



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 National Center for Special Education in Charter Schools (the Center) is a leader and partner with charter school authorizers, charter networks, and charter schools across the U.S. and the leading national voice regarding educating students with disabilities in the charter sector. We are focused on ensuring that students with disabilities have equal access to public charter schools and that those schools are designed and operated to enable all students to succeed. At the same time, we are equally committed to supporting access to high quality education for all students with disabilities, regardless of whether they are enrolled in traditional district schools or public charter schools.

We are writing to provide input to the requirement under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for the Secretary of Education to prepare a report with recommendations “on any additional waivers” believed to be “necessary...to provide limited flexibility to States and local educational agencies to meet the needs of students during the emergency...” under key education laws, including the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973 (Rehab Act).

First and foremost, while we acknowledge that the rapidly escalating COVID-19 pandemic is an unprecedented national challenge, we do not believe now is the time to eliminate or reduce, even temporarily, any statutory requirements of either the IDEA or Section 504 of the Rehab Act. Rather, the Secretary must stay the course to support and uphold all of the civil rights of students with disabilities. Instead of requesting waiver authority, the Department of Education can and should continue to help states and local education agencies (LEA) understand that school teams and parents can work together during the crisis to make decisions together about the provision of special education services and supports as allowed within their unique and individual circumstances. Because the IDEA and Section 504 of the Rehab Act provide the basis for civil rights protections for students with disabilities, waivers of any kind would upset the delicate balance between equity and access that our most vulnerable students rely upon to receive an education in public schools.

The Center is extremely pleased the Secretary has clarified for states, districts and schools that the federal disability law provides sufficient flexibility to ensure all students, including students with disabilities, can benefit from remote education as communities determine the best approach to instruction during the COVID-19 crisis. In our work with charter schools, we are aware of many, including those who operate as their own LEAs, who are already working to provide distance instruction in partnership with families while finding creative and innovative ways to ensure teachers and students can engage in instruction and learning and in the provision of related services. While the IDEA has specific requirements, including important timelines, the Department has made clear that sufficient flexibility exists for schools to extend those timelines when needed while concurrently working with families to make good decisions that support students.

It takes good planning, sufficient resources and adequate technical assistance (TA) for schools and districts to pivot quickly and provide remote education so students do not experience huge learning lags. With clear guidance now in place for schools to identify paths forward, we ask you to provide enhanced and focused TA through all available avenues including through the “Expanding Opportunity through Quality Charter Schools” program (ESSA Title IV Part C). As you know, this program currently provides over thirty states with funding in support of high-quality charter schools, which can be used to improve outcomes for students with disabilities. The Center is also advocating for Congress to address the obvious need for additional funding to support innovative approaches to educating all students, including students with disabilities. It is important for us to emphasize that we will only support special education funding that is securely attached to the full provision of rights under the IDEA and other civil rights laws.

As the Center continues assisting schools and districts in adjusting to this new reality while still ensuring that students with disabilities have equitable access to remote learning, we ask that the Department take into consideration the above comments in the development of its report to Congress. It is crucial for the Department to maintain the rights and protections of students with disabilities by encouraging and supporting states, LEAs, and schools in identifying ways to provide distance learning opportunities without rolling back IDEA requirements through waivers.

If you would like further input as you develop the report, or if you would like specific examples of charter schools and districts that are responding quickly and robustly to the needs of students with disabilities in this current public health crisis, please contact Wendy Tucker, Sr. Director of Policy at wtucker@ncsecs.org.

Sincerely,



Lauren Morando Rhim, Ph.D.
Executive Director

cc: Laurie VanderPloeg, OSEP Director