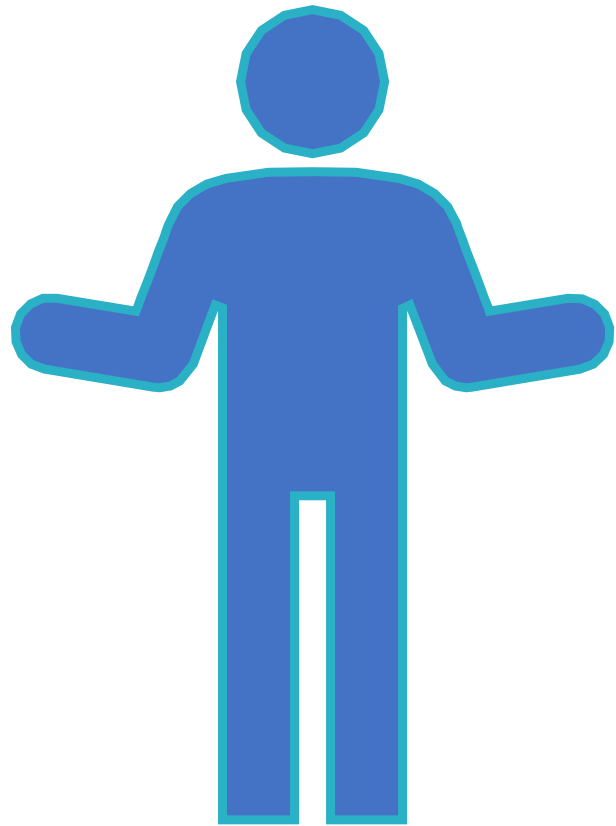


CHAT WITH AN ATTORNEY:  
ALEXANDRA ROSENBLATT, ESQ.  
VIRTUAL LEARNING ISN'T WORKING! WHAT DO I  
DO?

ALEXANDRA  
ROSENBLATT, ESQ.

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## QUESTIONS?

### No “I” questions

Please frame your questions as hypotheticals.

If you have particular questions about your child, we can talk more after the webinar. You can email me at [arosenblatt@markmartinlaw.com](mailto:arosenblatt@markmartinlaw.com)

ADMISSION 😊

**I don't have  
all the  
answers.**

**This is hard!**

## OUTLINE OF THE WEBINAR

Review old webinars:  
CDSPG.org → Resources →  
Monthly Chat with An Attorney

### Outline

- Why it isn't working
- How to document it isn't working
- What to do about it

## REMINDER OF THE LEGAL STANDARD

- COVID “does not [limit] the rights of students with disabilities to FAPE) and equal opportunity to educational services as their non-disabled peers...”
- **The school system “must provide equitable access to comparable opportunities to students with disabilities, tailored to their individual needs, to the maximum extent possible.”**
- “Blanket policies adopted by schools/districts during the school closure to not provide certain special education and related services is NOT an individualized determination about what a student requires for a FAPE”--→ this requires comp ed.

**MOST COMMON REASON IT'S NOT WORKING: FAILURE TO IMPLEMENT THE IEP**

1. Review the IEP
2. Common Failures. Not providing:
  1. push in services in gen ed
  2. modified work
  3. behavioral incentives, breaks
  4. failure to work on goals. Some are needed to make progress in other areas.
    1. a work completion goal
    2. A writing goal

## DOCUMENTING FAILURE TO PROVIDE MODIFIED WORK

Teachers are stressed, not in the same building as special educators and related services providers, and don't necessarily know your child

1. Every time you notice it isn't modified, leave a comment or email.
2. Document what is your work and your child's.
3. Document what how much support it took.
4. Email the teacher about how your child was during class.
5. Keep a notebook



## CAN THE SCHEDULE BE TWEAKED?

1. Missing out on important pieces in gen ed?
2. Less focused in afternoon and need more challenging tasks in the morning?
3. Breaks??  
Structured/expected, “productive” movement?
4. Provide a disability-related reason for the change.

# THE APPS

- Are the apps accessible and appropriate?
- Apps are taking the place of instruction and need to provide a FAPE.
- ADA requires accessibility.
- Document and share concerns.
- Request more accessible apps.



SOMETHING  
NEEDS TO  
CHANGE!

- Compensatory services upon the return to school
- Tutoring
- Reimbursement of private services
- Nonpublic placement
- In-person public options
- But first!! You need data...

# HOW TO COLLECT DATA ON FAILURE TO MAKE PROGRESS

Test last year's IEP. (Previous webinar.) Have they lost skills? Are they foundational skills needed to attain skills currently being worked on?

DIBELS, iReady scores from past two years and this year. Other ideas?

IEP progress reports must have data. Ask them for it.

Work/Writing samples (less measurable/objective but sometimes tell more.)

## COMPENSATORY SERVICES IN GENERAL: NO FAULT ZONE

- When: MSDE TAB says “upon the return to school.” But there must be exception to avoid snowballing regression.
- No Fault Zone:
  - “While compensatory education/recovery services are traditionally awarded when [a school] has failed to meet their legal obligations, these services **are not intended as a punishment** for the local school system.” They are intended to “remediate the negative impact experienced by the student due to the loss of FAPE. . . While this may have occurred through **no fault** of the district, the obligation to provide a student with a FAPE remains, and the student may be entitled to remedial services.
  - “In situations where a FAPE (i.e., instruction, related services, and supplementary aids and supports) was not or could not be provided, and the student was negatively impacted (i.e., a regression of skills or lack of progress in the curriculum or on IEP goals), the student will require compensatory education/recovery services.”

COMPENSATORY  
SERVICES IN GENERAL:  
NO FAULT ZONE

“The compensatory education/recovery services award will not always reflect the same services (nature, amount, frequency) that were missed.”

“Decisions about the individual student’s compensatory education/recovery services award should be made collaboratively with the parent.”

“Creativity in identifying compensatory education/recovery services will be necessary and may include the scheduling and delivery of services through an extended school day, weekends, and/or summer.”

## COMPENSATORY EDUCATION

Not everyone can wait until we return to school.

Regression that cannot be timely remediated.

Significant Social, Emotional,  
Behavioral Impact

Inaccessible to learning remotely.

TRADITIONAL  
COMPENSATORY  
EDUCATION: FAULT  
ZONE

Reimbursement for  
tutoring

Independent Educational  
Evaluations

Nonpublic placements

Advocates, Attorneys, Due  
Process, MSDE Complaints



## CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

- CARES Act Sec 18003 funds can be used to “provide compensatory education services and compensatory related services through contracts with related service providers”
- Sec 18003 ESSR funds can be used to
  - “Provide tutoring programs outside normal school hours to address student needs.
  - “Provide compensatory educational services to students with disabilities.”



## RETURNING TO IN- PERSON

- Not a return to normal!
- How will push in services be done?
- How will pull-out services be done?
- How will related services be done?
- Masks
- How will Supplementary Aids and Accommodations be done
  - Breaks?
  - Rewards and Incentives?



RETURNING  
TO IN-  
PERSON

- Document your decision in writing
- Explain the disability-related reason for not returning.