

LEGISLATIVE CALL-TO-ACTION

CORONAVIRUS RECOVERY ASSISTANCE TO SCHOOL DISTRICTS: FOURTH EMERGENCY SUPPLEMENTAL

NSBA's Federal Advocacy and Public Policy and Legal Advocacy teams ask that you encourage your members to contact their Members of Congress to urge their strong support for the resources and guidance our school districts need in order to provide a reasonable level of continuity in special education services to students educated under the Individuals with Disabilities Education Act (IDEA) during this coronavirus pandemic.

Issue

As school districts are working to transition to online learning and alternate delivery of child nutrition services during this pandemic, there are exigent circumstances impacting students who receive special education services. While school districts may not be able to provide the comprehensive services according to a student's individualized education plan (IEP) under the circumstances in some situations, districts are taking every measure possible to continue a reasonable level of service(s) to students as they deserve and in compliance with public health directives and initial guidance from the U.S. Department of Education. The digital divide in education, commonly called the homework gap, only adds to an already difficult situation.

Despite these efforts to provide continuity in IDEA services, several legal concerns beyond the U.S. Department of Education's guidance have arisen, that school boards and district personnel should raise with their United States senators and representatives, as Congress considers provisions for a fourth emergency supplemental and other measures.

Problem

Two key concerns are negatively impacting IDEA services to students that NSBA urges Congress to address swiftly: 1) Targeted Flexibility School Districts Need for Continuity of Services and 2) Federal Funding and Resources to Help Provide Services to Students with Disabilities During the Pandemic and Beyond.

The first key concern is that numerous services normally provided within an IEP cannot be provided currently because of public health directives restricting live interactions, such as some physical therapy services and home-based services. There are also concerns for protecting student and teachers' health during the pandemic that make some services traditionally provided in-person impossible to deliver under the circumstances. Additionally, other health-related services within an IEP that may be provided online for some students could be a violation of HIPAA (Health Insurance Portability and Accountability Act) security and privacy

requirements. These are just some of the extraordinary circumstances that teachers and schools are dealing with during this crisis.

As school districts are working diligently to continue to provide FAPE (Free Appropriate Public Education) to children with disabilities pursuant to IDEA and the Rehabilitation Act of 1973, the issues noted above as well as others are presenting challenges because of this pandemic.

The recent guidance provided by the U.S. Department of Education is limited and does not address all the challenges school districts are facing to continue services for children with disabilities. Increasingly, school districts are fielding concerns and complaints because of difficulties caused by the coronavirus pandemic, and need these issues addressed legislatively for targeted flexibilities during this unprecedented catastrophe. School districts share the concerns that all students deserve a high-quality education and urge Congress to alleviate problems that may arise for schools and students in the coming days.

The next key concern is federal funding which has already involved a high level of state and local funding compared with the federal share for educating students with disabilities. Currently, the federal share of funding for the nation's investment in children who are educated through IDEA is 13 percent – well short of the federal share of 40% called for under the IDEA law. Even during usual circumstances such as a few short weeks ago prior to school closings, the federal investment in IDEA was inadequate. Likewise, the funding Congress provided to states and school districts in the recent CARES Act (“Coronavirus Aid, Relief, and Economic Security Act”) for coronavirus preparedness and mitigation efforts is far short of what schools and students with disabilities need. Compounded by the intervening factors of the coronavirus pandemic that have interrupted the delivery of education services, as well as reductions in local and state revenues that finance the majority of special education services, the federal investment must be greater to address this urgent need. For example, budget officials from four states have already estimated potential revenue losses of \$30 billion because of the effect of this pandemic on state and local economies. Unfortunately, this estimate is expected to increase as states assess areas of need and next steps for recovery; and, as resources for elementary and secondary education are thereby impacted.

Request to Congress - Sample letter / Talking Points

Dear Representative / Senator _____:

As a school board member in your district/state, I am writing to urge you to support both additional funding and flexibility for IDEA in the upcoming supplemental relief package. Schools are working hard to provide services to all students during the COVID-19 pandemic.

I urge Congress to fully fund the federal share of the national investment in special education this year or at least provide a minimum of \$13 billion immediately through the next supplemental appropriation.

- The federal funding provided through regular appropriations is inadequate (and currently averages less than \$1,800 per child). The number of children with disabilities

has increased from an estimated 6.9 million in Fiscal Year 2020 to an estimated 7.4 million for Fiscal Year 2021, thereby causing a greater demand for resources.

- The complications school districts are facing including inadequate home student internet access because of the coronavirus pandemic have compounded the problem regarding inadequate federal funding for IDEA.
- I applaud Congress' bipartisan leadership to provide preliminary resources to states and school districts for IDEA and other education services through the Education Stabilization Fund appropriated through the recent CARES Act. However, this funding is not sufficient and far below what is needed to address the longer-term challenges districts and families are facing in order to provide a level of continuity in services to children with disabilities.

Furthermore, it is critical for Congress to provide narrowly tailored and temporary flexibility to school districts as they continue to act in good faith to provide appropriate special education and related services to the extent feasible to students with disabilities during this catastrophe that has interrupted normal school operations.

- The significant hardship affecting school districts' efforts to continue to provide special education and related services in the amount and/or type required by a student's Individualized Education Plan is raising a number of legal concerns that have not been addressed by the U.S. Department of Education's guidance for schools during this pandemic.
- Temporary, targeted, and tailored flexibility to school districts is needed as they encounter challenges that are interrupting the delivery of certain special education services (such as HIPAA protections for students regarding services delivered online; public health directives preventing certain physical therapies; shortages of qualified staff caused by health and safety concerns; school building closures due to health and safety concerns where certain equipment and technology is housed and cannot be relocated; and, lack of Internet access and/or necessary hardware to connect service providers and instructional staff to students). *These and other circumstances cannot be addressed effectively unless Congress intervenes.*
- Upon the resumption of normal school operations, school districts look forward to uninterrupted delivery of special education and related services in the amount and type required by a student's Individualized Education Plan. Therefore, targeted and narrowly tailored flexibility to districts would be discontinued pursuant to any federal, state, and local clearances needed for a district to resume its normal schedule and delivery of education services.