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NYC's Immunocompromised Children Forgotten as City's Children Return to School

New York City's public schools reopened their doors in mid-September 2021, welcoming back many students to in-person learning for the first time since March 2020.[1] For many teachers, students, and their families, the return to school signaled the return to pre-pandemic life. But some families were forced to choose between their children's health and their education.[2]

At the end of the last academic year, Mayor Bill de Blasio announced that New York City, home to the biggest school district in the country, will fully open its schools for the upcoming school year. "We can't have a full recovery without full-strength schools, everyone back, sitting in those classrooms, kids learning again," Di Blasio explained about the schools' re-opening.[3] But there were questions about how medically fragile children, or those with vulnerable family members, would fit into Di Blasio's plan.

Immunocompromised students were given two options for the 2021-2022 academic year: They could return to school and hope the city's COVID-19 measures would be effective in protecting them, or they could enroll in the city's "medically necessary instruction program." [4] Although catered to students with certain health needs, the program was a far cry from even the fully remote options the schools offered the year prior. Elementary school students enrolled in the program would receive only five hours of instructions a week, while middle school and high school students would receive a mere ten hours of instruction per week.

Parents have been understandably worried about the consequences the limited class time would have on their children, both educationally and socially.[5] The program's low enrollment rate reflected these concerns: although the program was expected to serve up to 5,000 students, only 300 families were enrolled by the beginning of the school year.[6] To supplement the limited instruction, some parents opted for virtual tutoring sessions. Other families, either unsatisfied with the city's offering or rejected from the program, selected to unenroll their children in favor of homeschooling.[7] Of course, financial constraints left some families limited.[8]

As back-to-school coincided with the peak of the Delta variant, concerns surrounding the lack of remote options surfaced both locally and on the state level. City council and parents of immunocompromised children took to social media, virtual round table discussions, and safety strikes to address their frustrations.[9] And in late September, New York State Senator John Liu proposed a bill that would require the New York City Department of Education to offer a remote option for schools in cities with high transmission rates. The proposed bill included remote learning options for medically fragile students and students, though not vulnerable, have families too concerned to take the risk.

Throughout the pandemic, parents and advocacy organizations across the country took legal action against their school districts. Many lawsuits alleged that the school districts denied children special education services, a violation of the Individuals with Disabilities Education Act,[10] or denied students' rights to a Free and Appropriate Public Education ("FAPE").[11]

Students enrolled in homebound services, like the city's medically necessary instruction program, are still entitled to these rights. As the school year progresses, courts will likely hear similar cases from families of enrolled students in the city's medically necessary home instruction, particularly demands for compensatory relief. Last year's virtual learning experience, though not easy by any means, signified that full remote learning is possible. Families whose children are not able to be educated in-person can "can demand robust and thorough home instruction programs." [12]

[1] Eliza Shapiro, *N.Y.C. Schools Reopen With Joy and Anxiety on 'Game Changer' First Day*, N.Y. TIMES, Sept. 13, 2021,

<https://www.nytimes.com/2021/09/13/nyregion/nyc-school-reopening.html>.

[2] Ali Bauman, *'I Want A Proper Education': Some NYC Public School Students With Medical Exemptions From In-Person Instruction Feel They're Falling Behind*, CBS N.Y., Sept. 22, 2021,

<https://newyork.cbslocal.com/2021/09/22/new-york-city-public-school-students-medical-exemption-in-person-learning/>

[3] Karen Matthews, *NYC mayor: Public schools will be all in person this fall*, AP NEWS, May 24, 2021,

<https://www.nbcnews.com/news/us-news/new-york-city-public-schools-will-be-all-person-fall-n1268321>

[4] NYC Dep't of Educ., *Medically Necessary Instruction*,

<https://www.schools.nyc.gov/learning/programs/medically-necessary-instruction>.

[5] Bauman, *supra* note 2.

[6] Alex Zimmerman, *1 hour of instruction a day: NYC parents grapple with limited learning for medically fragile students*, CHALKBEAT N.Y., Oct. 1, 2021, <https://www.amny.com/news/as-the-start-of-school-inches-closer-at-least-one-more-elected-as-voiced-support-for-a-remote-option/>.

[7] *Students With At-Risk Family Members Fight to Get Remote Schooling Options in NYC, CT*, NBC New York, Aug. 19, 2021, <https://www.nbcnewyork.com/news/coronavirus/students-with-at-risk-family-members-fight-to-get-remote-schooling-options-in-nyc-ct/3231647/>.

[8] Mary Steffenhagen, *As NYC Students Head Back to School, Immunocompromised Families Push for Remote Option*, City Limits, Aug. 16, 2021, <https://citylimits.org/2021/08/16/as-nyc-students-head-back-to-school-immunocompromised-families-push-for-remote-learning/>.

[9] Madina Touré, *An uneasy return to the classroom in New York City*, POLITICO, Sept. 13, 2021,

<https://www.politico.com/states/new-york/albany/story/2021/09/13/an-uneasy-return-to-the-classroom-in-new-york-city-1390930>.

[10] ADVOCATES FOR CHILDREN, *AFC FILES CLASS ACTION AGAINST NYC DOE ON BEHALF OF STUDENTS WITH DISABILITIES TO ADDRESS LOSSES DURING REMOTE LEARNING (2020)*, <https://www.advocatesforchildren.org/node/1663>.

[11] *Id.*, explaining school districts are required to provide a Free Appropriate Public Education ("FAPE") to students under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.

[12] COPAA, FAQ REGARDING STUDENTS WITH DISABILITIES

WHO CANNOT SAFELY RETURN TO IN-PERSON

SCHOOL FOLLOWING SCHOOL RE-OPENING (2020),

https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020_docs/opt_out.final.pdf