



Back to School & College During COVID-19: Part 2

Hosts: Rebecca Gillett, MS OTR/L, and Julie Eller

Guest: Heidi Goldsmith, Esq.

In July, the CDC updated its guidance for schools, including recommendations for safely reopening, (I.E., social distancing, masks, screening). But there is one sharp contrast from last year's recommendations: Schools who can't follow all recommendations are still encouraged to return in-person. The thought is that benefits of returning to school in-person outweigh the risks. But what about for kids with compromised immune systems, like those living with JA? What kinds of considerations and accommodations are they entitled to by law?

In this episode, our guest expert, educational rights attorney, Heidi Goldsmith, Esq., will discuss educational rights plans and how they can be applied in the context of the pandemic this fall. Listeners will leave with a better understanding of how to advocate for themselves or their child, including reasonable accommodations they can ask for in this unprecedented situation.

Heidi Goldsmith has been serving the needs of children and families in the area of special education for 20 years. Prior to founding Bradley Goldsmith Law, Ms. Goldsmith practiced law at McAndrews Law Offices. During her 19 years at McAndrews Law, Ms. Goldsmith became a shareholder of the firm and was supervising shareholder of the special education department for over 10 years. Ms. Goldsmith is the parent attorney representative to the Stakeholders Council for the Office for Dispute Resolution, which oversees all due process and mediations in the state of Pennsylvania. She also serves on the professional advisory board of the Learning Disabilities of America, as well as the chair of the by-laws and policy committee.

Additional resources:

[Live Yes! with Arthritis Episode 18: Back to School & College During COVID-19 \(fireside.fm\)](#)

[Navigating School Rights in the Time of COVID on Vimeo](#)

[Guidance for COVID-19 Prevention in K-12 Schools | CDC](#)



Episode 40 Back to School & College During COVID: Part 2
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PODCAST OPEN

Welcome to Live Yes! With Arthritis, from the Arthritis Foundation. You may have arthritis, but it doesn't have you. Here, you'll learn things that can help you improve your life and turn No into Yes. This podcast is for the growing community of people like you who really care about conquering arthritis once and for all. Take a moment to subscribe to, rate and comment on Live Yes! With Arthritis wherever you get your podcasts ... and never miss an episode. Our hosts are arthritis patients Rebecca and Julie, and they are asking the questions you want answers to. Listen in.

Rebecca Gillett:

Welcome to the Live Yes! With Arthritis podcast. I'm Rebecca, an occupational therapist living with rheumatoid arthritis and osteoarthritis.

Julie Eller:

And I'm Julie, a JA patient who's passionate about making sure all patients have a voice.

MUSIC BRIDGE

Rebecca:

Thanks for joining us on this episode of the Live Yes! With Arthritis podcast. With the CDC updating guidance for the reopening of schools and getting kids back in the classroom, there is one big contrast from last year's recommendations when we talked about this topic: Schools who can't follow all of these recommendations are still encouraged to return in person.

Julie:

Which means that we have a lot of questions and considerations about accommodations, what we're entitled to, what we're not entitled to and even just how to navigate that program that we're all asking ourselves. So, we're just thrilled to have a special guest back with us on the show again: Heidi Goldsmith. She's going to be helping us talk through the educational rights plans that we can establish and how they can be applied in the context of the pandemic this fall.



Heidi has been serving the needs of children and families in the area of special education for more than 20 years. She is the parent attorney representative to the Stakeholders Council for the Office of Dispute Resolution, which oversees all due process and mediations in the state of Pennsylvania.

She also serves on the professional advisory board of the Learning Disabilities of America, as well as the chair of the by-laws and policy committee. Heidi, thank you so much for joining us today. We're so thankful to have you here.

Heidi Goldsmith:

Thank you for having me back.

Julie:

We did last year have a really phenomenal conversation about the basics of IEP and 504 planning, including things like the rights of parents who are immunocompromised and even how to file for some of these plans. Heidi, to kick us off, do you want to give us a little bit of the current landscape of returning back to school this fall?

Heidi:

The landscape has really been a lot different and it has evolved over the course of the year. We've had a whole shift from, you know, coming out of lockdown, having situations that people have been home, a real question about masks. Vaccinations weren't available. And a lot of the guidance was very conservative in its nature.

As things have opened up, the vaccinations have become available, is that... Education and the loss to kids for the education shutdown and not being in person has really impacted it. Kids with disabilities, kids with any type of health issues, have really been compromised even more significantly than other populations.

We obviously have kids under 12 who cannot receive vaccinations, we have people who for health reasons cannot receive vaccinations. So, we're not out of it yet.

Julie:

It can be so, so difficult, and Rebecca, you're a parent of a child going back to school. Even for someone who is not immunocompromised, it's challenging and scary, right?



Rebecca:

Yeah, totally. I think last year I remember how nervous I was about sending him off into a hybrid situation for school, mostly because of my situation of being immunocompromised. So, for all of our listeners who are on immune-suppressing medications and their children are in school, or young adults who are in college, or teenagers who are going back to school in person: What does it mean for you in your area? What kind of recommendations are out there and protections are out there for parents to reach out for?

Heidi:

One of the great things about the pandemic is it really taught people kind of what local politics is and how it works. So, you kind of didn't understand prior to this whole situation how much power school district boards actually had, or the interplay between school boards and other state agencies. Really, what the CDC recommends and really how the legal framework is set up, is: It's a partnership between the state and the county, as well as the local school district.

What's supposed to happen is the county and the school board is supposed to really say, "Hey, we're taking a real local level look at what the transmission rates are, how significant the COVID percent positivity in our rate, and making decisions on what the strategies are."

It's great if they work together, and that's what we all hope, but there can be a lot of conflict. So, it really depends on your area. It seems like in terms of the landscape right now, most schools are moving towards returning in person full-time with limited remote options if any; some are not offering any at all. In addition, you have a lot of districts who are moving towards no mask if they return in fall. However, you do have places like California, some places in New Hampshire and other areas locally that are still stating that they're having the kids return with masks.

Julie:

And it's difficult also because, as we all have lived through this, we've seen guidelines change and new rules and regulations come out related to COVID mandates and masks and social distancing, and so on. From your perspective, if you can kind of predict the future a little bit based on what the past has been, do you think that the



guidelines that we have today from schools will remain on firm ground until August, September?

Heidi:

The shift has been very clear from the CDC, and they've taken kind of a hard stance, even with the Delta variant, even against recommendations by the WHO, that state: If you are vaccinated, you do not need to wear a mask. And that came through clear in the guidelines. So, they're really recommending returning with masks for just the under-12 crowd.

I think when the vaccination becomes available for K through 12, I do think you're going to see the CDC shift in its guidance towards that. I'm reading tea leaves here, but just generally based upon what we've seen, I suspect that's going to happen sometime around September, October.

Julie:

And when you consider the guidelines just in general for our school-aged children, do you feel that the CDC is considering all school-age children, or are we kind of creating guidelines for the healthiest among us, and the immunocompromised kids are kind of facing an uphill battle and determining what that looks like themselves? Or are there specific caveats within the guidelines that can help to provide some leadership to these families with immunocompromised kids?

Heidi:

The CDC has issued guidelines. They're not laws, they're not regulations. There was also guidance that just came out in the middle of May from the Office of Civil Rights, which is actually the governmental agency that talks about how to interpret the civil right laws. And the IDEA and Section 504 is a civil right law. The Office of Civil Rights and why that's so important: It's not only do they have decision-making power if there's complaints, but it's also the guidance that courts and hearing officers look to in determining what is right for kids with disabilities.

So, the OCR came out very strong with the assumption that masks will be required. It was funny because they didn't talk about kids who needed a mask in a mask-free environment. Instead, they were talking about kids and what their rights were if they couldn't wear a mask. But what's interesting is that same logic, whether for or against



masks, still holds true. And here's what it is: Children with disabilities are entitled to a free, appropriate education, OK? Regardless of how that happens.

Now, that doesn't mean home. It could be a private school, it could be another learning center. But what the OCR specifically said is there is no decrease in their rights to a free, appropriate public education, and that they have to reasonably accommodate these kids, and they have to create strategies to make sure that the environment that they're in is safe.

So, one of the strategies that I think that parents can easily obtain is hand washing, and that's something in line with the CDC guidance. The physical distancing, again, CDC recommends three feet. I think that that's something that parents can absolutely obtain in the school environment. I don't think there'll be any question that the children who need to wear masks will be allowed to wear masks.

In terms of teachers wearing masks, that usually is not so much an issue unless the teacher themselves has a disability or for some reason cannot wear a mask. And then there's other strategies in place. Since busing is actually considered public transportation, regardless of if the school is mask-free, you still actually have to wear a mask on school buses. That is something that will not change even if your district is without masks. You are entitled to an appropriate environment.

So, if you need to be in one that safe, you can absolutely seek your school district to provide that, even if it means it be in an alternate location, such as a private school that still requires masks, a neighboring public school that may have a different mask guidance, intermediate units or other agencies that are providing educational systems that are provided in a safer environment.

Rebecca:

Given that the roles are different wherever you are living, Heidi, how can parents advocate for their child for any accommodations they feel like they need, especially if they're immunocompromised? Not just our grade school kids or high school kids, but also for those college students and maybe some adults who are returning to school. What kind of accommodations are still appropriate to ask, to protect themselves from getting sick?

Heidi:



The first thing that I would suggest doing is reaching out to your doctor and asking them to create a document that you could take to the school, like a letter. A little prescription note is not going to work. It has to be like a formal letter indicating exactly what the accommodations, or especially design instruction, you're going to need for your child going back. The other recommendation I have is the same one as last year, which is start early.

The school year is rapidly approaching. Some kids are going back in early August. So, you need to get the doctor's note and ask for a meeting with the district. What is important when you're dealing with summer in the districts is that you contact people in writing and phone calls, because if you place a phone call to a district person who's on vacation, they return — they have 30 phone calls, they're going to forget it. And you need to follow up, and you don't have the luxury of time. If you're not hearing back within 48 hours, re-follow up with the district personnel again. Ask for a meeting to take place. The other key component that you'll hear is, "Well, we can't get staff in." Be willing to waive staff members. Say you'll have a meeting without a staff member, you know, "I'll do it in writing, that's not a problem."

In terms of colleges, you need to be reaching out for the office of disability services, and they're called different things at the different colleges, but definitely be reaching out. It was interesting again about that OCR guidance. They talk specifically about colleges and the fact that colleges will need to accommodate kids who may need remote learning because they can't return to campus. They shouldn't merely take the approach that if a young person is seeking that accommodation for a program or a class, that that would fundamentally alter, that they have to try to accommodate it. And if they can't accommodate, they have to find other supports and services to try to make it possible for that child to access that program or service, which was a lot stronger language the last time.

PROMO:

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Julie:



How do you define a reasonable accommodation? And if you have a child that's immunocompromised, what kind of questions should you be asking yourself about building a reasonable, safe and fair classroom setting for them?

Heidi:

The reason that the law is called individuals with education is because it's individualized. I would work in partnership with your doctor and also the Arthritis Foundation. There's general accommodations we might be aware of such as hand washing, social distancing, ventilation, mask wearing, all those things that you can ask for. If you're in a district, there is nothing except for the one issue, and again, it's because it's become so politicized: the mask issue.

I think that would be the only one that you might have to have more documentation of in terms of supporting a mask environment. However, you have not only the CDC guidance supporting that; you have OCR guidance that basically assumes that kids are going to be returning to a mask environment, for kids with disabilities.

So, I think you have a lot of leverage to push back on districts of creating those safe spaces. What is important to know is that there should be no discrimination that comes along with that. One of the things that I want parents to be vigilant of is, if they say, "Listen, we need social distancing." "Oh, well, we can't do that in that club or we can't do that, so they can't go to that specific activity." They've got to make reasonable accommodations for that.

If they're in an auditorium, if it's outside at recess, children who have special needs are able to access every single one of those. So, I would also be thinking about the different activities you want your child to participate in, such as assemblies; whether or not recess is compromised; whether or not there's extracurricular activities, because that's included, too; and what they're going to need to be able to access those.

Rebecca:

If I'm thinking about my situation and how it might translate to other families out there thinking about going back to school... I'm on an immunobiologic. So, we still don't know how well the vaccine is going to help me against any COVID or variants of COVID, right? When I get my infusion every month, it wipes out my immune system.



Could there be pushback in that, where somebody, a parent, can say, "My child is vaccinated. However, they receive medication that affects their immune system." And the district might come back and say, "Well, they're vaccinated, so we don't necessarily need to do that accommodation." How would you suggest a parent handle that situation?

Heidi:

I do think that that's going to be an issue going forward because, again, part of the difficulty is if the district is warranting that they're providing certain safety measures as part of a 504 or IEP. And if they fail to adhere to it, they're actually opening themselves up to legal liability. So, I do think you're going to get more pushback, especially since the CDC has been so strong on the fact that, you know, if you're vaccinated, it's kind of a catchall. You're good to go.

And we all have to remember, much as you pointed out, that even people who are vaccinated, there may be reasons that they still need more additional accommodation supports and safety protocols. And that goes back to my point of why it's so important to get a doctor involved who can explain that with the studies and the information, so that you're educating the school district people.

They're not going to know that. They're going to look to the CDC. So, getting that documentation in writing, providing that as quickly as possible to the districts to explain: Why, yes, you understand the CDC makes those certain guidance that's of three feet, but you still need six feet.

Rebecca:

We know that there's HIPAA rules and privacy rules and all of that. You can't expect or make anyone on a school staff, or even students and their parents, share whether or not they've been vaccinated. But let's say a parent has a child who is immunocompromised; they do decide, "OK, well, we're gonna send them to school with a mask, but I want to know if the classroom teacher's vaccinated." Is that possible?

Heidi:

You know, what's interesting is that is a common belief that districts are covered by HIPAA. I get that all the time. "It's a violation of HIPAA." HIPAA's only related to medical facilities that are providing medical care. Districts are not covered under HIPAA. They're



covered under FERPA, which is the Family Education Rights Privacy Act. And then you'd have district personnel who have certain rights. So, districts can absolutely ask for vaccination. It's not a violation of HIPAA.

You can choose not to provide it, but then there could be other consequences to those choices of whether or not you would then be required to have a mask. Where there is a little bit of an interplay, this is a gray area... Let's say you were in an environment that's masked, and you have a teacher and/or a student or a staff member come in and say, "I am a person who has a disability, and I need an exemption to the mask requirement."

That's the ADA. Under the ADA, you can't ask them what their disability is or to prove that type of situation. So, if you have a teacher who is unmasked, it's a situation where you may not be able to ask what the disability is for the not masking, but you can ask if they're vaccinated, and the districts would be required to ensure that if your child is immunocompromised, there is safety protocols in place, which would mean possibly that they would only be placed with vaccinated teachers, who would still also wear a mask if needed.

Rebecca:

That's very helpful. I'm glad that I asked that question. If a family decides... Let's say they have a child who is immunocompromised; that virtual learning is still what they want to do for now, how do they go about asking for that? Is that an accommodation?

Heidi:

Yes, it is. That is an absolute accommodation. Federal law trumps state laws, state mandates. And kids have a right to an appropriate education. If for that child, based upon that child's individual needs, they need a remote option or a hybrid option, or a situation where it's kind of an ebb and flow option... Because what the CDC guidance tells us is that it's going to be an evolving monitoring process, where you're looking at transmission rates, how much safety protocols you're putting into place, whether or not you have a screening process.

If there is a situation where you have a child who may be in and out of school, you need to have that as part of the plan. They are entitled to the same quality supports and services as if they were attending in person, which could potentially mean that a teacher comes to the house. A vaccinated teacher would come and provide



instruction in the house if that child needs that in-person learning but needs to not do it in a large public-school setting.

PROMO:

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Julie:

There's so much skepticism and cynicism when it comes to all things: COVID vaccines and masks and social distancing. And it's unfortunately something that's been politicized. But as a parent, how do you go about advocating for those reasonable accommodations, if you're dealing with some cynicism coming back to you about what might actually be reasonable or what might not be? How can you set yourself up for success in really being your kid's best advocate?

Heidi:

What is great about all the laws that touch upon kids with special needs is that there's always dispute resolution mechanisms. You have actually a variety of avenues you can push through the situation forward. Obviously, an attempt to keep things locally, speaking to the director of special education, a superintendent, the school board, as much as possible, you want to try to keep it local.

But after that there's mediation available in all states regarding special education disputes. There are usually some other resolution systems, such as state complaints, where you can file with the state educational agency. There are also usually situations OCR... You can file a complaint with the Office of Civil Rights; they will do an investigation, as well as what is known as the due process proceedings, which are the legal lawsuits where you can actually have a hearing officer or judge ... each state is different ... come in and listen to the dispute and make a legal, enforceable order as to what the resolution will be.



Rebecca:

So, would a parent have to hire a lawyer to file a dispute?

Heidi:

They are not required. However, and I'm not just saying this because I am a lawyer: These proceedings are like court. You have a court reporter, you have a judge. There's going to be objections to testimony. My advice is, even if you don't want to hire a lawyer, I would still consult with one.

Every state has usually a parent training center that's available. They're called different things, but each state is required and federally-funded to have a training center. I would reach out to them, speak to one of their advisors. That's free of cost. They can refer you to attorneys who they know are able to help parents who may have cost-prohibitive issues. I would at least consult with one.

Julie:

The most helpful commodity and most valuable commodity right now is time and getting moving on these things quickly, so that if there is a dispute, you have some runway before the school year begins or something like that. In the event that a parent doesn't win that dispute, what happens then?

Heidi:

You have a right to appeal. You can usually appeal to your state court or your federal court. My advice is to appeal to the federal court. And then the federal court has a lower district court, and then a circuit court, and then obviously after that, the Supreme Court.

Julie:

Wow. And what happens with your child's education while you're going through a dispute like this?

Heidi:

It's a term of law called pendency, and that's what happens when you file in terms of mediation or a due process hearing. And that basically means that the child will remain



in their pendant placement. And that's defined as the last agreed upon placement. So, whatever situation your child was in previously, they will be in going forward. If, and I would be surprised to see it, but theoretically could happen: If your 504 or IEP actually included statements that they would be offered an environment where everyone would be fully masked, that would technically be your pendant placement.

I am not sure how the districts would get around that, because they would clearly have to offer that. So again, making sure that's whatever in your 504 or IEP is very specific and very clear and as broad as possible is always important. Because if you end up in a dispute in the future, that's what everyone sticks at through pendency of the proceedings.

Julie:

Well, that's really helpful. If you went through the motions of setting up a 504 plan last year, that was kind of pandemic ready, those protections then would carry over into this school year in the event that you were in pendent position. Is that true for just the general school year, from year to year? Does your 504 carry over?

Heidi:

Yeah, generally 504s carry over year to year. I have found that they tend to be three-year documents in most states. They tend to carry over. Sometimes they're lifelong.

Rebecca:

A lot of kids who have any type of juvenile arthritis might be heading off to college in the fall, and that 504 plan can still be used in that college setting. We talked about that in our first episode with you last year. And how you should work with the disability office on campus to figure out their plan. Is there anything different this year, a year later, that you might add, so college students know how to arm themselves to protect themselves on campus?

Heidi:

It would be somewhat the same recommendations. Not only that 504 plan, but also updating any type of medical accommodations that you would need to attend your school. I think making sure that we're envisioning how that child's going to be attending



those classes, with the appropriate accommodations and what they can offer, in place as soon as possible would be important.

What would be important to that is obviously finding out your class sizes. You need to be looking at how large those class sizes are. What the ventilation systems are. Are they offering any physical distancing in those larger classes?

Julie:

I know in my experience in registering for classes, oftentimes you can see the class capacity, how many people are able to be in a particular class, right there in the registrar, which is an easier thing than maybe calling the office of disability and saying, "Hey, here are the six classes that I'm thinking of taking; can you help me balance the day of the week and all of the other pieces?" You can have that relationship with your office of disability services where you can find those things out. One thing that I have seen recently is that a lot of college campuses are being very proactive about having immunization records for their students and for their staff.

How would you go about navigating the process of getting all of your information in as soon as possible with all of the 504 information as well? Are there any special tricks to making sure that you can build a good relationship with your office of disability services and your campus generally early on?

Heidi:

If you're visiting the campus for any reason, stop in. That in-person quality of walking into the office and seeing the people and meeting the people I think is always important. You get a sense of the people that work there, you get a sense of how supportive they are. I would generally suggest meeting with them in person or via Zoom, depending on your health issues, before school midyear and near the end of the year to plan for next year.

What often happens for kids when they walk into a college setting is... As strong of self-advocates as they are, it's a really big transition time. And you keep trying to work within the system. And not touching base sometimes allows problems to get too big. There's always things that pop up, that you didn't anticipate, that they might need supports or services with.

Julie:



It's important to have those early conversations with your office of disability services, because, if for no other reason, like you might not want your professors to know about your arthritis; but you certainly want someone in that classroom to help nudge the students who are taking their masks off or who are not abiding by the guidelines, to have that extra level of risk mitigation on your behalf, even if they don't know which student it is that needs some extra buffering.

What about from the mental health side of it, from just like the burden side of it? What guidance can you offer parents who are overwhelmed or students who are overwhelmed by the task ahead, as they figure out how to navigate gaining those special accommodations for next year?

Heidi:

A lot of the research came out about the impact COVID has actually had on everyone's mental health. And especially for kids with disabilities and kids in general: It seems to have impacted them to a greater extent. One of the things that a lot of the guidance and regulations that are coming out is really creating initiatives for social, emotional learning, as well as having situations... and this is the critical part: making districts really aware and schools really aware that they need to be outreaching, just not reactive. And I think we are going to see a lot of initiatives in the districts that are going to be helpful to that.

Unfortunately, in terms of right now accessing mental health services for parents, there's no legal right under the ADA or section 504. But what you do have legal rights for, especially in this time when you are exhausted, is having advocates, and a lot of the local arcs, those parent training centers that I've communicated about, again, these are all free services, actually offer people who'll attend meetings with you for free. And that extra level of support is needed. I always recommend, regardless of pandemic or mental health issues, you do bring someone else to a meeting because I've sat at the IEP meeting table as an attorney for 20 some years.

I also have three kids, some who have special needs. It is 10 million times harder when you're there on your own kid. And having that other person around — who can, you know, make sure you're hearing everything, make sure you're reminded to talk about everything, that you're not forgetting something — is really helpful.



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Rebecca:

Well, I think this was a very helpful conversation. It's really interesting to revisit this topic with you again, Heidi, a year later — after all that we've learned — and still there's gray areas. But, I wonder, as we wrap up today, if there are three takeaways that you can share, based on our conversation of how to safely navigate getting back to school at any age, for our listeners.

Heidi:

I would like to give new takeaways. Unfortunately, the first one is going to remain the same, which is start now. The second thing though is to get your doctors involved. We know a lot more about what those accommodations and recommendations are. And three: being strong advocates for our kids. I mean, what we've all learned from this is: We've learned what works and what doesn't work for our kids, and we know more medically what they need and what they don't need, and what's safe.

And really going in with that... with a clear direction of a plan of action that we need to have for your kid. And honestly, I call it the iron fist with a velvet glove. You can really be strong and pursue things, but you don't have to do it in an aggressive, negative manner. So, just don't back down and keep pushing the ball forward.

Julie:

The iron fist and the velvet glove, I think, is really important. And such a helpful, helpful illustration for us. And I think one of the things that comes back to me every time we have a conversation about back to school is that it's just so much easier to work toward a solution before there is a problem, rather than trying to be in a real crisis space and realizing then you have to figure out your accommodations. Thank you so much for joining us.

Heidi:



Thank you very much.

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