



The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

April 3, 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 Council of Parent Attorneys and Advocates (COPAA) writes to provide input regarding the requirement under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for the Secretary of Education to prepare a report as required in Section 3511 (d)(4).

With the outbreak of COVID-19, COPAA's position is that the Individuals with Disabilities Education Act (IDEA) and all of the legal rights for students with disabilities remain in effect notwithstanding the school closures occurring across the country. We believe the same is true for the rights afforded to students under Section 504 of the Rehabilitation Act of 1973 (Section 504). **Therefore, we strongly urge the Secretary to fully uphold all tenets and requirements of the IDEA and Section 504 and resist requests for the authority to waive provisions of either law.**

The Secretary has appropriately responded to the crisis by clearly stating, "School districts must provide a free appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students." The Department's Supplemental Fact Sheet of March 21, 2020 makes clear that states and Local Education Authorities do not need any waivers under the IDEA or Section 504. The IDEA supports individualization for students and requires partnership with parents. Consistent with the law, a great deal of collaboration, innovation, individualization, advocacy for resources and flexibility in modes of delivery to meet students' needs is occurring across the country. Students with disabilities cannot afford the lengthened delay that would result from a blanket pause on timelines. IEP Teams for many students are moving forward to provide opportunities for students to learn and progress. Why would we stop such efforts?

Many states are now holding virtual IEP Team meetings, virtual mediations, and virtual due process hearings. They are providing related services and instruction via distance methods. Simply put, there is no need to waive any provisions of the IDEA because of the school closures.

We urge the Secretary to support and help expand existing collaborative work rather than stymie it by recommending to waive key requirements of these civil rights laws.

We highlight some examples of the flexibility contained in the IDEA as written that allow school personnel to work with families to individualize the provision of special education and related services in the midst of this national pandemic.

- **Initial Evaluations/Eligibility:** While IDEA requires that an initial evaluation must be conducted within 60 days of receiving parental consent, or within the state-established timeline within which the evaluation must be conducted, COPAA advocates that, for students whose evaluation had already occurred, school teams should determine eligibility and develop an Individualized Education Program (IEP).
- **IEP Meetings:** As the Secretary has documented, and as the IDEA and its implementing regulations already expressly provideⁱ the annual IEP meeting while required, may also be conducted through alternate means, including videoconferencing or conference telephone calls.ⁱⁱ There are many school districts that are already conducting, or plan to offer, IEP meetings using technology. Additionally, the parent of a child with a disability and the public agency may agree that it is unnecessary to convene an IEP Team meeting and instead develop a written document to amend or modify the child's current IEP.ⁱⁱⁱ From COPAA's perspective, the most important thing is for the parent and school team to work together to make decisions and document any changes to the IEP.
- **Due Process:** The Secretary has clarified the flexibility that IEP teams have in extending the timeline for a resolution meeting and that parties can agree to extend the timeline for a decision in a due process impartial hearing due to unavoidable delays caused by the COVID-19 pandemic.^{iv} COPAA is also aware of impartial hearings continuing in New York City and other cities directly impacted by COVID-19. There is no reason to alter any provisions related to due process when all parties can work together to set timelines and develop modalities for dispute resolution that fit their unique situations.

It is clear that IEP Teams already have the ability to adapt to new circumstances, in ways that support continuity of learning and ongoing collaboration between schools and families. Now is not a time to work at cross purposes or halt progress, but rather, is a time for community good will, maintaining trust and for educators and parents to work together to design and implement effective programs for students with disabilities. The Secretary should remain firm in the position taken in the Supplemental Fact Sheet and insist that each student with a disability receives a free appropriate public education even while the schoolhouse is closed.

Rather than waivers under IDEA or Section 504, we urge the Secretary to provide technical assistance to states [and districts] to allow everyone to focus efforts on ensuring that every student has the opportunity to receive educational supports and services in the way that makes sense for the students and their teams in collaboration with communities and families.

Sincerely,



Denise Marshall
CEO

cc: Laurie VanderPloeg, Director, Office of Special Education Programs, U.S. Department of Education

The Council of Parent Attorneys and Advocates (COPAA) is an independent, nonprofit organization of 2600+ parents, attorneys, advocates, and related professionals; over 90% of whom identify as having a disability; or are parents or family members of individuals with disabilities. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the 7 million children with disabilities in America. COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares them for meaningful employment, higher education and lifelong learning, as well as full participation in their community.

ⁱ 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/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

ⁱⁱ 34 CFR. § 300.328

ⁱⁱⁱ 34 C.F.R. §300.324(a)(4)(i).

^{iv} 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/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>