



March 16, 2020

Dr. Miguel A. Cardona  
Commissioner of Education  
Connecticut State Department of Education  
450 Columbus Boulevard  
Hartford, CT 06103-1841

By Email and First Class Mail

Dear Commissioner,

We, the undersigned organizations and individuals, write to express our concern about the provision of special education services during this unknown and indeterminate period that schools are closed as a result of the COVID-19 pandemic. We write to implore you to issue binding instructions to school districts on providing special education and related services during any period of school closure. We understand, of course, that local, state and federal agencies are dealing with an unprecedented crisis and that we are all figuring out how to deal with the pandemic in real time. We commit ourselves to working with you and with other stakeholders to ensure appropriate education during this challenging period.

This request is made all the more urgent by the widely varying practices being instituted by the various school districts, and various schools within districts. Parents of students with disabilities are confused and anxious because they do not know what to expect, have not been provided with information, and have had no advance warning. Moreover, many special education administrators are unsure of what is acceptable and appropriate. The guidance documents issued by the State Department of Education and by the United States Department of Education are helpful as far as they go but fail to address the major questions about distance learning, transportation, related services and compensatory education.

Students on Individualized Education Programs (IEPs) require, in many cases, continuity of educational services to a much greater degree than other students. A student with autism may require daily discrete trial interventions. A student with dyslexia may need structured literacy interventions without interruption. And, a student with social and emotional challenges can require a consistent behavior intervention plan. A school closure can inflict a level of damage to these students which can never be effectively remediated. Indeed, the impact of closures on

students with disabilities will be far more profound than the impact on other students. We will see regression across a panoply of domains. Students with anxiety disorders will be particularly hard hit.

There can be no question that the State Department of Education, as the State Education Agency under the Individuals with Disabilities Education Act (IDEA), has the authority, and indeed the responsibility to issue binding rules. Each year the State Department of Education certifies to the federal government that it has in effect policies and procedures to ensure that a free appropriate public education is available to all children with disabilities. The issuance of binding policies, on an emergency basis, is imperative to make good on this certification. While these policies might not have the force and effect of a statute or regulation, they would provide a safe harbor for district action and for the adjudication of any parental claims that might ensue.

The overarching principal of these binding policies is 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 must be developed and implemented prior to the beginning of the 2020-21 school year. And, the program of remote services and compensatory education must be developed in collaboration with the parents through the Planning and Placement Team (PPT) process.

We propose the following as the basis for binding policy. We base our recommendations on the understanding 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. Although state law allows for waiving the 180-day school year requirement, it does not allow local education agencies (LEAs) to waive the provisions of a student's IEP.

#### **I. PPT Process.**

The IDEA and Connecticut state law require that parents (and students where appropriate) be equal partners in the development and implementation of a student's educational program. This requirement is not waived under the current circumstance. We recommend the Department issue binding guidance:

1. Reminding LEAs of their obligation to provide families of students with IEPs with written notice specifying any modification of the services provided, including proposed options to address these changes, and Prior Written Notice on the impact of the changes within ten days of any cessation of in-school services.

2. Establishing a mechanism to convene virtual PPT meetings within the ten-day period 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. School districts should freely seek waivers of legal requirements for certain individuals to attend a PPT meeting. Further, the Department should put out rules for the extension of annual review dates.
3. Creating standards, consistent with the recommendations contained later in this letter, for determining whether modified services during the period of closure are sufficient to meet IEP requirements or, alternatively, whether such services need to be provided as part of a program of compensatory education.
4. Establish minimum requirement for communication to parents, including notice of the number, type and duration of any missed special education and related services.

## **II. School closures without distance learning**

The Department's March 9 guidance recommends against providing distance learning during short closures, in part to avoid inequitable treatment. Although we understand the rationale behind this suggestion, emergency closures do not eliminate the requirement that the LEA provide FAPE. We therefore recommend the Department issue three default requirements for students with IEPs:

1. All students with disabilities will be guaranteed compensatory educational services equal to the hours not provided during the school closure. Such services shall be provided prior to the beginning of the 2020-2021 school year. The PPT can, for sound educational reasons related to the individual student, waive or modify this requirement, but any such waiver or modification can be challenged by the parent in a due process hearing. It is highly likely that compensatory education for undelivered IEP services will have to be made up during the summer of 2020. Hence, the standards must make it clear that limiting ESY services to a period of four to six weeks is unacceptable during the summer of 2020.
2. Some students may face significant regression or the need for recoupment based even on relatively short periods without services. Compensatory education, over and above the compensatory education what will be required for missed IEP services, will be needed if the cessation of service results in regression or need for recoupment.
3. For all students with a disability, the student's PPT must make a determination of the need to provide special education and related services to that student regardless of whether distance learning is provided for all students.

### **III. School closing with distance learning**

The state and the federal Departments of Education have correctly stated that, in cases where schools are providing distance learning opportunities, that students with disabilities must be provided with equal educational opportunity. This guarantee needs to be made concrete, as follows:

1. If learning opportunities are to be provided by electronic means then every student with a disability must have access to that education. This should include a provision to provide internet hotspots for any student who does not have access to the internet in his or her home. Parents and students need training in how to use technology for distance learning. Further, where direct teaching is required for a student with a disability, the LEA needs to make arrangements to provide that instruction telephonically or through internet video. Districts choosing to implement distance learning must also consider equity in access to those learning opportunities. Technology selected to deliver virtual instruction must include options that are available and affordable for families with low incomes. Children from such families represent a large percentage of both general and special education students in certain urban and rural districts. This is of particular importance as many public libraries and other community sites or programs with access to computers have closed. These families are also more likely to experience COVID -19 related loss of income that will impact their ability to maintain smartphone and tablet service plans.
2. The PPT needs to determine whether special education and related services such as speech and language therapy, can be provided remotely. Clearly other services, such as occupational and physical therapy, behavioral support and social skills training cannot be provided remotely. In cases where services cannot effectively be provided remotely, 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 needs to be made by the PPT.
3. Services during the summer of 2020 need to be considered for all students with IEPs. There should be an expectation that lack of services during school closing will result in a significant need for recoupment. Indeed, 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 closure must be firmly placed on the LEA.

#### **IV. Outplaced Students**

Where a student has been placed at an out-of-district facility, either by the district or through agreement, the LEA must continue to support the placement, as long as the facility remains open. This includes a requirement to continue to provide transportation where that is provided by IEP or by agreement.

Where the out-of-district facility is closed and the student is placed there under an IEP, the PPT needs to determine service during closure and compensatory education thereafter.

#### **V. Mediations, Due Process Hearings**

Postponing all mediations and due process hearings during any period of closure is unnecessarily extreme. We ask that provisions be made to continue these processes using internet-based services, except that any parent can, without penalty, ask for a delay in the proceedings to be able to participate in person.

This letter has been endorsed by numerous organizations and individuals. The names are being provided on a separate spreadsheet.

Again, we pledge our best efforts to working with you and other stakeholders to arrive at practical requirements that provide students with disabilities with the educational services to which they are entitled.

Sincerely yours,



Barbara Distinti  
President

Signatories Attached

Organizations Endorsing This Letter

AFCAMP

Applied Behavioral Strategies

Special Education Equity for Kids in Connecticut (SEEK-CT)

Children's Advocacy Services for Education

CTABA

RSD 13 SEPTO

Smart Kids with Learning Disabilities

SpEd CT

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Stamford Education 4 Autism

WeCAHR

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