



April 10, 2020

The Honorable Betsy DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: CARES Act Education Waivers

Dear Madam Secretary:

Section 3511(d)(4) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) requires that you submit a report to Congress “with recommendations on any additional waivers under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), and the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.)” As President of the National Federation of the Blind, the largest organization of blind people in the United States, I urge you to refrain from recommending any additional waivers under the Individuals with Disabilities Education Act or under the Rehabilitation Act of 1973. No additional waivers are necessary to meet the needs of students during the emergency, and none should be recommended to Congress.

Emergencies have long been part of the educational landscape. In recent years, several states and local educational agencies (LEAs) across the country have faced emergency situations, including hurricanes, floods, and other natural disasters, requiring the long-term closure of schools. These emergencies often left entire communities without internet, power, or shelter. Despite these severe situations, Congress has never sought to allow the Secretary to waive provisions of the Individuals with Disabilities Education Act (IDEA) through any legislation addressing national crises. While the COVID-19 emergency is widespread, its impact on education at the local level is far less than previous state, national, and international catastrophes. LEAs impacted by COVID-19 have far more resources than those impacted by hurricanes and other natural disasters.

Moreover, the Department of Education (“the Department”) has provided guidance to LEAs for years regarding their responsibilities to provide their students with disabilities free appropriate public education (FAPE) during emergency situations, including school closures. States and LEAs across the nation received notice of their disaster-related responsibilities in US Department of Education guidance issued in September 2017. The Department reissued that guidance in

September 2018, and the COVID-19 outbreak guidance issued in March 2020 remains identical.¹ Certainly more than two years is adequate. Many LEAs across the nation are following the Department’s guidance and providing FAPE to their students with disabilities, including blind students.² They utilize accessible technological solutions for distance learning, and they continue to provide blind students the materials and tools they need at home to learn.³ Given that many LEAs are already meeting their long-known responsibilities without waivers, it is clear that waivers are not “necessary” to allow “States and local educational agencies to meet the needs of students during this national emergency.”⁴

Some states and LEAs are focusing their efforts on planning their waiver requests in anticipation of your recommendations to Congress, as opposed to meeting their legal obligations to provide FAPE. Blind students, and other students with disabilities, should not be stripped of their rights to FAPE simply because some LEAs have not done their due diligence for years and now seek to further avoid their legal obligations. Our nation benefits when these students receive the FAPE they need to be ready for post-secondary education, post-secondary employment, and living independently. Failing LEAs should not be rewarded for their multiple and long-term failures to comply with IDEA, Section 504, and Title II of the Americans with Disabilities Act. LEAs may use IDEA Part B funds to mitigate the damage caused by their lack of preparedness. Additionally, the CARES Act also provides a tremendous amount of financial support for states and LEAs in this time of national emergency. Section 18003 provides \$13,229,265,000 dedicated to elementary and secondary schools, and section 18003(d) emphasizes the use of these funds for underserved student populations, including students with disabilities.⁵ With this massive appropriation, even unprepared LEAs can meet their legal obligations to the students they serve. Waivers that will allow a further delay of educational services are in no way necessary.

¹ “If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).”

From: “Non Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters” (September 2017, <https://safesupportivelearning.ed.gov/sites/default/files/disaster-guidance.pdf>), “Non Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters” (September 2018, <https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.pdf>), and “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak” (March 12, 2020, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>).

² Due to the long-term nationwide shortage of professionals in blindness education, many blind students have been receiving services using distance technology tools for years. School closures should have no impact on blind students receiving education in this manner.

³ Since August 2006, IDEA regulations have required IEP teams to provide assistive technology at the student’s home if access is necessary for the student to receive FAPE.” 34 C.F.R. section 300.105(b).

⁴ Coronavirus Aid, Relief, and Economic Security Act, Section 3511(d)(4).

⁵ This grant of more than \$13.2 billion represents an almost doubling of the Fiscal Year 2020 final federal IDEA Programs appropriation of \$13.86 billion and more than a fifty percent increase of the \$26.1 billion federal appropriate for Elementary & Secondary Education. From: <http://www.nea.org/assets/docs/Final-FY20-Appropriations-for-Education-Related-Discretionary-Programs-with-State-Tables.pdf>

The National Federation of the Blind and other organizations have stepped up to provide educational opportunities for blind students and their families during the COVID-19 emergency. Our Distance Education Resources provide interactive online lessons, how-to videos, and written lesson ideas to meet the educational needs of blind students. LEAs receiving federal money can do the same.

Without the unnecessary crutch of waivers, LEAs can focus on meeting their students' needs. With the additional funds from CARES, LEAs can implement or enhance systems to deliver high-quality and equitable educational opportunities to their blind students and other students with disabilities. As a father of two blind daughters, I urge you to report to Congress that no waivers are necessary and to encourage underperforming LEAs to reach out to, and learn from, successful LEAs and organizations like the National Federation of the Blind.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Riccobono". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Mark A. Riccobono, President
National Federation of the Blind