Advocating For Your Child During The COVID-19 Pandemic

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The Statutory Right To A FAPE

- FAPE standard clarified by Supreme Court’s unanimous 2017 Decision in Endrew F.
- Goals must be sufficiently “ambitious” and “challenging” and take student’s “potential” into account
- FAPE standards require adequate foundational assessments (to determine the challenge level)
- School district does not get a COVID-19 “hall pass” to excuse non-compliance
The “Elephant” On Everyone’s Mind: Will Our Public Schools Be Able To Safely Reopen In September?

“I don’t believe so” (Michael Mulgrew, President of the UFT, at August 13 Town Hall)

“I’m not comfortable sending our children back to school.”  Dr. Sanjay Gupta (Atlanta)

Many schools are not properly supplied with protective equipment—and funding for that equipment is a problem— New York State faces a $16 billion dollar budget deficit, with NYC facing a $6-7 billion budget shortfall

Many teachers want to teach remotely or not at all, at least until the New Year

Some parents may sit out the first few days of school to better assess the risk

If your school does not open—be prepared to implement private educational programs
Getting The Most Out Of Remote Instruction

• It’s not about attendance—it’s about “attending.”
• Assess the proposed learning environment for any interfering factors
• Need for teacher proxy (usually a parent) as the teacher’s “hands”
• Does your school have a Remote Learning Plan? It should. Plan should then be individually tailored.
• Synchronous (live) vs. asynchronous (recorded)
• Maintain chronology and detailed schedule of all sessions
• How is efficacy being tracked/measured? Remote instruction as the ultimate test for “generalization”
• Consider supplementing with in-person instruction on notice to the school district
• Responding to crises (e.g. caregiver becomes ill) What’s the backup plan?
Additional Uses For Telehealth Technology

- Transition investigations
- Parent training and counseling
- Group Speech
- Social skills groups
- Team meetings
- Important alerts and announcements
- Probing to assess “generalization”
My Child’s School Offers A Remote And In-Person Option: Which Option Should I Choose?

Individual Factors to Consider:
• Virus rates in your community
• Risk to child
• Transmission risk to other family members living in the home
• Level of protection offered at school
• Extent of child’s attention
• Distractibility and other interfering behaviors
• Availability of parent support
• Quality and efficacy of instruction
• Child’s learning style and rate of acquisition
• Whether school is “Cohorting”
COVID-19 Specific ADL Goals For IEP

• Observing CDC recommended safety protocols should now be part of every student’s ADL goals and objectives

• When to wear a mask and sustainability, maintaining physical distance, hand washing, staying away from the water fountain, elevator procedures, safe lunch procedures, coughing into your elbow, acceptable replacements for “shaking hands”...
IEP Meetings And Hearings By Phone

Easier to secure the participation of providers and witnesses who have knowledge of the student’s unique needs

Requires advance distribution of pertinent documents

Assessing demeanor and credibility may be more challenging
Can The COVID-19 Pandemic Give Rise To Any Due Process Claims?

• Safe access to an appropriate education is an integral component of a FAPE (Judge Weinstein in T.K. v. DOE “bullying” case)

• Examples: district offers student an unduly crowded and congested classroom, fails to observe recommended safety precautions

• “Ten day notice” not required where there is a danger to physical or emotional well being—(but give whatever notice you can)

• School districts will be responsible for taking “reasonable” protective measures but not to eliminate all risk (i.e. not as an insurer)
Is The Pandemic Setting The Stage For A Flurry Of Compensatory Education Claims?

- Compensatory education relief is available when the school district fails to discharge the service mandates of the IEP and “owes” your child what they were supposed to receive.
- Keep track of unfulfilled service mandates and document complaints—any relief awarded may be less than full value.
- Be mindful of IDEA’s two year statute of limitations.
For Additional Information:

AUTISM’S DECLARATION OF INDEPENDENCE by Gary S Mayerson
Available to order at difflearn.com

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