Special Education in Online and Virtual School Programs

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See 70/185 (ESY required in VP charter)

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:
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> - 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
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> 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 6th/7th 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 8th-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

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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.
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> 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 the 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 on 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 as 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 they 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 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 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 persons 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 reevaluation 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 reevaluation, it may be determined 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 provided to the student on a web-based or online basis, while some services, such as occupational therapy, may require in-person delivery of services. The District services 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. 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. 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 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 jeopardize 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.