

The Honorable Betsy DeVos
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

April 10, 2020

Dear Secretary DeVos:

America's school leaders work every day to ensure that students with disabilities are cared for, seen, and afforded strong, equitable education. The National Association of Secondary School Principals (NASSP) and the National Association of Elementary School Principals (NAESP), the leading organizations and voices for principals and other school leaders across the United States, strongly support the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. We believe all children and students with disabilities have a right to an excellent public education. We know that school leaders are working tirelessly with parents, teachers, and school districts to provide services for students with disabilities during this time of national crisis.

As you know, the COVID-19 pandemic has created unprecedented challenges for our nation's schools. As many schools close around the country, principals are working tirelessly to feed their neediest students, develop remote and digital learning plans with teachers, and provide other critical services and calming leadership to students, parents, and their community. Because of the magnitude of the crisis and the historic scale and length of school closures, NASSP and NAESP understand the need for limited flexibilities in implementing Individualized Education Programs (IEPs) required under IDEA. Now more than ever, schools and states need to be focused on what is important - providing an appropriate, accessible, accommodated education to all students during the ongoing pandemic.

The emergency COVID-19 response legislation recently passed by Congress and signed into law by the President requires that the U.S. Department of Education (ED) produce a report with information regarding flexibility for schools that might be necessary during the ongoing pandemic. The CARES Act specifically asks for recommendations to Congress within 30 days for waivers or flexibilities under IDEA that are necessary to help states and local educational agencies meet the needs of all students during the crisis. Given this language, NASSP and NAESP ask that you recommend several specific temporary and targeted IDEA flexibility actions that have also been requested by the Council of Administrators of Special Education and the National Association of State Directors of Special Education in two categories: Timelines and Procedures.

Timeline Flexibilities

One of the most challenging aspects of IDEA currently facing LEAs and SEAs is the multitude of timeline requirements for evaluation, eligibility, transition, and Individualized Education Program (IEP) teams under the law. Therefore, we recommend that timeline requirements be paused from the day schools closed due to the pandemic and extended for ***not more than 45 school days*** after regular school year in-person instruction has resumed for the following:

- *60-day initial evaluation timelines and re-evaluation triennial due dates [34 C.F.R. § 300.301(c); 34 C.F.R. § 300.303(b)(2)].*
In some situations, a child who was being evaluated for special education and related services prior to the pandemic may be experiencing new needs as a result of this crisis and their learning situation (new mental health needs, parent/guardian unemployment, food insecurity, etc.). Additionally, testing protocols are not easily administered or manipulated virtually, and the results of the evaluations could be questionable.
- *Annual IEP review timelines [34 C.F.R. §300.324(b)(1)].*
The IEP meeting is meant to be a collaborative process between parents/guardians and the LEA. Even in

the best of circumstances nuances around body language and vocabulary of special education services can result in misunderstandings between the parties. While holding IEP meetings via phone, computer, or electronic means are all good options, none will replace a face-to-face meeting. Further, not all families or schools have access to technology allowing for meetings to take place via phone or video call. It is for this reason IEP annual review timelines should be relaxed, and LEAs and families should be given the option, if desired, to convene together (at the request of the parent or the LEA) when in-person meetings become available.

- *Complaint timelines [34 C.F.R. 34 C.F.R. §300.508; C.F.R. § 300.510(a) and (c); 34 C.F.R. § 300.515(a) and (c)].*

In the rare instances where parents and local education agencies find themselves in a dispute, IDEA provides state education agencies the responsibility to have a system of impartial hearing officers and state complaints. These complaint systems are necessary components, and with state education agencies being shuttered, hearing officers, attorneys, parents, and others working from home, and additional stressors being put on an already challenging process, we appreciate the current state authority to be flexible in the timeline to resolve these complaints without corrective actions. However, additional flexibility will be needed surrounding timelines to resolve all types of due process complaints.

- *Part C to Part B Transition Timelines [34 C.F.R. § 300.124].*

Early childhood transition from Part C to Part B is another important area where flexibility will be required in order to ensure that IEPs written at such a critical time in a child's life are thoughtful, well developed and situated in the context of high-quality early education rather than during a global crisis which has caused school building closures. Specifically, the component of the law to identify a child on or before their third birthday should be paused.

It is our belief that school districts and parents should continue to work together on behalf of children with disabilities to meet the requirements of the IDEA as best as possible. However, ED and members of Congress should understand that in some situations, despite our best efforts, meeting these requirements in the middle of a pandemic is not possible. It is for this reason that these timelines must be extended during this period when school districts are unable to provide services in a typical manner.

Procedural Flexibilities

In addition to the timeline requirements, the IDEA requires several procedures that are meant to ensure that collaboration occurs between parents and the local education agency. These requirements are in place to develop and offer free appropriate public education (FAPE) for any child eligible for special education and are a critical feature of the law. During a pandemic, we believe this collaboration is no less important but may need to look differently and require more flexibility to ensure all children's needs are met, to the maximum extent practicable. Procedural flexibility with an emphasis on local education agencies and parents making "good faith" efforts in light of the current circumstances is needed. Therefore, we urge you to consider flexibilities to the following:

- *Documentation of FAPE under each district's circumstances and IEP meeting procedures [34 C.F.R. § 300.323(c)(1); 34 C.F.R. §300.324(b)(1); 34 C.F.R. §300.324(a)(4)(i); 34 C.F.R. §300.328].*

The current information from ED (*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, March 12, 2020) suggests that every school district in the country will be changing a child's placement after ten days of school closure. Decisions about changes in placement are made after discussions by the IEP team, which includes the parent. However, in this situation, the decision to change a child's placement has been forced upon parents and schools by the COVID-19 pandemic. Therefore, we suggest that all IEPs written before schools closed be maintained. In situations where the current IEP does not sufficiently describe the services that are being provided during the pandemic, a separate document could be created, for example, in a 'distance/continual learning plan.' The plan should be clearly communicated after consultation with the parent. In addition, team meeting requirements should be flexible during the development of the documentation of the new plan. The development of the plan would maintain IEPs and placements to avoid a stay-put placement (in the home environment) under a due process complaint during this national crisis. No IEPs would need to be amended under this plan.

Further, it should be recognized that school districts and parents are grappling with new situations. Resources are varied between school districts and homes. In a typical situation, not impacted by the global pandemic, none of this is taken into account.

- *Data collection and corrective action plans [34 C.F.R. § 300.152]*

It is important that the standards set forth under IDEA related to district and state performance plans be temporarily adjusted to provide the greatest flexibility possible. Items of concern include, but are not limited to, submission of Comprehensive Coordinated Early Intervening Services (CCEIS) data, the State Systemic Improvement Plan (SSIP), State Performance Plan (SPP)/Annual Performance Report (APR), and state monitoring and enforcement. We support the state and LEA focus on providing services to students, rather than diverting attention to corrective action or other paperwork.

In summary, the areas under which we are requesting flexibility are as follows:

- §300.124 Transition of children from the Part C program to preschool programs.
- §300.152 Minimum State complaint procedures.
- §300.301 Initial evaluations.
- §300.303 Reevaluations.
- §300.324 Development, review, and revision of IEP.
- §300.510 Resolution process.
- §300.515 Timelines and convenience of hearings and reviews.
- §300.600(e) State monitoring and enforcement.

To be clear, we expect that these flexibilities should only be granted in this specific circumstance (COVID-19) and that state and local education agencies, parents, and families should continue to work together in the interests of children with disabilities. However, it is clear to us that IDEA, the Rehabilitation Act, and other federal laws were not written anticipating a global pandemic that has closed a large majority of schools across the country, and for that reason we urge you to seek these specific flexibilities.

Sincerely,



JoAnn D. Bartoletti
Executive Director, NASSP



L. Earl Franks, Ed.D., CAE
Executive Director, NAESP

And the following state school leader organizations:

Alaska Council of School Administrators (Alaska Association of Secondary School Principals & Alaska Association of Elementary School Principals)
Arizona School Administrators
Arkansas Association of Elementary School Principals
Association of Washington School Principals
Association of Wisconsin School Administrators
Colorado Association of School Executives
Council for Leaders in Alabama Schools
Georgia Association of Educational Leaders
Georgia Association of Elementary School Principals
Georgia Association of Secondary School Principals
Georgia Association of Secondary School Principals
Hawaii Association of Secondary School Administrators
Hawaii Elementary and Middle Schools Administrators Association
Idaho Association of School Administrators
Illinois Principals Association
Indiana Association of School Principals

Kansas Association of Elementary School Principals
Kansas Association of Secondary School Principals
Kentucky Association of Elementary School Principals
Kentucky Association of Secondary School Principals
Maryland Association of Elementary School Principals
Maryland Association of Secondary School Principals
Massachusetts School Administrator Association
Michigan Association of Secondary School Principals
Michigan Elementary and Middle School Association
Minnesota Elementary School Principals' Association
Mississippi Association of Elementary School Administrators
Mississippi Association of Secondary School Principals
Missouri Association of Elementary School Principals
Missouri Association of Secondary School Principals
New Hampshire Association of School Principals
New Jersey Principals and Supervisors Association
New Mexico Association of Elementary School Principals
New Mexico Association of Secondary School Principals
North Carolina Principals and Assistant Principals' Association
North Dakota Council of Educational Leaders / NDAESP / NDASSP
Ohio Association of Elementary School Administrators
Ohio Association of Secondary School Administrators
Oklahoma Association of Elementary School Principals / Cooperative Council of School Administrators
Oklahoma Association of Secondary School Principals / Cooperative Council for Oklahoma School Administration
School Administrators Association of New York State
School Administrators of Iowa
School Administrators of Montana (MASSP & MAEMSP)
Tennessee Principals Association
Texas Elementary Principals and Supervisors Association
Utah Association of Secondary School Principals
Vermont Principals' Association
Virginia Association of Elementary School Principals
Virginia Association of Secondary School Principals
West Virginia Association of Elementary/Middle School Principals
West Virginia Association of Secondary School Principals
Wyoming Association of Elementary & Middle School Principals
Wyoming Association of Secondary School Principals