

March 20<sup>th</sup>, 2020

Mark Schultz  
Delegated Authority to Perform Functions and  
Duties of the Assistant Secretary for the Office of  
Special Education and Rehabilitative Services  
Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Commissioner Schulz:

We write to you regarding our concerns for children with disabilities and their educational needs during school closures. Today, the United States faces a pandemic caused by the spread of the 2019 Novel Coronavirus (COVID-19). The impact on students, families, educators, and schools is overwhelming as millions of children and youth are out of school with closures as communities are working to control the spread of the disease. As of the writing of this letter 39 states and the District of Columbia have closed all schools to take immediate action to prevent the spread of COVID-19. Districts with adequate resources are moving to online instruction while others with limited funds and technology have been forced to curtail instruction for their students.

The impact of these closures has a significant impact on children with disabilities and presents unique challenges to school officials to meet the legal requirements of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA). Some students with disabilities may be at higher risk for severe illness if infected with the coronavirus and must take preventative steps early before an outbreak is present in their communities. IDEA requires the provision of free appropriate public education for children with disabilities, even if the school moves to online instruction. However, as many districts, early intervention service providers, and lead agencies have never contemplated online instruction, transitioning to virtual delivery of educational and related services for children with disabilities is a challenging task. Assisting states and districts to navigate their obligations to meet the legal requirements of students' individualized education plans (IEPs) and individualized family service plans (IFSP) for infants and toddlers with disabilities will be critical during this national public health emergency.

On March 12, 2020, your office released *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (Q&A document). This Q&A document answered nine questions regarding services under IDEA Part B, Section 504, and ADA (six questions) and IDEA Part C (three questions). While the Q&A document provided answers to a few of the questions raised by educators during this difficult time, it failed to address many of the questions our offices have heard from families, educators, and community leaders.

Further, portions of the Q&A document use language which greatly concerns us, the most striking being, "Once a school resumes, the [district] must *make every effort* to provide special

education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504" (emphasis added). This language seems to have been interpreted by some stakeholders to suggest that a district may attempt to but not be required to provide special education and related services. The suggestion that a district must merely make an effort to provide such services is inconsistent with the law. The Department should clarify that IDEA requires services for students with disabilities to be provided, including when educational services are resumed after a discontinuation of services. The suggestion it is possible to not fulfill the required services to a student must be corrected immediately.

In order to ensure children with disabilities are provided a free appropriate public education and educators, administrators, and lead agencies are provided with the guidance necessary to carry out their legal obligations under IDEA, Section 504, and the ADA, we request a response to the following questions and requests no later than April 3<sup>rd</sup>, 2020:

1. Please clarify that districts are obligated to provide special education and related services when educational services resume in accordance with IDEA and Section 504.
2. Please provide guidance to districts and lead agencies regarding IEP and IFSP reviews and re-evaluations that may come due during a school closure.
3. For schools that have not yet closed, what information is your office providing to states and districts to ensure additional protections from COVID-19 for students with disabilities in segregated classrooms, potentially including separate educational settings specific to students with disabilities who may be at a greater risk?
4. As many districts have not previously provided education via online platforms, what information is your office sharing with them about accessibility standards and requirements for providing educational services to students with disabilities through online settings?
5. What guidance or technical assistance is your office providing states and districts to transition related services, such as speech and language services, occupational therapy, physical therapy, and mental health services, to online platforms?
6. What guidance will your office provide to states, districts, and lead agencies to support children with mental health disabilities to ensure access to mental health services during school closures, social isolation, or quarantine?
7. What guidance will your office provide schools that are closed for extended periods regarding compensatory special education and related services and the delivery of such services during Extended School Year (ESY) or via other means?

8. What guidance or technical assistance is your office providing to lead agencies and early intervention service programs in supporting families virtually in the event of school closures or for families confined to their homes for extended periods of time to ensure the continuity of Part C services?

Sincerely,



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Christopher S. Murphy  
United States Senate



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Richard Blumenthal  
United States Senate



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Sherrod Brown  
United States Senate

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Robert P. Casey, Jr.  
United States Senate



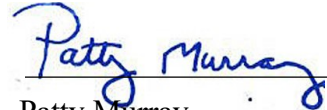
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Christopher A. Coons  
United States Senate



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Kirsten Gillibrand  
United States Senate



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Patty Murray  
United States Senate



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Corey A. Booker  
United States Senate



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Maria Cantwell  
United States Senate

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Thomas R. Carper  
United States Senate



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Tammy Duckworth  
United States Senate



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Margaret Wood Hassan  
United States Senate

/s/Martin Heinrich

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Martin Heinrich  
United States Senate



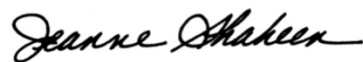
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Edward J. Markey  
United States Senate

*Jack Reed*

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Jack Reed  
United States Senate



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Jeanne Shaheen  
United States Senate

*Tim Kaine*

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Tim Kaine  
United States Senate



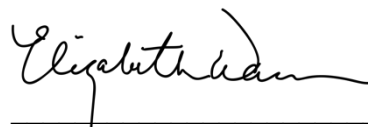
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Gary C. Peters  
United States Senate



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Bernard Sanders  
United States Senate



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Elizabeth Warren  
United States Senate