

An Open Letter to the U.S. Department of Education
www.SaveIDEA.org

April 14, 2020

Hon. Betsy DeVos
Secretary of Education

Mark Schultz
Acting Assistant Secretary
Office of Special Education and Rehabilitative Services (OSERS)

Laurie VanderPloeg
Director
Office of Special Education Programs (OSEP)

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-7100

Dear Secretary DeVos, Acting Assistant Secretary Schultz, and Director VanderPloeg:

We the youth, parents, educators, advocates, disability and civil rights organizations, and service providers that comprise a community alliance are seeking to urge U.S. Department of Education to reject any waivers unduly limiting the rights of students with disabilities under Federal statutes.

Students with disabilities are struggling as a result of the widespread school closures. Many of these children depend on a daily routine, and the shift from school to home-based education has caused not only behavioral escalation but increased symptoms of anxiety and depression. We understand that many children may not be able to receive the full benefit of their educational programs in the home setting; however, we believe any harmful effects can be mitigated by careful consideration of a student's Individualized Education Program (IEP) and the provision of services to the greatest extent possible. Because suspending the rights of children with disabilities would have a severe impact on those children's wellbeing and because it is possible for local education agencies to continue to fulfill their duties using available technology, we assert that no waivers to the Individuals with Disabilities Education Act or Rehabilitation Act of 1973 are necessary.

Some school districts have opted not to provide any special education or related services during the school closures. This has placed the full responsibility of a child's educational program on the parents, who are struggling to meet their children's educational needs and prevent educational regression, all while trying to balance their

own careers, homes, and other children. These parents are doing the best that they can, but they simply cannot do the work of an entire team of highly-trained, qualified therapists and educators. The end result is that many children with disabilities are deprived of the opportunity to make educational progress during the school closures.

On March 21, 2020, the U.S. Department of Education (Department), Office for Civil Rights issued the “Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities” (Fact Sheet). In this document, the Department issued guidelines for local education agencies (LEAs) wondering whether or not they were still obligated to comply with the Individuals with Disabilities Education Act (IDEA, 20 U.S.C. §§ 1401 et seq.) and other laws during the current global health crisis.

According to the Fact Sheet, they are. However, the Fact Sheet went on to cite various aspects of IDEA that are flexible, such as certain timelines that might be extended through mutual agreement of the parties. We believe it to be a suitable starting point for a discussion on how to best move forward.

On March 27, 2020, the United States Congress passed, and the President signed, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 4511(d)(3), directs the Secretary of Education to submit a report to various House and Senate Committees with recommendations on the exact provisions of various laws protecting our children that should be waived during the crisis. In other words, the Secretary will be deciding what rights and protections students are still entitled to, and what rights will be suspended. This report is due April 26, 2020.

In Los Angeles, we have seen the Los Angeles Unified School District suspend special education programs and IEP meetings. The California Department of Education has waived statutory timelines for assessment plans and records requests. This has taken a toll on some of our most vulnerable students, a toll that no one can yet quantify. We urge the Secretary and the various committees to strongly consider the negative impact of any waiver that seeks to remove the rights, protections, guarantees, or entitlements of students with disabilities.

Students with disabilities in Illinois are struggling as a result of the widespread school closures. Some students have received very little specialized instruction and no related services. Other children have received special education and related services through videoconferencing, from multisensory reading instruction to speech and language and social work services. While some districts already provided students with individual devices in order to access special education and related services, other districts don't have the funding to provide computers and internet access to all of their students in need. Illinois allows districts to provide remote learning either online or through other means in order to address resource disparities. Rather than waiving IDEA requirements, districts need resources to provide the tools to access education remotely, thereby improving equitable access to services. Districts should also provide students additional supports if their parents or caregivers are not able to meet their

children's educational needs while balancing other significant family concerns or because of a lack of expertise. The Illinois Department of Human Services has worked with the Department of Healthcare and Family Services to implement the Teletherapy Service Delivery model within the Early Intervention program. This type of service delivery model could be utilized within the special education system to service all special education students.

While we must consider the health and safety of children, their families, and education providers when providing special education and related services during the pandemic, it is not necessary or prudent to waive the rights and protections provided to students with disabilities. Individualized instruction for special education students has been implemented in a number of California school districts through the use of distance learning methods such as telephone or video conferencing. It is also possible to use these same methods to provide certain related services including, but not limited to, speech therapy, psychological and counseling services, adulthood transition services, and interpreting services. The provision of these services during this period is especially important for students who are struggling with the change in routine.

For many students, there are in-person services that are absolutely necessary and cannot be waived. For example, students who exhibit severe aggression or self-injurious behaviors require behavior intervention services in spite of social distancing guidelines. Various Applied Behavior Analysis (ABA) providers have deemed their service to be essential and have continued to provide in-home ABA during the school closures. Waiving these services could present a grave risk, not only to the student's health and well-being, but to that of the student's parents, siblings, and community as well.

An LEA's obligation to hold IEP meetings is one of the most important provisions protecting the rights of students in special education. Not only are these meetings possible during the current closures, they are crucial. Without regular IEP meetings, LEAs will not be able to develop appropriate programs to increase accessibility to online instruction for students with disabilities. Transition plans need to be drawn up in preparation for schools reopening, which is also not possible without IEP meetings. Parents have successfully attended IEP meetings during the current crisis through the use of videoconferencing programs, and the outcome of these meetings has been largely positive. Where IEP teams have proposed reasonable interim in-home programs that account for a student's individual needs, we have seen students continue to progress in their education.

Unfortunately, there are some LEAs who have refused to hold IEP meetings or deliver instruction and related services. For the students of these districts, we have seen academic regression and exacerbation of maladaptive behaviors as they struggle with the change in routine that the pandemic has caused. That, compounded with a total lack of educational services or anything that might help maintain some semblance of normalcy, has created an untenable situation for these children and their families.

Attached to this letter are testimonies from families describing the impact of the current situation. We have posted this as an “open letter” on a website www.SaveIDEA.org.

In light of the above, we urge the Department to strongly consider the impact of any proposed waivers on the wellbeing of students with disabilities. Specifically, we urge the Department to *reject* any proposal limiting the following:

1. An LEA’s responsibility to convene IEP meetings;
2. An LEA’s responsibility to provide individualized instruction;
3. An LEA’s responsibility to provide related services;
4. An LEA’s responsibility to provide access assistive technology, when appropriate;
5. An LEA’s responsibility to provide accommodations enabling students to access their educational programs;
6. An LEA’s responsibility to provide necessary behavior intervention services, in order to prevent behavioral regression and ensure students’ safety; and
7. An LEA’s responsibility to fund placement at residential treatment centers, when appropriate.

In addition, we urge the Department to take the following proactive actions:

1. To the extent that certain related services absolutely cannot be provided during the pandemic, require LEAs to provide a reasonable amount of compensatory educational services;
2. Require LEAs to adopt distance-learning instructional strategies, including the use of online instruction and videoconferencing for related services when appropriate; and
3. Require LEAs to convene IEP meetings for the purpose of developing programs that can be implemented during school closures.

In regard to children protected by Section 504 of the Rehabilitation Act of 1973, we urge the Department to require LEAs to provide appropriate accommodations that will enable these children to access the instruction provided by their schools. These accommodations include, but are not limited to, prewritten lecture notes, study guides, extra time on assignments, and access to supplemental materials.

Thank you for your time and attention to above matter.