

Draft of letter to State Supt. of Public Instruction:

Dear Dr. Lane,

We are the superintendents who lead the eight largest school divisions in Virginia, and we applaud the recent actions you have taken to keep Virginians safe. We also greatly appreciate the open lines of communication you and your staff have maintained with school divisions as we all work to navigate through these difficult times. Our eight school divisions educate approximately 600,000 students in the Commonwealth; spanning the Northern Virginia, Richmond and Hampton Roads regions. While our divisions are larger than most, they share many of the challenges and opportunities common to urban, suburban and rural school settings.

As you know, every day we are faced with new issues and challenges as we try to navigate the fallout from the COVID-19 pandemic. The Governor's mandate that schools close for the remainder of the 2019-2020 school year has required school divisions to develop long-term distance learning strategies for all students. As we do so, school divisions have the obligation to ensure that students with disabilities can access learning activities or adapted versions of those activities consistent with their IEPs. One of the primary concerns of our group— and it is not limited to just large school divisions — is our ability to comply and meet the requirements of many of our students individualized education plans (IEP). We are specifically concerned about IEPs that require personalized attention such as (but not limited to) physical therapy, occupational therapy or speech therapy.

We are requesting flexibility with short-term waivers from a small number of special education regulations that exceed the federal requirements under the Individuals with Disabilities Act (IDEA). Our goal is to reduce the administrative burden on special education staff so that they can focus on developing appropriate distance learning activities geared to the individual needs of students that are as consistent as possible with their IEPs, given the unique circumstances of educating each student under these conditions.

We ask that you please temporarily waive the specific [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#) described below only during the state of emergency, and seek their reinstatement no more than 45 days after students return to schools. We strongly support the education rights of students with disabilities and their families throughout this health crisis, we seek to continue compliance. We ask that you allow localities flexibility with several administrative requirements because special educators must focus on student's individual learning needs.

Requests for Waivers of Virginia Regulations Governing Special Education Programs for Children in Virginia

8 VAC 20-81-110 Individualized education program

- IEP Timeline After Reevaluation:

Waiver request: Waive the 30-day timeline requirement that upon completion of a reevaluation an IEP must be developed. Require IEP development for reevaluations in a “reasonable time considering the individual circumstances.”

Rationale for waiver request: IDEA does not mandate a 30-day timeline for the development of an IEP upon completion of a reevaluation. This only applies to the reevaluation of students already being served through an IEP. Under the circumstances of the COVID-19 health crisis, the 30-day requirement would be an unnecessary administrative requirement that would have little adverse impact on student learning. If, as a result of reevaluation, the student’s learning needs are significantly changed, the IEP team could convene in a “reasonable time considering individual circumstances.”

8 VAC 20-81-170 Procedural safeguards

- Parental consent:

Waiver request: Waive the requirement for parental consent for revisions to the IEP. If an IEP team seeks parental consent, allow written consent to be provided in parental responses via email, text, or other written communication or documented verbal phone conversations.

Rationale for waiver request: Special education teachers, therapists, and service providers may need to provide amended IEPs or temporary learning plans to students, especially with divisions that consider learning activities that go beyond “continuous learning” and engage students in “new” learning content that reflects grade level or adapted standards. This may require amending IEPs for tens of thousands of students across Virginia. Permitting special educators permission to develop plans in conjunction with parents but not requiring written parent consent would streamline this process and help teams focus on instruction versus compliance to procedural matters. Providing a temporary waiver of parental consent would not diminish the school divisions’ responsibilities to engage parents in the development and implementation of specialized instruction or services. This temporary waiver would reduce what could become a barrier to consideration of the efficient and thorough provision of special education services.

- Parental notice requirement:

Waiver request: Waive the school division’s requirement that they must “take whatever action is necessary” to engage parents in procedures and require documentation of “reasonable effort” on the part of the LEA as they seek to involve the parents in special education procedures during this crisis.

Rationale for waiver request: The COVID-19 health crisis has closed schools and is keeping individuals physically . This creates unique challenges for school division staff to communicate with parents and engage them in special education processes. School

divisions can and should make reasonable efforts to engage parents in special education procedures, but not be held to the highest standard of “take whatever action is necessary.”

- [Procedural safeguards notice:](#)

Waiver request: Waive the obligation to provide a hard copy of the procedural safeguards notice. Require verbal notice and providing a link to procedural safeguards on the VDOE website if a parent has already been offered procedural safeguards within the last two years.

Rationale for waiver request: School division special education staff do not currently have access to school buildings to obtain or make copies of this 43-page document that provides parents information about procedural safeguards. School staff may not have the capacity to print (from home) the lengthy document. Parents often waive the need to receive the document at meetings, so the requirement to provide parents a hard copy of the procedural safeguards should be waived.

Thank you for your consideration to provide temporary relief and flexibility under Virginia Regulations Governing Special Education Programs for Students with Disabilities. As we continue our efforts to provide equitably individualized education services to help our students with disabilities. We make this request as national organizations such as NASDSE, CASE, and CEC are requesting that the US Secretary of Education submit recommendations to the US Congress for temporary waivers of specific IDEA regulations. This COVID 19 world health crisis warrants necessary, timely flexibility to best streamline Virginia’s administrative special education procedures as we help our students with disabilities and their families.

If you need any additional information, or have any questions, please do not hesitate to reach out to us.

Sincerely,