



LATSHA DAVIS & MCKENNA



ATTORNEYS AT LAW



**DELIVERY OF SPECIAL EDUCATION
SERVICES IN ONLINE PROGRAMS
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National Growth of Virtual School Options



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“KEEPING PACE WITH K-12 DIGITAL LEARNING” John Watson, Larry Pape, Amy Murin, Butch Gemin, Lauren Vashaw Evergreen Education Group, 2014

- 36 states have fully online schools operating across the entire state.
- In school year (SY) 2013–14, they estimated that over 315,000 students attended statewide fully online schools, a year over year increase of 6.2%.
- State virtual schools operate in 26 states, providing supplemental online courses to students across their states. In SY 2013–14 they collectively served just over 740,000 course enrollments, about the same amount as in SY 2012–13

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Variations in Online Learning

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- Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies U.S. Department of Education Office of Planning, Evaluation, and Policy Development Policy and Program Studies Service Revised September 2010
 - <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>
 - “Objective—whether the activity serves as a replacement for face-to-face instruction (e.g., a virtual course) or as an enhancement of the face-to-face learning experience (i.e., online learning activities that are part of a course given face-to-face)”
 - Technologies can support different learning experiences:
 - “Expository” instruction—(Digital devices transmit knowledge)
 - “Active learning”—The learner builds knowledge through inquiry-based manipulation of digital artifacts such as online drills, simulations, games, or
 - “Interactive learning”—The learner builds knowledge through inquiry-based collaborative interaction with other learners; teachers become co-learners and act as facilitators.
 - Delivery:
 - “Synchronous”, with instruction occurring in real time whether in a physical or a virtual place
 - “Asynchronous”, with a time lag between the presentation of instructional stimuli and student responses
 - “Blended Learning”, combination of online and face-to-face instruction

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Virtual Special Education

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With the evolution of virtual schools, it is critical to remember that students with disabilities enrolled in public online or virtual schools retain their federally protected rights under applicable laws and regulations.

Therefore, Local Education Agencies (LEAs) must understand their obligations under applicable federal and state laws & regulations & adhere to them.



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Goals of the Session

• **ANTICIPATE**

• **ADVOCATE**

• **INNOVATE**





Overview of the Legal Aspects



LAWS AND REGULATIONS WERE NOT INITIALLY DRAFTED WITH UNIQUE ONLINE MODELS OF EDUCATION IN MIND OR PARTICULARLY WITH NEW AND EMERGING TECHNOLOGIES IN MIND

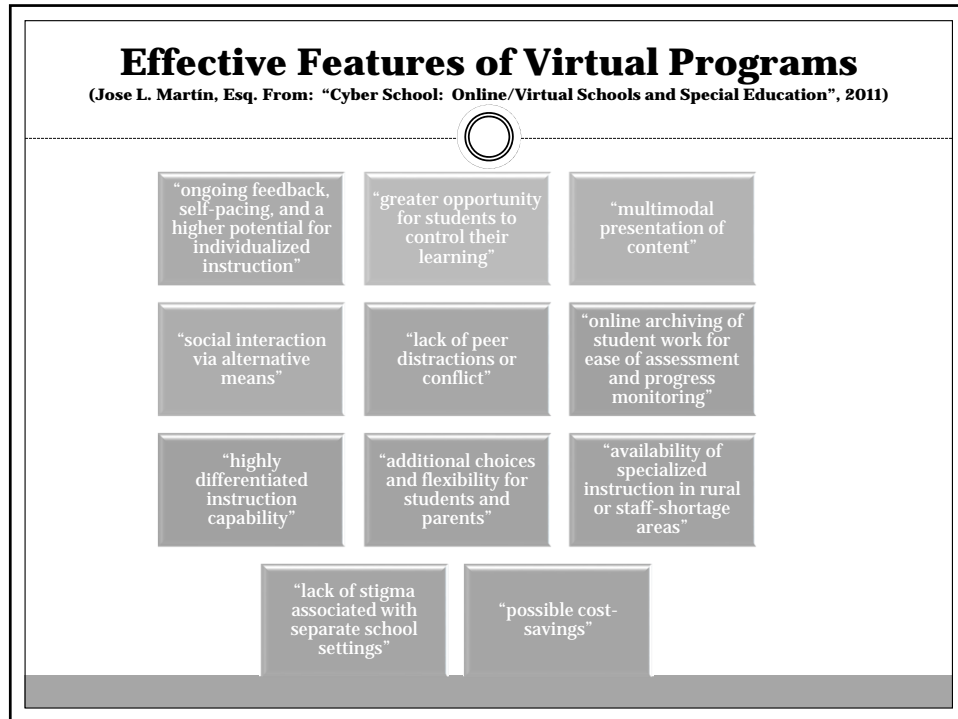
BUT ...



Virtually Possible



- *See Demystifying Special Education in Virtual Charter Schools, Lauren Morando Rhim, Julie Kowal, Public Impact stating:*
- *“Educating students with disabilities in virtual schools entails not only molding state charter school laws to fit a specialized type of charter school, but also adapting federal and state special education guidelines aimed at providing special education in traditional brick and mortar settings. Two primary points for consideration in virtual charter schools are **enrollment** of students with disabilities and navigating the intersection of the **complex laws and regulations.**”*



OVERVIEW OF MAJOR FEDERAL LAWS & REGULATIONS

- Individuals with Disabilities Education Improvement Act of 2004 (IDEA)
- Implementing Regulations at 34 CFR Part 300;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794;
- Implementing Regulations at 34 CFR Part 104;



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OVERVIEW OF MAJOR FEDERAL LAWS & REGULATIONS

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- Amendments to Title II ADA regulations effective 2011, 28 CFR Part 35, as published in the Federal Register;
- ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools
- Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g); and implementing Regulations at 34 CFR Part 99.

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Section 504



- **Section 504 of the Rehabilitation Act - Section 504 prohibits discrimination based on disability in federally funded and federally conducted programs or activities in the United States, including employment programs.**
- **No otherwise qualified individual with a disability in the United States ...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...**

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

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The purpose of 20 U.S.C.A. § 1400 is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities . . .



SECTION 504 & IDEA

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- Legislation designed to protect the rights of individuals with disabilities
 - Section 504 is a broad civil rights law
 - IDEA is a federal statute with the purpose of providing children with disabilities a free and appropriate education (FAPE) through specially designed instruction.



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FAPE

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- A recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.
- Special education and related services must be made available to the student in the least restrictive environment.
 - ✦ FAPE services must meet state educational standards.
 - ✦ FAPE services must be free of charge.
 - ✦ FAPE services must comply with the student's IEP.

34 C.F.R. § 104.33

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Special Education

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- Specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education

34 CFR §300.39

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Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley

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- Appropriate educational programs under IDEA do not mean the absolute best or potential maximizing services for the child
- Student has to be provided with a “meaningful educational benefit”

458 U.S. 176 (1982)

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THE ADA

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- Title II of the ADA prohibits discrimination and ensures equal opportunity for persons with disabilities
- ADA regulations can impose greater obligations on schools than IDEA does.
- For example, 28 C.F.R. 35.160(a)(1)
- Communications are as effective as communications with others.
- appropriate auxiliary aids and services
- equal opportunity
- *primary consideration to the requests of individuals with disabilities.*” 38 C.F.R. 35.160(b)(2).

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THE ADA

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- *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013), *cert. denied*, 2014 U.S. LEXIS 1732 (Mar. 3, 2014), held that an IEP that meets the FAPE obligation of IDEA does not necessarily satisfy the distinct obligation imposed by the ADA
- In determining how it will meet the child’s needs the ADA regulations require that the public entity ‘give primary consideration to the *requests of the individual with disabilities.*’” Provision has no direct counterpart in the IDEA.

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STATE SPECIFIC LAWS AND REGULATIONS

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- In addition to compliance with federal laws, online schools must also comply with any state specific laws and regulations.
- ** Check with legal counsel regarding specific requirements in your state.



- LEA OR NOT LEA? What's the implication for you?



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OCR GUIDANCE AND ONLINE LEARNING

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- **Per OCR:**
- ***Be knowledgeable about Federal civil rights laws in all areas, including but not limited to:***
- ***Recruiting***
- ***Admissions***
- ***Academics***
- ***Educational services and testing***
- ***School climate (including prevention of bullying and harassment)***
- ***Disciplinary measures (including suspensions and expulsions)***
- ***Athletics and other nonacademic and extracurricular services and activities,***
- ***Accessible technology***

○ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>

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Virtual Community School of Ohio v. OCR

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<http://www.ed.gov/news/press-releases/us-education-department-announces-first-its-kind-resolution-virtual-charter-school-civil-rights-investigation>

Virtual Community School of Ohio v. Office for Civil Rights, Midwestern Division, Cleveland (Ohio)

- OCR reinforced the importance of complying with the IDEA, Section 504, and the ADA
- Experts say this is a case that will have a significant impact on the way virtual schooling occurs
- Although an Ohio virtual charter school's website advertised that it was an "ideal setting" for students with disabilities, its approach to evaluating and placing them suggested that it was falling short.

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Virtual Community School of OH OCR Agreement

- <http://www.ed.gov/news/press-releases/us-education-department-announces-first-its-kind-resolution-virtual-charter-scho>

- Per OCR, “students with disabilities who attend online public charter schools are entitled to all the protections of the federal civil rights laws that their peers receive at traditional public schools, including the right to receive a free appropriate education (FAPE).”

- “Online schools also must take steps to ensure that the websites and online classrooms they use to promote their services and to educate students are accessible to individuals with disabilities.” Online education environments in which students reside across the state and go to school together in a totally online environment, may present “unique challenges.”

- Resolution provides for equal access to educational opportunities for students

Take Aways

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- Consider:
- Whether the School has adopted and published grievance procedures that provide for the prompt and equitable resolution of complaints under Section 504
- Whether the School provided individuals with visual disabilities with equal opportunity to participate in or benefit from its web-based program and whether access to the web-based education program is as effective as that provided to other students
- Whether the School identifies, evaluates, places and provides procedural safeguards for students with disabilities in conformance with Section 504.

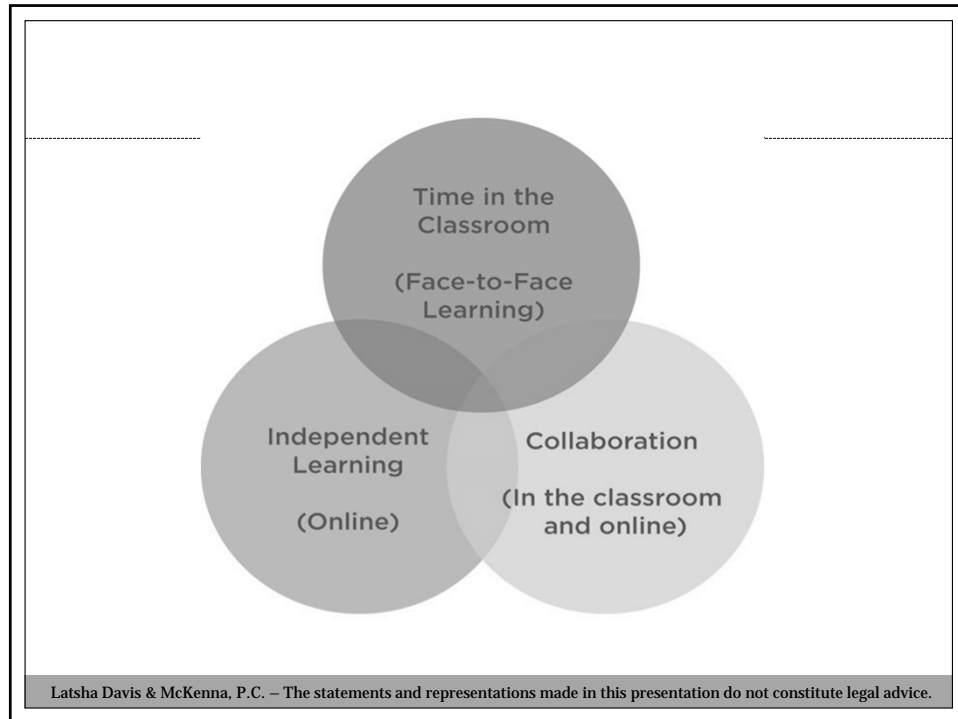
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CONSIDERATIONS FOR HIGH QUALITY ONLINE LEARNING

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- What are you trying to teach?
- How will your students learn?
- What background knowledge will they need?
- What opportunities do they need to practice?
- How will they get feedback?
- What opportunities are there to extend their learning?
- How will it relate to their work?

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PRACTICAL ISSUES

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- IT facilities and support - especially if running state-wide modules & work across time zones may require tutor flexibility
- Some functionality is impaired on mobile devices
- Institutional usernames and passwords to access e-libraries [? Problematic with some administrative burden]
- Upkeep of system - maintaining links etc.
- Monitoring student engagement
- Requires a similar amount of tutor time

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SPECIAL EDUCATION SPECIFIC

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- Progress Monitoring Systems
- Paraprofessionals and Supports
- Virtual and F2F Related Services and Coordination
- A Dedicated Special Education Person to Monitor Student Progress & Report to Team
- Related Service Providers
- Testing Centers
- Transportation

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CONTINUUM OF SUPPORTS & SERVICES

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- **Least Restrictive Environment**
- **Regular Education Classroom**
- **Regular Education Classroom with Consultant**
- **Regular Education Classroom with Itinerant Teacher**
- **Regular Education Classroom with Resource Room Support**
- **Part-Time Resource Room**
- **Full-Time Resource Room**
- **Alternative Placement/Special Day School/Residential Program**
- **Supplementary Aids & Services**

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“ONLINE LEARNING DONE CORRECTLY AND WITH DIVERSITY”

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- “Increases student motivation and achievement
- Learning environment that is highly interactive
- Curriculum that is built upon recognized standards
- Student centered and Instructor facilitated
- Instructors certified in their subject area
- Connects students from various backgrounds
- Provides individualized attention between teacher and student
- Requires students to be active learners, not passive
- Encourages higher-level thinking
- Utilizes resources of the whole wired world
- Involves parents as partners
- Expands learning time
- Prepares students for post-secondary and the workplace”



- New Models for 21st Century High Schools: Creating Options and Engaging Students, Julie E. Young
- <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjzuvGDqqDMAhUM0j4KHXTGASOQFggcMAA&url=https%3A%2F%2Fwww2.ed.gov%2Fabout%2Foffices%2Flist%2Fvae%2Fpi%2Fhsinit%2Fpresen%2Fyoung.ppt&usg=AFQjCNERVI9h1Rh13FsKuBFMDk-0l5mpaw&sig2=Dwn0qeE7YWY--CT6ZszQZA&bvm=bv.119967911,d.cWw>

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Innovative Technologies

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- **Cyber Charter Schools often use innovative technologies to assist them to function as their own LEA**
- **Role and function of providing a FAPE for identified students is typically done in the home**
 - Live sessions using innovative technologies
 - Synchronous and Asynchronous sessions via a teaching and learning platform consistent with distance education

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Parent Involvement

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- **Parents of Cyber Charter School students are often actively involved in educational instruction**
 - Delivery of instruction and assessments in the home, or at educational centers
 - Complications with active parent involvement
 - Delivery of instruction and teaching can be enhanced by active parent involvement



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Parent Role

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- See e.g. Pennsylvania State Educational Agency, 8123/07-08 AS (SEA PA 2008) wherein a hearing officer found that no consideration was given to the role of the Parent. The Parent was in a role that had some of the characteristics of a special education teacher and some characteristics of an educational aide. While she was supervised and supported by -- for the most part -- qualified teachers, she was the only person providing direct, hands on instruction. Thus, the School's system vested substantial responsibility in her, and the record shows that she had neither the skills nor the experience needed to succeed in that role. Yet, the special education teacher never went to the home, nor did any other member of the teaching staff. There was no consideration of finding another Learning Coach for the Student. Even when the Parent became too ill to function as a Learning Coach, there was no substitute.

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Getting Off to the Right Start



- ENROLLMENT
- ADMISSIONS
- POLICIES/PROCEDURES
- NON-DISCRIMINATION
- WHAT TO IMPLEMENT OR DEVELOP?
- DILIGENT REVIEW
- KNOW THE STUDENT!

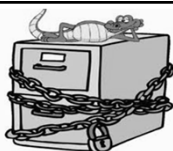
Admissions

- Ensure that admissions criteria are non-discriminatory
- “As a general rule, a schools eligibility criteria for admission must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner”
- May not categorically deny admission to students on the basis of disability
- ADA communications regulations require that “communications with parents with disabilities must be as effective as communications with other parents”
 - From OCR issued Dear Colleague Letter in May 2014

Douglas County Sch. Dist. RE-1, 109 LRP 32980
(SEA Colorado 2009)



- When registering her child in August, 2008, Parent asked the Charter School if it could implement Student's IEP
 - The director told her that the Charter School could
 - Subsequently, in September, 2008, after reviewing the IEP, the Charter School told Parent that it could not meet Student's needs and asked for her to withdraw
- Based upon language in the enrollment materials, the State Complaint Officer found that Student was conditionally enrolled in the Charter School in August, 2008
- During the three-week period of conditional enrollment, the Charter School was obligated to provide a FAPE.



Where are the Records?



- Ongoing Access to Information
- FERPA
- Contracts and Contractors
- Agents
- Communication

Eligibility Determinations

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- Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the child's parents will determine whether the child is a child with a disability.
- The rationale behind the IDEA and this entire process is to establish a cooperative practice between the parents and the school, resulting in an appropriate IEP for the student. See *Muscogee County Sch.*, 704 F. Supp.2d 1299 (M.D. Ga. 2010).

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Enrollment and Transfer Issues



Jana K. v. Annville-Cleland Sch. Dist., 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. Aug. 18, 2014)

- The district court noted that the type and amount of services necessary for FAPE in one virtual school may differ from services necessary for another brick and mortar school
 - The student transferred from her home district to a cyber charter school due to lack of progress
- The Hearing Officer concluded, and the district court agreed, that the resident school district had committed a child find violation thereby depriving Student of a FAPE
- The Hearing Officer used the related services in the Charter School IEP to determine compensatory education owed for the child find violation
 - The district court did not affirm that award, finding that the virtual school presented fewer behavioral and emotional challenges and Jana would require far more support in a public school setting
- The court went on to award full days of compensatory education:
 - "in a situation such as this, where the overall effect of the school district's deficiencies resulted in a widespread loss of educational benefit for the student, it would be futile to attempt to parse out the precise number of hours that the student was denied a FAPE." 2014 U.S. Dist. LEXIS 114414, at 63.

Attendance & Pendency

- **R.B. v. Mastery Charter Sch., 61 IDELR 183 (3d Cir. 2013)**
- **Mastery Charter School assumed management of Pickett School in 2007**
- **At that time, R.B. was already attending the school, with an IEP, and she automatically became Mastery's student**
- **In June, 2009, Mastery dropped R.B. from its attendance rolls after ten consecutive absences**
- **The District Court held that the disenrollment violated the "stay-put" provision in the IDEA**
- **The Court of Appeals affirmed**

FBA, PBSPs, Attendance and Observations

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An FBA is a process that searches for an explanation of the purpose behind a student's problem behavior. Although FBAs and behavioral intervention plans are not required components of the IEP, they aid schools with discipline procedures.

34 CFR §300.530.

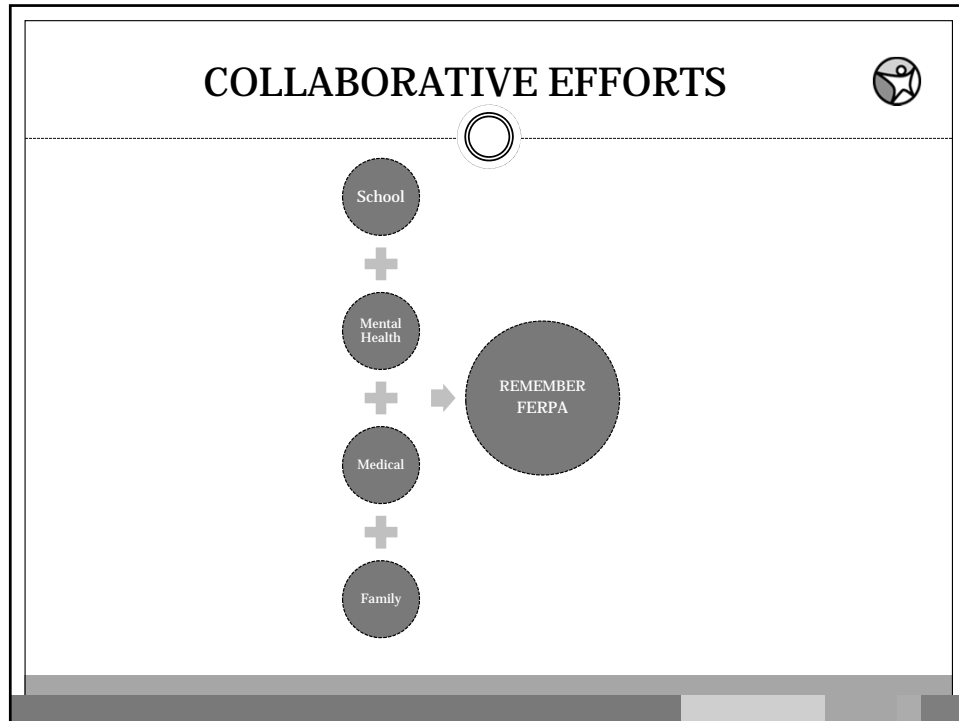


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Positive Behavior Support

- Thought to Be Eligible?
- Functional Behavior Assessment
- Student Assistance Programs
- Behavior Support Plans
- SDIs
- Referrals
- Agency Links
- Coordination of Efforts





Evaluations, Reevaluations & IEEs

- Under the IDEA, an initial evaluation must be conducted to determine whether a child qualifies as a child with a disability
 - This stems from one of the key purposes of the IDEA, which is to ensure parental involvement in a disabled child's education - *See G.J. v. Muscogee County Sch.*, 704 F. Supp.2d 1299 (M.D. Ga. 2010)
 - A request for this initial evaluation may be initiated by the parent of a child or by the school itself - *See 34 CFR §300.301*
- Schools must make reasonable efforts to obtain informed parental consent in order to determine whether the child is a child with a disability
- Procedural Safeguards are in place for cases where the parent does not provide consent or fails to respond to the request to provide consent - *See 34 CFR §300.300.*
- Parental consent for an initial evaluation should not be construed as consent for an initial provision of special education and related services
 - This is because under 34 CFR §300.300(b), the school must obtain parental consent prior to the initial provision of special education and related services to the child
 - If the parent fails to respond to the request, or refuses to consent to it, the school may not utilize Mediation or Due Process in order to obtain an agreement or ruling that the services are to be provided to the child - *See 34 CFR §300.300.*

Individualized Education Programs (IEPs)

- An IEP is an important tool that helps individualize a student's education program so that it is the best possible fit for that student
- Under the IDEA, an IEP is defined as "a written statement for each child with a disability that is developed, reviewed, and revised in a meeting." 34 CFR §300.320(a)
- The IEP must include the child's present levels of academic achievement and functional performance and measurable annual goals
 - Once the child reaches the age of transition, such services should be included in the IEP, including measurable postsecondary goals - See 34 CFR §300.320
 - At the beginning of each school year, the school must have an IEP in effect for each child with a disability - See 34 CFR §300.323.
 - Note, however, age 14 under PA regulations; Age 16 per federal IDEA

The Team



- Supplementary Aids and Services?
- PCA/Paraprofessional?
- Positive Behavior Support Plan?
- Student Assistance Programs?
- What can we do?
- What can we offer?
- What can we document?

Related Services

- **Related services are those services that accompany special education that allow a child with a disability to benefit from special education**
 - Includes school health and nurse services, school social work services, parent counseling and training, transportation, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), early identification and assessment of disabilities in children, counseling services (including rehabilitation counseling), orientation and mobility services, medical services for diagnostic or evaluation purposes - 34 CFR §300.34 (a).

One Size Does Not Fit All



- Policies
- Only Asynchronous Classes?
- Only one Curriculum Option?
- Student-Specific Decision Making
- FAPE

SPECIALLY DESIGNED INSTRUCTION (SDIs)

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- Specially Designed Instruction
 - Review Existing SDIs, if any.
 - Be creative in “how to” morph the brick-and-mortar approach into a virtual one
 - Don’t overcomplicate the issue - Specially Designed Instruction should answer the basic question, regardless of the location of delivery of the service.
 - The Question Remains – What does the teacher do to present the information to this student in a way that is different from what other students receive?



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SDIs

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- Key Points Overview of SDI
 1. Type of Instruction – make it specific
 - a. List the group size – individual or group (such as in a virtual classroom situation)
 - b. What skill do you want the student to learn?
 - c. How will you teach the skill?

Don’t be confused here – the same answer to “How” and “Through what method or means” applies to virtual instruction. If the application uses eye contact or a reminder of sorts, there are ways to achieve that in a virtual setting. For example, if the student has trouble with focus, a reminder ‘tap’ on the screen using technology can appear at set times, or, when appropriate, the student can be expected to enter a special code, or check off items on a list of accomplishments for a session, block of time or day.

- d. What conditions need to be in place prior to the presentation of the material?

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SDIs Continued

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- Key Points Overview of SDI
2. Provider Title – is the teacher/educator, unless co-teaching
 3. Location – home or other settings; and, access to the location device, for certain technology
 4. Time and Frequency -- list the minutes, hours; daily, weekly, monthly, quarterly; and specific to the time the student is receiving the specially designed instruction; and, could be contingent on certain “trigger events”

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Virtual SDIs

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- So, what does virtual SDI look like?
- The answer is the same for brick-and-mortar SDI! Below is a sampling of categories that might present some challenge:
 1. For nonverbal communicators, cued speech can be during face time/skype sessions or designated for home visits. But, visual, written, picture prompts and cues can all be given via the computer.
 2. For verbal communicators, repeating what is heard can be during face time/skype sessions or designated for home visits. But, chunking and written prompts, and visual prompts and cues can all be given via the computer. In addition, the student can video and/or audio record and the instructor can provide feedback.
 3. Challenges may present in oral expression, voice and fluency. But, again, face time/skype sessions or designated home visits can be used. Even so, the following SDI can all be utilized via technology:
 - verbal, picture, visual, written prompts and cues; relaxation and breathing techniques, counseling and role playing can all be done on the computer in video reproductions of simulated settings.

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Virtual SDIs Continued

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- So, what does virtual SDI look like?
4. Challenges may also present in social competence. But, social stories on line can be used to show examples and to generate responses.
 5. Substitute software driven computer prompts for verbal prompts and visual prompts; and, substitute audio and visual vignettes for role playing and modeling.
 6. Video self-modeling, in all of its forms, can be used for physical functioning SDIs and is especially productive for language and behavior issues, including children on the autism spectrum.

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Specially Designed Instruction

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- The following programmatic examples in the next few slides are not offered with the intent that an IEP team would adopt each and every one of them or any one specifically but to give you a sense of the range of opportunities that might be considered to help the student in the cyber classroom. It is recommended that multidisciplinary and IEP teams review a range of research-based programs to meet the Student's needs and to make decisions for program planning based upon the totality of information gathered about the student.
- These are examples for thought only and not recommendations for individual students:

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Specially Designed Instruction Continued

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Disability Related Need	Specifically Designed Instruction (“SDI”)	Recommended Location
<i>Distractions</i>	<i>Individualized 3-minute Instant Message During Session by Teacher</i>	<i>Synchronous Session or Break Out Room</i>
<i>Inattention</i>	<i>5 minute Alarm Check-In – Bomb (Explodes Graphically every five minutes to keep students attention)</i>	<i>Synchronous Session or Break Out Room</i>
<i>Hyperactivity</i>	<i>Small Group – Break Out Discussion Thread</i>	<i>Synchronous Session</i>
<i>Taking Turns</i>	<i>Cyber Multiple Hat (each group member is assigned a role for a duration of 3 minutes – recorder, scribe, reporter etc.)</i>	<i>Synchronous Session or Break Out Room</i>

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Specially Designed Instruction Continued

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Disability Related Need	Specifically Designed Instruction (“SDI”)	Recommended Location
<i>Peer Interaction</i>	<i>Peer Thermometer - By Color – each group shares positive feelings about the activity 10 minutes in and at the end and submits to instructor</i>	<i>Synchronous Session or Break Out Room</i>
<i>Comprehension</i>	<i>“W L” What I Know and What I learned or want to Learn More about (each student posts on whiteboard at the end of lesson).</i>	<i>Synchronous Session or Break Out Room</i>
<i>Phonemic Awareness</i>	<i>Syllabication Exit Cards (student chooses 3 new words learned during reading or ELA instruction and arranges them in phonetic spelling and shares with the group).</i>	<i>Synchronous Session or Break Out Room</i>

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Specially Designed Instruction Continued

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Disability Related Need	Specifically Designed Instruction ("SDI")	Recommended Location
<i>Reading Fluency</i>	<i>Cyber Peer Read Aloud</i>	<i>Break out Room or 1:1</i>
<i>Poor Spelling</i>	<i>Name That (Students Post Spelling new words at the end of a lesson on individual white boards only the teacher sees)</i>	<i>Synchronous Session or Break Out Room</i>
<i>Encoding</i>	<i>Digital Sound Cards where Students post digital white board cards to identify the phonemic sound of the word being taught.</i>	<i>Synchronous Session or Break Out Room</i>
<i>Phonemic Awareness</i>	<i>Digital Tapping Students post on the class discussion thread how many sounds they heard after manually tapping them out.</i>	<i>Synchronous Session or Break Out Room or Homework</i>

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Specially Designed Instruction Continued

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Disability Related Need	Specifically Designed Instruction ("SDI")	Recommended Location
<i>Math Numeration</i>	<i>Say and See Touch Math (Students type math problems and solve with symbols)</i>	<i>Synchronous Session or Break Out Room or Homework</i>
<i>Math Application</i>	<i>Students Utilize Study Island – Base Line CBM</i>	<i>Synchronous Session or Break Out Room or Homework</i>
<i>Math Computation</i>	<i>Students Utilize Study Island</i>	<i>Break Out Room or Homework</i>
<i>Written Expression</i>	<i>Cyber Slate Keyboarding program (Assistive Technology)</i>	<i>Synchronous Session or Break Out Room or Homework</i>
<i>Written Expression</i>	<i>Co-Writer Solo (Should be used in conjunction with Microsoft Word. This is a word prediction software program that includes both flexible spelling and topic dictionary option - Assistive Technology)</i>	<i>Break Out Room or Homework</i>

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Specially Designed Instruction Continued

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Disability Related Need	Specifically Designed Instruction ("SDI")	Recommended Location
<i>Reading and Writing</i>	<i>Read & Write Gold (RWG) is a comprehensive computer software program that provides support to students in reading, writing, online research and study skills(Assistive Technology)</i>	<i>Break Out Room or Homework</i>
<i>Organization of Verbal Information</i>	<i>Dragon Naturally Speaking 10 is the most student-friendly voice recognition program but it takes a great deal of commitment on the part of the student and school staff to implement successfully (Assistive Technology)</i>	<i>Break Out Room or Homework</i>

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IEP GOALS

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SMART IEP goals are:

- **Specific**
- **Measurable**
- **Use Action words**
- **Realistic**
- **Time-limited**

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Progress Monitoring

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- Progress Monitoring is a scientifically based practice used to assess performance and to evaluate the effectiveness of instruction.
- Data driven. Variety of useable formats.
- Measure on Regular basis (weekly, monthly).
- Report progress to parent.

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Your Map

The Evaluation Report, the Reevaluation Report, the IEE, etc. – Your Map

What Else Does the Parent provide? Withhold?

The Power of Observation

The IEP and Present Levels– The more things stay the same . . .

Your Toolkit



First, Make Sure You have the Right Map!

Chart it Out! Needs → Goals and SDIs

Request! Collect! Review! Share!

Keep Going! e.g. Quarter → Quarter → Year → Year →

FERPA note – Discovery/Records Requests

Successive IEPs



- E.S. v. Katonah–Lewisboro Sch. Dist., 742 F.Supp.2d 417 [264 Ed.Law Rep. [724]] 55 IDELR ¶ 130 (S.D.N.Y. 2010), aff'd, 487 Fed.Appx. 619, 59 IDELR ¶ 63 (2d Cir. 2012).
 - Court upheld appropriateness of first, but not second, of two successive IEPs for student with schizoaffective disorder and borderline intellectual functioning, concluding that the second IEP did not sufficiently take into account the progress data from the first year of the child's unilateral placement.

Continuum of Alternative Placements



- 34 CFR §300.115 (requiring continuum of placements) applies to Charter Schools
- Continuum must include “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.”
- Same LRE principles apply
- Placement decisions must be individualized
 - *Letter to Anonymous*, 53 IDELR 127 (OSEP 2009)

Implementing the Instructional Plan and Progress Monitoring

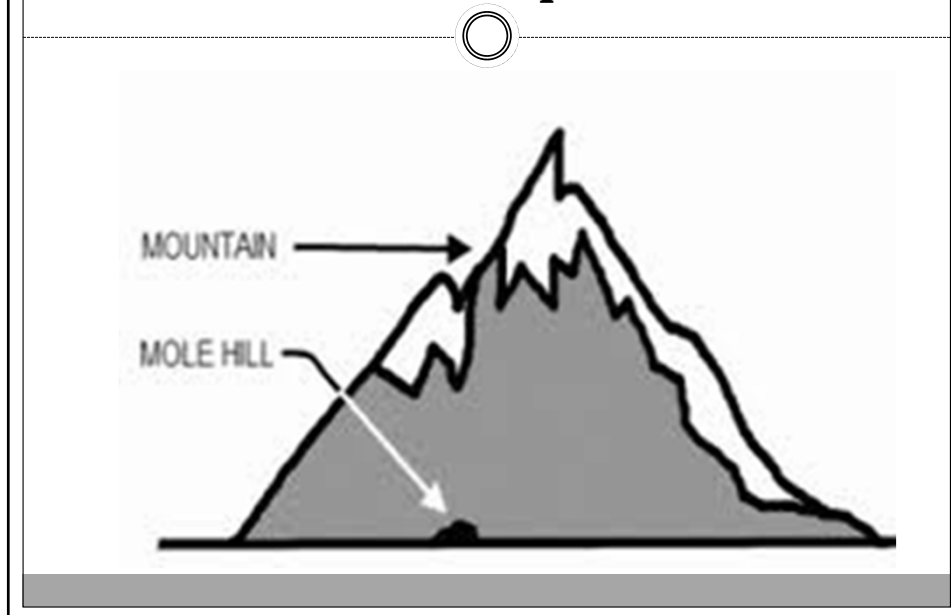


DK v. Abington Sch. Dist., No. 10-2189 (3d. Cir. Oct. 2012)

- District consistently:
- **monitored, documented** and **responded** to student’s individual educational needs in this case plus
- **developed** behavioral implementation systems with **parent cooperation** and **offered** special attention and testing accommodations.
- That was enough to justify no child find or FAPE violations under 504 or IDEA.
- (Case also considered scope of exceptions to statute of limitations)

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Parent Requests



Retaliation?



- *A.C. v. Shelby Cnty. Bd. of Educ.*, 711 F.3d 687 (6th Cir. 2013)
- Preserved for trial § 504 retaliation claims of parent who filed OCR complaint on behalf of elementary school child with peanut allergy, diabetes, and learning problems—genuine factual issues as to whether the principal’s reporting of the parent for child abuse was retaliation for the parent’s repeated requests for monitoring the child’s glucose levels in the classroom rather than the school clinic

When to Consider Other Options?



- How to Have the Difficult Discussions
- When and How to Involve Others
- How to Advocate
- Communication Strategies

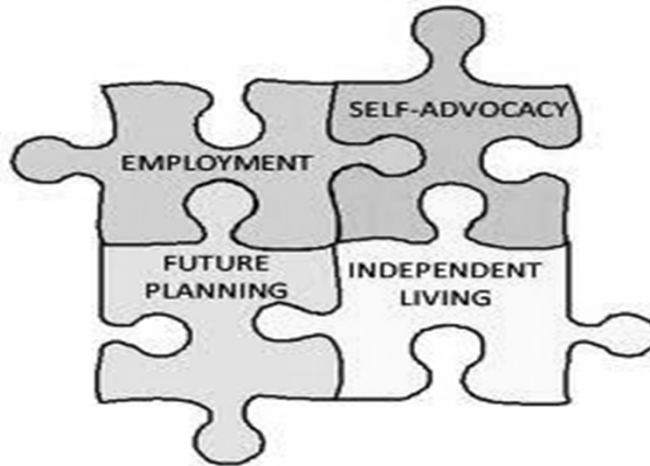


Vendors and Contractors



- Contractual Terms/Location/Transportation/Coordination
- Clearances
- Records/Student Information/Access
- Compliance
- Indemnification/Hold Harmless/Liability?/Insurance
- Reporting Requirements/FERPA

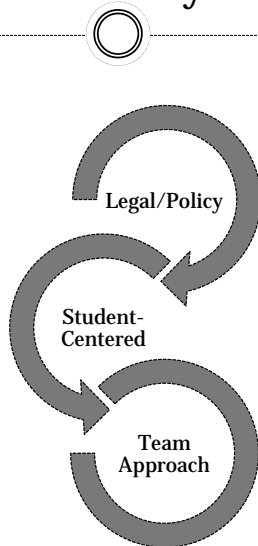
Transition Services/Assessments/FAPE



Districts can be Liable for Failures in Online Programs

- A Washington district's failure to monitor the admissions procedures of an online high school caused OCR to determine that the school violated Section 504 and the ADA
- The district, as the school's operator, also was liable for discrimination - *Quillayute Valley (WA) Sch. Dist.*, 49 IDELR 293 (OCR 2007)
- The school's written admissions criteria stated that it would not provide certain accommodations to students with disabilities
- The school also excluded students who had a "documented inability" to complete assignments independently or who were unable to read and write at a sixth-grade level
- It did not apply the same criteria to nondisabled students. Districts could face claims under Section 504 and IDEA for failures in accessibility and the provision of FAPE in online programs
- There are also unique LRE considerations likely on the horizon related to district online programs

Take Aways



Questions & Answers



Thank You!

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