

July 01, 2020

***Sent via electronic mail***

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Members of the Georgia Board of Education  
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Dear Superintendent Woods and Members of the Georgia Board of Education:

We, the undersigned organizations, advocate for the rights of students in Georgia. We write to urge you to take proactive and equitable measures to address the challenges that the COVID-19 crisis has had and will continue to have on vulnerable students in the state as schools move to reopen for the 2020-21 academic year.

The COVID-19 crisis has underscored and exacerbated existing opportunity gaps in Georgia's public education system. As you know, many students lacked an equitable opportunity to receive academic instruction even before the COVID-19 outbreak began, including students with disabilities, low-income students, and students of color. Students with disabilities and students of color have historically and systematically experienced greater adverse educational outcomes in the form of disproportionately low graduation rates, and disproportionately high rates of school pushout and exclusionary discipline.<sup>1</sup>

The pre-existing opportunity gap for students has widened during school closures. Low-income families and people of color are more likely to experience hardships from COVID-19 caused by the inability to work remotely, inequities in access to technology, and inadequate healthcare.<sup>2</sup>

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<sup>1</sup> See, e.g., 20 U.S.C. § 1400(c)(12)(A); U.S. Commission on Civil Rights, *Beyond Suspensions, Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* (Briefing Report, July 2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

<sup>2</sup> See, e.g., Hannah Hageman, *New Survey Highlights Racial Disparities in the Coronavirus Pandemic*, NPR (Apr. 14, 2020, 5:48 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/14/834466606/new-survey-highlights-racial-disparities-in-the-coronavirus-pandemic>; J. Edward Moreno, *Black, Latino Communities Suffering*

Students eligible for special education services have experienced disruptions to their Individualized Education Plans (IEPs), including gaps in services and significant modifications in service delivery. While many IEP teams may have done their best to ensure a free, appropriate public education (FAPE) in a challenging time, compensatory services will almost certainly be required.

Further, all students are facing additional stress and trauma caused by the crisis, which impact their ability to focus on learning and their ability to regulate their behaviors. Students have struggled from a lack of structured curriculums, nonacademic programs, and extracurricular activities. Children have lacked social contact with friends, family members, mentors, and teachers. Even as schools move to reopen in the fall, the impact of the losses in education and services due to school closures will be long-term: research found that it took two full years to recover learning loss that occurred following school closures during Hurricane Katrina in New Orleans.<sup>3</sup>

The Georgia Department of Education (GDOE) has the obligation to guide and support local education agencies (LEAs) in remedying and preventing educational losses suffered by students with disabilities, low-income students, and students of color. Further, as you are aware, the GDOE is obligated to ensure that all students with disabilities in the state receive FAPE.

Without a coordinated response from the state which sets robust standards and criteria to measure how various LEAs have responded and continue to respond to equity gaps resulting from school closures, achievement and opportunity gaps will grow exponentially. Inconsistent responses by LEAs will result in reduced services and instruction for many children in Georgia, especially children with disabilities, low-income children, and children of color.

GDOE has begun planning for the 2020-21 academic year and we appreciate the steps that the GDOE has already taken to guide LEAs in serving students with disabilities. However, based on the foregoing and the likelihood that COVID-19 will continue to impact schools, we urge you to specifically engage in additional planning and implementation both for reopening of schools and for the possibility of continued distance-learning in the following areas: (1) regaining any academic losses for students with disabilities and preventing similar losses during future distance-learning periods, and (2) ensuring students have the supports to meet their social, emotional and mental health needs during and after this crisis; including expanding trauma-informed and restorative practices and reducing punitive measures. Specifically, we recommend the following before August 1, 2020:

### **Distance Learning**

1. Require LEAs to detail how they will implement IEPs during any future periods of distance learning to ensure FAPE.

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*Disproportionately From Coronavirus, Statistics Show*, THE HILL (Apr. 7, 2020, 10:07 AM), <https://thehill.com/homenews/state-watch/491518-black-latino-communities-suffering-disproportionately-fromcoronavirus>; <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.  
<sup>3</sup> See *The Legacy of Katrina: The Impact of a Flawed Recovery on Vulnerable Children of the Gulf Coast*, Children's Health Fund, the National Center for Disaster Preparedness & the Columbia Mailman School of Public Health (Aug. 23, 2010), <https://academiccommons.columbia.edu/doi/10.7916/D8H420TK>.

2. Develop and articulate a system to monitor and support the delivery of special education and related services by LEAs engaged in distance-learning.
3. Compile a detailed report on how LEAs delivered special education and related services to students during the school closures and the amount and type of compensatory education that LEAs determined is required as a result of the school closures. A follow-up report should also be made at the end of the next school year assessing the implementation of the compensatory education decisions.
4. Provide publicly accessible guidance for LEAs to address students' socio-emotional and behavioral symptoms resulting from transitioning back from a distance-learning environment. At a minimum, such guidance should:
  - a. Include trauma-informed supports and resources to students, educators, and families, and
  - b. Ensure that schools and educators use evidence-based practices to build safe and healthy school climates for students as they continue distance learning once they return to schools.

### **Compensatory Education Services**

5. Recognize that in addition to FAPE, eligible children are entitled to compensatory services under IDEA, and provide publicly accessible guidance governing the provision of compensatory services. At a minimum, such guidance should:
  - a. Establish practices for the timely implementation of compensatory education;
  - b. Direct LEAs to craft an individualized compensatory education award for every special education student subject to any distance learning period, except upon a specifically articulated finding by the IEP team that the student suffered no educational losses during the distance-learning period;
  - c. Clarify that compensatory education differs from the educational program ordinarily required under IDEA, but rather is to remedy educational losses due to lack of services<sup>4</sup>; and
  - d. Clarify that lack of resources is not a legally relevant consideration before the IEP Team in determining the amount, frequency, duration or criteria for compensatory educational and therapy services.
6. Publish and distribute notice of rights to compensatory education as a result of school closures to families throughout the state, with an explanation of how to appeal any decisions.
7. Require LEAs to detail how they will ensure that compensatory education services are provided to students who have been denied services.
8. Develop and articulate a process for monitoring the implementation of compensatory education by LEAs.

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<sup>4</sup> “Compensatory awards should place children in the position they would have been in but for” the lack of services. *Draper v. AISS*, 518 F.3d 1275, 1289 (11th Cir. 2008). Compensatory education should be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the district should have [been able to] suppl[y] in the first place.” *Id.* at 1291 (quoting *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524-525 (D.C. Cir. 2005)).

### **School Discipline**

9. Provide publicly accessible guidance to ensure that students who were disciplined or were facing disciplinary action during COVID-19 school closures can promptly return to their home schools. At a minimum, this guidance should:
  - a. Allow students who were suspended through the spring 2020 school semester to return to their home schools at the start of the 2020-2021 school year.
  - b. Clarify that distance-learning days count towards the terms of their suspension.
10. Provide publicly accessible guidance limiting the use of punitive discipline, including exclusionary discipline, for truant behavior and non-violent infractions.

We know that the COVID-19 crisis continues to present many challenges for educators and schools across Georgia, and we appreciate the work that the GDOE is doing to ensure the health and safety of students during this time. This moment has highlighted the centrality of public schools within the communities they serve, not only in teaching and learning, but also in making sure that students have access to food, physical and mental health supports, and robust enrichment opportunities. Even as schools reopen, we hope that the GDOE will take this opportunity to address the equity gaps widened in our public education system and envision the way forward for an equitable and legally compliant provision of educational services.

Sincerely,

Atlanta Legal Aid Society

Georgia Advocacy Office

Georgia Legal Services Program

Kids in Need of Defense (KIND)

Parent to Parent of Georgia

Southern Poverty Law Center

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