CONSORTIUM FOR CITIZENS WITH DISABILITIES

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 undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force and allies submit this letter in response to the directive that the Secretary of Education submit, within 30 days of enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act a report to Congress with recommendations on any additional waivers the Secretary deems necessary under the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973 (Rehabilitation Act) and other education laws. The undersigned organizations are unwavering in our pursuit of educational equity and stand unified in the strong conviction that **NO ADDITIONAL waivers are necessary under either the IDEA or the Rehabilitation Act.**

To be clear, we recognize that during this unprecedented global crisis brought on by COVID-19, communities and families across the country are reckoning with the new reality that schools are closed and shelter in place orders have been issued. Indeed, education looks vastly different than it did just weeks ago. Educators and families are hard at work finding new ways to provide students with educational opportunities while also ensuring basic health and safety needs are met.

The undersigned firmly believe that students with disabilities are <u>always</u> best served when school leaders, teachers, specialized instructional support personnel, parents, students and advocates work as a team to address complex issues. While challenging, this crisis is not different.

It is clear that during this rapidly evolving crisis, flexibility, patience, and innovation will be needed. Indeed, families and teachers and specialized support personnel are reporting about both the challenges but also the opportunity to collaborate together. Given all of this, we especially appreciate the clarification provided to schools by the Secretary that "provision should be made to maintain education services"[1] [for students eligible under the IDEA or the Rehab Act] and the emphasis further reflected that "federal disability law

[1] Office for Civil Rights (March 16, 2020) "Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students.' U.S. Department of Education: Washington, DC. Available at: https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf

allows for flexibility in determining how to meet the individual needs of students with disabilities."[2] Given that IDEA offers flexibility by design and states, districts, communities, and families are working together to find solutions to the problems they face in the next several months, we firmly believe that this is not the time to roll back civil rights protections for students with disabilities. **Federal education laws must be protected. There is NO need for Congress to provide waiver authority to the U.S. Secretary of Education under the IDEA or Rehab Act.**

The U.S. Department of Education must enforce and Congress must uphold the following principles:

1. LEAs must continue to provide Free Appropriate Public Education (FAPE) to students with disabilities.

The obligation to provide a free, appropriate, public education to students with disabilities remains, even in the face of a public health emergency. This means that special education and related services must continue. It also means that schools must consider how the needs of students with disabilities -- including the accommodations, specialized instruction, and related services they need -- will change as they learn from a distance, in their home, and in an online setting.

Existing federal disability laws allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency, and schools may not be able to provide the same services in the same manner they did in the past. FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. In some cases, this may mean that schools provide 1:1 instruction and services virtually or telephonically. In others it may mean that schools send materials and activities home for students with instructions and supports for families, in their language. In all cases, schools must be evaluating which compensatory services may be needed and plan to provide those services as soon as possible.

2. Teams responsible for student Individualized Education Programs (IEPs) must involve parents in all decisions.

IDEA includes robust provisions calling for parent participation in special education, including within the IEP process. Specifically, IDEA calls for public agencies to "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate."[3] IDEA anticipates that parent participation may not always be possible in-person and allows for parents and public agencies to "agree to use alternative means of meeting participation, such as video conferences and conference calls."[4]

There may be a situation where a school team feels the need to make amendments to a student's IEP given the emergency situation they are in and because students are learning from a distance. In such a situation,

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[2] 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

[3] 34 CFR. § 300.322(a)

[4] 34 CFR. § 300.328

IEP provisions within IDEA already allow for amendments to an IEP without an IEP meeting as long as the parent and district agree to those amendments and a written document is created and attached to the IEP.[5]

It is clear that IDEA has numerous provisions that provide the needed flexibility for parents and schools to work together -- even remotely -- during this time. No additional waivers or flexibility are needed. IDEA's key tenet of parent participation must remain and no changes may be made to an IEP without parent notice *and* consent. As time has passed, more teacher-parent communications are occurring via email and other remote means. Now, more than ever, parents must be a part of any decisions regarding their child.

3. Parents' due process rights must remain intact.

Given the inherent flexibility within IDEA and the focus on parent-school partnerships, there is no reason to weaken or revoke parents' due process protections. Instead, schools and IEP teams should spend time planning for and engaging in meaningful communication with parents and proactively addressing issues related to service provision and accessibility. Frequent and clear communication, collaboration, and partnership between schools and families will be necessary during this time.

Where due process complaints proceed, much can be done in preparing for a due process hearing or investigating a state complaint without an in-person meeting. We also are aware of hearings that are occurring virtually.

4. Use of Federal education funds must adhere to the IDEA, the Rehabilitation Act, the Americans with Disabilities Act and other civil rights laws.

Federal dollars should not be used for any voucher, voucher-like, or scholarship programs unless participating schools are required to adhere to all federal education and civil rights laws. All students should be able to attend a high-quality public school that meets their needs while maintaining all of their rights under the IDEA and other civil rights statutes.

Finally, there is no doubt that some districts and states are better equipped to pivot quickly and support students virtually and in order to achieve this in more communities, schools must be better supported to build the capacity to serve students with disabilities and their families under these new circumstances. Therefore, instead of waivers, we will urge Congress to protect the civil rights of students and provide robust funding to states and school districts so they can make every reasonable effort to educate students with disabilities during this national emergency.

We urge you to support our request to keep the laws intact and protect the civil rights of students with disabilities. We must work together to ensure schools and families collaborate in support of every student with a disability.

Sincerely,

The Advocacy Institute
The Arc of the United States
Alliance for Excellent Education
Alliance for Strong Families and Communities

[5] 34 CFR. § 300.324(a)(4)

American Council of the Blind
American Foundation for the Blind
American Music Therapy Association
American Muslim Health Professionals
American Occupational Therapy Association
American Physical Therapy Association
American Psychological Association
American Therapeutic Recreation Association
Association of People Supporting Employment First
Association of University Centers on Disabilities
Autism Society of America
Autistic Reality
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
CAST, Inc.
Center for American Progress
Center for Public Representation
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Clearinghouse on Women's Issues
Collaboration to Promote Self-Determination
CommunicationFIRST
Community Options, Inc.
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Easterseals
Education Reform Now
Epilepsy Foundation
Family Equality
Feminist Majority Foundation
First Focus on Children
Girls Inc.
Higher Education Consortium for Special Education
The Jewish Federations of North America
The Leadership Conference on Civil and Human Rights
Learning Disabilities Association of America
MomsRising
Muslim Caucus Education Collective
NAACP
National Association of Councils on Developmental Disabilities
National Association of State Head Injury Administrators
National Center for Learning Disabilities
National Center for Lesbian Rights
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Center for Special Education in Charter Schools
National Center for Transgender Equality
National Center for Youth Law
National Council on Independent Living

National Disability Institute
National Disability Rights Network
National Down Syndrome Congress
National Indian Education Association
National PTA
National Urban League
National Women's Law Center
New America, Education Policy Program
Perkins School for the Blind
RespectAbility
School Social Work Association of America
SchoolHouse Connection
Southeast Asia Resource Action Center
Southern Poverty Law Center
Tash
Teacher Education Division of the Council for Exceptional Children
Tourette Association of America
UnidosUS
Union for Reform Judaism
United States International Council on Disabilities

cc: Laurie VanderPloeg, Director, Office of Special Education

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The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Education Task Force of CCD monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). The Education Task Force advocates for high expectations for children with disabilities under these and other laws.