds of student need.

In *In re: Student with a Disability*, 116 LRP 30723 (SEA Pennsylvania 2016), a student with emotional disturbance and SLDs enrolled in a virtual charter school program. But, the student had a history of school avoidance, which in turn led to him not participating in the online program. When he should have been logging in to the online program, the student was interacting with other children at the social services agency where he used the computer. He eventually failed many classes. The hearing officer noted that despite the student's poor performance and failure to turn in assignments or respond to teachers' efforts to contact him, the school neglected to evaluate the student's behavior and amend the IEP to ensure it was offering FAPE. "Rather than revise its approach to Student's progressive withdrawal from learning ..., the Charter continued to apply its online model to Student, a model which relies upon the child to access instruction."

- **Compliance with legal norms in virtual context**

Schools must assume that all legal requirements under the IDEA apply to virtual/cyber programs. Progress reports, for example, are required under the IDEA. The IEPs for all students must include a statement of how the student's progress will be measured. See 34 C.F.R. §300.320(a)(3). This requirement would apply equally to an IEP that will be implemented in a virtual program. The IEP team would have to address how the student's progress on annual goals will be measured as part of the virtual program, and how periodic progress reports (concurrent with the schedule for issuance of report cards for nondisabled students) will be generated and provided to the parent. Similarly, the virtual program IEP would have to include a statement of the special education services (i.e., specially designed instruction) that would be provided to the child by means of the virtual program. See 34 C.F.R. §300.320(a)(4). Thus, virtual programs must think through the legal framework for IEPs as they design the programs, so that the legal requirements can be properly met as the IEP is developed for implementation in a virtual context.

In 2016, the U.S. Department of Education issued a Dear Colleague Letter addressing the application of IDEA norms to virtual programs. *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016). The Letter stated

that “the educational rights and protections afforded to children with disabilities and their parents under IDEA must not be diminished or compromised when children with disabilities attend virtual schools that are constituted as LEAs or are public schools of an LEA.” If a virtual school is a school of an LEA, that LEA is generally responsible for ensuring that the requirements of IDEA are met by that virtual school for children with disabilities participating in the virtual program. Virtual charter programs are responsible for IDEA compliance, unless the State creates another system. SEAs should carefully review their policies to ensure that they address virtual programs. Child-find applies in virtual programs, although since “children who attend virtual schools generally may not have the same degree of face-to-face interactions and in-person contacts with a teacher or other school staff as children who attend brick and mortar schools, child find for children attending virtual schools may present unique challenges.” If the program offers limited actual contact with teachers, the virtual program must undertake child-find in other ways, such as questionnaires and screenings. With respect to ensuring FAPE, the Letter states that “in situations where the State designates a virtual school as its own LEA, consistent with 34 CFR §300.28, and the child attends that virtual school LEA, but the child's family resides in a different LEA in the State, the State has the discretion to determine which LEA is responsible for ensuring that the requirements of Part B are met with respect to the child, so long as the State designates one LEA that is responsible for ensuring the provision of FAPE to the child.”

In its investigation of *Virtual Community Sch. of Ohio*, 62 IDELR 124 (OCR 2013), the Office for Civil Rights (OCR) addressed legal compliance issues with respect to a fully virtual program under §504. OCR noted that the 504 Coordinator tended to develop any needed §504 programs merely by discussion with the parent, and sometimes the prior school, but not pursuant to a proper §504 evaluation. At times, moreover, parents were asked to obtain medical and other documentation of disability to substantiate their children’s eligibility. The school had no written policies and procedures under §504. OCR also found that the virtual program and its website was not accessible to students with visual impairments. As to child-find, OCR found that students were only identified if the parents indicated the students were previously on a 504 plan, and there was no established process to find students that might be disabled, in order to evaluate them under §504. There was no procedure in place for periodic reevaluations, notice of parent rights was spotty, and there was no grievance procedure in place. Importantly, OCR found that the school “does not examine the Section 504 plans of new students to determine whether they are appropriate before adopting and implementing the

plans, even though many plans would not have previously provided for placement of the student in an on-line educational environment.” In light of the various serious compliance areas with respect to §504, OCR required the school to enter into a significant resolution agreement addressing the various areas of concern.

*Note*— The School's website stated that it was “an ideal setting for students who need specialized instruction, students with disabilities, students removed from school for disciplinary reasons, students who desire to work at an accelerated pace and students who philosophically do not want to attend a traditional school.” Its Special Education page stated that the flexible schedule offered by the School could “create an ideal scenario for students with special needs. Students who find it difficult to attend a traditional brick and mortar school are relieved to be able to attend school from home on a schedule that works best for them.” The website also stated that it was open to any students who met the school's age, grade, and geographic enrollment criteria and whose parents choose to apply.

Given that a virtual instructional placement might not be appropriate to meet the needs of some students, it bears considering whether a virtual school might want to be more cautious in promoting itself. Schools might want to follow a more conservative approach that emphasizes that the inherent nature of virtual programs means that they will not be appropriate for all kinds of students with disabilities, and that thus, some relevant criteria will be applied to prospective applicants in conjunction with their previous bricks and mortar schools and the parents.

The following case from Washington DC illustrates how courts will have to handle incorporating virtual programs into other aspects of the existing legal framework, here in the context of a “stay-put” dispute:

In *Eley v. District of Columbia*, 63 IDELR 165 (D.D.C. 2014), the District argued that placement of a student with multiple disabilities in a special classroom on a regular campus, rather than in the student’s existing private virtual program was not a change in placement in violation of the “stay-put” provision of IDEA. The District argued that no change to the IEP would be involved, as the District could implement the virtual program’s curriculum and services. The court rejected the argument that the term educational placement in IDEA refers only to the IEP, and never involves the physical location of service delivery. “Clearly, shifting from what is essentially a completely individualized instructional setting separate from other students to a more traditional school setting does constitute a change in the plaintiff’s ‘then-current educational placement.’”

It also appears that courts are encountering virtual programs in the context of students that pose a safety risk in the school setting, as in the following cases:

In *Tacoma Sch. Dist.*, 116 LRP 50574 (SEA Washington 2016), a District expelled a high school student with OHI (ADHD, ODD) due to the risk of him committing school violence. After the emergency expulsion term, the District moved the student to its virtual program, in light of ongoing safety concerns. Although polite and cheerful, the student tends to be excessively absent and produce little work, as he requires assistance to remain on task. The hearing officer held that moving the student to an online program was a change in placement that should have been preceded by a reevaluation, particularly since the change in placement was to a more restrictive setting. The online setting, moreover, was not just another version of a regular education setting. The online program required a much higher level of self-initiative than the student's in-school general education classes—a skill that the student lacked. Moreover, the virtual program deprived the student of any interaction with peers. The failure to reevaluate and convene an IEP team meeting prior to the change in placement deprived the parent of a meaningful opportunity to participate.

In *Wayne-Westland Community Schs.*, 64 IDELR 176 (E.D.Mich. 2014), the school sought a court injunction to keep a six-foot, 250-pound student out of school, as he had threatened and physically attacked schoolmates and staff, including one incident that required a lockdown of the campus. In a short period before the injunction, the student threatened to bring guns to school to kill staff he disliked, made racist comments toward African-American staff, and punched the school director in the face. The court issued the injunction, and ordered the school to provide the student access to the general curriculum through the Michigan Virtual Academy online program, with a designated staff member available to assist him “by telephone or e-mail.”

*Note*—The court does not closely inquire as to whether the online program will be educationally appropriate for a student that exhibits such clearly non-compliant behavior even when under the supervision of staff in a school setting. A statement from the school to the effect that the student would suffer no “educational harm” in being educated through the online program was sufficient for the court, particularly as the parents did not contest the injunction request, despite several contacts.



- **Least Restrictive Environment (LRE) in the virtual program context**

One specific legal norm that applies awkwardly to virtual programs is the IDEA's LRE mandate (§504 also contains an analogous LRE-like provision). The Act's LRE provision, essentially unchanged since the inception of the law in the late 1970's envisioned bricks and mortars school placements. The requirement speaks to students with disabilities being educated "alongside" their nondisabled peers, and, preferably, in the campuses they would attend were they nondisabled. LRE is about degree of physical exposure and interaction with nondisabled peers in the educational setting. How does this mandate translate to the virtual context? The recent *Dear Colleague Letter*, **68 IDELR 108 (OSERS/OSEP 2016)** does not address that question squarely, other than generally asserting that all IDEA requirements apply in virtual program. One view is that virtual programs afford some students, such as those with severe chemical sensitivities or immune system issues, the opportunity to electronically interact with instructional staff and possibly classmates, as opposed to receiving instruction alone with a homebound teacher. A more "standard" legal application would be that virtual programs are in fact highly restrictive, as they offer no opportunity for education physically alongside nondisabled peers, and likely afford little or no opportunity for casual social interaction, such as takes place in the cafeteria, halls, or school grounds. That appears to be the view taken in the following case:

In the matter of *S.P. v. Fairview Sch. Dist.*, **64 IDELR 99 (W.D.Pa. 2014)**, a student with severe and frequent refractory migraines alleged that the District discriminated against him and failed to identify him under the IDEA. The migraines were allegedly serious enough to require 12-16 hours of rest in a darkened room, and made regular school attendance difficult. Over several years, the school provided the student with numerous §504 plans that attempted to deal with his escalating attendance problems, and poor independent work output. When the school allowed the student to attend partially, he still was absent. When the school provided work to be performed at home, he did not complete it. When he was allowed to come to school when he felt well enough to come, he still was unable to attend. In his ninth grade, when the school provided him the virtual program his parents preferred, with support of specially trained teachers, he made minimal progress, and his parents developed a "lack of faith" in cyber education. His treating physician, however, issued a letter indicating that a virtual program "is tailored to him very well," in "adjusting his lifestyle for interruptive migraines." Part of the parents' objection to the virtual program was based on LRE, in that it did not provide in learning behavior and building social relationships with peers.

Thus, the parents' expert opined that the program was not the LRE for the student.

The court held that in light of the student's migraines, he was not capable of regularly attending school or participating in any instructional program other than in-home cyber education. Applying traditional LRE analysis, the court focused on the "extraordinary" efforts of the school in accommodating the student's attendance in a school setting. After exhausting those options, however, the court agreed with the school that a virtual program was the only remaining option. The court noted that "in-home cyber school is certainly the most restrictive option, but the record establishes that it is the least restrictive appropriate educational environment for S.P."

*Note*—In the case above, the court sees the virtual program as highly restrictive, as it does not afford personal interaction with peers—a traditional view of LRE premised upon a legal provision that never anticipated or envisioned a virtual educational environment, with its possibilities for cyber interaction with faraway classmates. Similarly, in the *Eley v. District of Columbia*, 63 IDELR 165 (D.D.C. 2014) case reviewed above, the court, also with a traditional approach, saw the virtual program as one "separate from other students." Are the courts saying that cyber interaction with classmates in a virtual program is inherently less valuable from an LRE perspective than personal interaction? It certainly does not appear that research on that point has reached that conclusion, but to a generation that never experienced or witnessed virtual social interaction, the instinctive answer appears to be in the affirmative.

*Note*—Another challenge on this point is that many virtual instructional programs are intended to be choice-based. Does this affect the LRE determination? Is a parent that chooses to apply to a virtual program in a sense waiving their child's right to LRE? Is that permissible? Certainly, a traditional application of LRE to virtual program applications would minimize enrollment of students with disabilities, as the majority of them could likely receive FAPE in school settings alongside other students. If virtual special education is akin to residential placement in terms of restrictiveness in the continuum of placements, then only a tiny percentage of special education students can be lawfully educated in virtual settings. The LRE point is a key example of how the Congress must rework the legal framework to adapt to virtual education options for IDEA-eligible students. In the meantime, significant uncertainty will prevail in litigation.

*A continuum of virtual placements* – It may be simplistic to apply the LRE analysis to online programs as if they were monolithic in design and implementation. In fact, online programs may vary with respect to the level of interaction they afford to participating students. Some synchronous programs allow for online participation in actual classroom environments, complete with capability for asking and answering questions, as well as for participating in classroom discussion. Other programs allow some level of student-to-student virtual interaction. Others are fully virtual, with only electronic interaction between student and instructor by means of assignments, text e-mails, and progress reports. Thus, the legal framework may have to acknowledge that there is a continuum of virtual placements with different levels of restrictiveness in proportion to the degree of interaction with other students that they afford.

- **Disputes over appropriateness of virtual instruction for providing a FAPE**

The advent of virtual/online programs inherently creates the potential for placement disputes involving the new type of setting. In one case below, the parents of the student alleged insufficiency of one-to-one instruction in the virtual program, and challenged the scope of their role in the implementation of the program. In another case, the parent claimed that the proposed online program for her child with ADHD was inappropriate to meet his individual needs. In the third case, parents that had experienced problems and conflict in a physical campus setting wanted a virtual program, instead of the brick and mortar placement advocated by staff, but then complained about their expected role in the virtual program and about technological problems that had to be addressed as part of the online program.

*Downington Area Sch. Dist. v. K.D.*, 69 IDELR 162 (Penn.Comm.Ct. 2017) – The Court upheld a hearing officer’s decision holding that the District’s proposed online math program for a fifth-grader with ADHD was inappropriate, even though it was supplemented by some actual live instruction. Given the student’s history of playing games, seeking out peers online, and generally getting off-task, the program was not appropriate to meet his individual needs.

*School Dist. of Pittsburgh v. C.M.C.*, 68 IDELR 102 (W.D.Pa. 2016) – When a teen with Asperger’s and anxiety developed fears about attending school after an altercation with a peer, the District proposed a combination of mostly online instruction with some campus instruction. The Court found that the student was not a good candidate for online

instruction, as the student was obsessed with computers and the internet, and had difficulty staying on task when doing work on the computer. A psychologist had testified that the student would not be able to learn with an online program. The online program, moreover, would not meet the student's need for social interaction. The Court disagreed with the District's position that the student was anxious around African-American females. It thus upheld an order of reimbursement for a private placement.

***Benson Unified Sch. Dist.*, 56 IDELR 244 (SEA Arizona 2011)**—An Arizona parent alleged that the online program provided by the District for her daughter with multiple chemical sensitivities failed to provide her a FAPE. The student qualifies under the IDEA as having an “other health impairment” (OHI). For a time, the student received homebound instruction by a teacher who followed a variety of protocols to prevent the student from being exposed to chemicals. At an annual IEP meeting, the team discussed the possibility of instruction through an associated online academy, and believed that the program could meet the student's needs. The parent disagreed, arguing that the online program did not provide sufficient one-to-one instruction and that neither parent was available to serve as “learning coach.” In response the team added 6 hours of paraprofessional support in the home. The treating psychologist testified that he believed the online program was not appropriate because the student could not “self-motivate.” The homebound teacher felt that the student was responsible and that requiring the student to do more work independently with the help of an online program would be beneficial. The Hearing Officer held that the online program, as individualized by the District, was appropriate for the student. The program could provide instruction with no printed materials whatsoever, and made available a certified teacher either online or in person. The paraprofessional, moreover, could fulfill the role of the “learning coach.”

*Note*—As seen by this case, disputes can arise between schools and parent regarding whether the student is sufficiently self-motivated to benefit from an online program, whether sufficient instructional assistance is provided, and with respect to the role the parent is expected to play in the virtual program.

***Virtual Community Sch. of Ohio*, 43 IDELR 239 (SEA Ohio 2005)**—Parents of a severely disabled low-functioning child with Down's Syndrome and associated impairments alleged that the virtual school district's program failed to provide an appropriate IEP or confer a FAPE. They sought reimbursement for the costs of a private placement. They

complained of IEP deficiencies, failure to provide and properly maintain appropriate software and hardware, and failure to properly train staff. The parents left a previous school-based program and sought out an online program due to displeasure with aides and staff at the prior district. The student participated in the virtual program's "non-structured flexible program," where parents play a significant part in the program and function as the primary source of teaching. Everybody involved in the student's education, however, believed that he needed to be educated in a setting with other students and more intensive instruction and assistance. But, when the virtual school proposed a possible transition to a brick-and-mortar program, the parent expressed concern, based on past experience. In the process, the parents cancelled meetings and did not provide information regarding the student's progress, any difficulties, or concerns about the IEP. "Problems inherent in technology," including viruses, modem problems, changed passwords, and difficulties logging into the system were attended to promptly. And, the data indicated that the student made progress when he participated in the virtual school. Moreover, there was a unilateral withdrawal from the virtual school as of the date the student stopped completing any of the work from the virtual school and was merely logging in hours from the unilateral private placement, and providing no actual work product to the virtual school. The Hearing Officer thus denied reimbursement.

*Note*— The Hearing Officer added that "FAPE delivered in a virtual school has a different method of operation and a different mechanism for the evaluation of its students.... When parents elect to enroll their children in a virtual school they assume the responsibility of their new role as education facilitator and eyes and ears for the teacher." The case illustrates the increased responsibility and role for parents in many virtual programs, as they help pace and sequence the program, monitor progress, assist with keeping the student on task, and spot problem areas. This is, in a sense, both a positive feature of virtual programs, as well as a possible source of conflict and problems.

The OCR findings in *Virtual Community Sch. of Ohio* refer to a prior OCR guidance letter, *Dear Colleague Letter, 111 LRP 36986 (OCR 2011)*. That letter addressed the use of emerging technologies in education, including online educational programs. It emphasized that such technologies must be accessible to students with disabilities. In situations where accessible technology is not available, the program must provide accommodations and modifications necessary in order for them to receive all the

educational benefits provided by the technology in an equally effective and equally integrated manner. "Equal access for students with disabilities is the law and must be considered as new technology is integrated into the educational environment." Equally effective means that students with disabilities have the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services in an equally timely and easy fashion. Importantly, the Letter acknowledges that the decision to provide emerging technology that is not used for all students for a student with disabilities is an individualized one. "The DCL does not change the requirements and processes by which elementary and secondary schools must provide a [FAPE] to students with disabilities...." Such individualized decision is made through the IEP team and §504 committee process, as applicable. See also, *South Carolina (SC) Pub. Charter Sch.*, 63 IDELR 112 (OCR 2014)(fully online programs that are not accessible to students with disabilities can offer no alternative option, and thus violate §504).

In the case of *Department of Educ., State of Hawaii*, 112 LRP 31884 (SEA Hawaii 2012), a student with cognitive, hearing, health impairments, and behavior problems was placed in a District-operated charter school that offered a hybrid program whereby a student attended a bricks-and-mortar school for a part of the week, while the main portion of instruction took place online. The program provided the parent with significant assistance and training in functioning as a "learning coach" with respect to the online portion of the program. The student encountered problems quickly in both portions of the program. In the online program, the student was producing virtually no work, while in the school portion, the student tended to be frequently absent or tardy. After various attempts to modify the program and provide additional support in the online component, the IEP team recommended that the student return to a full-time face-to-face classroom environment. Staff believed that the student's needs, including significant work avoidance and off-task behaviors, required the structure of a bricks-and-mortar classroom environment. In addition, staff were concerned that the student was not producing work in the online portion of the program. The parent opposed a change in placement to the student's neighborhood school, and wished to continue with the hybrid charter program. The hearing officer agreed that the hybrid program was not working for the student. "Part of the reason the hybrid program was not working was because Student needed a very structured program with a lot of consistency." The online program was inconsistent because the student's behaviors posed too great of a challenge for the parent as a "learning coach." In turn, the school portion was

inconsistent because the student was frequently absent or tardy, leading to disruption in structure. Thus, the hearing officer held that the hybrid program was not appropriate to meet the student's needs despite the best attempts of the program to accommodate the student and provide services, supports, and modifications. She held that the student required a full-time face-to-face program on a school campus.

*Note*—One can easily envision future litigation similar to the one in the Hawaii case above. The outline of such a case would be that the parent wants an online instructional program, and after a trial period, the program's IEP team determines it cannot provide a FAPE in light of the student's unique needs. The parent then challenges the decision in due process arguing the program failed to provide the accommodations, services, aids, or modifications that would have made the program appropriate for the student. Or, in situations where a district determines that the student needs the online program, the parent challenges the appropriateness of the program to meet the student's needs. Note also that given that the parent must voluntarily play an important role in monitoring and implementing the virtual program, a parent's unwillingness to do so can effectively render the program inappropriate.

*Note*—Likely areas for disputes involving virtual programs may include equity and access arguments over denials of admission, attempts by virtual programs to change a student's placement back to a regular school setting, disagreements over face-to-face service needs, disagreements over parental participation, and disagreements over the reason for a student's failure to progress in the virtual program, among others. Before a virtual program's IEP team determines that the program cannot meet the student's needs and the student must return to school, there should be documentation of all attempts to accommodate, modify, and provide aids and services. Then, virtual programs should be aware that the stay-put provision of IDEA will likely work to keep the student at the program for the pendency of the dispute should the parent file a request for due process hearing.

- **Degree of individualization to meet unique student needs**

Delivering a FAPE in a virtual context requires individualization as in a brick and mortar program. The virtual program must implement each student's annual goals (and short-term objectives, if applicable) and provide sufficient virtual instruction for the student to have a reasonable opportunity to master the annual goals. In addition, instructional accommodations appropriate to the unique nature of the virtual program must be addressed as part of the IEP

process, and must be implemented by the virtual program instructional team. A virtual program that does not afford the necessary degree of individualization may be subject to legal challenges on equity and access grounds, as well as on denial-of-FAPE grounds.

- **Fitting the existing legal framework to virtual instruction context**

The IDEA's legal requirements were not designed with virtual/cyber programs in mind, and may not incorporate provisions addressing the use of virtual programming for some time. Historically, legislation lags behind technological innovation, and must play "catch-up" to address norms in the context of evolving technology applications. The LRE requirement, for example, is premised on the degree to which a special education student is physically educated alongside non-disabled peers. How does that requirement apply to a virtual program? In one sense, the program is highly restrictive, as it may allow little opportunity for social interaction with peers in the traditional forms. But in another sense, it may allow for students to interact with others in a virtual manner, and may allow greater access to a greater range of curricula. The requirement to implement positive behavioral supports and interventions may be awkward to observe in a virtual program context. Thus, while the law evolves to address the issues inherent in virtual/cyber programs, there may be areas where the framework of the law does not provide a natural "fit" with which to analyze potential conflicts and disputes. Certainly, the next IDEA reauthorization will need to provide clarity in terms of how the IDEA's mandates apply to the virtual education world, in order to provide clarity to parents, schools, hearing officers, and courts.

- **Need for staff training on issues unique to virtual instruction**

Virtual program staffpersons are likely to require training both on meeting the legal requirements of IDEA with respect to IEPs and IEP development in a virtual context, as well as on implementing and monitoring special education services in such programs. Providing instruction and monitoring progress in a virtual program is not the same as when the student is physically present in the instructional setting. Staff must be trained as to the unique nature of virtual programs and their nuances in terms of quality of instruction, implementing specially designed instruction in the virtual context, troubleshooting, interacting with parents, and monitoring of progress.

- **Monitoring and addressing cyberbullying**

Cyberbullying has been identified as a specific problem in the online environment, and online/virtual programs can be an additional forum for



inappropriate interactions between students, including students with disabilities. Schools that operate online programs must ensure that proper notices and policies are created to inform parents and students of how to report cyberbullying or disability harassment, and establish procedures for how the school will address such reports. See attached *Sample Anti-Harassment Policy Language* addressing cyberbullying.

- **Related services: the need for some face-to-face services**

No matter how well-designed and high-tech, some related services can simply not be provided meaningfully in an online context. Physical and occupational therapy, for example, are services that in most cases require physical contact from the therapist. Thus, for some students, their online instructional program will have to be supported by some measure of in-person services. As part of the IEP development process, schools must address and state the location of related services. See 34 C.F.R. §300.320(a)(7). The IEP team must address whether the related services that must be provided in person will be provided at a school site or in the home. In a related vein, the therapists must address the need for services from a different perspective, as those decisions typically hinge on how the student will physically manage the brick and mortar environment, rather than an online setting. For students that are physically located far from the virtual program staff, the program will have to make arrangements to contract with related services providers in the area where the students live, and will have to monitor their development of IEP goals and objectives, the implementation of services, and their monitoring of progress.

*A related service unique to virtual programs* – A key related service in the virtual context is training and support for the student and the parent with respect to using the computer and software. The training and support for the student would focus on using the technology to review materials, complete assignments, and turn in work. For the parent, the training and support would focus on using the technology to monitor participation, review progress on assignments, document attendance, and interact with instructional staff as necessary. As with other related services, the tech training and support should be individualized and set forth with specificity in the IEP or §504 Plan, including amount, frequency, duration, and location. If problems in this area arise, the IEP or §504 team should meet to determine if additional or different support is required.

- **Students with motivational, social, or behavioral issues**

While online methods can be highly effective, they can prove problematic for more dependent learners, or those with existing motivational or behavioral

issues. See, e.g. *Weaknesses of Online Learning*, Illinois Online Network, University of Illinois. The asynchronous nature of virtual programs give students greater flexibility and control over their learning experience, but also place greater responsibility on the student. Thus, some sources argue that virtual programs may not be appropriate for younger students or other students who are dependent learners and have difficulties assuming the responsibilities of virtual programs. *Id.*

Clearly, the IEP team's information on the student's level of self-motivation, ability to manage time, and skills in working independently play significantly in the decision of whether a virtual program is appropriate for the student. Or, the IEP team may have to include safeguards in the program to ensure that the student is on-task and submitting his own work. This issue is likely to generate discussion and possible disputes, as parents of students who exhibit school refusal, attendance problems, or motivational issues at school may decide to have the student attempt online educational programs in lieu of traditional attendance. The problem is that this type of program inherently demands more self-responsibility and initiative than the student may demonstrate. After a period of attempts at online instruction with increased levels of accommodations, aids, modifications, and services, if there is still no success, it may prove difficult to re-transition these students to a regular campus setting without significant risk of legal challenge.

***Positive Behavior Interventions and Supports in Virtual Programs***—As applied traditionally, IDEA requires that IEP teams consider positive behavior interventions and supports when students exhibit behaviors that impede their learning or the learning of others (note that the very language of the provision envisions group learning). 34 C.F.R. §300.324(a)(2)(i). It is likely that the provision would be applied to virtual programs that encounter situations of students who are exhibiting off-task or non-compliant behaviors, such as not logging in, not turning in work, not attending to instruction, etc. Virtual programs have to plan for behavioral interventions that make sense in the virtual context, such as increased monitoring of the student, increased contacts with the parent, training of parents on how to motivate the students and keep them on-task, behavior contracts. If a program has made real efforts to address a behavior problem and the student does not respond, this would seem to be an indication that the virtual program may not be appropriate for the student's behavioral needs. But transitioning such students back to school might be a challenge, as they might have considered the virtual program in reaction to behavior problems in a bricks-and-mortar school setting. Admission policies and criteria should make clear that a student's non-

compliant or off-task behaviors may be an indicator that a virtual program will not have the degree of structure necessary to meet their needs.

*Social Skills Needs*—A related issue is the student with social skills deficits who seeks virtual instruction as the sole method for his education. The IEP team must determine how social skills deficits will be addressed as part of the program, and whether it is even possible to meet this area of need in a virtual program. For some high-functioning students with autism spectrum disorder, for example, development of appropriate social skills can be a key aspect of their educational program and IEP. Although these students may be well adept at managing the technological aspects of the programs, and will avoid potential social conflicts and problems that present themselves at campuses, IEP teams might decide that such a program is detrimental to acquiring improved social skills.

- **Transfers of students between virtual and brick-and-mortar schools**

The safest legal assumption to make is that a change from a brick and mortar program to a virtual program is a change in placement under the IDEA, subject to IEP team decision-making and prior written notice. Not only does the student attend school in a different manner, the nature of the program changes in terms of the student's role and the parent's role. The movement of students between traditional physical campuses and online/virtual programs can be tricky for schools to manage, and can lead to disputes, as the following case demonstrates:

*Douglas County Sch. Dist. RE-1, 109 LRP 32980 (SEA Colorado 2009)*—After a student requested placement in an online charter school authorized by the District, the program allowed the student to participate in the online program by means of written work while her application was being processed, and while an IEP team convened to determine whether the program was appropriate to confer a FAPE. After the IEP determined that the program could not meet the student's needs for direct instruction with only consultative services in addition to the online program, the parent complained to the SEA. The SEA found that the District was required to ensure that FAPE was provided in the three-week period during which the application and IEP meeting process took place. Instead, the student had neither full access to the online program, nor to her required special education services. Thus, the student was entitled to 20 hours of compensatory education from a special education teacher (although the parent indicated she did not want such services, as the student was enrolled in another full-time online program).

*Note*—Here, the problem appeared to be that the District allowed the parent to go to the virtual school to enroll a child who was new to the District, as she resided in another. Instead of offering services comparable to her current school-based IEP in a campus setting while the online program application and IEP team decided if the program was appropriate for her, she was allowed to enroll in the online program although she could not access the computer system while her application was pending. The District could have insisted that the student attend school under a comparable services temporary program while the application was being considered. Or, if the parent wished, the student could have remained in her home district while the application process and IEP team meeting could be finalized. From a policy standpoint, an online school's policies should required that applying students remain in their resident district or assigned campus until the online program accepts the student and the IEP team has approved the placement.

- **Factors relevant to appropriateness of virtual program for specific students**

Attendance problems or school avoidance  
Ability to remain on task with minimum prompts  
Social skills deficits requiring live interaction with other students  
Need for significant one-to-one instruction  
Need for life-skills instruction  
Ability to work independently  
Previous performance in virtual programs  
Ability and willingness of parents to play expected role  
Need for alternate schedule  
Compliance problems  
Emotional problems  
Academic ability  
Ability to work with technology (with training and support)

There may be more factors that are also relevant. It will be crucial for admissions policies and criteria to set forth the factors that a virtual program's IEP team will use in determining if their program is appropriate for the student. *See attached* sample policy.

- **IEP Team meetings**

It would seem that the natural process would be one where the online program convenes IEP team meetings on students seeking to enroll with the

participation or consultation of staff from the student's prior regular school placement, and after review of educational records. The IEP team can then make an initial determination of whether the program, even with accommodations, modifications, aids, and services, is capable of conferring FAPE to the student, based on review of key factors and the student's unique needs. As part of this application and enrollment process, the virtual program may conduct needs assessments to help in making these determinations. The meetings may be conducted virtually or by telephone, particularly if the student is located far from the virtual program staff. Scanning technology can facilitate distribution and transmission of IEP documents and other records to meeting participants. Virtual program developers should engage in thoughtful planning for the logistics of conducting IEP team meetings.

- **Addressing the increased role of parents**

In the *Virtual Community School of Ohio* case reviewed above, the Hearing Officer focused on the fact that parents in many online programs assume new roles as monitors and facilitators of their child's educational programs when they agree to participate in the online program. The cases illustrate that this is an aspect of the placement decision that must be carefully considered by the IEP team in close collaboration with the parent. The parent must be clearly, carefully, and completely informed of their expected functions and duties as part of the program. These functions should be outlined in the program's policies and procedures. Normally, parents play little or no role in the implementation of their child's IEP in a physical campus setting, and have no legal responsibility to do so. If problems arise in a virtual program regarding parental duties, the IEP team must meet to discuss the problems and brainstorm how the problems can be addressed. Note that in the *Benson* case (also reviewed above), the school had to add paraprofessional assistance when the parent indicated she could not meet the role of the "learning coach."

*Note*—Parents may need training and tech support in assisting the student's participation in the program, documenting attendance, and interacting with instructional staff. At the outset of a student's admission, staff should consider a parent needs assessment to ascertain whether the parent has the skills, time, and willingness to play their expected role in the program implementation. While programs must provide parents with assistance, if parents are unwilling and unable to perform minimum required functions, even with individualized support, the program might not be appropriate for the student.

*Note*—See also *Department of Educ., State of Hawaii*, 112 LRP 31884 (SEA Hawaii 2012), for a hybrid online educational program where parents are trained to be “learning coaches” for the students.

- **Clearly identifying staff roles and responsibilities in implementing and monitoring the IEP**

In online programs, a greater degree of responsibility is placed on both the student and the parent. This is inherent in online instruction, as many programs are self-paced and the parent may have to help organize the instructional day and monitor whether the student is on-task and working a sufficient amount with the required diligence. Thus, it is crucial to establish what the school staff will do and what responsibilities and duties are placed on the student and the parent. Moreover, one key duty of school staff is to monitor the overall effectiveness of the program for the student, troubleshoot any potential problems in the student’s role, and identify and address issues in the parent’s role. The IEP team should address recurring problems with appropriate measures, including additional assistance to the student and parent as needed. If such measures are ineffective, the IEP team may have to decide whether the online program is an appropriate placement option.

- **Technology problems and the key role of technicians**

In the case of *Virtual Community School of Ohio*, which was reviewed above, the parent complained that there were periodic problems with both the software and hardware components of the online program. The Hearing Officer noted that these are “problems inherent in technology,” including viruses, down times, malfunctions, and other glitches. But, he found that the school addressed the problems promptly, and thus, there was no violation of the IDEA. Translated into the virtual realm, a legal argument that technology problems were not attended to in a timely or appropriate fashion can form the basis for a failure-to-implement claim if the facts show that the school was remiss in addressing the technological problems in a proper and timely fashion. Thus, the response time of technicians and technical teams will have legal implications in online programs. Schools must iron out all possible technical problems, and have sufficient technician resources to address day-to-day problems and malfunctions. In situations where the virtual program staff are far from the student, this will present difficulties if technicians have to go to the student’s home to address hardware issues and technology training. In addition, notices must be provided to parents that misuse or non-educational use of the program software and hardware can exacerbate the potential for technical problems. Staff must document any parental non-compliance with technology use policies in case disputes later arise.

- **Managing the instructional “shift” in the way material is organized and delivered**

An instructional challenge for teachers who deliver online instruction is shifting the manner in which material is organized and presented. This is likely as much a matter of practice and familiarity as it is of training. Campus administrators will undergo a parallel shift as they adjust their supervision and monitoring of instruction to a virtual context.

- **Need for certain degree of student computer literacy**

Both students and staff will have to reach a minimum level of computer and operating system literacy to function within an online program. Some entry-level training may be necessary for some students to reach the required technical proficiency, while for others, the technical prerequisites to functioning in an online program may be too significant to overcome. Thus, a component of determining whether an online program is an appropriate placement for a special education student must be based on an assessment of their computer and operating system savvy, and whether their competencies are such that additional training can make them sufficiently proficient, within a reasonable time, to make effective use of the technology to access the program.

## **Additional Resources**

Betts, Welsh, Pratt, Hermann, Dietrich, Treviño, Watson, Brooks, Cohen, & Coombs, *Understanding Disabilities & Online Student Success*, JOURNAL OF ASYNCHRONOUS LEARNING NETWORKS, Vol. 17: Issue 3.

Rhim & Kowal, *Special Report: Demystifying Special Education in Virtual Charter Schools*, PRIMERS ON IMPLEMENTING SPECIAL EDUCATION IN CHARTER SCHOOLS.

Basham, Stahl, Ortiz, Rice, & Smith, *Equity Matters: Digital and Online Learning for Students with Disabilities*, CENTER ON ONLINE LEARNING AND STUDENTS WITH DISABILITIES (2015).

## **SAMPLE POLICY LANGUAGE IDEAS FOR VIRTUAL PROGRAMS WITH RESPECT TO STUDENTS WITH DISABILITIES**

**Mission and Goals.** The mission of the District's virtual program is to promote high academic achievement leading to appropriate opportunities for post-school work and/or educational experiences. Its goals include increasing students' ability to work independently, self-discipline and self-motivation, ability to maintain on-task attention with minimal external prompts, self-monitoring of attendance and participation, ensuring proper parental role in monitoring student attendance and participation, and ability to work with technology and technology applications.

**Equity and Access.** Despite the web-based and online nature of the District's instructional program, the District will ensure that students with disabilities enjoy equal access to the educational benefits and opportunities offered by the technology, as well as equal treatment in the use of such technology. Students with disabilities shall not be excluded from, or be denied the benefits of, the web-based and online program on the basis of disability as long as their respective committee of knowledgeable persons (Section 504 committee or IEP team) determines that the web-based and online program is appropriate to provide them a FAPE with or without the provision of appropriate and individualized accommodations, modifications, aids, and/or services.

**IEPs and Section 504 Plans.** For students with disabilities wishing to enroll in the District's web-based and online program that have existing and current IEPs or Section 504 plans, the District shall convene IEP team or Section 504 committee meetings respectively, and such meetings shall include staff from their prior educational placement and carefully consider data from various sources to reevaluate their needs specifically with respect to participation in the web-based and online program. If the attendance of staff from the prior placement is not feasible, the IEP team will obtain the necessary information from such staff prior to the meeting. If the respective team determines that with appropriate and individualized accommodations, modifications, aids, and/or services, including parent training and orientation, the program is appropriate for the student to receive a FAPE in light of their unique needs, then the IEP or Section 504 plan will be revised to include the services, aids, supports, accommodations, and modifications that will be required in order for the IEP to be reasonably calculated to confer educational benefit in the web-based and online program. After consideration, a team may determine that, based on some students' unique needs, the web-based and online program is not appropriate to confer a FAPE, even with the provision of appropriate and individualized accommodations, modifications, aids, and/or services. Such a determination may be made in the initial application process, or after the student has participated in the program



for some time. Moreover, such a determination is subject to the parents' rights and procedural safeguards under IDEA and Section 504 respectively.

**Factors relevant to appropriateness of web-based or online program for specific students.** The following are some of the factors that may be relevant in an IEP team's determination of whether the web-based or online program is appropriate to provide a FAPE, with or without the provision of appropriate and individualized accommodations, modifications, aids, and/or services:

- Non-medical attendance problems or school avoidance
- Ability to remain on task with minimum prompts
- Social skills deficits requiring live interaction with other students
- Need for significant one-to-one instruction
- Need for life-skills instruction
- Ability to work independently
- Self-motivation skills
- Previous performance in virtual programs
- Ability and willingness of parents to play expected role
- Need for alternate schedule
- Compliance problems
- Emotional problems
- Academic ability
- Ability to work with technology (with training and support)

Although the above listing represents some key relevant factors, others may also apply.

**Related Services.** Related services are those needed in order for the student to benefit from his educational program. Some related services can feasibly and appropriately be provided to the student on a web-based or online basis, while some services may require in-person delivery of services. The District will arrange for services required to be provided personally either at a bricks and mortar facility or the home, and parental preference will be considered in the decision on location of services. Should transportation be necessary in order for a student to access related services, the District will provide transportation from and to the home.

**Parental Role.** The inherent nature of web-based and online programs envisions an active and important role for parents in implementing and monitoring the program and the student's participation. Parents assist in the implementation of the program by facilitating the attendance and participation of the student in the web-based and online program and assisting in ensuring that the student remains on-task as required for participation and progress in the program.

Parents will be provided training and orientation with respect to the applicable technology and their role in the program. Parents will also be expected to communicate and coordinate frequently with online instructors with respect to the student's performance and progress. Failure of parents to play their expected role with respect to the web-based and online program may compromise a student's performance and progress on the program.

**Preliminary Needs Assessments.** As part of the collection of various sources of data needed to reevaluate students with disabilities specifically with respect to participation in the web-based and online program, the District may conduct needs assessments to help ascertain the unique needs of the child vis-à-vis web-based and online programs, as well as the parents' ability and willingness to meet expectations with respect to parental role, as set forth above.

**Accessibility.** The District provides individuals with visual disabilities with an equal opportunity to participate in or benefit from its online or web-based instructional program. Access of students with visual disabilities to the program, and its associated websites and web pages, shall be as effective and integrated as that provided to non-disabled students, and with substantially equivalent ease of use. With respect to students with other types of disabilities, including hearing or manual impairments, the program shall also be accessible and meet the equally effective and integrated standard. Should the program use a device or feature that is not fully accessible, the District will provide accommodations, assistive technology, or modifications that permit students with disabilities to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner, and with substantially equivalent ease of use. In meeting the accessibility standards, the District will refer to standards under either Section 508 of the Rehabilitation Act, W3C's Web Content Accessibility Guidelines, or other standard or combination of standards that will render its electronic and information technologies accessible.

**Equipment.** Parents must understand and acknowledge that any equipment provided by the District remains the property of the District and must be returned if the student withdraws from the program, graduates, or services are otherwise terminated. Parents and students must commit to using the technology as directed and make best efforts to avoid damage to either hardware or software. Misuse of, or damage to, the technology despite warnings and training is a factor that the student's IEP team may consider in determining whether the web-based or online program is appropriate to meet the student's needs.