



August 7, 2020

Mark Schultz  
Acting Assistant Secretary  
Office of Special Education and Rehabilitative Services  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-7100

Laurie VanderPloeg  
Director  
Office of Special Education  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-7100

RE: Guidance for States: Providing Services to Children with Disabilities During COVID-19

Dear Acting Assistant Secretary Schultz and Director VanderPloeg,

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, attorneys, advocates, and related professionals; over 90 percent of whom identify as having a disability; or are parents or family members of individuals with disabilities. COPAA works to protect the civil rights and secure excellence in education on behalf of the nearly 8 million children with disabilities in America – as identified under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). 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.

We write today as follow-up to our issuing a statement July 9, 2020 titled: [Recommendations on the Provision of FAPE to Students with Disabilities When a Parent Opts to Keep Their Child Home During the 2020-2021 School Year](#) and respectfully request that the U.S. Department of Education (Department) issue updated guidance to states regarding the provision of services to children with disabilities whose parents may opt to keep them at-home during the COVID-19 pandemic. COPAA believes such guidance is both timely and essential to securing every child’s right to a free appropriate public education (FAPE) for eligible students with disabilities whose parents opt to keep them out of attending school in person for the 2020-2021 school year. This request would ensure the Department provides guidance to states and districts similar to that issued in the form of a Frequently Asked Questions (FAQ) during both the H1N1 and Ebola outbreaks.<sup>1</sup> Issuing updated guidance is in the best interest of children and their families as states and districts must provide FAPE whether education is conducted through distance, in-person, hybrid, or home-based learning.

The Department has issued guidance clarifying that states and districts must provide students with disabilities FAPE, which is embodied in the student's individualized education program (IEP).<sup>2</sup> However, we believe the Department should now go further to inform the IEP development process so that states are prepared to work with districts to ensure that every eligible child has access to the unique educational, social, emotional, and behavioral supports they need this school year. Ordinarily, if

---

<sup>1</sup> See: *Preparing for Infectious Disease: Ebola—Department of Education Questions and Answers on Providing Services to Children with Disabilities During Extended Student Absence or School Dismissal* at: <https://www2.ed.gov/about/offices/list/osers/ebola-qa.pdf> and *Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak*, at: <https://www2.ed.gov/policy/speced/guid/idea/h1n1-idea-qa.pdf>

<sup>2</sup> See: *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

schools are open, the special education and related services will be provided in the school. As a rule, if the district offers appropriate services, the district has met its legal obligation, even if the student fails to access the services, however, the pandemic requires states and districts to rethink the provision of FAPE. It is incumbent on the Department to help them do so.

As the Department is aware and can appreciate given the magnitude of the COVID-19 outbreak, some parents may not send their student with a disability back to the school building in the fall of 2020, even if schools are physically open, due to concern about the contagion of COVID-19. Multiple factors impact this decision including the student's age, nature of their disability, physical or mental health status, and other risk factors. Many students with disabilities have complex medical issues that make them especially vulnerable to the potential impact of COVID-19.

Hence, COPAA urges the Department to craft guidance that modifies the general rule regarding the provision of special education and related services under the IDEA to students with disabilities who do not attend school in-person for the 2020-2021 school year. If a parent refuses to send their student with a disability back to the school building but keeps their child enrolled in school, the IEP team should be obligated to offer a FAPE and appropriate accommodations through distance, hybrid, or home-based learning to the maximum extent possible. Indeed, the IEP team should be tasked with creating a separate service delivery page for when special education and related services are delivered through distance learning. Amendments to the IEP, for purposes of remote learning, should be discussed, agreed upon, and documented in the IEP. If the student returns to the school building, the last in-school IEP would be the operative IEP, unless the parties agree otherwise. No student with a disability should be deprived of all special education and related services because the student's family and/or physician does not think it safe to return the student to the school building.

Further and as clarified by the Department in past guidance, under current law, homebound instruction can be provided when a child is unable to attend school due to a verified medical or emotional reason relating to the child. If the child is a student with a disability, the IEP team needs to design an educational program to provide a FAPE.<sup>3</sup> Yet, IDEA does not articulate how homebound instruction must occur and is typically limited by the state or district and to a medical or emotional condition present in the child, which is generally time limited. The availability of homebound instruction does not effectively cover the current situation; therefore, COPAA urges ED to clarify for states that all students whose parents opt to keep them out of school during the 2020-2021 school year must have full access to FAPE.

Finally, for the purposes of the guidance, COPAA requests the Department to clarify for states, districts, parents, and others that homebound instruction is not the same as home schooling; the two terms must not be used interchangeably, especially as it relates to the provision of FAPE when a parent opts to keep an eligible child at home during the pandemic.

COPAA appreciates your consideration of our request and we look forward to a reply.

Sincerely,



Denise Marshall, CEO

---

<sup>3</sup> *Preparing for Infections Disease: Ebola—Department of Education Questions and Answers on Providing Services to Children with Disabilities During Extended Student Absence or School Dismissal* at: <https://www2.ed.gov/about/offices/list/opers/ebola-qa.pdf> and *Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak*, at: <https://www2.ed.gov/policy/speced/guid/idea/h1n1-idea-qa.pdf>