

**Education Advocacy Coalition
for Students with Disabilities**

**Maryland Special Education
Lawyers**

March 19, 2020

Karen Salmon, Ed.D.
State Superintendent
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

Re: Provision of Education to Students with Disabilities During Pandemic

Dear Superintendent Salmon,

We understand the recent outbreak of COVID-19, which has been declared a pandemic by the World Health Organization and a national emergency by the President, raises a multitude of issues that national and local leaders are working to address. We know that you are currently working with local district superintendents to determine how public education will proceed during this global health crisis, and we acknowledge that these conversations are not easy.

Maryland has always been an education leader and has been at the forefront of providing education to students with disabilities, even before passage of the Individuals With Disabilities Education Act (IDEA). We write to you today as representatives of the Education Advocacy Coalition and the Maryland Special Education Lawyers on behalf of Maryland's students with disabilities to urge you to continue Maryland's strong leadership by requiring school districts throughout the state to ensure that students with disabilities continue to receive special education and related services to the extent possible while schools remain closed as a result of the COVID-19 pandemic. Although we are familiar with the guidance issued by the Office of Special Education Programs (OSEP) and Office of Civil Rights (OCR), we are requesting that you and the Maryland State Department of Education (MSDE) join other states such as Massachusetts in making a commitment to meet the needs of students with disabilities during and after this unprecedented national emergency.

A school closure can cause students with disabilities to regress both academically and functionally to a degree that will be difficult to compensate effectively. States and Districts around the country are coming up with innovative ways to ensure that all students, including students with disabilities, are receiving educational services during school closures. Accordingly, we are requesting that MSDE require districts to:

1. Convene virtual or telephonic IEP meetings using Zoom, Face Time, WhatsApp or other electronic means, and to provide parents with requisite notice of these meetings, within ten calendar days following any cessation of in-school services to allow parents and educators to make necessary modifications to a student's IEP according to the IDEA requirements during the pendency of any school closure;

2. Develop policies and procedures to govern the provision of special education and related services during any period of school closure, including:
 - a. Policies requiring each student's IEP team to determine whether special education and related services, such as speech and language therapies, counseling, and Home and Hospital Teaching (HHT) (also known as Interim Instructional Services (IIS)), can provide educational benefit when provided remotely. These policies should also make clear in cases in which services cannot effectively be provided remotely that the LEA needs to provide written notice to the parent of the amount and nature of service being denied and a guarantee that these services will be provided through compensatory education after school reopens or during the summer. The determination of the exact nature of those services should be made by the IEP team;
 - b. Policies and procedures governing the need for timely determination of eligibility for students who were referred for evaluations or in the middle of eligibility evaluations prior to the closure of schools.
 - c. The need, in some cases, for IEP meetings to be convened to discuss the student's transition needs upon an eventual return to school;
3. Ensure that decisions about extended school year services include a compensatory services analysis. Traditional ESY services may not be sufficient in light of this significant disruption in students' learning. Some students may face significant regression or the need for recoupment based even on relatively short periods without services. ESY services, over and above the compensatory education that will be required for missed IEP services, will be needed if the cessation of service results in regression or need for recoupment. The burden of demonstrating the lack of need for ESY services in the case of a student whose IEP services were not fully provided during the period of COVID-19 related closure must be firmly placed on the LEA;
4. Ensure that that even if the schools are closed for public health purposes, those days be counted as a day of "removal" for students subject to disciplinary removals. We believe that to further penalize these students by extending their removal from school further as a result of the ongoing closure of schools would be punitive. In these difficult times, we believe that it is imperative that students not be further isolated for purely punitive purposes and that the removals be limited to the "shortest period practicable" as required by state law.;

We also request that MSDE issue guidance regarding:

- 1) Students who have been placed at a nonpublic school, either by the district or through agreement, clearly stating that the LEA must continue to support the placement, as long as the facility is open, and continue to provide transportation as provided by IEP or by agreement. When a student is placed at a nonpublic school pursuant to an IEP and the facility is closed, the guidance should make clear that the IEP team will need to determine, as soon as possible following notice of the closure, what services can be provided during closure, and what compensatory education is owed thereafter;

- 2) Guidance on the way school districts should respond when a student is discharged or removed from his/her current school during the closure, with no identified school to provide services for the student for the duration and immediately after the closure ends.

We understand that each student's IEP imposes individual requirements for that student, including specific, measurable educational and social goals as well as services and supports required to meet those goals and provide the student with equal access to education. The overarching principle of any policies issued by the Department should be that, for any day counted as a school day, a free appropriate public education (FAPE), consistent with the student's IEP, must be provided to every student with a disability. In cases where some or all of the necessary IEP services cannot be provided during days the school building is closed, a program of compensatory education should be developed and implemented prior to the beginning of the 2020-21 school year.

We look forward to continuing to work with you to ensure that the needs of Maryland's students with disabilities are met during these difficult times. We welcome further discussion on these issues and request that as policies and procedures are developed, we be provided with updates on the Department's decisions. Thank you in advance for your leadership at this difficult time. We trust that with your assistance, Maryland's students with disabilities will not be left behind. Please feel free to reach out to either of us to discuss this letter and MSDE's plans.

Sincerely,

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cc: Marcella Franczkowski