

**PROVIDING FAPE VIA VIRTUAL/ONLINE LEARNING:
WHAT ARE THE QUESTIONS AND ARE THERE ANY ANSWERS?**

**Julie J. Weatherly, Esq.
Resolutions in Special Education, Inc.
6420 Tokeneak Trail
Mobile, Alabama
(251) 607-7377
JJWesq@aol.com
Web site: www.specialresolutions.com**

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I. INTRODUCTION

With the significant increase in recent years in the development of public virtual and online learning programs, there are sure to be questions related to the provision of FAPE to students with disabilities who participate in these programs. This session will examine the legal requirements that apply to such programs with respect to the provision of FAPE to students with disabilities, including recent guidance provided by the U.S. Department of Education. Recent OCR, hearing officer and court opinions involving the provision of services via virtual/online learning programs will also be examined.

II. COMMON QUESTIONS AND SOME ANSWERS

A. Has Research Been Conducted Regarding Online Public Education for Students with Disabilities?

Yes. In 2011, the Center on Online Learning for Students with Disabilities (COLSD) was funded by the U.S. Department of Education's Office of Special Education Programs (OSEP) to research transformative changes taking place in K-12 online education for students with disabilities. In 2015, COLSD released its inaugural 152-page report, "Equity Matters: Digital and Online Learning for Students with Disabilities," which analyzes research, policy and guidance concerning students with disabilities who are in online and blended school settings.¹

Based upon a variety of research inquiries including national scans, forums, surveys, interviews, observations, and data analysis involving various stakeholders in online learning (administrators, teachers, parents, students, and developers and vendors of digital curriculum materials and delivery systems), the following items were noted in the Report to represent a sample of important issues for consideration by all stakeholders:

- Few states offer or require certification or endorsements in online teaching, despite the fact that there is general agreement that the knowledge and skills, both technological and

¹ The Report can be accessed at http://centerononlinelearning.org/wp-content/uploads/2015_COLSD_Annual-Publication_FULL.pdf.

pedagogical, necessary for success differ dramatically from those skills and knowledge required in brick-and-mortar settings;

- There is a shared belief that the flexibility of digital learning materials, when combined with appropriately designed online delivery systems and instruction, can address the variable learning needs of elementary and secondary students with disabilities in ways difficult or impossible to otherwise achieve;
- The capacity of online learning systems to track, record, and present information about student progress—at the point of instruction—offers enormous potential for supporting more personalized learning for all students, including students with disabilities. Unfortunately, the current data gathered within many of these systems are often siloed and do not always support instructional decision-making;
- State Directors of Special Education agree that great potential exists for online systems to collect a variety of data, but that these data currently do not support the reporting requirements they are charged with addressing;
- Leaders of full-time virtual and blended online schools, and digital materials and systems vendors uniformly agree that Individualized Education Programs (IEPs) developed for brick-and-mortar settings need to be re-visited (and likely revised) once a student enrolls in online learning; and
- Parents of students with disabilities who are being educated in full-time virtual settings spend more time supporting their students in day-to-day online learning than do parents of these students in blended or supplemental settings, despite the fact that few parents report having expertise in providing special education services.

The Report notes that each of the nine domains in the study and outlined in the Report touched on a critical element of the IDEA but noted that the online, blended and digital learning environments require stakeholders to view FAPE through a lens that has a very limited research base. Notably, the COLSD's state and territory scan found that great variation existed on how states and territories are working to ensure how these critical pieces are being addressed in online learning policy. The scan also showed that limited policy across the country deals specifically with these critical issues.

From a legal perspective, a noteworthy finding was that at least 75% of all states and territories scanned were found to have Unclear, No with Evidence, or Nothing Found in six of the nine items most closely aligned with IDEA as follows:

- Reviewing IEP prior to online enrollment (48 states/territories Unclear, No With Evidence, or Nothing Found);
- Guidance to consider online learning variable when developing an IEP for online settings (46 states/territories Unclear, No with Evidence, or Nothing Found);
- Examples of appropriate accommodations in online settings (50 states/territories Unclear, No with Evidence, or Nothing Found);

- Clear statement of child find and identification considerations (52 states/territories Unclear, No with Evidence, or Nothing Found);
- Monitoring procedures for ensuring online schools are in compliance with IDEA (54 states/ territories Unclear, No with Evidence, or Nothing Found); and
- Guidance for considering parent involvement (55 states/territories Unclear, No with Evidence, or Nothing Found).

The Report also notes another disconcerting finding that at least 50% of all states and territories scanned were found to have Unclear, No with Evidence, or Nothing Found on the remaining three IDEA-related items:

- Required regulations for supporting students with disabilities in online settings (37 states/territories Unclear, No with Evidence, or Nothing Found);
- Clear understanding for entity bearing responsibility for FAPE/services in online settings (41 states/territories Unclear, No with Evidence, or Nothing Found);
- Ensuring accessibility for students with disabilities in online settings (35 states/territories Unclear, No with Evidence, or Nothing Found).

The COLSD notes that these findings can assist state agencies and other entities (e.g., local school districts) as they reevaluate their current education policies and determine how to ensure that the rights of students with disabilities are supported and protected in all learning environments.

B. What Relevant Terms or Definitions Apply to Our Discussion Today?

There are so many different types of online learning programs. For example, the COLSD Report notes that there are full-time, blended and supplemental online learning programs. However, if the program is a public school program, FAPE must be provided to a student who is being served by that program, no matter what type of program it is.

Where our discussion today relates to virtual schools and questions related to them, we will use the definition of “virtual schools” used by the U.S. Department of Education in recent guidance issued on August 5, 2016. Dear Colleague Letter, 68 IDELR 108 (OSERS/OSEP 2016) (hereinafter referred to as 2016 DCL).

In 2014, the U.S. DOE began collecting data from States on the status of virtual schools through its Annual Mandatory Collection of Elementary and Secondary Education Data (an *EdFacts* information collection), to enhance its knowledge of virtual education across the country.² According to the U.S. DOE, this information collection defines “virtual school” as a public

² For additional information on this data collection, see “Summary of Changes, Attachment C, EDFACTS” at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201302-1875-001.

school that only offers virtual courses: instruction whereby children and teachers are separated by time and/or location. In addition, interaction occurs via computers and/or telecommunications technologies, and the school does not have a physical facility that allows children to attend classes on-site.

In the 2016 DCL, the U.S. DOE uses the term “virtual schools” to refer to programs that are public schools of traditional Local Educational Agencies (LEAs) or are public schools that operate as an LEA under State law. The 2016 DCL guidance on virtual schools does not address obligations to children with disabilities placed in non-public virtual schools by their parents as a parentally-placed private school student under the IDEA regulations. However, children with disabilities who are placed in a private virtual school by a public school agency in order to receive special education and related services must be provided with FAPE at the private virtual school and those virtual school placements are included.

C. What Responsibilities Do SEAs and LEAs Have With Respect to Virtual Schools?

According to the 2016 DCL, all of the requirements of the IDEA apply to virtual schools, regardless of whether the virtual school is a public school of an LEA or a public school that operates as its own LEA pursuant to State law. The U.S. DOE notes that each State Educational Agency (SEA) must develop and maintain policies and procedures that are consistent with and implement the requirements of the IDEA. Accordingly, each LEA must have policies, procedures and programs that are consistent with the SEA’s policies and procedures related to the provision of education to children with disabilities and in order to establish eligibility for Part B sub-grants from the SEA.

As is always the case with any public school programs, the SEA must exercise general supervision over all educational programs for all children with disabilities in the State to ensure that educational standards and Part B requirements are met and, accordingly, is responsible for ensuring that all LEAs, including virtual school LEAs, implement the requirements of the IDEA. Where a virtual school is a public school within an LEA, the LEA is the entity that is generally responsible for ensuring that the IDEA’s requirements are met by the virtual school.

D. What About Responsibilities for Virtual Schools that are Also Public Charter Schools?

According to the U.S. DOE, where a virtual charter school operates as an LEA and receives Part B funds, the virtual charter school LEA is responsible for ensuring that the requirements of the IDEA are met, unless State law assigns that responsibility to another entity. Similarly, if the virtual school is a public charter school of an LEA that includes other public schools, then the LEA of the virtual charter school is responsible for ensuring the school’s compliance with the IDEA, just like it is responsible for compliance by its other public schools, unless State law assigns responsibility to another agency. The U.S. DOE notes, however, that the SEA still retains ultimate responsibility for ensuring that the requirements of the IDEA are met in all educational programs for children with disabilities within the State.

E. What Specific Action Should be Taken by SEAs and LEAs Relative to Their Responsibilities to Supervise Virtual Schools?

Where a State has virtual schools that are LEAs, the U.S. DOE has indicated that the SEA should carefully review its own policies and procedures to ensure that they address virtual schools. Similarly, LEAs should carefully review their policies and procedures to make sure that they address public virtual schools of the LEA. Specifically, the U.S. DOE suggests that policies and procedures should be reviewed regarding:

- Monitoring to identify and correct noncompliance with Part B requirements, including the implementation of IDEA in virtual schools;
- Timely collection of reporting of data under the IDEA and data to report on the indicators in State Performance Plans/Annual Performance Reports, that are (a) valid and reliable and (b) reflect actual practice and performance, including collecting and reporting data about children with disabilities who attend virtual schools and receive special education and related services;
- Establishing and maintaining qualifications to ensure that personnel necessary to carry out the purposes of the IDEA, including personnel serving children with disabilities in virtual schools, are appropriately and adequately prepared and trained, and that those personnel have the content knowledge and skills to serve children with disabilities;
- The availability of dispute resolution procedures to implement IDEA's procedural safeguards, including the mediation and due process hearing provisions, the discipline provisions, and the Part B State complaint procedures; and
- Provisions to ensure the confidentiality of personally identifiable data, information and records.

In addition, SEAs are required to have policies and procedures in place to ensure that children with disabilities who attend public virtual schools are included in all general State and district-wide assessment programs, including those described under the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments, where necessary and as indicated in their IEPs.

F. Do Virtual Schools Have Child Find Responsibilities?

Certainly. In the 2016 DCL, U.S. DOE reminds SEAs and LEAs of their duty to ensure that all children who are in need of special education and related services regardless of severity of their disability, including those who attend virtual schools, are properly identified, located and evaluated.

DOE recognized that there may be some children who already have IEPs who transfer to virtual schools, while others may enroll in a virtual school prior to being identified as having a disability

under the IDEA. For those who already have IEPs, child find responsibilities will include ensuring that periodic reevaluations are conducted.

G. How Is Child Find Conducted for Children Who Attend Virtual Schools?

In the 2016 DCL, the U.S. DOE acknowledges that child find for these children may present “unique challenges,” since they generally may not have the same degree of face-to-face interaction and in-person contact with a teacher or other school personnel as do children who attend brick-and-mortar schools. However, DOE notes that it is not uncommon for a child’s teacher to be the first person to suspect that the child may have a disability and be the one to refer the child for an evaluation. Thus, where the practices of the virtual school limit or prevent teacher interaction and contact with their children, the SEA’s child find policies should suggest additional ways that LEAs can meet this IDEA responsibility for children attending virtual schools.

Examples provided by DOE in the 2016 DCL of those “additional ways” to meet child find responsibilities include screenings to identify children who might need to be referred for an evaluation and questionnaires completed by virtual school teachers, staff and parents. However, DOE notes that reliance on referrals by parents should not be the primary vehicle for meeting the child find requirement for virtual school children.

I would offer some additional suggestions for ensuring appropriate child find occurs for students in a virtual school program either already identified or suspected of having a disability and need for special services might include:

- A process for determining whether a student has an IEP or 504 Plan at another school which could include face-to-face interviews with parents;
- Determine whether decision to have student participate in an online program was based upon issues such as anxiety or fear at school, school phobia or other social-emotional reasons and monitor the student if such is indicated;
- Request records from previous schools and examine them for previous diagnoses, behavioral and attendance issues and other “referral red flags;
- Develop, maintain and explain the referral process for an evaluation to teachers, other staff and parents and consider posting the process on the website and in other relevant materials;
- Consider the use of regular parent input surveys or questionnaires regarding any concerns they may have about academic or behavioral issues;
- Use progress monitoring data and review it for signs of possible disability;
- Closely monitor student participation and any noticeable decline in attendance in an online program or course;

- Developing a clear process for determining whether a reevaluation is warranted and, if so, the process for doing so; and
- Consider some online face-to face interaction through, e.g., videoconferencing

H. Do All of IDEA’s Requirements Apply to Children with Disabilities in Public Virtual Schools?

Yes. The 2016 DCL highlights particular LEA responsibilities to virtual school children, including, but not limited to, the following:

- Ensuring that each eligible child with a disability has FAPE available in accordance with the IDEA;
- Implementing the evaluation and eligibility requirements of the IDEA;
- Carrying out the IEP requirements, including those governing IEP content, IEP Team participants, parent participation, when IEPs must be in effect, consideration of special factors, the development, review and revision of IEPs, secondary transition services and participation in State and districtwide assessment programs; and
- Implementing the requirements of the IDEA regarding education in the LRE, including ensuring the availability of a continuum of alternative placements to provide special education and related services.

In closing the 2016 DCL, the U.S. DOE did state its intent to issue future guidance addressing more specific questions regarding the topic of providing services to children with disabilities attending virtual schools.

I. What About Challenges to Virtual Programming Based Upon LRE?

Where a virtual program is offered by a school district, there could be challenges to it based upon the restrictive nature of the virtual program. However, it cannot be assumed that placement in a virtual school program is never the LRE where a student can receive FAPE:

S.P. v. Fairview Sch. Dist., 64 IDELR 99 (W.D. Pa. 2014). District’s offer of a full-time cyber school program is upheld as the provision of FAPE to the teenager with refractory migraines in the LRE. The student’s frequent absences from school, along with his documented need to remain in a quiet, dark room for 12 to 16 hours when he had a migraine showed that the restrictive placement was necessary to meet his unique needs. Like the IDEA, Section 504 requires districts to educate students with disabilities in the LRE “to the maximum extent appropriate” based on their needs. Here, the evidence supported the finding that the student was not able to benefit from a school-based placement. The district had reduced academic expectations and modified the student’s schedule several times to help him complete his coursework. In addition to allowing the student to arrive at school later in the day, the district also arranged for him to work in the school’s resource room as needed, receive additional help

from teachers outside of school hours, and complete certain courses online. Only when the student was unable to attend school for even part of the day did the school place the student in the “cyber school” program. Given the unique medical issues of the student, the district made extraordinary efforts to accommodate him in a regular education setting and also gave him the opportunity to participate in extra-curricular activities and to attend school-based classes when he was well enough to do so.

J. Is Accessibility of Online Learning Programs for Students with Disabilities an Issue?

Absolutely. In 2011, the Office for Civil Rights issued guidance regarding this issue:

Dear Colleague Letter, 43 NDLR 75 (OCR 2011). Following up on a Dear Colleague letter issued on June 29, 2010 with respect to the use of emerging technologies in postsecondary educational institutions, this clarifies that the obligations also apply to elementary and secondary schools, and to other forms of emerging technology, such as online learning. The 2010 letter stated that educational institutions cannot require the use of electronic book readers in class if the readers are not fully accessible to individuals with disabilities, including students with vision impairments, unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. Those principles apply to other emerging technology, such as virtual learning programs, including those which the district provides directly, and those provided indirectly through contracting with a third party. Therefore, when acquiring any emerging technology, districts should consider whether students with disabilities will be able to use it, and if not, whether it can be adequately modified, or whether there is a different device available that would enable students with disabilities to reap the same benefits in a timely, equally effective, and equally integrated manner. Finally, if a district using emerging technology proposes traditional alternative media, such as an audio book, as an accommodation, it must ensure the traditional media provides access to the benefits of the more advanced technology. “Some forms of emerging technology may readily offer students educational opportunities and benefits that traditional alternative media cannot replicate.”

K. Would Movement from a Virtual Program to a Brick-and-Mortar Program Be Considered a Change of Placement?

According to one court it is.

Eley v. District of Columbia, 63 IDELR 165, 47 F.Supp.3d 1 (D. D.C. 2014). Student’s move to a proposed private school program from an internet-based private school setting would be a change of placement violating stay-put while the student’s appeal is pending. The district’s argument that the term “educational placement” refers only to a student’s IEP and services, and not to the physical location, is rejected in this case where “educational placement” could include both the services in the IEP and the physical location of those services. As such, the student is entitled to a stay-put order where the proposed private school program was notably different from his virtual school program, which was deemed appropriate in an earlier ruling. The district’s own characterization of the two schools showed key differences in the programs where,

unlike the virtual school, which lacked physical classrooms and access to peers, the private school featured on-campus learning. Clearly, shifting from what is essentially a completely individualized structured setting separate from other students to a more traditional school setting constitutes a change in the student's "then-current educational placement."

L. Can a Virtual School Deny Admission to a Child with a Disability?

Not if it would constitute disability discrimination to do so.

Quillayute Valley (WA) Sch. Dist., 49 IDELR 293 (OCR 2007). The school district's failure to monitor an online high school's admissions procedures violated Section 504 where the school improperly denied admission to students with disabilities. The school's written admissions criteria stated that it would not provide certain accommodations to students with disabilities and limited students to 40 hours per week of specialized instruction. In addition, the school stated that it would not provide counseling, para-educator support, tutoring or a modified curriculum. The school also excluded students who had a "documented inability" to complete assignments independently or were unable to read and write at a sixth grade level and did not apply the same criteria to nondisabled students. Because there is no evidence that the admissions criteria are necessary for the school to achieve its goals, the school violated Section 504 and the ADA and the school district is also liable for the discrimination.

M. Are Virtual Schools Seeing Lawsuits or Formal Complaints Regarding Services to Children with Disabilities?

Yes, they are. There are lawsuits (whether they are due process hearing requests, court cases, etc.) and State and other complaints being filed against virtual schools just as there are against other public school programs. Below is a sampling of cases/decisions to give you an idea of what issues are involved:

State Educational Agency (SEA) Complaints

Hoosier Academy Virtual Charter School, 114 LRP 9542 (SEA Ind. 2013). School violated the IDEA when it sent a draft IEP to parent changing the provision of in-home OT, PT and speech to online without a meeting of the team and denied FAPE when it did not provide these services in accordance with the IEP. Corrective action includes reconvening the IEP team to review and revise the IEP properly and to make a determination as to the amount and nature of compensatory services to make up for lost educational opportunity when the school failed to implement the IEP with respect to in-home OT, PT and speech services. At a minimum, compensatory services should include 2,640 minutes of speech and 1,080 minutes of PT services. The team must include specific language regarding how, when, where and by whom the services will be provided in the revised IEP and ensure that the services are provided by appropriately licensed or certified personnel. In addition, in-service training for all staff on the topics of IEP implementation and revision must be provided with particular attention to making changes to IEPs without meeting and convening the Team at least annually.

Ohio Distance & Electronic Learning Academy, 114 LRP 53450 (SEA Ohio 2014). Online charter school is required to convene the IEP teams for 17 students to determine what compensatory education services may be necessary based upon the school's failure to show that the student received required specially designed instruction from an intervention specialist. When their former specialist left the school, the new specialist that was hired had problems learning the school's technology and was not able to set up the virtual classroom for three weeks in September. The specialist, who filed the complaint with the State DOE, alleged that the school was responsible for the failure to implement the students' IEPs. Although the school's administrator indicated that another specialist had provided services to the students, the only documentation that the school provided was with respect to services that were provided in October but none for September, and the specialist confirmed that she did not provide any services to the students while she was employed by the school. Without documentation of services provided in September, there was no evidence that the school was implementing the IEPs for the students during that time.

Cincinnati Learning School, 116 LRP 39184 (SEA Ohio 2016). District violated the IDEA when it failed to ensure that the student received specialized instruction and logged into his online classes often enough to complete his coursework. The student's IEP required that he receive small group or individual support in reading comprehension and math several times per week. According to the school, the student who took all of his classes through the school's online program, could sign up online to receive that assistance in the resource room at the school campus if he chose to do so. The school is required to provide the services listed in the IEP, whether the student signs up to receive those services or not. According to the school's session logs, the student did not log in to his classes often enough to complete his work, but the IEP team never met to address that situation or to ensure that the student was receiving the right amount of specialized instruction.

Due Process Hearing Decisions

In re: Student with a Disability, 116 LRP 30723 (SEA Pa. 2016). Where a student with ED and SLD refused to engage in online instruction and had failing grades, the cyber charter school violated the IDEA for three years by failing to reevaluation the student and revise the student's IEP. Here, the student enrolled in the school in the fall of 2013 and stayed at a social services agency during the day where the student logged on to a computer. However, the student often left the computer to interact with other children, accessed online instruction only sporadically, and eventually failed many classes. Despite the student's poor performance and failure to turn in assignments or respond to teachers' efforts to contact the student, the school neglected to evaluate the student's behavior and amend the IEP to ensure that FAPE was offered. Rather than revising its approach to the student's progressive withdrawal from learning, the school continued to apply its online mode, a model which relies upon the child to access instruction. It was not until October 2015 that the school began to provide in-person counseling and tutoring to support the student's access to online services but, even then, the school did not base its IEP revisions upon reevaluation or an FBA. "The charter, having chosen not to reassess and not to intervene in a different way, cannot be heard to blame the child for the failure of the online modality."

Office for Civil Rights Complaints

Elkhart (KS) Unif. Sch. Dist. 218, 51 IDELR 51 (OCR 2008). Online school violated Section 504 by failing to provide to parents the information they needed to request accommodations for students with disabilities. The school district responsible for the school's operations failed to notify parents of their procedural safeguards, where the school does not have established standards and procedures for the evaluation of students with disabilities. Although the school claimed that it determined students' needs on a case-by-case basis, it did not inform students or parents of this policy. In addition, the school's student handbook did not identify the person to contact about accommodations or the method for requesting assistance.

South Redford (MI) Sch. Dist., 61 IDELR 84 (OCR 2012). School district did not violate 504 where it provided evidence that following two IEP meetings where it was decided that the student would attend a virtual high school program after being released from a court-ordered residential placement, the parent was provided with notice of procedural safeguards. In addition, OCR noted that although the parent disputed whether she was provided an opportunity to disagree with the placement decision during the IEP meetings, the student told OCR that he agreed to try the virtual program.

Florida (FL) Virtual School, 63 IDELR 173 (OCR 2013). Based upon conversations with the parent and school staff, it was found that the wording and format of the student's IEP left both parties confused about the exact reading and writing services the student was to receive. However, the virtual school had since convened an IEP meeting with the parent to clarify the exact nature of the reading and writing services the student needed. In addition, the school provided OCR with a copy of the student's amended IEP which indicated that the members of the team addressed the issue of reading and writing services needed. Finally, the school resolved the parent's complaint about its failure to provide speech-language therapy by entering into a resolution agreement requiring it to provide compensatory education.

Virtual Community School of Ohio (OH), 62 IDELR 124 (OCR 2013). Although the virtual charter school advertised on its website that it was an "ideal setting" for students with disabilities, OCR found that it had violated Section 504 in many ways. As a result, the school agreed to take steps to ensure that it conducts appropriate evaluations, makes appropriate placement decisions, provides access to its websites, and otherwise complies with Section 504 and Title II of the Ada. The school, which is its own LEA, serves approximately 1,200 students throughout Ohio, including 634 pupils identified as having a disability. The investigation revealed that the school performed no evaluation or assessment before placing students on 504 plans but, instead, referred parents to outside providers, leaving the parents to bear the cost of needed evaluations. In addition, the school did not draw upon a variety of sources in making placement decisions under Section 504, but relied on parental input, and, where available, information from the student's prior school. Other violations were found with respect to the school's treatment of transfer students who entered the school with an existing 504 plan, where the school did not examine the existing plans to determine whether they were appropriate before adopting and implementing them, even though many plans would not have provided for an online placement. Further, the school failed to utilize a group of persons knowledgeable about a student in making placement decisions under Section 504. Instead, the school's Coordinator

could decide that a student has a disability and determine what services were required based solely on a discussion with the student's parents/guardians. Finally, the school failed to make its website and online learning environment accessible to students with disabilities, particularly those with visual impairments. For example, it posted numerous images that lacked text equivalents and course content, class assignments, instructions, and other critical information often appeared on its online learning environment in PDF format, making the documents potentially inaccessible to individuals using screen readers, or those with vision impairments.

Court Cases

Knaub v. Tulli, 56 IDELR 230 (M.D. Pa. 2011). Special education teacher's claim of retaliation against her public cyber charter school may proceed where she alleged adverse action based upon her advocacy on behalf of a student with a disability. Protected activity under Section 504 and the ADA extends to participating or assisting in an IEP meeting. Here, the teacher attended an IEP meeting as an advocate for her friend's autistic child in another district. At the meeting, the teacher urged the district to include a behavioral plan in the IEP, which the district reluctantly agreed to do. A representative of the district subsequently complained to the cyber school and the school suspended the teacher and then terminated her employment after she complained to school management about the school's alleged breach of confidentiality rules and repeated failure to follow the student's IEPs. Clearly, the teacher's activity was protected under the ADA/504 as participation or assistance in a proceeding involving a student with a disability and the student's IEP. The teacher may also proceed with her free speech retaliation claim based on the internal complaints to school officials but her speech at the IEP meeting was not protected under the First Amendment because she was not speaking on a matter of public concern.

N. Could a Computer-Based Program be Held Inappropriate for Some Children?

Yes. Just as with any kind of program or methodology, a computer-based instructional program could be found inappropriate for a child with a disability.

School District of Pittsburgh v. C.M.C., 68 IDELR 102 (W.D. Pa. 2016). District's proposed program combining online and campus-based learning would not provide FAPE to the teenager with Asperger Syndrome, ADHD, Anxiety Disorder, Depressive Disorder, Mathematics Disorder and Sensory Integration Disorder who was fearful of returning to school after a physical altercation with another student. The evidence showed that she was not a candidate for computer-based instruction where a school psychologist testified that the student could not learn via computer and that online learning should be a supplement to other instruction. In addition, there was testimony from several other individuals indicating that the student was obsessed with computers and the internet and had particular difficulty staying focused when performing schoolwork on the computer. Further, the online program would not allow her to practice social skills or peer interaction, even with a weekly social skills group. Thus, the parents are to be reimbursed for the student's private schooling at The University School.