

Chapter 6

Disability and Disproportionate Disadvantage

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INTRODUCTION

The COVID-19 pandemic has been bad. But it hasn't been equally bad for all. One of the ways in which it has been bad is that it has taken previously existing social inequalities and magnified them. Prior to the pandemic there were inequalities in economic security, access to quality healthcare, and educational opportunities, not to mention the inequalities forced on some people, given their identities, by structural racism, sexism, transphobia, ableism, xenophobia, and so on. One of the important effects of the pandemic is in terms of, as Carol Hay puts it, "exacerbating social problems that have always been there, making them such that even the socially privileged can no longer avoid them, and of course making them even worse for those who have been suffering their brunt all along."¹ Many of those groups that were already disadvantaged by social inequalities have been hit even harder by the pandemic. (This isn't a new phenomenon; it's been seen before with other catastrophic events, such as Hurricane Katrina.) Part of this is because the virus itself doesn't affect everyone equally. It's harder, on average, on older people than it is on younger people, on men than on women, and on Blacks than on whites. The subsequent shutdowns and economic uncertainty have, again on average, been more of a problem for poor and lower-middle-class people than on those who are wealthy or upper-middle class.

Some of these disparities have received significant public discussion. But another disproportional impact—namely, the fact that the pandemic has hit

disabled individuals harder than nondisabled individuals—hasn't received quite as much public attention.² This claim, as with the earlier one, is a claim about average impact. Clearly, some nondisabled individuals have weathered the pandemic better than have some disabled individuals. But as a claim about how, on average, large groups of individuals have been affected, COVID has been harder on disabled populations. And this fact isn't as widely known or discussed as are some of the others. It'd be hard to not know that wealthy individuals with well-paying jobs and good insurance have had an easier time than hourly employees in service industries without employer-sponsored health insurance. In contrast, it's not as widely known that people with intellectual and developmental disabilities are three times more likely than nondisabled individuals to die if they are infected with COVID-19.³ "The COVID-19 pandemic has highlighted systemic disadvantages that people with disabilities face in the health care system."⁴ And that difference seems worth some attention, especially given that intellectually and developmentally disabled individuals are already disadvantaged in our society even apart from the pandemic. Looking at the patterns, bioethicists have concluded that disabled people are in "double jeopardy for marginalization in routine and preventive health care and, as demonstrated with COVID-19, in emergency preparedness and care."⁵

So in addition to all its impacts on public health, the economy, supply chains, and family dynamics, COVID has also highlighted many social inequalities that disabled individuals and families face. My goal in this chapter is to talk more about some of these inequalities. While acknowledging the full range of impacts on disabled individuals and families deserves attention, this chapter explores, at greater length, one particular kind of disproportionate impact: special education.⁶ Don't get me wrong; virtually every student in the country has had their education affected by the pandemic. But, as we know, that impact isn't equal. To see how the pandemic has tended to impact those students who receive special education services harder, it'll be helpful to have a sense of how, in broad strokes, special education works in the United States. So that's the focus of the next section. The way that special education is done in public schools shaped how districts responded to the pandemic.

And then, in the final section, I look at how districts responded to the pandemic with respect to public education. What I hope to show is that how we've set up the structures of special education in the United States made our response to the pandemic worse, and not just for disabled students who receive special education. Many districts responded worse for all students given constraints related to special education. And this is telling. The fact that our public education system isn't set up to bear some of the pressures of a pandemic, or even other challenges like economic hardship, without harming students shows that the current system is problematic. I'm hoping that we can

learn from the pandemic and take an opportunity to change our educational system in important ways. Because as much as we don't want to think about it yet, another challenge will come.

SPECIAL EDUCATION

The increased risk for marginalization isn't found only in the domain of public health. The pandemic has also revealed how public education is especially fragile for students with disabilities. Before turning to this, however, it will be helpful to have some background information regarding how public special education works in the United States.

The United Nations' 1975 Declaration on the Rights of Disabled Persons lists education among the human rights owed to disabled individuals. Their reasoning, in part, is that education is needed for full participation in social and civic life.⁷ But historically, such a right was not often given. Most of our country's history hasn't included coordinated special education.

Massachusetts first required education in 1852. Mississippi became the last state to enact a compulsory public education law in 1918. Despite the move toward compulsory public education in general, it wasn't required for disabled students, and most states didn't even offer it. The Education for All Handicapped Children Act (EAHCA) became the first US federal law extending the right to public education to disabled students when it was enacted in 1975. Its passage was, in part, a response to a congressional investigation that found that less than half of the country's 8 million disabled children were receiving an appropriate education, and that nearly 25 percent weren't receiving any public education at all. The EAHCA was updated in 1990, becoming the Individuals with Disabilities Education Act (IDEA). IDEA guarantees disabled children the right to a "free appropriate public education" (FAPE). Furthermore, it requires that education to be provided in the "least restrictive environment" (LRE)—that is, for them to be educated with nondisabled students in the general education setting to the maximum extent appropriate. The purpose of the law is to prohibit a "separate but equal" approach to special education, since in our country's history separate never seems to be equal. IDEA specifically requires that

each public [school] agency must ensure that: (i) to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature

or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

IDEA requires schools to develop an Individualized Education Plan (IEP) for all students with a qualifying disability. An IEP is a legal document describing how the school is going to provide any needed services or accommodations that will enable the disabled student to work toward appropriate goals and be involved in the general education curriculum. IEPs have to be reviewed and updated annually.

Public education in the United States is administered at the state rather than federal level. So IDEA isn't implemented by the federal Department of Education. Rather, each state develops its own application of IDEA. A state's special education program is then implemented through that state's local school districts. Each state also determines its own level and method of funding special education in public schools. As an "unfunded mandate," IDEA puts pressure on public schools and districts to provide services that are often costly. Budgetary concerns aren't allowed to restrict the services that are offered, but they often do in disguise. This means that the relationship between parents who think certain services are needed and school districts that don't have the money for them are often adversarial.

Given this general arrangement, when the pandemic hit during the spring of 2020, it was up to individual districts to implement their public education response to the pandemic. Unsurprisingly, district and state responses varied widely. Nevertheless, a number of patterns emerged. As we'll see in the next section, many of these responses were problematic, having negative impacts not only on disabled students but on all students. But the problems highlighted here don't capture all the challenges that different school across the country—and around the world—face. It's important to keep in mind that even under the best of conditions, special education remains problematic even though EAHCA and IDEA have been federal law for more than forty years. Schools have some incentive to follow IDEA's requirements, since failing to do so puts a district's federal and state education funding in jeopardy. But this sanction has never been enforced. So many districts do less than they're required to because they can get away with it. Our son's own district, for example, didn't even attempt to educate him in the general education classroom, bussing him past the neighborhood school across the street from our neighborhood to another school—that is, until we realized what the law required and pushed back.⁸

Evidence suggests our experience isn't unique. Many students who qualify for special education services under IDEA are not properly identified, especially in poorer communities. Forcing schools to follow the law often requires financial resources that many families do not have.⁹ As a result, many children

who should receive special education services "fall through the cracks," so to speak. Sometimes this is a result of a family not knowing how to navigate the procedures required. But many local and state educational services have policies in place that fail to provide what IDEA is supposed to guarantee. This suggests that perhaps a better metaphor is that students are actively "pushed into the cracks" if the district can get away with it.¹⁰

Consider, for example, Texas. In 2004 the Texas Education Agency (TEA) told its districts that they should aim for providing no more than 8.5 percent of their students with special education services. This was, they claimed, intended as a benchmark and not a cap, since such caps have no place under federal law. But upon investigating, the US Department of Education's Office of Special Education Programs found that Texas districts had in fact used the 8.5 percent number as a cap, resulting in widespread denial of services required by IDEA. Providing special educational services to only 8.5 percent of students is nearly 35 percent below the rate of services provided in the other forty-nine states.¹¹ In 2018, the US Department of Education sent a letter to TEA that read as follows: "TEA's use of the 8.5 percent indicator contributed to a statewide pattern of practices that demonstrate that TEA did not ensure that all [districts] in the State properly identified, located and evaluated all children with disabilities who were in need of special education and related services."¹²

The Texas Education Agency would later admit that its policy led to up to 189,000 students who qualified for such services not receiving them. Governor Greg Abbott instructed TEA to prepare a plan to address those students who were denied services. While 101,400 students were eventually identified as eligible for compensatory services, as of May 2020 fewer than 8,000 of those students had actually received them.¹³

According to the most recent report by the US Department of Education, only twenty-one of the fifty states' educational services actually satisfy the requirements of IDEA.¹⁴ More than five thousand written state complaints against schools or districts are filed under IDEA each year, and more than three times as many due process complaints.¹⁵ While not every filed case indicates a failure for disabled individuals to receive the services afforded to them by IDEA, it's pretty obvious that that the law had not achieved the kind of protections it aims at, despite being over forty years old.

DISPROPORTIONATE DISADVANTAGE

This already bad situation of would get worse during the pandemic. The exact impact of the pandemic on education depends on specific educational policy and systems. Since special education in the United States is administered

by individual districts, I look at a number of them in detail. However, many features of their response to the pandemic were shared by other districts. While my focus is on districts in the United States, similar issues arose in other countries. The *Guardian*, for example, reports of “‘widespread failure’ [in England] to restore special educational needs provision when children returned to school in September 2020.”¹⁶ Policy analysts in India note a similar, if not structurally worse, problem there:

COVID 19 has brought unprecedented challenges in India one of which is its impact on school-going children and their regular education. While it is promising to see many thought pieces raising the issue and offering meaningful solutions to this issue, it is no surprise that we have yet again failed to recognize the highly excluded category of children with disabilities (CWDs) from the entire discourse. A staggering 75% of children with disabilities doesn’t attend schools in India. When combined with other structural inequalities like poverty, caste, gender, religion etc., children with disabilities are more likely than other vulnerable categories to be excluded from education.¹⁷

These vulnerabilities can be found in a range of countries around the world.

Furthermore, it’s also important to note that the impact of the pandemic wasn’t felt equally by all disabled students. Students with less access to technology or with unreliable internet broadband were hit harder. Districts’ and families’ economic resources clearly mattered. In addition to economic and technology access concerns, the specific nature of students’ disabilities played a role. A middle-class suburban student who uses a wheelchair may be able to access online learning resources as well as a nondisabled student, but the same won’t be true for many students with intellectual disabilities even if they have the same economic resources. Given the financial impact that disabilities often have on families, there’s no guarantee that a family’s economic situation (and thus the public school system they have access to) will be insulated from disability status.

In the early days of the pandemic, many countries closed public schools in the face of the growing spread of the virus. More than 90 percent of students enrolled in preschool through higher education lost access to in-person education. While most countries closed schools at the federal level, the United States was one of only six countries that left that decision to more local levels of government.¹⁸ The first US school district, Northshore School District near Seattle, shut down in-person instruction on March 5, 2020, initially shifting to instruction online. However, a week later it stopped providing instruction altogether, citing special education services and their inability to “meet the strict guidelines outlined in federal and state regulations.”¹⁹ This early move that would soon develop into a much wider pattern.

Schools received little guidance from the federal government’s Department of Education, so they had to figure out how respond to the emerging situation at the state or district level. In New Jersey, of instance, state law prohibited providing special education services via telecommunications or other distance-learning tools. This limited their public schools’ instructional options for disabled students in the early days of the pandemic. The New Jersey Board of Education relaxed those restrictions in early April 2020. Speaking on behalf of the board of education, assistant commissioner Peggy McDonald said that “the closure of schools during the COVID-19 pandemic has resulted in the need for the delivery of special-education instruction and related services . . . through alternative means. . . . Without this modification, students with disabilities would not be able to receive some of the services they are entitled to.”²⁰ This was a particular concern give that the Newark Public School District, the state’s largest public district, had been found guilty of failing to enforce special education law in 2019, resulting in a state order to take corrective action. (Fourteen other New Jersey districts also failed to meet four or more of the nine requirements stemming from an earlier lawsuit against seventy-six districts in the state.)²¹ But numerous parents denied that their children were given the services they qualified for during the early transition.²²

Other states preemptively made decisions in an effort to avoid legal trouble. Natalia Alamdari reported that “Delaware public school districts have balked at the idea of remote learning [in their spring 2020 response to the pandemic] out of fear of being sued, especially related to meeting the needs of special education students.”²³ The majority of lawsuits over special education services settle out of court, costing the districts significant amounts of money. According to Alamdari, some Delaware districts instructed their teachers to not offer any official instruction during the first few weeks of the pandemic to avoid opening themselves up to such lawsuits. Other districts, including Jefferson County Public Schools, the largest public school district in Kentucky, admitted that concerns about equity led them to not move official instruction online.²⁴

According to a white paper from Meira Levinson at Harvard’s Edmond J. Safra Center for Ethics, many states and districts decided to “to level down to offer no educational services to anyone rather than violate principles of equity as policy-makers understood them.”²⁵ Public schools were aware that official instructional time offered remotely through distance learning would have to be a full replacement for face-to-face instruction, thus requiring schools to “abide by all IEPs, 504s, and other instructional needs of students.”²⁶ But some services required by students’ IEPs can’t be provided remotely. If a school district was offering official instruction online and couldn’t provide all IEP services remotely, then it would be in violation of state and federal

law and potentially guilty of discriminating against disabled students. By mid-March, an increasing number of public schools had announced that they were “canceling all government-mandated meetings for special-needs students until schools reopen—which might not be until fall [of 2020].”²⁷

The federal Department of Education, led by then Secretary of Education Betsy DeVos, tried to counter this trend. The department admitted that “if an LEA [local education agency] closes its schools to slow or stop the spread of spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period.”²⁸ But the Department of Education’s Office of Special Education and Rehabilitative Services advised in mid-March that

to be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act *should not prevent any school from offering educational programs through distance instruction*. . . . [Districts] should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities.²⁹

Within days of the above guidance from the education department, the American Association of School Superintendents cautioned that

it’s one thing for ED [the US Department of Education] to understand this but another for Courts to understand this is the case. The law is still the law, and ED’s suggestion that districts are responsible for “still meet[ing] their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students” will be an insurmountable challenge for some districts.³⁰

Their hesitancy and concern about legal ramifications makes sense, especially since the federal government also reminded schools that “if the school is open and serving other students, the school must ensure that the student continues to receive a free appropriate public education (FAPE).”³¹ But the federal government also instructed schools that “if a school district closes its schools and does not provide any educational services to the general student population, then a school would not be required to provide services to students with disabilities during that same period of time.”³² Some districts took this as a way to avoid the need to comply with IDEA’s demands.

In April 2020, DeVos announced that the education department would not provide waivers “for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).”³³ Overall, it is hard to

see the administration’s response as little more than doublespeak, requiring of schools what the administration in no way equipped them to provide. It’s not surprising then that the vast majority of districts closed not only their buildings but also their official instructional offerings through the end of the school year.³⁴

Let’s look more closely at how one district, Grand Rapids Public Schools (GRPS), a public school district in Michigan, responded to this situation. Like all schools in Michigan, GRPS was initially closed on March 16, 2020, by an executive order from Governor Gretchen Whitmer.³⁵ GRPS’s legal counsel confirmed to district administrators that “if a school chooses to use virtual instruction in place of in-person instruction for general education students during the closure, the school *must* ensure equal access for *all* students and FAPE for students with disabilities.”³⁶ This would involve districts needing to provide all related services—occupational therapy, physical therapy, speech therapy, psychological services, social work services, nursing services, and so on—remotely as well. The same day the district received this confirmation from its legal counsel, GRPS executive director of special education and early intervention services Laura LaMore wrote in an e-mail:

No official instruction? No FAPE. When we shift from [Optional Online Enrichment] Resources to [official] Instruction, we shift to FAPE. If we move to a virtual learning platform, we will be mandated to open every IEP (2843), 504 Plan (188) and NPSP [non-public service plan] (294)—and at least amend . . . to identify what they will be receiving as our offer of FAPE. (Because FAPE needs to change when environment changes. . . .) We will be crushed with compliance when we should be thinking about instruction.³⁷

But the need to provide FAPE to disabled students could be avoided simply by not providing any educational services to the general student population. LaMore described this realization as “a game changer.”³⁸

Whitmer issued an executive order on April 2, 2020, suspending in-person instruction and closing school buildings to the public for the remainder of the school year.³⁹ That executive order also required each public school district to implement a Continuity of Learning Plan (also known as a Distance Learning Plan) by April 28. While this executive order effectively allowed districts to offer no more official instruction for the rest of the school year, nothing in the order prohibited schools from providing instruction. That is, districts could continue to offer official instruction through electronic or virtual means, but doing so would, as already indicated, require that they live up to the requirements of IDEA.

GRPS’s Continuity of Learning Plan, the COVID-19 response plan required by Whitmer’s executive order, was “the district’s approach to

providing high-quality academic, social-emotional, and wellness support for students and families throughout the school closures during Spring 2020.”⁴⁰ It claimed to be “universally designed to be inclusive across all grade levels”⁴¹ for all students, including those receiving special education services. But in order to not need to follow the requirements of IDEA in providing FAPE, the Continuity of Learning Plan consisted entirely of optional resources and supplemental learning. This would enable the district to focus on delivering educational opportunities to students “and not compliance”⁴² with state and federal laws requiring equity of access for disabled students.

Our son was among those who then didn’t receive all the therapies that were supposed to be provided by GRPS as part of their public education services. While there was an attempt to offer some of these services remotely as part of the “optional resources and supplemental learning” resources, they just couldn’t replace what he usually received.

The denial of educational opportunities and services, and the resulting leveling down of education based on the recognition that special education law couldn’t be followed, wasn’t the only disproportionate disadvantage faced by disabled students in public school districts. In at least some cases, transition documents such as distance learning surveys were not available in alternative format for blind students or parents. Nor were they available in translation for English as a second language families, many of whom also have disabilities.⁴³ Many of the assistive technologies students rely on to access their nature were not compatible with the online platforms many districts turned to. A blind student, for example, would not be able to access tactile maps via Zoom.⁴⁴ While all the online technologies, platforms, and apps districts used were required to comply with federal and state guidelines for the visually impaired, this requirement was often ignored. As one parent put it, “[There are] students who rely on structure their new virtual classrooms can’t provide; dyslexic or reading-delayed students who have to read even more in order to access online learning.”⁴⁵

Children who receive special education are sometimes afforded Extended School Year (ESY) services to protect against regression during the summer months. According to the Department of Education, “a child’s entitlement to needed ESY services continues to apply even if schools and other facilities are closed due to COVID-19.”⁴⁶ But many districts did not provide such services at all during the summer of 2020. The Department of Education also indicated that “districts shall, to the extent practicable and necessary, make individualized determinations whether and to what extent compensatory services may be needed for pupils after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends.”⁴⁷ As of this writing, that has not happened in many districts. The situation mentioned earlier involving the Texas Education Agency, so far the only large-scale

effort to provide compensatory services, indicates that the process of seeking to evaluate for and provide compensatory services is likely to be a massive failure. Even for those disabled students who are able to secure such services, receiving them will often require additional work by their families. As Lisa Flores, whose son attends a Texas public school, puts it, “The onus is still on parents to ask for compensatory services, and it will still be on parents once this is over. . . . I doubt any district will preemptively offer compensatory education. They will stay quiet and only consider it if a parent brings it up.”⁴⁸ As with other aspects of special education, the burden too often falls to families to make sure districts follow through.

As problematic as this is, there were other disproportionate effects on families of disabled students. Just as many families with health concerns felt a greater need to take precautions in an attempt to avoid being infected, so too did many families with disabled members. Online education often requires substantially more involvement from parents of disabled students who otherwise require an aide or paraprofessional to access their education. Either my spouse or I had to be on Zoom with our son for every aspect of his online schooling, often while trying to also assist our other two children and finding time to teach my own classes at my university. Parents, even involved ones, are not professionally trained therapists or educators. Even if they have the time and flexibility to devote to their children’s needs (which, to be quite frank, many of them didn’t), they cannot provide the highly specific and intensive supports that disabilities sometimes require: “There are students with physical disabilities who receive therapies their parents aren’t trained to do; students with attention issues who find it difficult to focus in a classroom, let alone on video instruction.”⁴⁹

Having to cancel those services due to public health concerns means that many of those students were less prepared, both compared to nonpandemic years but also compared to their nondisabled peers who don’t need such services, when schools reopened in the fall of 2020. One survey in the UK reported that 69 percent of families with children with learning disabilities reported having their social services cut the first half of 2020.⁵⁰ As Ami Harbin and Alice MacLachlan put it, the pandemic has called into question “the assumed self-sufficiency of the nuclear family.”⁵¹

The impact of the pandemic, of course, didn’t end with the 2019–2020 school year. Most schools would reopen to instruction in the fall of 2020, though often virtually. Many of the increased demands on working parents and families would return. But as we’ve seen, these demands are not uniform, and disabled families continue to bear a larger share of them. In September 2020, the federal Office of Special Education Programs reminded state and local education agencies that “no matter what primary instructional delivery approach is chosen, SEAs [state education agencies], LEAs [local education

agencies], and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.”⁵² Some school districts, however, sought to use educational funds designated for special education services to pay for “non-special education duties such as check-in duties, temperature taking, covering classes, etc.,” forcing state departments of education to note that “any non-special education duties must be paid from funds other than special education, and may not be reimbursed with state special education categorical aid.”⁵³ Though already underfunded, special education programs were seen as a source of funding for other pandemic-related services.

CONCLUSION

The pandemic, as Julia Watts Belser puts it, “hits hardest among communities that are already marginalized.”⁵⁴ IDEA was developed to provide for the education of previous marginalized individuals. But IDEA is an unfunded mandate, putting obligations on public school districts without providing funding for those obligations. It’s understandable, then, that districts would be motivated by a concern for cost—both of providing services and for the lawsuits they were afraid of. But as the Supreme Court decided in *Goldberg v. Kelly*, the state’s interest in the general welfare and education of its citizens “clearly outweighs” its concern “to prevent any increase in its fiscal and administrative burdens. . . . Public assistance, then, is not mere charity, but a means to ‘promote the general Welfare, and secure the Blessings of Liberty to ourselves and all our Posterity.’”⁵⁵ The purpose of special education in the United States is provide “a more equitable allocation of resources [that] is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals”⁵⁶ As we’ve seen, however, concerns about living up to the law led school districts to choose not to provide education to *any* student.

Public health threats like COVID require a structural response. It’s not enough for individuals to make personal choices they think are best for them. We need public health policy, guidance, and coordination. In a similar way, the ability of a country or state to provide special education requires a good structural response. While public special education is governed by federal law, the pandemic has magnified many of the previously existing structural inequalities that already existed in how the United States approaches special education. While the pandemic has been felt by all, its harms have not been uniform. And those harms have often fallen disproportionately on those who are least able to bear them.⁵⁷

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NOTES

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2. There has been some discussion. For worthwhile discussions, see Laura Guidry-Grimes, Katie Savin, Joseph A. Stramondo, Joel Michael Reynolds, Marina Tsaplina, Teresa Blankmeyer Burke, Angela Ballantyne, Eva Feder Kittay, Devan Stahl, Jackie Leach Scully, et al., "Disability Rights as a Necessary Framework for Crisis Standards of Care and the Future of Healthcare," *Hastings Center Report* 50, no. 3 (May/June 2020): 28–32, <https://onlinelibrary.wiley.com/doi/abs/10.1002/hast.1128>; Julia Watts Belser, "Disability and the Politics of Vulnerability," *Berkley Forum: Religion and the COVID-19 Pandemic: Vulnerable Populations*, April 15, 2020, <https://berkeleycenter.georgetown.edu/responses/disability-and-the-politics-of-vulnerability>; Meredith Wadman, "COVID-19 Is 10 Times Deadlier for People with Down Syndrome, Raising Calls for Early Vaccination," *Science*, December 15, 2020, <https://www.sciencemag.org/news/2020/12/covid-19-10-times-deadlier-people-down-syndrome-raising-calls-early-vaccination>; Margaret A. Turk, Scott D. Landes, Margaret K. Formica, and Katherine D. Goss, "Intellectual and Developmental Disability and COVID-19 Case-fatality Trends: TriNexT Analysis," *Disability Health Journal* 13, no. 3 (2020): 100942, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7245650/>; UK Office for

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 5. May Sabatello, Teresa Blankmeyer Burke, Katherine E. McDonald, and Paul S. Appelbaum, "Disability, Ethics, and Health Care in the COVID-19 Pandemic," *Public Health Ethics* 110, no. 10 (2020): 1523 (footnotes omitted).
 6. I find the phrase "special education" to be problematic, for similar reasons to why many individuals involved with disability studies or disability rights think the phrase "special needs" is problematic. While the testimony of individuals with disabilities isn't uniform with respect to a number of terminological issues, many object to the use of "special needs" and "special education" in a way we ought to take seriously. Furthermore, it is not the aim or importance of education that is "special"; rather it is primarily the delivery modalities of that education that is special. Thinking of "special education" as distinct from just plain education makes it too easy to apply different standards, thereby contributing to discrimination or ableism. Nevertheless, "special education" is the leading term in the relevant subsection of education literature and is a term with specific legal force (see, e.g., IDEA 300.39). Given this, I'll use the term but with reservations.
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 8. A fuller account of this story can be found in Kevin Timpe, *Disability and Inclusive Communities* (Grand Rapids, MI: Calvin University Press, 2018), chap. 1.
 9. Eloise Pasachoff writes that "the available evidence suggests that wealthier parents continue to come out ahead in the enforcement game. At the individual and intra-district level, the evidence is largely anecdotal, but it is consistent and widespread. Throughout the country, scholars and commentators provide repeated examples of parents with greater financial resources disproportionately taking advantage of the IDEA's private enforcement mechanisms in comparison to their less well-heeled neighbors. . . . Our findings are consistent with the idea that families with more financial (and perhaps also educational) resources are better situated to pursue their rights under the IDEA" (Eloise Pasachoff, "Special Education, Poverty, and the Limits of Private Enforcement," *Notre Dame Law Review* 86, no. 4 (2011): 1426f).

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16. Sally Weale, "Special Needs Pupils in England 'Pushed to One Side' in Covid Crisis," *Guardian*, February 19, 2021, <https://www.theguardian.com/education/2021/feb/19/special-needs-pupils-in-england-pushed-to-one-side-in-covid-crisis>.

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18. Meira Levinson, *Educational Ethics during a Pandemic*, Edmond J. Safra Center for Ethics at Harvard University, May 16, 2020, <https://ethics.harvard.edu/files/center-for-ethics/files/17educationalethics2.pdf>, 4.

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27. Richards, "Is Online School Illegal?" This concern is not limited to US schools: "Schools in England are using COVID-19 risk assessments as a 'blanket excuse' to prevent pupils with special educational needs and disabilities (SEND) from attending classes." Sally Weale, "English Schools 'Using Coronavirus as Excuse' Not to Teach Special Education Pupils," *Guardian*, July 1, 2020, <https://www.theguardian.com/education/2020/jul/01/english-schools-using-coronavirus-as-excuse-not-to-teach-special-needs-pupils>. Some other US public school districts rejected online instruction due to equity of access to the needed technology.

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35. Executive order 2020–5.

36. Thrun Law Firm P.C. communication to retainer clients including GRPS, obtained via Freedom of Information Act request.

37. E-mail from Laura LaMore to Richard Lemons, May 20, 2020, 4:52 p.m., obtained via Freedom of Information Act request.

38. E-mail from Laura LaMore to SE Admin—LOCAL Supervisors, May 23, 2020, 11:50 a.m., obtained via Freedom of Information Act request.

39. Michigan Governor Executive Order 2020–34.

40. GRPS Implementation Guide: Community of Learning and COVID-19 Response Plan, spring 2020, 3, obtained via Freedom of Information Act request.

41. GRPS Implementation Guide, 3, obtained via Freedom of Information Act request.

42. E-mail from Laura LaMore to Kirsten Myers, May 20, 2020, 10:03 a.m., obtained via Freedom of Information Act request.

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47. Michigan Governor Executive Order 2020–35, 12. More guidance on compensatory services can be found here: <https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/>.

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55. *Goldberg v. Kelly*, 397 US. 254 (1970), quoting the preamble to the US Constitution; see also the discussion in Martha Nussbaum, “The Capabilities of People with Cognitive Disabilities,” in *Cognitive Disability and Its Challenge to Moral Philosophy*, ed. Eva Feder Kittay and Licia Carlson (Malden, MA: Wiley-Blackwell, 2010), 84f.

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57. Thanks to Anna Gotlib and Alida Liberman for comments on an earlier version of this chapter.

Responses to a Pandemic

Philosophical and Political Reflections

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