

# Students with Disabilities in the New Normal, a Training for Advocates

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# About Nassau Suffolk Law Services



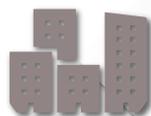
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“Advocates” include  
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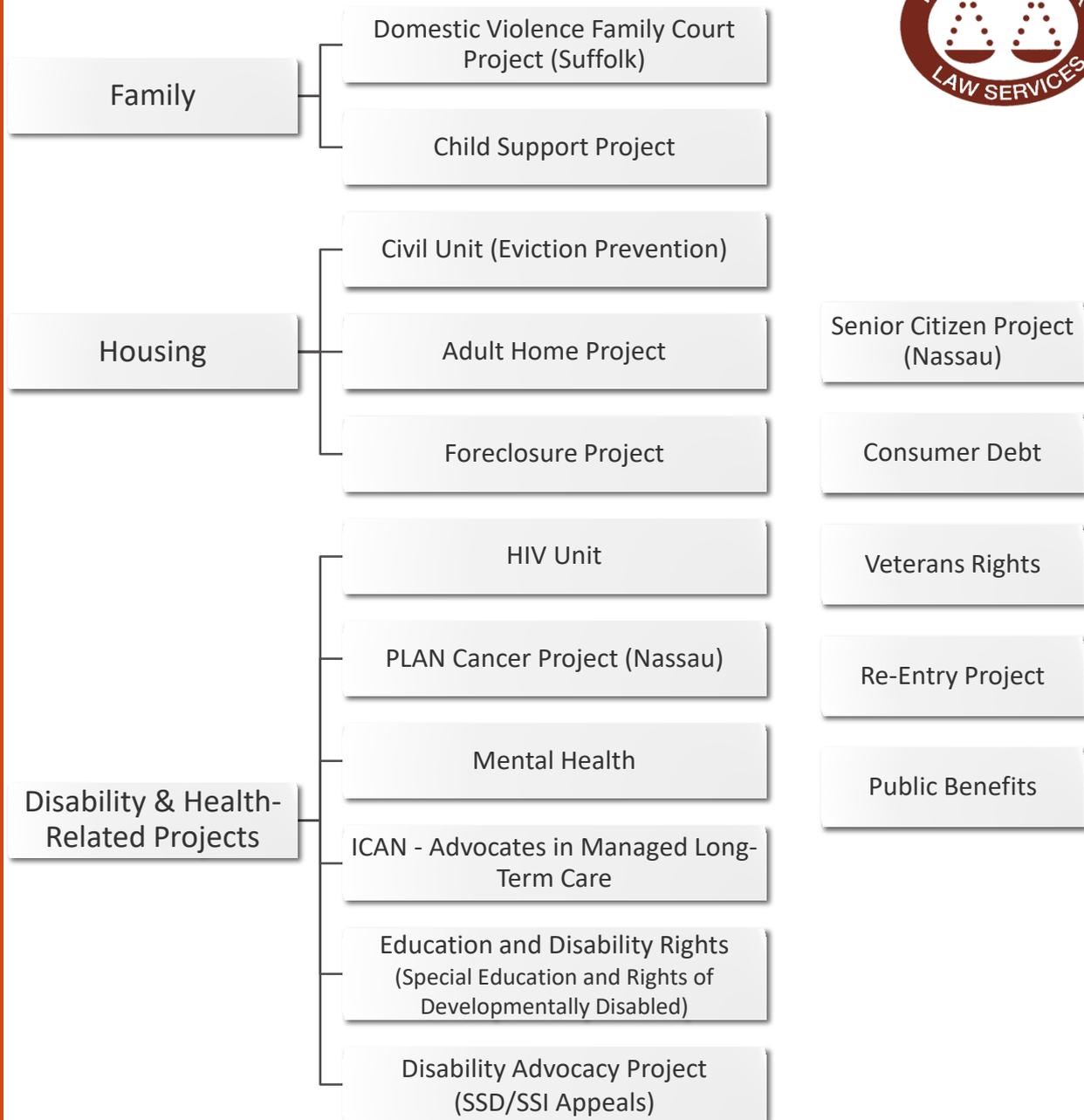
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**Advocates call (631) 232-2400 for assistance:  
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# Specialized Units





## **Education and Disability Rights Project (EDRP)**

- **The EDRP represents students with disabilities between ages of 5-21.**
- **Issues include:**
  - **Special education**
  - **Residency disputes**
  - **Matters pertaining to homelessness, and much more.**

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# Covid-19 and the Educational Rights of New York Students With Disabilities

## Part I

- School Closures and the Challenges of Remote Instruction

## Part II

- Regulatory Changes That Continue to Impact Students With Disabilities in the 2020-2021 School Year



## SCHOOL CLOSURES:

## Timeline

**March 16, 2020:** Executive Order 202.4 closed New York schools.

- New York school districts began to implement remote instruction.

**March 12, 2020:** The U.S. Department of Education (DOE) issued initial guidance regarding the provision of a Free and Appropriate Public Education.

**March 21, 2020:** The U.S. Department of Education (DOE) issued guidance on delivery of remote instruction.

## FAPE: Free Appropriate Public Education



## SCHOOL CLOSURES:

## FAPE Required

- i. Federal Individuals with Disabilities Education Act (IDEA) defines FAPE
- ii. An Individualized Education Program (IEP) designed to meet that student's unique needs ensures that each student receives a FAPE. *See* 20 U.S.C. §1412(a)(1).
- iii. 504 Plans ensure that children with disabilities receive accommodations to ensure access to the learning environment. *See* U.S. Rehabilitation Act of 1973.

### DOE March 12, 2020 Guidance:

- If districts provide services to general student population, "they must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. To the greatest extent possible, school districts must provide each student with a disability with the special education and related services identified in that student's IEP".
- Students with a 504 Plan must also be provided with a FAPE through services set forth in 504 Plan.



## Challenges of Remote Instruction:

## Delivery of Distance Instruction Allowed

### DOE's March 21, 2020 guidance

- Gave districts “flexibility” in providing IEP education and services.
- Rejected concerns about barriers to distance learning.
- Encouraged practices such as teletherapy and tele-intervention, particularly for related services.



## Challenges of Remote Instruction:

## Compensatory services

- a. DOE recognized that students with disabilities would miss services.
- b. March 12th and March 21st DOE guidance directed **Committees on Special Education (CSE)** to make individual determinations about **compensatory services** or **extended school year services (ESY)** once schools reopen



## Challenges of Remote Instruction:

Why does remote instruction complicate learning for the special education student?

- a. Characteristics of special education:
  - i. Clear, intensive, uninterrupted instruction
  - ii. Frequent refocusing
  - iii. Behavioral support
  - iv. Individualized or specialized instruction
  - v. Hands-on experiential learning
  
- b. Special Education May Include:
  - i. 1-1 aides
  - ii. Curriculum modifications
  - iii. Specialized reading programs
  - iv. Occupational or physical therapy

New York State regulations [8 N.Y.C.R.R. §200.1(ww)] define special education as “specially designed individualized or group instruction or special services or programs . . . and special transportation, provided at no cost to the parent, to meet the unique needs of students with disabilities”.

# Challenges of Remote Instruction:

## Examples of missed services

- a. Disability-related focusing issues (e.g., ADHD, Auditory Processing Disorder) prevent uninterrupted online learning;
- b. Non-sighted student without Braille materials;
- c. Lack of 1-1 home ABA services provider for autistic student causes regression;
- d. 1st grade student who is too distractible to complete homework online not provided with written material;
- e. Medically involved student with developmental delay does not receive in-person related services (OT and PT);
- f. Student cannot learn virtually due to lack of internet access;
- g. Non-verbal student who needs hands-on assistance to access communication system cannot participate in virtual speech/language therapy;
- h. Student cannot access manipulatives needed to learn;
- i. Student evaluations that required in-person observation delayed.





## Challenges of Remote Instruction:

*J.T. v. de Blasio*  
Class action challenges adequacy of remote learning

- a. Filed in New York federal court (Southern District) on July 28, 2020
- b. Class of 500 students from 25 states
- c. Alleging pervasive denials of FAPE seeks
  - i. All schools open for in-person instruction
  - ii. Vouchers for parents who needed to hire professionals to carry out elements of their child's IEP
  - iii. Independent evaluations of each student with a disability
  - iv. Reimburse parents for any expenses or loss of employment due to school closures
  - v. Punitive damages "based on the intentional and willful violations of the federal rights of parents and students"
  - vi. Pre-trial conference is scheduled for September 18, 2020.



# Reopening Schools:

## New York State Education Department Guidance to Reopen New York State Schools

- July 16, 2020: Department of Education Guidance
  - Designed to help schools and districts develop Reopening Plans for 2020-2021 school year.
  - Required schools and districts to:
    - Post their Reopening Plan on their public website;
    - Plan for in-person instruction, remote instruction and a hybrid of both in-person and remote instruction.
- August 7, 2020: Governor Cuomo allowed schools to reopen for 2020-21 academic year.
  - Most Long Island school districts are opening under a hybrid model.
  - School reopening dates range from September 4th to September 14<sup>th</sup>.



## Reopening Schools:

## NY Guidance and Students with Disabilities

Guidance discusses mandates in

- i. Special Education,
- ii. Health and Safety,
- iii. Transportation,
- iv. Nutrition,
- v. Technology and Connectivity,
- vi. Social-Emotional Well-Being,
- vii. Attendance and Chronic Absenteeism and
- viii. Career and Technical Education (CTE)



## Reopening Schools:

## NY Guidance for Special Education

- a. **Provide a FAPE, consistent with health and safety**
  - a. Ensure IEP services delivered “to the greatest extent possible”;
  - b. Plan for remote learning and in-person;
  - c. Ensure parental engagement ;
  - d. Ensure collaboration between CSE and the providers;
  - e. Ensure access to accommodations, modifications, supplementary aids and services and technology
  - f. Prioritize in-person services for high needs students with disabilities.
- i. **IEP Implementation**: Flexibility in IEP implementation until schools have normal operations.



*What is  
Compensatory  
Education?*

## Reopening Schools:

## NY Guidance for Compensatory Services

- a. CSE must make individualized determinations about compensatory services
  - i. Equitable remedy to make up for the loss of a FAPE.
  - ii. Determined based on a student's individual needs.
  - iii. Aims to "place children in the position they would have been in", but for the denial of FAPE. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).
  - iv. If performance lower than when schools closed or achievement gap larger, CSE must provide more intensive services.
  
- b. To demonstrating need document:
  - i. Services child was receiving prior to the closure
  - ii. Services offered during the school district's closure
  - iii. Access to materials and education.
  - iv. Regression or loss of skill

## Reopening Schools:

## NY Guidance for Health and Safety

- i. Perform health checks and encourage parents/guardians to screen
- ii. Train staff to recognize illness
- iii. Develop social distancing plan
- iv. Develop plan to isolate ill people
- v. Develop plan for masks. Mask exceptions:
  1. Face coverings would impair health (including mental health) or obstruct services and instruction
  2. Anyone who has trouble breathing, who is incapacitated or otherwise unable to remove the covering without assistance.
- vi. Instruct students and staff in hygiene and face coverings
- vii. Provide face coverings as needed
- viii. Clean and disinfect
- ix. Allow families to opt-out of in-person instruction





## Reopening Schools:

## NY Guidance for Transportation

- a. Require masks (with medical exceptions) and social distancing on the bus;
- b. Provide masks if needed;
- c. Disinfect buses regularly.



## Reopening Schools:

## NY Guidance for Nutrition

- a. Provide eligible students with school meals whether school is in-person or remote;
- b. Protect students with food allergies;
- c. Discourage sharing food;
- d. Comply with Child Nutrition Program requirements.
- e. Communicate with families
  - i. Use multiple means, in the languages spoken by those families
  - ii. Remind families that they may now qualify for free meals
  - iii. Provide applications online and at front office



## Reopening Schools:

## NY Guidance for Technology and Connectivity

- a. Determine home access to
  - i. Device (laptop, desktop, Chromebook, full size tablet)
  - ii. Reliable high-speed internet
- b. Provide devices and internet access as needed
- c. Provide multiple ways to participate in learning



## Reopening Schools:

## NY Guidance for Attendance and Chronic Absenteeism

- a. Students with disabilities struggle with absenteeism due to psychological or emotional concerns, learning problems and/or bullying.
- b. Schools and school districts must collect and report daily teacher-student engagement or attendance.



## Reopening Schools:

## NY Guidance for Social- Emotional Well-Being:

- a. Students with disabilities may have anxiety, depression or other psychological or emotional conditions.
- b. IEPs may specify group or individual counseling as a related service
- c. Schools and school districts must
  - i. Review and update comprehensive developmental school counseling program;
  - ii. Establish a collaborative working group to inform plan;
  - iii. Address resources and how referrals;
  - iv. Provide professional development
  - v. Supports development of coping and resilience skills for students, faculty and staff



## Reopening Schools:

## NY Guidance for Career and Technical Education (CTE)

- a. Districts and Boards of Cooperative Educational Services (BOCES) must meet learning standards
- b. Collaborate with business partners to ensure safe and healthy work-based learning opportunities
- c. For students with disabilities, consider:
  - i. Work collaboratively to design work-based learning experiences in line with IEP goals;
  - ii. Remote or hybrid experiences may be used towards work-based learning hours;
  - iii. Placements in the school building if outside businesses are not able to meet IEP requirements



## Reopening Schools:

## Instructional Models at Start of 2020-21

- a. Many districts starting 2020-21 with hybrid model.
  - i. Some districts: Regular education elementary students in-person 5 days per week.
  - ii. Many districts: Students in self-contained classrooms in-person 5 days per week.
  - iii. Some districts: All students in-person 5 days per week.
  - iv. At least one school district: All students remote-only.



## Instructional models at BOCES Career and Technical Education (CTE) programs

- Nassau BOCES CTE program (e.g., Barry Tech): remote option
- Eastern Suffolk BOCES CTE programs (e.g., Bixhorn Tech, Milligan Tech, Ward Tech): No remote optio
- Western Suffolk BOCES CTE program (e.g., Wilson Tech): Track student's district model.



PART II:

CHANGES TO STATE REGULATIONS THAT  
IMPACT STUDENTS WITH DISABILITIES  
IN THE 2020-21 SCHOOL YEAR

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## Regulatory Changes:

### Cancellation of June and August, 2020 Regents

- a. Any student planning to take Regents exams or assessment exempted from tests
- b. Course credit available based on coursework. *See, 8 N.Y.C.R.R. §100.5*



## Regulatory Changes:

## Cancellation of June, 2020 and August, 2020 Regents

- Students with disabilities may pursue Local Diploma instead of Regents.
- Career Development and Occupational Studies Commencement Credential (CDOS): Vocational certificate to help qualify for Local Diploma and enhance employability.
- CDOS can meet eligibility requirements for a Local Diploma under “Superintendent’s Determination”
- 2019-20 grads exempted from unfinished CDOS requirements if knowledge and skills in CDOS learning standards demonstrated. See 8 N.Y.C.R.R. §100.6(b)(3)(ii).
- For 2019-20 school year, parents/guardians had option to decline exemptions to prevent award of Regents diploma or CDOS that school year. See 8 N.Y.C.R.R. §100.5(a) (5)(viii)(a).
- In 2020-21, CDOS students unable to complete 54 hours work-based learning due to school’s inability to provide experiences may be awarded CDOS if student meets other requirements. See, 8 N.Y.C.R.R. §100.6(b)(3)(iv).



## Regulatory Changes:

## Academic Intervention Services

- Students in grades 3-8 at risk of not achieving English Language Arts, Mathematics, Social Studies, and/or Science standards entitled to **Academic Intervention Services (AIS)**.
- Districts not required to conduct two-step identification process and may develop procedure to determine AIS eligibility. See 8 N.Y.C.R.R. §100.2(ee)(2)(ii)(f).



## Regulatory Changes:

## Due Process Hearings

- a. Impartial Hearing Officer (IHO)  
may receive testimony at due process  
hearing by telephone or video conference
  - i. Testimony must be under oath and  
subject to cross-examination.
  - ii. IHOs may also conduct hearings by  
video conference. See 8 N.Y.C.R.R.  
§200.5(j)(3)(xii)(h)
- b. At request parent or district, IHO may  
extend cases up to 60 days while schools  
closed due to COVID-19 .
- c. IHOs may not grant extensions on their  
own behalf or grant extensions  
unilaterally. See 8 N.Y.C.R.R. §200.5(j)(5)(i).



# Regulatory Changes: Individual Evaluations and Reevaluations

- a. Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed if the parent consents.
- b. Evaluations that requires a face-to-face meeting or observation need to be delayed until school reopens.
- c. Initial Evaluations When Schools are Closed
  - i. Individual Psychological Evaluations: Individual psychological evaluation only required when school psychologist deems necessary.
  - ii. Observations: Student Observation only required when CSE deems appropriate. See 8 N.Y.C.R.R. §200.4(b).



## Regulatory Changes:

## Programs and Services

- a. NY Commissioner of Education regulations normally require special education programs and services within 60 school days of receipt of consent to evaluate or referral for review.
- b. 60-day deadline excludes time school district closed due to COVID-19. *See* 8 N.Y.C.R.R. §200.4(d).



## Regulatory Changes:

## Private School Placement

- a. NY Commissioner of Education regulations normally require private school placement within 30 school days of CSE's recommendation.
- b. 30-day deadline will not include any day district closed due to COVID-19. *See* N.Y.C.R.R. §200.4(e)(1).

# Regulatory Changes:

# Completing School



- a. High School Equivalency Diplomas during COVID-19
  - i. Normal regulations: High School Equivalency (HES) candidates exempt from Test Assessing Secondary Completion (TASC) sub-tests corresponding to Regents exams they passed. See 8 N.Y.C.R.R. §100.7(2)(a).
  - ii. Students exempt from Regents exam due to COVID-19 also be exempt from that section (sub-test) of the TASC.
- b. Students who age out may return to school in 2020-21 School Year
  - i. Students “age out” at end of school year in which they turn 21 and lose right to attend high school
  - ii. Students who aged out of school in June, 2020 may be able to return to school in 2020-21 to earn diploma or credentials
    - i. Demonstrate missed instruction due to COVID-19, regression, or failure to meet IEP goals
    - ii. Remaining in school includes continued transportation, meals, instruction, related services and transition supports.
  - iii. Parents may need to request impartial hearing to get more time for student.



Thank you for your attention.

Thank you for your attendance!