Cyber School: Online/Virtual Schools and Special Education

by

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The Growth of Online/Virtual Public Education

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

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
- Allows for highly differentiated instruction
- 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. 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.

Degree of individualization to meet unique student needs

Delivering a FAPE in a virtual context requires the same level of 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, appropriate instructional

accommodations must be addressed as part of the IEP process, and must be implemented in the virtual program. A virtual program that does not afford the necessary degree of individualization may simply not be appropriate for some students, depending on their need for individualized instructional strategies and accommodations.

• Legal framework did not anticipate virtual instruction

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. 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.

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.

Need for staff training on unique issues in virtual instruction

School staff 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, troubleshooting, 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.

• 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.

• 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. See, e.g. Weaknesses of Online Learning, Illinois Online Network, University of Illinois.

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 student may be one for whom an online program demands more self-responsibility and initiative than the student may demonstrate. After a period of attempted online instruction without success, it may prove difficult to re-transition these students to a regular campus setting.

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.

• 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 the second 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 technological problems that had to be addressed as part of the online program.

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-andmortar 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.

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. 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."

• 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 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.

Questions in Determining Appropriateness of Online Program

- Does the student exhibit the required degree of independence, initiative, motivation, and responsibility?
- Does the online program's degree of ability to individualize instruction match to the student's needs?
- Are the student's parents aware of, and willing to undertake, the additional responsibilities of monitoring the student's work, assisting in organization of tasks, and ensuring the student is on-task a sufficient amount of time per day?
- Can the student's IEP goals and objectives be implemented in the online setting?
- Have the staffpersons' roles been clearly defined?
- Can the program implement the instructional accommodations required by the student's IEP?
- Does the student demonstrate the minimum necessary proficiency on the computer and operating system?

- Will a staffperson be specifically designated to address any day-to-day problems?
- Does the online program have a set of policies addressing students with disabilities?