



NATIONAL ASSOCIATION OF
School Psychologists

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Mark Schultz, Acting Assistant Secretary
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US Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Laurie VanderPloeg, Director
Office of Special Education Programs
US Department of Education
400 Maryland Ave, SW
Washington, DC 20202

April 1, 2020

Dear Acting Assistant Secretary Schultz and Director VanderPloeg,

On behalf of the National Association of School Psychologists (NASP), I would like to offer the following recommendations to be considered as the Secretary prepares a report to Congress detailing what, if any, additional waivers are needed from major education laws, including the Individuals with Disabilities Education Act (IDEA). The National Association of School Psychologists represents 25,000 school psychologists who work with students, parents, teachers, administrators, and communities to address and remedy barriers to learning. School psychologists provide direct support and interventions to students; consult with teachers, families, and personnel to improve support strategies; and work with school administrators to address the academic, social-emotional, and mental and behavioral health needs of *all* students. They continue this critical work in a virtual environment where schools are closed.

We believe all children and youth with disabilities have a right to a free appropriate public education in the least restrictive environment with strong protections for all parties involved. Currently, our nation is experiencing an unprecedented challenge, and we want to ensure that all students get the supports they need to continue their education outside of the school building, while also protecting the civil rights of students outlined in the IDEA.

The health and safety of our communities must come first, and during this unprecedented time, schools, LEAs, and SEAs are rightly focused on protecting public health. With this in mind, Congress can provide some targeted flexibility in legal requirements to allow for creative problem solving and implementation of innovative solutions that ensure *all* of our nation's students have access to learning opportunities while schools remained closed. Equity must be at the forefront of any administrative or legislative action to advance student learning in this environment.

We appreciate the guidance that has been released thus far, and it has provided helpful information on many issues important to school psychologists and the families we serve. However, the current guidance does not provide enough clarity related to special education timelines. We are in support of Congress allowing for targeted and time limited waivers of these requirements during COVID-19 related school closures. To be clear, we do not support any effort that undermines students' rights, or would allow schools, LEAs, and SEAs to ignore the needs of students with disabilities. Any issued waiver must come with the requirement that LEAs document good faith best effort to provide special education services in alternate formats, as appropriate, and other support to students with disabilities and their families. Further, these waivers must be time limited and expire when schools return to providing in-person services in the school building.

The current pandemic makes it impossible to adhere to established special education timelines. Although some evaluation components for both initial and triennial evaluations can be completed virtually while maintaining appropriate validity and reliability, other components require face to face interaction. Such interaction violates CDC guidelines and many states' stay at home orders, and risks the health of children, families, and school psychologists.

NASP encourages Congress to allow for a waiver that essentially provides a "pause" of special education timelines beginning the day schools closed, and extending no more than 45 school days after schools re-open. We offer the following suggestions for Congress to consider:

- Pause all timelines for initial evaluations that were in the process of being performed when schools were closed until normal operations and direct in-person instruction resumes. When a school resumes normal in-person instruction, then the timeline will go back into effect and the initial evaluation resumes according to the reactivated timeline. For example, if the school had 30 days left of the 60-day IDEA timeline, the school would have 30 days left when school resumes and the timeline is reactivated.
- Pause all timelines for responding to requests for an initial evaluation made during the time that schools are closed. When normal operations and direct in-person instruction of students begin again, the timeline for responding to the request for an initial evaluation reactivates and the district has whatever time is left to respond.
- Pause the time requirements for completing a three-year reevaluation while the schools are closed. When direct in-person instruction of students resumes, the timeline for completing the three-year reevaluation reactivates and the district will have the same amount of time to complete the three-year reevaluation that was available before the schools closed. The student's eligibility continues until the three-year reevaluation is completed and the IEP team meets to consider the evaluation. If the district has access to staff, records, and adequate data to perform a re-evaluation virtually, it may (but is not required to) do so.
- The timeline for completion of functional behavioral assessments is paused while schools are closed. When direct in-person instruction resumes, the timeline is reactivated for completing functional behavioral assessments.
- Pause all timelines for holding an IEP meeting until normal school operations and direct in-person instruction resumes. If schools are able to hold IEP meetings electronically or telephonically during the time schools are closed, they are encouraged to do so. Parent permission must be secured specifically to hold the IEP meeting virtually. The failure to hold an IEP meeting that otherwise would have been required to occur by a certain date, and the failure to adhere to any statutorily prescribed deadline when schools are closed, will not be a basis for a finding of a violation of the IDEA in a later hearing.

Although these suggestions would allow for a legal pause of the timelines when necessary, there will be cases in which the timelines can continue to move forward. For example, if an evaluation was completed prior to a school closure, or if an evaluation can be completed virtually, schools should be strongly encouraged to move forward as the situation allows. To be clear, we expect that these flexibilities should only be granted in this specific circumstance (school closures related to COVID-19) and that state and local education agencies, parents, and families should continue to work together in the interests of children with disabilities.

Despite LEA and SEA efforts, school districts could be faced with a backlog of evaluations and IEP meetings when school re-opens. Schools are already confronted with a shortage of school psychologists and other specialized instructional support personnel who provide comprehensive evaluation and direct

intervention support to students. It will be imperative that Congress provide additional financial support to school districts to ensure that they can recruit and retain school psychologists and other qualified staff to meet the needs of their students and families.

Thank you for your attention to this urgent matter. We are happy to speak further about how Congress and the Department can help states and local school districts best support their students during this pandemic. If you have any questions, please don't hesitate to reach out to Kelly Vaillancourt Strobach, NASP Director of Policy and Advocacy (kvallancourt@naspweb.org).

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Minke".

Kathleen Minke, PhD, NCSP
Executive Director