

To: Emily Cunningham

From: Carla Jarosz, Deputy Attorney General

Date: April 17, 2020

Re: Delaware Department of Education, Exceptional Children's Workgroup's Response to COVID-19 Pandemic.

On March 13, 2020, Governor Carney issued an executive order closing all Delaware public schools from March 13, 2020 through March 27, 2020. On March 23, 2020, Governor Carney extended the school closure until May 15, 2020 and directed Districts and Charters to create plans for remote instruction, providing no education during the school closure was not an option. Plans were to be provided to the Delaware Department of Education ("DDOE") by April 3, 2020. Plans received are available for inspection on the DDOE's website. The vast majority of these plans contemplate schools being reopened on May 15, 2020. At this time, May 15, 2020 remains the anticipated date for Delaware public students to return to school. Please note that public schools in Pennsylvania are closed for the rest of the school year; in New Jersey, they are closed indefinitely; but in Maryland they are scheduled to re-open on April 24, 2020.

In Delaware, each school district is governed by an elected school board and each charter is governed by a board of directors. The school boards and boards of directors administer and supervise the public schools within their districts. *See* 14 *Del. C.* §§ 1043 and 504A. Each District and Charter is also responsible for providing free appropriate public education ("FAPE") to students with disabilities within its control. FAPE must be provided to all students with disabilities under the Individuals with Disabilities Education Act ("IDEA"), a federal law. The vast majority of Delaware's state statutes and regulations regarding the provision of FAPE and the rights of parents (and children) if they feel they are not being provided with FAPE are mandated by the IDEA and cannot be waived or changed by the State including documentation requirements and procedural safeguard timelines. The United States Department of Education, Office of Special Education Programs ("OSEP") has issued written guidance on providing FAPE during school closure. *See* <https://www.ed.gov/coronavirus>. Additionally, The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") enacted at the end of March mandates the United States Department of Education recommend within 30 days whether to provide waivers or limited flexibility to the IDEA during the COVID-19 crisis.

The DDOE is statutorily tasked with consulting, advising and cooperating with school boards, superintendents, school leaders, teachers and interested citizens in matters relating to education. The Exceptional Children Resources Work Group ("ECRWG") within the DDOE focuses on FAPE. *See* 14 *Del. C.* §3101. ECRWG is headed by Director MaryAnn Mieczkowski. Director Mieczkowski has a team of six members. Each member of the team acts as a liaison for several Districts and Charters and engages in on-site monitoring of Local Education Agencies ("LEAs"). Additionally, each member focuses on a different area of special education services.

As a special education liaison, if there are complaints, concerns or questions, team members work collaboratively to troubleshoot, brainstorm and help resolve the issue.

In addition to their regular workloads, since the Governor's March 13th Executive Order, the ECRWG has worked tirelessly to help Districts, Charters, Special Education Directors, educators and paraprofessionals understand their responsibilities towards children with disabilities in Delaware under the IDEA, corresponding state statutes and Federal guidance; and to collaborate, problem-solve and help Districts and Charters create good faith remote educational plans for children with disabilities as detailed more fully below:

- Immediately every member of the ECRWG communicated with assigned Districts and Charters to offer and provide support. Communication continues through phone calls, emails and virtual meetings.
- Every day for the first three weeks of school closures, followed by weekly, Director Mieczkowski met with Sarah Celestin from Special Education Strategic Plan Committee ("SESPAC") which includes Special Education Directors, Advocates, and Governor's Advisory Counsel members; Lisa Lawson from Delaware Administrators of Special Education Programs ("DASEP") which includes Special Education Directors and Jill Scannell, the Special Education Director of Newark Charter school and lead liaison for special education administrators in charter schools. Their dialogue involved sharing information from the Office of Special Education Programs ("OSEP") within the U.S. Department of Education ("USED") and national Special Education groups; guidance provided by the DDOE; and an ongoing back-and-forth about what was happening "on the ground" in Delaware.
- Every week, Director Mieczkowski attends the Communication and Collaborative Network ("CCN") meeting for curriculum and Special Education Directors to discuss issues regarding COVID-19. Three times Director Mieczkowski has presented to the CCN on guidance documents issued by DDOE.
- Twice a week, Director Mieczkowski engages in national conversations with the National Special Education Directors ("NSED") and Council for Administrators of Special Education ("CASE") and National Technical Assistance Centers to coordinate national responses, lend state perspective and to ensure ECRWG is passing on the most up to date guidance from the National Association of State Directors of Special Education ("NASDSE"), National Center for Systemic Improvement ("NCSI"), Center for IDEA Fiscal Reporting ("CIFR"), Office of Special Education Programs ("OSEP"). Recently, NSED and CASE urged OSEP to provide further flexibility to LEAs in their responsibilities under the IDEA; they are also discussing and providing guidance on the implications of funding provided by the CARES Act and how to spend it to benefit children with disabilities.
- This week, Director Mieczkowski is held meetings for Special Education Directors in New Castle, in Kent and in Sussex and for Charters. The meetings will provide

- Special Education Directors the ability to share resources and learning plans as well as collaborate and problem-solve issues with each other and ECWG.
- ECRWG combined with the early learning group held a meeting with coordinators of services for children from ages 3-5 years old with disabilities.
 - Immediate and continued communications with outside supports, providers, statewide programs including: Center for Disabilities Studies (“CDS”), Division of Visually Impaired (“DVI”), Delaware School for the Deaf (“DSD”), Delaware Network for Excellence in Autism (“DNEA”), Parent Information Center (“PIC”), Accessible Instructional Materials (“AIM”), Statewide Autism Program (“DAP”). ECRWG has facilitated support to LEAs by providing a link between groups, programs and LEAs, accessible materials and resources.
 - ECWG is continuously collaborating with vendors to provide special education services in virtual environments. ECRWG vendor, Access Project recently conducted a training on Universal Designs for Learning (“UDL”) in virtual environments with 112 educators attending. Access also has a series of professional learning opportunities.
 - Specifically, to the field of Autism, ECRWG has planned and revamped Peer Review Committees (“PRC”). Prior to the COVID-19 pandemic, PRCs reviewed behavior support plans and provided feedback, since plans may not be implemented now, PRCs are supporting school psychologists and teachers in a virtual environment, problem-solving with parents; providing professional learning and developing plans on how to continue education, consultation and problem-solving in virtual environments. ECRWG is continuing to conduct State Monitoring and Review Board meetings, and Respite meetings.
 - ECRWG worked with the Special Education Partnership for the Amicable Resolution of Conflict (“SPARC”) to create process and forms for conducting virtual mediations.
 - ECRWG is coordinating Inter-agency Collaborative Team monthly meetings in a virtual environment in order to ensure children with disabilities in private placements inside and outside the state and their families are receiving counseling, therapeutic supports, technology and academic support and coordinating case reviews in virtual environments while ensuring confidentiality.
 - ECRWG participates in state meetings with Developmental Disabilities Council, DVI Vocational Rehabilitation Advisory Council, and State Rehabilitation Council to ensure students with disabilities continue to receive job training and set up meeting between National and Delaware Project SEARCH directors to discuss continuing to provide students virtual employee diversity training for working with individuals with disabilities while they are unable to attend actual job sites and provide trainings.

In addition to keeping Districts and Charters informed of guidance provided by OSEP, the ECRWG has also prepared the following written guidance and resource information as well as continued to share guidance prepared by national resources with LEAs:

- On March 16, 2020, ECRWG created and issued guidance on adherence to IDEA and the provision of FAPE based on USED’s guidance. (Attached as Exhibit 1).
- On March 27, 2020, ECRWG created and issued additional guidance on adherence to IDEA and the provision of FAPE based on USED’s prior guidance. (Attached as Exhibit 2).
- On April 7, 2020, ECRWG created and issued a guidance memo on Accessible Materials during COVID-19. (Attached as Exhibit 3).
- On April 14, 2020, ECRWG disseminated guidance from the National Center for Systemic Improvement’s (“NCSI”) Fiscal Support Team on how CARES Act funding may be utilized for students with disabilities.
- ECRWG prepared a list of resources related to transition to the workforce for students with disabilities. (Attached as Exhibit 5).
- ECRWG provided resources and links on DDOEs website for parents (<https://www.doe.k12.de.us/domain/599>).
- ECRWG contributed to DDOE’s list of resources for educators. https://docs.google.com/document/d/1iT_8wcZ086gucsU6mABTnCIlpGZdwOQGRRLLQNOUd7IQ/edit
- ECRWG contributed to DDOE’s list of professional learning documents for educators. <https://docs.google.com/document/d/1WroHei1PVE3vigsVVSa3UxgrqLEgRTQ-YOQQZzIZrFs/edit?usp=sharing>