



April 6, 2020

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-7100

Mark Schultz  
Acting Assistant Secretary, OSERS  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-7100

Dear Secretary DeVos and Acting Assistant Secretary Schultz,

The National Disability Rights Network (NDRN) submits this letter in response to the directive that the Secretary of Education submit, within 30 days of enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act a report to Congress with recommendations on any additional waivers the Secretary deems necessary under the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973 (Rehab Act) and other education laws. NDRN is unwavering in the belief that **NO ADDITIONAL waivers are necessary under either the IDEA or section 504 of the Rehab Act.** Given that IDEA offers flexibility by design and states, districts, communities, and families are working together to find solutions to the problems they face in the next several months, we firmly believe that this is not the time to roll back civil rights protections for students with disabilities.

The Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies are a nationwide network of congressionally mandated, cross disability rights organizations operating in every state in the United States, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands). There is also a P&A and CAP affiliated with the Native American Consortium, which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. The P&A/CAP Network has the authority to provide legally based advocacy services and legal representation to all people with disabilities. P&As and CAPs pursue legal, administrative, and other appropriate remedies under all applicable federal and state laws to protect and advocate for the rights of individuals with disabilities. Collectively, these programs make the P&A/CAP Network the largest provider of legally based advocacy services to people with disabilities in the United States. Education cases comprise a significant percentage of the P&A caseload.

To be clear, NDRN recognizes that during this unprecedented global crisis brought on by COVID-19, communities and families across the country are reckoning with an abrupt new reality that schools across the country are closed and shelter in place orders have been issued. The P&A Network is hearing many examples of educators and families working together to find new ways to provide students with educational opportunities while also ensuring basic health and safety needs are met

and NDRN celebrates this innovation. Specifically, NDRN has heard that Florida, Kentucky, New Hampshire, and Nebraska P&As are all engaging regularly with their state education agency and other stakeholders to collaboratively ensure that students receive services under the IDEA and Section 504 during the school closures.

NDRN firmly believes that students with disabilities are always best served when school leaders, teachers, specialized instructional support personnel, parents, students and advocates work as a team to address complex issues. Indeed, in a statement signed on March 23, 2020 by the National Association of State Directors of Special Education (NASDSE), the Council of Parent Advocates and Attorneys (COPAA), the National Center for Parent Leadership, Advocacy and Community Empowerment (National Place), and NDRN states, **“students with disabilities will be best served when diverse stakeholders come together and share resources, innovative ideas and promising practices.”**<sup>1</sup>

During this rapidly evolving crisis, flexibility, patience, and innovation will be needed. In that spirit NDRN has advised the P&A Network to work both collaboratively and systemically with states and local systems to ensure that the needs of students served under the IDEA and Section 504 of the Rehab Act are met. Further, NDRN appreciates the clarification provided to schools by the Secretary that “provision should be made to maintain education services”<sup>2</sup> [for students eligible under the IDEA or the Rehab Act] and the emphasis further reflected that “federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities.”<sup>3</sup>

Additionally, NDRN wishes to emphasize the principles as outlined in the Consortium for Citizens with Disabilities (CCD) Education Taskforce letter, also submitted to the Department, which the Department must enforce and Congress must uphold:

**1. Local Education Agencies must continue to provide Free Appropriate Public Education (FAPE) to students with disabilities.**

The obligation to provide a free appropriate public education to students with disabilities remains, even in the face of a public health emergency. This means that education and related services under the IDEA must continue. It also means that schools must consider how the needs of students with disabilities -- including the accommodations, specialized instruction, and related services they need -- will change as they learn from a distance, in their home, and in an online setting.

Existing federal disability laws allow for flexibility in determining how to meet the individual needs

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<sup>1</sup> <https://www.ndrn.org/resource/statement-on-serving-students-with-disabilities-during-covid-19-outbreak/>

<sup>2</sup> <sup>2</sup> Office for Civil Rights (March 16, 2020) “Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students.” U.S. Department of Education: Washington, DC. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

<sup>3</sup> Office for Civil Rights & Office of Special Education & Rehabilitative Services (March 21, 2020). “Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities.” U.S. Department of Education: Washington, DC. Available at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/fag/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency, and schools may not be able to provide the same services in the same manner they did in the past. FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing educational and related services to students. In some cases, this may mean that schools provide 1:1 instruction and services virtually or telephonically. In others it may mean that schools send materials and activities home for students. In all cases, schools must be evaluating which compensatory services may be needed and plan to provide those services as soon as possible.

## **2. Teams responsible for student Individualized Education Programs (IEPs) must involve parents in all decisions.**

IDEA includes robust provisions calling for parent participation in their child's education, including within the IEP process. Specifically, IDEA calls for public agencies to "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate."<sup>4</sup> IDEA anticipates that parent participation may not always be possible in-person and allows for parents and public agencies to "agree to use alternative means of meeting participation, such as video conferences and conference calls."<sup>5</sup>

There may be a situation where a school team feels the need to make amendments to a student's IEP given the emergency situation they are in and because students are learning from a distance. In such a situation, IEP provisions within IDEA already allow for amendments to an IEP without an IEP meeting as long as the parent and district agree to those amendments and a written document is created and attached to the IEP.<sup>6</sup>

It is clear that IDEA has numerous provisions that provide the needed flexibility for parents and schools to work together -- even remotely -- during this time. No additional waivers or flexibility are needed. IDEA's key tenet of parent participation must remain and no changes may be made to an IEP without parent notice *and* consent. As time has passed, more teacher-parent communications are occurring via email and other remote means. Now, more than ever, parents must be a part of any decisions regarding their child.

## **3. Parents' due process rights must remain intact.**

Given the inherent flexibility within IDEA and the focus on parent-school partnerships, there is no reason to weaken or revoke parents' due process protections. Instead, schools and IEP teams should spend time planning for and engaging in meaningful communication with parents and proactively addressing issues related to service provision and accessibility. Frequent and clear communication, collaboration, and partnership between schools and families will be necessary during this time.

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<sup>4</sup> 34 CFR. § 300.322(a)

<sup>5</sup> 34 CFR. § 300.328

<sup>6</sup> 34 CFR. § 300.324(a)(4)

Where due process complaints proceed, much can be done in preparing for a due process hearing or investigating a state complaint without an in-person meeting. We also are aware of hearings that are occurring virtually. Finally, hearing timelines may be extended by consent, if necessary.

**4. Use of Federal education funds must adhere to the IDEA, the Rehabilitation Act, the Americans with Disabilities Act and other civil rights laws.**

Federal dollars should not be used for any voucher, voucher-like, or scholarship programs unless participating schools are required to adhere to all federal education and civil rights laws. All students should be able to attend a high-quality public school that meets their needs while maintaining all of their rights under the IDEA and other civil rights statutes.

Finally, there is no doubt that some districts and states are better equipped to pivot quickly and support students virtually and in order to achieve this in more communities, schools must be better supported to build the capacity to serve students with disabilities and their families under these new circumstances. Therefore, instead of waivers, we will urge Congress to protect the civil rights of students and provide robust funding to states and school districts so they can make every reasonable effort to educate students with disabilities during this national emergency.

We urge you to support our request to keep the laws intact and protect the civil rights of students with disabilities. We must work together to ensure schools and families collaborate in support of every student with a disability.

Should you have any questions or wish to be provided with additional information, please do not hesitate to contact Amanda Lowe, Senior Policy Analyst, at [amanda.lowe@ndrn.org](mailto:amanda.lowe@ndrn.org)

Sincerely,



Curtis L. Decker  
Executive Director

cc: Laurie VanderPloeg, Director, Office of Special Education