



Take these steps now to prepare for future disputes, due process hearings

While scrambling to serve students with disabilities during school closures, districts around the country are understandably concerned that once schools reopen, the floodgates of litigation will open as well. But education attorneys say there are some basic steps districts can take now to help prepare for -- and possibly minimize -- potential disputes.

Those steps focus on maintaining proper documentation, regularly communicating with parents, and engaging in good-faith efforts to serve students through distance learning.

Two school attorneys advise districts to take the following actions to minimize future disputes:

- **Document all offers of services and efforts.** "Everything you do or offer now will be helpful later," said Jeffrey J. Weiss, a partner and coleader of the K-12 Education Industry Team at Harris Beach PLLC in Buffalo, N.Y. If a parent refuses a service, document the refusal. If it was not possible for the district to provide a particular service required by the IEP, document why that was the case.
- **Monitor progress.** Collect as much information as possible about a student's progress, or lack thereof, and how the district responded. Even if a student made progress in an area not addressed by the IEP, document that improvement, he said.
- **Demonstrate caring and responsiveness.** Although no one can say with any certainty whether a district's good-faith efforts will affect a hearing officer's future decision-making, districts should show they are "responsible, responsive, and caring," Weiss said. The fact that a district acted in good faith to serve a student through distance learning is, by itself, unlikely to impact a decision concerning whether the student was denied FAPE. However, Weiss said that good-faith efforts could affect a hearing officer's decision about whether and how much compensatory education is owed.
- **Track related services.** Have each related service provider keep detailed logs of attendance and services provided. Try to conduct assessments on a monthly basis showing the student's progress on IEP goals and objectives, said attorney Nathanya Simon, a partner with Scarinci Hollenbeck in Lyndhurst, N.J.
- **Keep communicating with parents.** "Ongoing communication by the school staff with parents will help with reducing future lawsuits," said Simon. She advised districts to have case managers stay in contact with families to provide emotional support.
- **Identify students who may need remediation.** For students who have extensive services and seem to be missing out the most, districts might consider advising parents that when school buildings reopen, the district will assess the student's skill acquisition and regression and provide additional supportive services if warranted.

See also:

- [CASE: Special ed programs need to be thoughtful, equitable, and make 'good-faith effort'](#)
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