

April 7, 2020



The Honorable Mitch McConnell, Majority Leader
United States Senate
Washington, D.C. 20510



The Honorable Nancy Pelosi, Speaker
United States House of Representatives
Washington, D.C. 20510



The Honorable Chuck Schumer, Minority Leader
United States Senate
Washington, D.C. 20510



The Honorable Kevin McCarthy, Minority Leader
United States House of Representatives
Washington, D.C. 20510



Disability Rights Education & Defense Fund

Betsy DeVos, Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202



RE: Supporting Delivery of Special Education Services for Children with Disabilities During and Following the Pandemic



Dear Majority Leader McConnell, Speaker Pelosi, Minority Leader Schumer, Minority Leader McCarthy and Secretary De Vos:



We appreciate your leadership in this time of unprecedented crisis and your continued commitment to ensuring the health and well-being of all the residents of our country, including the most vulnerable.



While the United States' response to COVID-19 is critical for all, children with disabilities, including those in foster care and/or on probation, uniquely rely on the public education, child welfare, and juvenile justice systems to ensure their emotional and educational well-being. It is critical that Congress and Secretary of Education DeVos act swiftly and responsibly to ensure that the needs of these children remain fully protected. Provided below is a summary of some of the most urgent needs facing children with disabilities related to the COVID-19 pandemic, together with policy recommendations to address these needs. The undersigned organizations urge the Administration and Congress to fully protect and support the existing laws protecting children with disabilities, as well as provide the requested additional guidance, as part of the federal government's COVID-19 response and relief efforts.



Our Most Vulnerable Children

Seven million children, aged 3-21, have disabilities for which they receive special education services in the United States.¹ Further, 13% of children birth to age three have developmental disabilities in the United States, for which they should be eligible to receive early intervention services.² Children with disabilities are a vulnerable population within an education system operating under normal functioning. When they experience intersectionality as a child in the foster care or juvenile justice system, are homeless, English language learners, or low income, this vulnerability is exacerbated exponentially. The need to protect and serve children with disabilities, wherever they may reside, has been recognized and protected as a national and state priority since 1974. This crisis must not lead to the elimination of those protections.

Of the over 443,000 children in the United States' foster care system³, up to 50% have disabilities. Further, children in the probation system have disabilities at a rate of 70-80% and up to 80% of these youth have prior child welfare involvement. These children are among the most marginalized members of our society. Removed from their families due to abuse and neglect, their trauma is often compounded by the instability they experience while in the juvenile dependency system, through placement and school changes.

At this time of crisis during the COVID-19 pandemic, when distance learning is the primary option, children with disabilities are at even greater risk of losing out on educational opportunities provided to other children. Further, children with disabilities are at high risk of having 50 years of their civil rights reversed. COVID-19 also poses a special risk to those children who are the legal dependents of the state, those in foster care or on probation. Families caring for children with disabilities who cannot attend school are under additional stressors and there is greater risk of these children experiencing abuse or placement destabilization during the pandemic.

Issues Facing Children With Disabilities During COVID-19-Related Closures of In Person Instruction Distance Learning: Districts⁴ and Part C providers are struggling to fund and distribute technology and connectivity to all children to begin distance learning. Children with Individualized Education Programs (IEP) and Individual Family Service Plans (IFSP) are receiving few, if any, of their state and federally mandated special education and early intervention services while schools and regional centers are closed as a result of COVID-19.⁵ Districts are unilaterally changing placements and IEP/IFSP services

¹ Nation Center for Education Statistics: https://nces.ed.gov/programs/coe/indicator_cgg.asp.

² Easter Seals:

[https://secure.easterseals.com/site/DocServer/Our Nations Children at Risk full report.pdf;jsessionid=00000000.0.app259b?docID=146598&NONCE_TOKEN=44687D37C09E06FD50F30F802334E18B](https://secure.easterseals.com/site/DocServer/Our_Nations_Children_at_Risk_full_report.pdf;jsessionid=00000000.0.app259b?docID=146598&NONCE_TOKEN=44687D37C09E06FD50F30F802334E18B)

³ Children's Rights: <https://www.childrensrights.org/newsroom/fact-sheets/foster-care/>.

⁴ Although we reference school districts throughout this letter, we use that term inclusively to include all local educational agencies including charter schools and county offices of education.

⁵ We reference school and Part C provider closures through this letter. This is meant to signal that physical buildings were closed, due to the requirements of social distancing to slow the spread of the pandemic, and that any educational services provided were vastly different from what children received in their classrooms and at their school sites. We acknowledge that most school, district, and Part C staff are working remotely in an effort to coordinate and deliver distance learning.

without notice to parents.⁶ Parents are also not receiving the essential and federally mandated right to meaningful parental participation in deciding what services, technology, and accommodations children with disabilities require in order to access their education.

Additional Risk Factors: Families that are low income and/or parents for whom English is not their first language face additional struggles to access general education and special education services through distance learning. Children with behavioral, medical, and communication needs are especially harmed without specialized instruction and related services. While in-person behavioral services may not be possible, parent coaching for high needs children, such as those with Autism, is essential to prevent regression. Medically fragile children are a high risk of serious health outcomes if they fall ill with COVID-19, yet also require special education services, such as nursing, rehabilitation services, or physical therapy to meet their daily living needs. Children with severe communication delays, if deprived of their speech and language therapy and the ability to interaction with other children, will fall even further behind. We must develop a mechanism to support these children now with services that meet health and safety requirements and also create a mechanism to provide them with additional support when schools and regional centers reopen.

Early Intervention: Children with disabilities, birth to age three have a right to early intervention services, under Part C of the IDEA. These services are deemed especially important and time sensitive to place children on an improved life trajectory by identifying and serving children with developmental delays at the earliest opportunity. These children are also not receiving their essential early intervention services. This consequence of the COVID-19 pandemic will have lifelong consequences for children who do not receive their essential early intervention services.

Take Action to Protect Children With Disabilities

Congress gave the Secretary of Education the responsibility to report, within 30 days, recommendations whether to waive portions of the federal Individuals with Disabilities Education Act (IDEA) in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed by President Trump on March 27, 2020.⁷ The report is due by April 26. Any recommended waivers would have disastrous impact on the education of children with disabilities.

In California, under Senate Bill 117 (Chapter 3, Statutes of 2020), we see the pandemic already interfering with the civil rights of children with disabilities, where the timelines for responding to special education assessment requests, obtaining school records, and the extension of investigations for compliance complaints and uniform complaints have already been implemented.⁸ With this suspension of certain rights in California, children with disabilities and their families are left without a remedy, despite that IDEA was built around such procedures and protections. We understand that disruption will occur during this unprecedented pandemic, but we need to ensure that our most vulnerable children are not further impacted beyond the health and safety threats of COVID-19. Any additional removal,

⁶ For children in the child welfare and/or juvenile justice systems, their parent's education rights may be limited and transferred to a court appointed education rights holder. We will use 'parent' through this document to inclusively include education rights holders.

⁷ H.R. 748 (2020), Public Law No: 116-136, Section 3511(d)(4), pages 321-2.

⁸ SB 117 (2020), Sections 7-8.

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB117&search_keywords=coronavir us.](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB117&search_keywords=coronavir us)

suspension, cancellation, or waiver of the rights of children with disabilities would be devastating to their educational and life achievement.

We do not believe there is a current need to waive any provision of existing IDEA law. School districts are able to manage the current situation and there is nothing in the current situation which would require any waivers. While we understand that it may take a few weeks for school districts to develop meaningful distance learning general education and special education programs, we see it happening already. Any extensive and unnecessary waiver of existing timelines will only serve to ultimately harm those who are the most vulnerable, children with disabilities.

Accordingly, we recommend that policy makers take the following actions:

1. Oppose waivers under IDEA and Section 504 of the Rehabilitation Act.
2. Support states by providing a total of \$12.5 billion in IDEA funding for: (a) tools necessary for distance learning including hardware, software, and connectivity; (b) extended school year and other compensatory services; and (c) ensuring providers are paid for telehealth related services such as speech and language, occupational, and physical therapy.
3. Focus on ensuring continuity of education and special education services by urging the Department of Education and Office for Civil Rights to provide additional guidance.⁹

Supporting Delivery of Special Education Services for Children with Disabilities During and Following the Pandemic

Thank you for your time and attention to the needs of our most vulnerable children in this evolving situation. We appreciate the remarkable circumstances in which school districts and Part C providers are operating and their efforts to provide education in this unprecedented time. We offer these recommendations as part of your ongoing COVID-19 response and relief efforts to address the unique needs of children with disabilities and urge you to adopt these recommendations as we collectively work to support our children to survive and recover from this crisis.

Our organizations are available as a resource to support children with disabilities, educators, child welfare and probation providers, policymakers, and funders during this time of emergency. Please contact Kristin Power, Alliance for Children's Rights, at (916) 838-3587 or k.power@kids-alliance.com if you have questions.

Sincerely,



Kristin Power, Government Relations Director
Alliance for Children's Rights

Megan Stanton-Trehan, Director and Adjunct Professor, Youth Justice Education Clinic
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⁹ Please see Attachment A for more information about this requested guidance.

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Attachment: ***Requested Additional Guidance from the U.S. Department of Education, Office of Civil Rights***