

NEW HAMPSHIRE SCHOOL ADMINISTRATORS
ASSOCIATION

CHAMPIONS FOR CHILDREN



March 24, 2020

Sen. Jeanne Shaheen
United States Senate
506 Hart Senate Office Building
Washington DC 20510

Dear Senator Shaheen,

I write on behalf of the New Hampshire professional education associations, which include the NH School Administrators Association (NHSAA), NH School Boards Association (NHSBA), NH Association of Principals (NHASP), NH Association of Special Education Administrators (NHASEA), Career & Technical Education Directors (CTE-NH), and NEA-NH, collectively representing over 18,000 teachers, principals, special education leaders, systems leaders and superintendents in our state. We are gratified to see that Congress is moving swiftly to provide school districts this year with administrative, assessment and accountability flexibility regarding the implementation of Every Student Succeeds Act. However, we write to voice our concern that Congress is not appropriately considering the unprecedented – if not impossible – challenge faced by districts to fully implement the Individuals with Disabilities in Education Act (IDEA) during this COVID-19 national emergency, and request that new flexibility be urgently given to school districts under IDEA.

In particular, we urge you to ensure that any forthcoming COVID-19 relief package grants the Secretary of Education the authority to waive the due process requirements under 20 U.S. Code § 1415 under *very limited* circumstances. The Secretary should be able to conclude that, pursuant to 20 U.S.C. § 1415(f)(E)(ii), any failure to provide in-person instruction pursuant to a student's IEP during this national emergency is a technical contravention of the IDEA and therefore not subject to IDEA's due process requirements. Furthermore, the Secretary should be able to declare that timelines under IDEA be waived during the times where schools are closed and physical contact with students is prohibited under federal, state or local order.

This is particularly true for states such as New Hampshire, where we exceed federal law under 57 standards including shorter special education timelines and frequency of meetings to ensure parental approval. This report to the NH State Board of Education is available: https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020/nh_standards_excess_chart.pdf

Our request is rooted in a need for practicality in the face of a national emergency that was never foreseen when IDEA was written in 1975. School districts across the country are now closed—likely for the remainder of the school year—for public health reasons, with no established date to resume instruction in many states. In most cases, the only alternative for districts is to provide students with instruction through virtual means. For a small portion of students with disabilities, however, it will be impossible to comply with their IEP due to the inability of our personnel to interact physically with the student. While we will implement IEPs to the best of our ability during the pandemic and most certainly ensure that services will resume once this emergency passes, during the emergency school districts must not be held liable under the procedural due process requirements provided by the Act for a failure to meet IEPs that is beyond their control.

New Hampshire school districts must comply with local decisions, leaving many schools closed to all staff and families in response to this COVID-19 health crisis. Special education evaluations require direct contact with students. Under our current conditions, this is not possible.

Over the course of the past two weeks, our teachers, school personnel, principals and superintendents have demonstrated their incredible commitment in the face of unforeseeable adversity to providing educational and non-educational resources to our state's students. Without the requested relief, we can reasonably expect some factors, specifically numerous law firms that exist solely to sue districts under IDEA, will now seek to take advantage of our school district's challenges complying with all IEPs during this crisis. The current situation asks even more of our school professionals, who now are not only are in constant, heightened fear of litigation over a law that is not designed to operate under the current environment, but who are also asked to potentially jeopardize their health and safety to provide services during a national emergency. We must operate from a position of strength and leadership, balancing the important work of educating students with disabilities with our responsibility to

ensure the health and safety of our district personnel while substantially reducing unnecessary litigation risk.

In New Hampshire, we pride ourselves on having a high rate of inclusion for students with educational disabilities. To ensure some semblance of continuity of instruction, the priority must be collaboration among classroom teachers and special education team members to develop and implement co-teaching within this virtual setting.

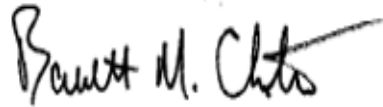
To be clear: we are not asking to step away from our responsibilities to educate our students or to not be accountable for their academic progress. We are asking Congress to permit temporary authority to be given to the Secretary of Education during these uncertain and unforeseeable times.

Thank you for considering this urgent request, and we look forward to working with you.

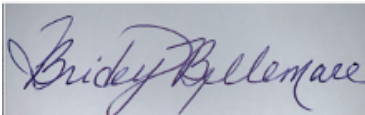
Sincerely,



Dr. Carl M. Ladd
Executive Director, NHSAA



Barrett Christina, Esq.
Executive Director, NHSBA



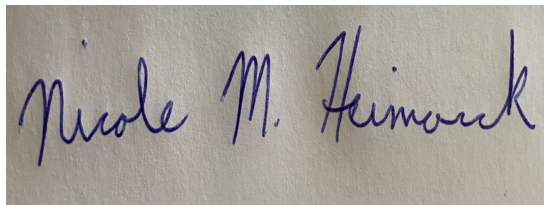
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