

Thank you for tuning in to the CASCW podcast channel. We wanted to give you a quick heads up about this episode. The audio for this episode is originally from a webinar series. We hosted this past summer with our partners at the Hennepin County Be@School program. We thought the content covered in this webinar series would be helpful for our podcast audience as well. So we repurposed the audio for you to listen here. We hope you enjoy the Be@School series.

Korina ([00:00:33](#)):

Thank you everyone for joining us. We're slowly getting everyone admitted. My name is Korina Barry, and I'm the Director of Outreach at the Center for Advanced Studies in Child Welfare. We're located in the School of Social Work at the University of Minnesota, and we are thankful to have partnered with the Hennepin County, Be@School program for a number of years now to host an annual conference, which we typically hold in-person during the summer. And we're able to see many wonderful faces in person and, you know, we're adjusting and adapting. And then in the pandemic as we all are and So we're thankful to be able to offer this training series to you virtually. And so at this time, I would like to invite Lori Whittier of Hennepin County to share a little bit more about be@school.

Lori ([00:01:24](#)):

Hello everyone. Um, as Korina said, my name is Lori Whittier.

Lori ([00:01:28](#)):

I'm the managing attorney of the child protection division in the Hennepin County Attorney's office. And on behalf of Hennepin County Attorney Mike Freeman, I want to welcome those back who were part of the webinar series last week as well, or do an initial welcome to people who are joining us for the first time today. Uh, we also are very thankful to have partnered with the University of Minnesota for several years on this conference. And we're very excited that you are all here to join us. Uh, as a little bit of background the be@school program is within the Hennepin County Attorney's office. And it is a program that is dedicated to address school engagement and attendance issues. Uh, as we all know, there were lots of changes that need to have needed to happen in the spring with distance learning. And we have figured out ways to support the educational needs of students and families.

Lori ([00:02:24](#)):

We are finding ourselves right back in that situation, this fall with most schools, um, having limited choices and what they can offer for students right now, and the possibility of things changing up as the weeks pass as well. So I'm really excited to have an opportunity today to talk more in depth about kids who, uh, need some special education services and ways that we can support those students and their families. So I hope that everyone finds this webinar to be interesting and helps you generate ideas of how you can work on school engagement within your program and or your school. So thank you, everyone enjoy.

Korina ([00:03:09](#)):

Thank you, Lori. Well, and at this time I would like to introduce our speakers for today and allow them to share a little bit more about themselves and their work and, um, get started on their presentation. So I will, um, invite Laura Tubs Booth and Liz Meske to feel free, to introduce, uh, introduce yourselves a little bit more and get us started.

Laura Tubbs Booth (00:03:31):

Good morning. Thank you all for being here and for having us, we really appreciate the opportunity to have some dialogue with you about students with disabilities and how their school districts have served them during COVID-19, uh, Liz and I work for the Rawtik, Roszak, and Maloney Law Firm in Minneapolis, and we provide special education support and preventative training for our clients in Minnesota and North Dakota. And Liz, I'm going to pass it to you in your beautiful background there. Um, do you want to say just a couple more words about your background?

Elizabeth Meske (00:04:09):

Yeah, happy to, um, sorry. I was having some video quality issues. So I put up this background and I figure August 11th. Well, I'll just pretend like we're at the Lake until school starts. Um, so like Laura said, my name is Elizabeth Meske. I'm associate attorney with Rawtik, Roszak and Maloney. Um, my practice is primarily school law with the emphasis on special education law, um, working with lots of, uh, special education, uh, personnel directors and really enjoying that work. Um, my favorite thing about my job is working with people who just care so much about what they do and that, um, makes me excited to come to work every day. We get to touch on a lot of different things. Um, the calls that come into our office and particularly right now in this period of, uh, uncertainty, we'll call it. Um, we're getting we're fielding tons of questions on all different aspects of how kind of the COVID-19 guidance is intersecting with, um, special education and special education law. So, like Laura said, we're really excited to be here today and chat with you guys about some of those legal considerations, um, as we move forward into the 20-2021 school year.

Laura Tubbs Booth (00:05:26):

Awesome. Thanks Liz. And again, thank you for having us. We're going to, uh, launch right in here. Um, and start first by giving you some background on special education law. Probably all of you have heard this background previously, but just so we're all kind of speaking the same language. Um, I think it's important to start with a little bit of, um, background information. And so we're going to do that. And then we're going to, um, talk about providing services for students with special needs during the COVID, um, period of time, we're going to show you a short video clip of one of our colleagues, uh, demonstrating what they have done in their public school district. We're going to talk with you about some successes that we've heard as lawyers who represent school districts in Minnesota, North Dakota. We're going to talk with you about some challenges that we've seen, and then we're going to, uh, ask you to help us by, uh, going into a breakout session and asking you some big questions about special education during this time.

Laura Tubbs Booth (00:06:32):

So as we present today, we always think of students with special needs as students who might have an individual education program, an IEP or students who have a five Oh four plan. So when we talk about students with special needs, we're talking about both of those groups, essentially. Um, so a little bit of background on the law in the special education arena. So the, the term that you've all heard over and over is FAPE, a free, appropriate public education. And it is the standard in the United States for serving students in public schools who have disabilities. And that standard, um, came from the Rowley decision that was passed in 1982, some 30 years later, the U S Supreme court, just in 2017, addressed the Andrew F. Case and looked at that standards. We're going to talk about that just for a couple of minutes, the Rowleystandards. So the black and white picture is a picture of Amy Rowley, a deaf person who attended school in upstate New York in the late seventies and early eighties.

Laura Tubbs Booth ([00:07:45](#)):

And the color picture on the bottom is Dr. Amy Rowley, who was a professor of linguistics and American Sign Language at a university in California. And we are super privileged at Ratwik to have had Dr. Rowley come and speak with our, um, educators at our Annual Special Education Law and Leadership Conference on two different occasions and it was fascinating to hear her story. And I want to give you some of the facts of the Rowley case, because it's interesting, I think to have the background and it also kind of helps us understand, um, what the court was doing in this case. So in the late seventies, Amy Rowley was an elementary student in upstate New York. She, as I mentioned as a deaf person, her parents are also both deaf and they're both educators. Amy had an awesome kindergarten year and as she entered into first grade and the litigation continued while she was in second and third grade, her parents were advocating for her to have a speech language interpreter, a sign language interpreter rather all day long during the school day. And the school district was open to that suggestion. As in kindergarten, she had had just a speech language person for, or a speech language, uh, I'm sorry, sign language interpreter during her academic coursework. So as a kindergartener for recess or play time or nap-time or lunch, she didn't have a sign language interpreter. And her parents were advocating for that full day service. And so the school district's, uh, suggested to the parents let's do a trial of this. And the trial that they looked at was a six week period where a sign language interpreter would come into the classroom and assist Amy for the full day. So when Amy came to speak to our group, she told us that as a seven-year-old, what she saw was a very tall man, all dressed in black because as you know, uh, ASL sign language interpreters often, uh, would do that particularly in that time period so that they wouldn't be disrupting or attracting the attention of the student. So she saw this tall man, all dressed in black. Her mother had told her that this was an experiment or a trial, um, that the school district was running. She was a little bit intimidated by this man. And so she decided in her seven-year-old brain to ignore him.

Laura Tubbs Booth ([00:10:33](#)):

When the six week trial was over the school district, said Amy continued to do very well in school. Um, in terms of her academics, in terms of her ability to take instruction from a teacher to engage with her peers, she had excellent attendance. She did well on standardized tests. And so the school district kind of proclaimed that a success story and told Amy's parents that they would not be providing a full-time speech language, um, uh, sign language interpreter for Amy, um, in the coming grades. And this case worked its way through the federal court system all the way to the United States Supreme Court. And the court looked at two things first, it said school districts have to develop that individualized education program in accordance with the due process that is embedded in the individuals with disabilities education act. That's the statute that, uh, the federal statute that governs special education. And we're going to talk about that due process just for a minute.

Laura Tubbs Booth ([00:11:44](#)):

The court also said the IEP has to be reasonably calculated to allow that child to make educational benefit. And the court then examined the facts and said, in Amy's case, she's doing very well on standardized tests. She's passing from grade to grade, she's able to make friends. Her attendance is good. She can take direction from a teacher and be part of a general education classroom. And so the court declared that Amy had received a free, appropriate public education again, because the school district had followed those procedures in the IDEA, and secondly, that the IEP that the school staff had developed with her parents had actually provided her with educational benefit. So that has been the standard since 1982 as to how a student with special needs receives the services that they're entitled to. And of course, I'll just as a, as an aside for you, um, today public schools would provide a child with a

sign language interpreter all day long because the educational knowledge has, um, improved over time. And we know that students, um, are, are denied a FAPE, really. They don't get, uh, all that they're entitled to if they can't communicate with their peers and their teachers all day long so that the factual outcome would be a little different here, but the law remains the same.

Laura Tubbs Booth (00:13:21):

Then 2019, the US Supreme court, just for the second time examined again, that FAPE standard, what is a free, appropriate public education for a student with disabilities. And, um, I always tell clients when we're talking about how to measure whether a child is receiving an appropriate education, this is, uh, an area where the law is really rapidly evolving. Um, and you know, if you think about the law in the United States, the first US Supreme Court case in special ed was in 1982, the second case on the FAPE Standard happening in 2019, this is relatively young law. And so, um, some of the things that have developed over the last even five years, um, are quite different than what happened 20 years ago. And we're going to see significant law changes with COVID because it's messing with how we provide a free, appropriate education to kids who have disabilities.

Laura Tubbs Booth (00:14:29):

So, um, in 2019, the court looked at a case called Andrew F and Andrew was a little boy who attended a public school and his disabilities were an intellectual disability and autism, both of which were, um, significant impairments for him when he was in kindergarten first and second grade, he was, um, included, fully included in his, uh, public school. And he made some progress as the social, um, requirements and the academic requirements of the classroom. And third and fourth grade began to elevate. Andrew began to have behavior problems and the behavior problems continued to a point where Um, the school district would call his mother and tell her that he was really having a bad day and that it would be their suggestion that she come and pick him up. Now, lawyers who do special education law know that when that occurs, we're really assigning the portion of the day that the students should be in special ed to the parent. Um, and that is not, you know, appropriate. It, it really becomes a disciplinary kind of issue. So, um, the school district, uh, would do this rather frequently. And so at some point the parents suggest to their public school, maybe it would be best to shorten Andrew's day. Maybe what we need to do is have Andrew attend school from eight in the morning until noon, and then one of the parents would come and pick him up. And so it was decided by the IEP team that this would be a good way to proceed. And they shortened Andrew's school day.

Laura Tubbs Booth (00:16:28):

In the summer of that year, Andrew's parents discovered a private school that was geared toward students with autism. And so everything from its facility to how it trained its teaching staff was really aligned with serving students who have autism or on the autism spectrum. And the very first thing that the private school did was a functional behavioral assessment. And for myself as a lay person, I understand the functional behavioral assessment to be a systematic way of looking at the child's behavior over time. So you can ask, why are they doing this? What is the serving for them? Are they having a behavioral, um, meltdown or issue at noon because they're hungry, because they're tired, because they are embarrassed that they don't know how to do math, so they're trying to get out of the math class? What is the function of their behavior? I mean, did that in the private school almost immediately, something the public school had not done and in, so doing, um, they learned that Andrew's behaviors were really a communication for him, mode of communication. And he was telling those around him that he didn't have a good communication system so that he could say he was tired,

hungry, frustrated, uh, needed a drink of water, didn't understand the math problems. And so the private school worked diligently to establish some assistive technology for Drew and to, um, create for him a communication system so that his basic needs could be better met at school. And this probably won't surprise you by the end of his first year in the private school, he'd made some nice progress in his ability to communicate with his teachers and with his peers. He, as a result, he made some good progress in social skills with peers and he's, he had also made some academic progress. Now, given his intellectual disability, he wasn't making the kind of progress that Amy Rowley had made back in her day in upstate New York, but he was making nice, solid, continual academic progress, and his behaviors had diminished, um, and decreased, um, exponentially.

Laura Tubbs Booth (00:19:04):

And so his parents brought a claim against the public school and asked them to pay for his private school tuition. And for us as lawyers that defend public schools, these are always, uh, concerning claims because what we know is that if a court were to order that the public school pay for the private school, it becomes what is referred to as the state put IEP, meaning it's the last agreed upon IEP between the public school and the parent. And it will continue until the IEP team agrees on some other program or a court orders otherwise. So on. So the short of the story is that Andrew F as a fourth grader now, or fifth grader in a private school that might cost between a hundred and \$150,000 per year, he might remain in that program till he ages out of special education at age 21. So it can be a pretty costly, um, situation for a public school. And so the public school, um, declined to pay for the private school and the parents requested a due process. What we call a due process hearing. It's an administrative hearing where the parent or the school district challenges the, um, the, uh, special education services. And so the, um, hearing officer found that the IEP that had been developed by the school district in with the parent's input had created diminimus for Drew and diminimus is a Latin term. And it essentially means a tiny bit over zero. Um, so if you think of a line, uh, extending across a classroom that says zero, um, Andrew made one tiny little step across that line in his education. And the hearing officer said in that case, and that's all special education is, um, supposed to do for children with special needs. Now, as an aside, this, um, case happened in the 10th circuit, not in our circuit, I've certainly never heard an educator make that argument. Um, I know the educators we work with are really focused on ensuring that students with special needs get meaningful education, get education that's commensurate with who they are and what they need to be functional and, um, joy-filled people in their adult years. But here, the hearing officer said diminimus progress was all the IDEA required. Parents appealed to the federal district court, the federal district court affirmed and said, yeah, IDEA only requires some progress, uh, for the student. And Drew has met that, or the school district has met that requirement for Drew in this case. So the case was appealed to the United States Supreme Court. Having not looked at this issue for more than 30 years, they took the case and they looked at the, of course, the arguments of both parties, and they found that IDEA, the Individuals with Disabilities Education Act requires more than diminimus progress. It requires something more along the lines of meaningful progress. And this is what the court said that just like the Rowley case, the IEP had to be developed in accordance with the procedures set forth in IDEA and we kind of refer to those as due process. The thing we'll talk about in a minute, those of you who are familiar with IEP's, and work with IEP's, um, you know, that means that if the school district is going to evaluate the student or reevaluate the student, they would send the parent notice they would, um, perform the evaluation within a certain period of time as required by the federal law and, um, that they would give parents an opportunity to participate in that IEP process. So the court affirmed the Rowley court and said the IEP has to be developed and in accordance with those procedures. It changed slightly, the Rowley Standard, instead of the IEP being reasonably calculated to allow the child to receive educational benefit, they added the words in light of the child's circumstances.

So in light of who this student is in light of their strengths and their disabilities, what are the circumstances that the school district needs to take into account in developing the IEP? The court said, we think the IDEA requires goals to be appropriately ambitious. Meaning we know Andrew F with his constellation of needs is not going to, um, probably take AP classes when he's in high school, but we want him to be challenged in the educational curriculum that he has every day. The court also said we want those objectives and the objectives are the smaller steps toward the goal to be challenging again, in light of who this particular child is. So the court affirmed the Rowley is still good law, FAPE is still that appropriate education where the school district has reasonably calculated or reasonably predicted, um, how to program for the child so they receive educational benefit, but it has to be in consideration of who this individual child is.

Laura Tubbs Booth ([00:25:03](#)):

So if we just look for a brief second at, um, a comparison, the term FAPE of free, appropriate public education, the court has really highlighted the "A". What is appropriate in light of who that child is? So the court looked at Amy Rowley and said, here's an individual with a very high IQ, Andrew F in contrast, with a student who had intellectual disabilities. Andrew had a communication disability that his public school apparently had not addressed and his private school immediately addressed, which provided, um, significant improvement. Um, for him. Amy Rowley also had a communication disability in that she was a deaf person, however, the school addressed it and dealt with it. Um, at least to the extent that Amy could make meaningful progress in her public education setting. Likewise, Andrew had some behaviors that really got in the way of his own education, and they probably impeded the kids in his class as well. Amy Rowley had, um, behaviors that actually enhanced her education. She was a thoughtful student. She had, um, uh, good behaviors in school. She, when she talked to our group, she highlighted that she would become very adept at watching what her peers were doing so she could follow the instruction. Um, Amy also had a full day of school and when she would go home at night, she reported to us that her parents, both of whom were educators and deaf, they would reteach much of what she had learned or was supposed to learn during the school day. So she had that full day of educational programming. Plus she had this significant parental input. Drew on the other hand, had a shortened day. And if there's anything we've learned from this case, again, as lawyers representing school districts to shorten this child's school day, especially a student with special needs is something that should be approached very carefully and very cautiously because essentially what the U S Supreme Court says here is, um, Andrew is a child with most significant, um, with quite significant disabilities and needs, and it is counterintuitive then to shorten his school day so that he has less service, less intensity of service and benefits, um, less from the expertise of the educators who are there. So, um, Andrew F was really a learning moment for, um, many of our school districts who had sometimes relied on shortening a student's school day because of behaviors that, um, the school at the moment was not able to, uh, deal with. So that is that's the FAPE Standard that our school district clients are looking at delivering in normal times and in COVID times.

Laura Tubbs Booth ([00:28:15](#)):

I mentioned earlier that IDEA um, embeds throughout it, this concept, this constitutional concept of due process and how, um, we in shorthand kind of talk about due process to educators is due process is notice and an opportunity to be part of the student's educational planning. When the government, as you all know, affords a citizen, some kind of benefit before it takes that benefit away, whether it's the tenure of a public school teacher, it's a disability benefit. Um, it's a, a welfare type of benefit before the government can remove that benefit It has to give notice and then an opportunity to participate. And that concept is, is ingrained throughout the special education law. And this is something that as schools

are, um, really challenged with providing services to special education students, right now, there's a huge emphasis on giving notice to parents and guardians of what the school district intends to do. How are you going to provide that those speech services to a student? How are we going to get their social work services, um, to them, um, in, in various ways, and then an opportunity for the parent to participate in that decision making, and that opportunity to participate is just that; it's an opportunity to have input, to have voice, but it is not a mandate for the parent to dictate what, um, the, the school might be providing for the students. So due process is really important concept, and we're talking with our clients during, COVID an awful lot about, um, giving notice to parents and making sure we're getting parental input into how is this working for your child? What else can we do to support, um, things of that nature. So, Liz, I'm going to ask you, if you would talk about evaluations and re-evaluations, um, as those are happening in this COVID time.

Elizabeth Meske ([00:30:33](#)):

I'd love to, uh, just a couple of quick things. So obviously, um, it will come as a surprise or shock to nobody here that this situation is evolving all the time. I think that's what we've seen since March. And we'll continue to see that as this school year plays out, uh, we do have more answers sitting here today than we have in the past, but it is kind of one of those situations that the more answers we have, the more questions we have. So, um, to that end, you know, we're going to talk about some of the current guidance as of today. Um, things could still evolve and change from this point forward. Uh, additionally, if you all have any questions that you would specifically like addressed, um, today, we're going to try to leave a little bit of space at the end of our hour to, um, talk about some of those questions. So please feel free to type them into the chat box of our zoom meeting here. So let's start off with just a little discussion about evaluations and re-evaluations. Um, one important note is that this is something that looks a little timelines for evaluations, look a little different from state to state. It's typically based on state law. Um, so our timelines here in Minnesota are going to look a little bit different than what we'd see in our neighboring States to the West, North Dakota and South Dakota. Um, here in Minnesota, under our state law schools have 30 days to complete initial evaluations, um, from the time that they receive parental consent to go forward with that evaluation. And they have 30 days to complete re-evaluations, which are supposed to be happening, um, I believe at least on a tri-annual basis, um, from the point in time that they either get parental consent or that the 14-day period for parental consent has expired.

Elizabeth Meske ([00:32:26](#)):

So that's kind of the timelines we're dealing with. And one of the questions that has come up a lot is, well, how, how do we meet those timelines? How do we get our evaluations done, if the kids aren't in school, if we're operating in a system where we have school closures, or if we have, um, distance learning models or, or hybrid models that include some version of distance learning and in-person mot, uh, in-person instruction, how does that all, um, square with these evaluation timelines that are set forth and a lot. So the main takeaway for evaluations is that there's no, um, at this point in time, no extension of those timelines, the the legal timelines are what they are, and we still are obligated, schools are obligated to work within those timeframes. Um, the guidance that we're seeing, however, is encouraging parents or encouraging schools to work closely with parents and MDE is telling our schools, um, you know, collaborate with these parents, get their input. If you're in a situation where an evaluation requires or necessitates some kind of in-person assessment, um, that can't be completed virtually, and you have to have some close contact to get that assessment completed, sit down have a talk with the parents about what that needs to look like for this particular student. And if the school is proposing that an extension of that timeline would be appropriate here, um, discuss that with the

parents too, to make sure everyone's really on the same page about this is what we knew, this is what we want to do and think we need to do for your student to get a good evaluation. Um, we need, you know, another few weeks to get that done, to make sure we can do it safely, um, and operating within the, the kind of guidance or guidelines that we're seeing from the Minnesota Department of Health and from the Minnesota Department of Education.

Elizabeth Meske ([00:34:23](#)):

Um, once schools have had that initial conversation, we're also advising our school district clients to put it in writing and put together a, a prior written notice, which Laura is going to talk about a little more extensively in just a minute. Um, but putting that proposal into writing along with documenting the explanation for why, right, but the proposal of extending the timeline is equally important as why we need the extension. Um, and if it's a COVID related reason, all the more reason to put it in writing. Um, the other thing to consider with evaluations that the most recent guidance that has come out from MDE is suggesting that any in-person assessment that requires that kind of close contact between students and staff, um, all parties involved should be, um, supplied with PPE to make sure that those things can be done safely. Um, so with that caveat of, you know, when there's a necessary in-person component, we're going to try our best to get it done within these timelines. If it can't happen, we'll talk about agreeing to an extension. Um, and if, and when that in-person assessment is being completed, we're going to use PPE to make sure everyone stays as safe as possible. Um, in the context of this pandemic, uh, in the same breath, I think MDE is very much so encouraging schools and IEP teams to find ways to virtually complete any components of an evaluation that can be done, um, via distance, uh, model. So whether that's, um, calling for a virtual meeting on zoom or telephone conference to get those meetings with parents and collect that parental input, whether that's sending off to the parents, um, an authorization to get the records of the school district thing so that they can start to review those records. Um, maybe even prior to the 30 day timeframe starting off, uh, and get the ball rolling so that once Fall comes, some of those evaluations that are gonna come due quickly can be expedited. Um, those are all things that MDE, it seems to be on board with and, and, and encouraging in terms of completing evaluations and re-evaluations within the prescribed timeframe. So, Laura, I'm going to toss it back to you to talk a little bit about the implementation of IEPs during COVID-19.

Laura Tubbs Booth ([00:36:54](#)):

Thanks, Liz. So, as we talked about earlier, due process is a really important, um, concept here and the tool that educators use for communicating this due process is called a prior written notice or a PWN. And, um, one of the reasons it's so critical in COVID, we did see, um, in our, uh, with our clients, uh, as schools were closing in March of 2020, um, many schools making unilateral decisions, simply telling parents, this is what the services are going to look like. And so, as we're entering this new school year, we're really focusing and emphasizing with our clients, make sure that you are getting parental input and make sure that you are, um, including parent voice in what you do. And then you're confirming in writing for them either in a hard copy or via an email, a prior written notice that outlines what, what the input was from both the school and the parent, what the decision that the district made, um, was. So super critical in COVID because we're not having those in-person meetings. Parents aren't stopping into the third grade classroom to ask questions something of that, um, that nature. So due process is really important and that prior written notice, um, when the school district sends that prior written notice out, the parent has 14 days to respond. The Minnesota Department of Education MDE has said, uh, if a parent responds orally or via an email, that's okay. During the COVID period of time, if the parent doesn't respond, then the district's plan goes into what is called implied consent. The districts, uh, able under the law to, uh, assume that the parent has given her consent, um, for that IEP. So now during the



COVID period of time, um, schools in, um, Minnesota, but schools around the country are looking at three different kinds of school situations first full in school, if the COVID numbers would allow for that was hearing yesterday on Public Radio that, uh, the City of New York is going to have in-school, um, services for its students because its COVID numbers have dictated that. Schools also can do a hybrid model, which is, um, some in school time and some, uh, online or distance learning, and then a full distance learning plan.

Laura ([00:39:32](#)):

So many, um, of our clients and many, uh, educators across the country are looking at embedding those three scenarios as a contingency plan in the IEP. So that if, for example, we had to close schools again in December and move to full distance learning. It would already be in that IEP and the parent would have already had their prior written notice and opportunity to consent to it. Um, one of the things, as I'm turning this back to Liz, I've noticed, um, we've really encouraged clients to be creative as they think about how to do these things. Um, and we've seen, and we're going to talk about some of these successes, but just really smart things that people have been doing to try to get the work done. So if they can't go into a student's home to deliver speech services, they're delivering them via telehealth services, or if they can't do a particular evaluation of a student, that's really necessary to make that child eligible for special ed, um, they might meet the family in their front yard and deliver the, um, the evaluation tools, um, in that way. So we're seeing lots of really creative work and we're encouraging folks, to do that. Liz, will you talk a little bit about compensatory education, what that concept is?

Elizabeth Meske ([00:40:56](#)):

Yeah. I'm just going to briefly touch on it, um, so that we can keep trucking here. So compensatory education generally, or historically, um, means the services that a student would be owed or would receive in the event that the school district or the school failed to provide that student with a FAPE. So it's, it's making up for the failure to provide a free, appropriate public education. Um, this frankly is still a bit of a murky area. Um, we're just in uncharted territory, uh, in this COVID-19 business and we're not exactly sure how compensatory education is going to come into play. We do know a couple things. Um, we know, number one, that compensatory education is not across the board going to be owed to every single student who had to switch from in-person learning to distance learning. That was the case for all students in Minnesota at the end of last school year. Um, and they were all kind of living that same reality. So, so there is no notion at this point in time that every student with a disability who made that switch just like every other student is going to be owed compensatory education just on the basis that their instruction model changed. Um, the other thing that we know at this point based on the guidance coming out of MDE is, um, that when we look at who is owed compensatory education, it needs to be a really individualized inquiry. Um, we're going to ask IEP teams for each student to sit down and really take a hard look at, um, the progress that was made while the student was in a non in-person learning model, uh, looking at their progress. But I will also say not looking at their progress, um, in a vacuum, right? So we have this context and MDE guidance has encouraged schools to look at the progress that students are making as compared to their peers. Um, so this is, this is this a situation where the student was failing to provide, excuse me, failing to make progress because of some kind of, well, number one, because the school district failed to provide services to the student, was it an access issue? Was a student not able to access the services that the school district was trying to provide? Was it an engagement issue? Maybe the services were provided by the school district. There was no access issue, but there was just some difficulty getting the students to engage and, you know, sitting here as a school district attorney, I think what we want to see, what we want our clients to bring to us is a factual scenario where if any of those three things are happening, you have an IEP team who's, who's noting it.

Who's conscious of it who, um, kind of takes to task, figuring out how to address those concerns, whether it's, whether it's provision of services, access, or engagement, um, and is problem solving all, you know, through the entire period of distance learning.

Elizabeth Meske ([00:44:04](#)):

Um, if those things are happening, I think we kind of move on that trajectory or that scale toward less likely that the student would be owed compensatory education. If those things aren't happening, perhaps it's more likely that the school districts would owe to that student compensatory education due to their failure to provide a free, appropriate public education to the student. Anything else you want to add on, on comp ed Laura?

Laura ([00:44:29](#)):

Nope. Thank you.

Elizabeth Meske ([00:44:31](#)):

So let's just talk really briefly about kind of what we're seeing or what we're hearing. I should say. When we talked to our clients about what this is all looking like in practice, um, we were really lucky and fortunate to have a great conversation with, um, an individual who was kind of our boots on the ground. And Laura, I'll let you introduce that video and then I can pull it out.

Laura ([00:44:55](#)):

Thank you. So we thought, um, in particular during COVID, um, when everybody's fatigued and, um, tired of the challenges that it might be kind of, uh, good for all of us to see what one school district here in Minnesota did to, um, really reach out to parents and to ensure that students had access to the technology or the written materials, have access to staff, had access to a whole variety of things that support students in getting the school, being engaged in school and being successful in school. Um, so I would like to introduce my good friend, Christina Hata Gonzalez, who is the director of student services in the Richfield Public Schools. And for those of you who are not from Minnesota, Richfield is what we refer to as a first ring suburb. They're one of the first suburbs outside of the city of Minneapolis. They are incredibly diverse, um, population, and they, uh, have been very successful during this COVID period of time. Christina, um, as the, um, student services director is responsible for a whole host of programming pieces, but, um, anything you can think of that supports students, so special ed section 504, health services, that kind of thing. And she's a licensed clinical social worker by training. So let's go ahead and play this very short video clip. Um, and then we can have some discussion about it. Good morning, Christina, thank you for being with us. I single question for you this morning, which is, um, can you tell our group about the process you use to reach out to your families and the Richfield Public Schools?

Christina Gonzalez ([00:46:50](#)):

Absolutely. Um, so we are a really diverse district, which I think is first really important to acknowledge both, uh, racially, linguistically and economically. And so once we moved to distance learning, we quickly, we knew and then quickly realized that outreach was going to be critical for a number of reasons. First, we needed to make sure that we had updated contact information, be it phone numbers and emails, and even addresses so that we could send things home and parents and guardians could read them in a timely fashion. We also wanted to be able to outreach to identify any engagement technology issues, be it software, hardware. So what we did is, um, I developed a family contact

verification process, where we pulled all of our families information out of our student database system. And then I wrote a literal process with talking points stating, and we engaged in outreach with our Spanish speaking outreach workers, our social workers, our teachers participated, our special ed staff and our Somali outreach workers. And the script was very clear in that we're reaching out today because we want to be sure to support Junior's success. And so we've noticed it's been hard for Junior to sign on, or he hasn't had an opportunity yet to sign on. Also embedded in that process were resources from basic needs, such as housing support, food resources and employment resources, health centers, mental health resources, and parenting. So in the first two weeks post distance learning, we actually successfully engaged nearly 1500 families to support them in resource, um, linking as well as ensuring that their contact information was updated. I believe we went from 40% accuracy in updated contact information to nearly 70 or 80%.

Laura (00:48:47):

Wow. That's wonderful. And did you hear back from your families? Did you get feedback from them about the process and whether they felt supported during that period of time?

Christina Gonzalez (00:48:57):

Yes, we did consistently in the spring. And then again now in our surveys that the outreach that folks provided, we actually continued outreach and are providing support and what we're calling summer coverage or summer outreach to families. And they're very grateful to be able to speak to their social worker or their school counselor and their outreach worker as needs might arise.

Laura (00:49:19):

And I would, I would bet that many of these families needed the additional support just with the technology and, um, finding ways to engage their learner. Their student.

Christina Gonzalez (00:49:30):

Absolutely. We, um, we actually had folks doing home visits to help connect up to internet lines, drop off hardware, replace hardware that wasn't working. Um, we've created some voiceovers in multiple languages so folks families can navigate our online tools, the tools that are utilized for online learning. Yeah, it was, uh, it's, it's vital. We, we initially in the spring called, it said that the summer slide was starting in March and now we know it's called the pandemic learning slide. So anything we can do to decrease the exacerbation of inequities related to achievement and engagement we're going to do in the district. And I'm sure all the other districts are too

Laura (00:50:12):

Awesome. Well, what a, what a, um, robust process did your staff, uh, feel like they were, um, making contact and, and making, um, meaningful contact with those families?

Christina Gonzalez (00:50:27):

Yeah, they were really grateful for how concretized the process was and one piece I didn't share is we generated reports and we're doing it now for our survey outreach around distance learning is we're generating reports multiple times a day. So folks know who has responded to our current survey for learning options as well as generated reports daily for the outreach so they knew that they had already successfully reached 50 families, then 100. And so having those clear measurable goals matched with

the concretized process helped them feel well. They missed their students and families. So it helped them feel connected, also grounded and feeling competent about how to answer concerns and address issues for families and students.

Laura ([00:51:11](#)):

Thank you so much. And thank you for the work that you're doing with students and families in the Richfield Public Schools have an awesome day.

Christina Gonzalez ([00:51:18](#)):

Thank you, Laura. You too. Thank you for all your work. Thank you. Bye bye. Bye.

Laura Tubbs Booth ([00:51:24](#)):

All right. So, um, some of our listeners have asked, can you summarize this a little bit? And if you know, Christina Gonzalez, she's a woman with a ton of positive energy. And, um, I was so impressed with what they did there. Richfield, I will summarize quickly here. Um, they developed an outreach process where, um, they've looked at the contact information they had for every family in the district. And they assigned staff from special education staff to their Somali outreach workers and everybody in between. And they asked folks to reach out using a scripted process with talking points to, um, connect with families and find out first, do we have good contact information for you? What's the best way for us to reach you? What are good times for us to reach you? Second, they were wanting to identify for families um, what are the drawbacks or the impediments to, um, families and kids being engaged in this distance learning? Do you have the right technology? Is it working? Um, they, Christina taught, emphasized in our larger conversation, how important it was to help her staff, um, put this in a way that was engaging to families. So she, her start, her story starters were some things like, you know, we haven't seen Laura log-on and we're concerned that maybe there's a technology issue.. So we're reaching out today as opposed to your student hasn't been attending and we're going to find them truant. The next thing they did, um, was to then look at in each category, what do families need. Is it a nutrition need? Do they need to be connected with nutrition resources or food services? Do they have housing issues? Do they have transportation issues? And they tried to connect families. Um, they reached 1500 families in the two week period between when the Governor of Minnesota announced that there would be school closure. They moved their, the accuracy of their contact information for families from about 40% to almost 80% accuracy. What they heard from families is they felt incredibly supported by these individual contacts, um, that, um, school staff were making to find out how can we support your child, your learner, because we want to see them be successful. The other thing I thought was super interesting, um, their staff also felt incredibly good about this process because they were reporting the number of families that had been reached every day to the entire staff. So they were seeing that today we've reached up to 500 and the next day we've reached 750. And the day after that we've reached 1200 families. Um, staff also felt empowered because they had resources at their fingertips and could say to families, I hear what your need is. And I'm going to report that back and we will get someone in contact with you to, to help you with that.

Laura Tubbs Booth ([00:54:45](#)):

Um, one of the things we know in special education is we collect a lot of data about what kids do and don't do. And oftentimes that data doesn't get analyzed. We just have a chart that tells us a student isn't reading. That's not particularly helpful. What Christina and her team at Richfield did was then take that data, analyze it, to see where are we having problems, getting kids engaged in learning, how can we

increase their attendance during the digital, um, time periods? And, um, what is it that the adults in the system need to know, um, to make sure that those students get their needs addressed. So, um, really, uh, a good example of how to move this forward. Liz, I'm going to suggest we move, um, just very quickly to our breakout questions and maybe we don't have time to, um, we've only got about five minutes left, so we probably, um, Korina, should we move to the breakout sessions? Do you think? Or should we just ask the questions?

Korina ([00:55:54](#)):

I think as a bigger group would be better just because by the time we get sorted you'll lose time,

Laura Tubbs Booth ([00:56:00](#)):

Yeah. Okay. We want to ask you some questions just, um, and I see there's some things coming in through the chat room too, but, um, just to ask some questions about what are what's missing and what your ideas are. Liz, I'll let you take it away.

Elizabeth Meske ([00:56:13](#)):

Great. So, um, the first question that we were interested in just having a group discussion, like Laura said, put your comments and your thoughts into the chat, um, for us so maybe we can review a couple of them in the few minutes we have left here, but really we want to look at two things. Number one, what are we missing? So like, what are the things that are getting overlooked still in terms of serving, um, our students with the greatest needs? I already saw one comment in the chat talking about, um, engagement issues with, for students who have high behavior needs and perhaps have parents who aren't able to necessarily address all of those needs in the home. Um, how do we help that student? So what are, what are other things that we're missing or what are things that are getting overlooked? And then second of all, what we're really curious, and we were hoping to have some breakout sessions. So you guys could collaborate a little bit, what are some ideas for how we can make this work? Right? Like as a group, let's try to come up with a couple of creative solutions that would really have an impact on serving students that have the greatest needs on serving our students with disabilities during COVID-19. Um, so those are two prompts and I, because I'm sharing my screen, can't see the chat. So Laura I'm going to have to ask you to kind of facilitate that conversation as we get comments coming in. Um, but in the meantime, with respect to what's getting overlooked, do you want to just talk briefly about some of the challenges that, that we've already heard. Laura?

Laura Tubbs Booth ([00:57:40](#)):

Um, yes. And I'm seeing some, some, um, good comments here too. So I'll maybe start with the comments. Um, one of the questions has to do with, um, is there going to be flexibility in extending, for example, if the student doesn't get their services during, um, distance learning, are they, um, is there going to be opportunity for extending their school year? And that's always an opportunity. The IEP team can discuss that. So they might have extended school year services that would be services during winter break or during summer break. Um, second question is what about transition students? So, you know, students receive special education and the transition from school to work environment between ages 18 and 21. And, um, so one of the things that districts are wrestling with across the country is if a student ages out, they turn 21 during this COVID period of time, and they're missing out on some critical education, what, what's the remedy going to be there? Um, we are advising our clients to do, as Liz said, an individualized review for every student, um, as to whether they need some compensatory services.

Um, and the law's really clear even after the student ages out, they can be entitled to compensatory services. Um,

Elizabeth Meske ([00:59:10](#)):

So when would that happen, Laura? Or do you sit down if they graduated last spring and you'd sit down and fall and take a look?

Laura Tubbs Booth ([00:59:18](#)):

Um, yes, you and we actually had a client during the summer who the student had. Um, she was a delightful student. They described her as delightful. Um, and she had worked really hard during distance learning, but she had not made the kind of progress that she had made during the typical school year. And so, um, the IEP team gathered virtually and they talked about what could we do to support her during the summer during extended school year, so that she would be more ready to go to her post-secondary, um, program, um, who pays for compensatory services? That's a darn good question. Um, currently, uh, the local education agency. So the federal law requires the local public school district. That is the school district where the child lives to pay for the compensatory services. So the student, for example, is attending in the Mound-West Tonka District, and they need comp-ed services. It's going to come from the Mound-West Tonka District. We're really hopeful that, um, across the country, um, departments of education will be providing some of their additional funding. We know Minnesota is already, um, looking at, um, a large pot of money over \$400 million to, to focus on just exactly that issue, uh,

Elizabeth Meske ([01:00:47](#)):

Just to add on quickly funding available under the Cares Act. Um, is also available for schools and public schools and charter schools to use, to provide these services, these compensatory services, um, as well.

Laura Tubbs Booth ([01:01:01](#)):

Um, another question is if distance learning doesn't work for some transition students, can they just choose to graduate early? Um, it's always an IEP team determination. So the IEP team would come together and, um, ask, has a student either met their IEP goals so that they can graduate or, um, have they acquired, uh, the necessary credits and met the requirements to graduate? So yes, they, they certainly could graduate early. Someone asked, is there a requirement to do the kind of outreach that Christina Gonzalez described? And the answer to that is no, not exactly, but it's a really good example of a way that a school district took its, um, requirement to equitably educate its students, um, and figure out ways to engage parents, uh, and engage students in the process. So I think Korina, we are right at noon, uh, Liz, and I'd be happy to take any other questions or to chat with you offline, but thank you for the opportunity to be with your group and for all the work that you all are doing.

Korina ([01:02:18](#)):

Thank you everyone for tuning in.

Laura Tubbs Booth ([01:02:21](#)):

Thank you everyone for joining us today.

New Speaker ([01:02:25](#)):

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