



April 1, 2020

The Honorable Tom Wolf
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Pedro A. Rivera, Secretary
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

RE: *Recommendations for State Guidance to Ensure Equitable Educational Services During COVID-19 School Closures*

Dear Governor Wolf and Secretary Rivera:

Thank you for your tireless work to ensure that Pennsylvania's most at-risk students receive educational services during this unprecedented health crisis. We wrote to you last week on behalf of more than 80 disability rights, child welfare, immigrant, and educational advocacy organizations across Pennsylvania to express grave concerns that these students – particularly children with disabilities, English Learners, children in the child welfare, juvenile justice and mental health systems, as well as children living in poverty – were not receiving educational services. We cautioned that these children would be irrevocably harmed and fall even further behind if they did not receive an education that addressed their needs during COVID-19 extended school closures.

Since submitting our letter on March 23rd, the Department has issued revised guidance that “strongly encourages” all schools to provide “some type of continuity of education” to all students, and Act 13 has been signed into law.¹ We applaud the leadership of Governor Wolf, the Pennsylvania Department of Education (“Department”), and the Legislature in addressing this important issue. We write now to urge the Department to provide clear, detailed guidance that can ensure equitable access to education and compliance with federal protections for vulnerable student populations, provide needed support to students and parents, and deliver individualized programming and a free appropriate public education for students with disabilities. Our proposals seek to inform the Department's guidance, drawing from models across the Commonwealth and the country, which represent innovative strategies and promising practices to achieve this goal. We also propose specific protocols that will safeguard the rights of students.

¹ 24 P.S. §15-1501.8.

We know that the COVID-19 school closures present exceptional and daunting challenges for school administrators, teachers, staff, students and parents, as well as the Department. Your guidance at this time is essential to enabling our schools to meet these challenges as school districts, charter schools, and Intermediate Units work vigorously to meet the needs of their students. Our letter seeks to inform and support these efforts and ensure that our most vulnerable students will not fall further behind as a result of this health crisis. The recommendations presented were developed with input from the many organizations which signed our first letter as well as discussions and calls with numerous school district and charter solicitors, teachers' unions, and education associations.

We greatly appreciate your consideration of these recommendations and welcome the opportunity to discuss any of these proposals in greater detail.

Continuity of Education

Act 13 requires the Department to issue guidance to LEAs regarding “continuity of education,” which remained undefined by statute. We urge the Department to encourage schools to provide planned instruction, rather than solely enrichment activities, which will allow all students equal access to the curriculum and the opportunity to make progress while schools are closed.² Such plans would provide access to the curriculum required under Chapter 4 of the PA Code for each grade and be subject aligned with the PA Common Core Standards, 22 Pa. Code 4.1 *et seq.* In addition, we recommend that these plans, which must be publicly accessible and submitted to the Department, include plans and procedures to ensure a FAPE for students with disabilities and equal access to educational opportunities for English Learners.

Enrollment

Current guidance issued by the Department has been interpreted to mean that LEAs have no obligation to enroll new students during school closures. This significantly impacts highly mobile students – particularly children placed in foster care and students experiencing homelessness – who have been turned away from schools and unable to receive any education at all. We urge the Department to revise its current guidance to clarify that LEAs must enroll and provide continuity of education to all students, including ensuring immediate enrollment for students experiencing homelessness and children in the foster care system.³

Ensuring the Rights of Students with Disabilities

Continuity of Education: All students with disabilities, including those requiring accommodations under Section 504 of the Rehabilitation Act must receive equal access to the curriculum provided to other students during school closures. Students with disabilities are also entitled to a free appropriate education, which includes the provision of related services. Many LEAs are currently implementing plans for accessible continuity of education, as well as the

² Many LEAs around the Commonwealth are currently providing distance learning that includes planned instruction and full access to the curriculum. *See, e.g.,* Ridley School District, Closed Response Level Information, https://www.ridleysd.org/news/what_s_new/closed_response_level_information; North Allegheny School District, Continuity of Education Plan, <https://www.northallegheny.org/Page/31699>; Unionville-Chadds Ford School District, Distance Learning FAQs, <https://www.ucfsd.org/covid19/faqs/distancelearning>.

³ *McKinney-Vento Homeless Assistance Act*, 42 U.S.C. § 11432(g)(3)(C)(I); *Every Student Succeeds Act*, 20 U.S.C. § 1111(g)(I)(E).

provision of special education and related services.⁴ In providing continuity of education, LEAs must:

- ✓ Ensure that plans for students with disabilities are individualized, based on a student's prior IEP, and address the student's disability-related needs based on meaningful parent participation;
- ✓ Address whether the student can utilize and benefit from the school's distance learning plan and consider all available and appropriate delivery models for educational services;
- ✓ Ensure that if appropriate educational services required to ensure FAPE cannot be provided through distance learning, a student will be entitled to compensatory education;
- ✓ Ensure that any educational services are provided consistent with all health and safety requirements and that parents are not expected to substitute for educational professionals in the delivery of educational services.

The process for providing continuity of education for students with disabilities should be submitted to the Department and posted online along with the school entity's plan for providing education during the crisis as required by Act 13.⁵

LEAs Must Plan for the Provision of a Free Appropriate Public Education: Act 13 requires "written notice" to be provided to students regarding the interim plan for providing a FAPE during COVID-19 closures. In order to provide this notice, the Department should advise LEAs to:

- ✓ Utilize remote methods, such as telephone or video conference, to convene IEP meetings with parents to discuss interim educational services.⁶ Attached is a proposed process for such meetings.
- ✓ Address new needs resulting from the change in delivery of services, including the need for assistive technology for the student to access the LEA's continuity of education programming and any necessary parent training. LEAs should revise policies, such as those related to limits on assistive technology device usage in the school setting, in order to ensure necessary educational services can be accessed in the home.

⁴ See, e.g., Lower Moreland School District, LM Learns! Special Education Parent Edition, <https://docs.google.com/document/d/1ez2DrhFvaPefFWsi-v5KDkZz0eqfrHNYi6rxRkcouPk/edit>; Lower Merion School District, Guide for Families to Flexible Instruction, at 3, https://www.lmsd.org/uploaded/documents/Departments/Health/Corona/Family_Guide_to_Flexible_Instruction.pdf; Bangor Area School District, COVID-19 Information, <https://www.bangor.k12.pa.us/Domain/247>; Downingtown Area School District, DASD Special Education Online Instruction Plan, <https://www.dasd.org/cms/lib/PA01916467/Centricity/Domain/5023/DASD%20Special%20Education%20Online%20Instruction%20Plan%20Community.pdf>.

⁵ 24 P.S. §15-1501.8.

⁶ Many LEAs are currently convening IEP meetings in order to develop interim plans for the provision of a FAPE. See, e.g., Mars Area School District, Message from the Superintendent, at https://www.marsk12.org/apps/pages/index.jsp?uREC_ID=1709795&type=d&pREC_ID=1881082.

- ✓ LEAs must ensure that all students currently attending Approved Private Schools receive a free, appropriate public education and cannot assume that the APS will provide continuity of education.
- ✓ Issue a Notice of Recommended Educational Placement (“NOREP”), consistent with the IDEA’s required written notice of an offer of FAPE under 20 U.S.C. §1415(a)(3) and in compliance with Act 13’s “written notice” requirement.⁷
- ✓ Determine eligibility for Extended School Year (“ESY”) if eligibility has not already been determined earlier in the year.
- ✓ Address any changes in transition planning activities resulting from the COVID-19 crisis.

Waiver of FAPE is prohibited: The Department must clearly advise LEAs that they cannot condition a student with disabilities’ receipt of educational services during COVID-19 closures on a waiver of FAPE. We are aware that some LEAs have been requiring parents to agree to waive right to FAPE or adding this declaration to surveys as a condition of receiving remote educational services, thereby depriving them of their right to compensatory education services as well. This practice is clearly prohibited and contravenes an LEA’s obligation to provide a free, appropriate public education.

Evaluations: The Department should supplement the current guidance to confirm that LEAs should respond to requests for evaluations by obtaining parental consent for initial evaluations and re-evaluations within all state and federal timelines. While it is likely that evaluations requiring face-to-face assessment or observation will be delayed until schools reopen, the Department should advise that LEAs otherwise must be prepared to proceed with evaluations and reevaluations when school closure periods conclude and that the applicable timelines can be extended by agreement in light of this new context.

Extended School Year (“ESY”): The Department should issue guidance to LEAs that students with disabilities who were previously determined by IEP teams to be eligible for ESY will continue to be eligible if COVID-19 school closures extend to the summer months and that additional students may be eligible for ESY as a result of school closures. All students with disabilities should have individualized determinations about ESY eligibility with required written notice to parents. This may require virtual IEP meetings to be convened for students whose IEP teams had not previously met in the school year to make ESY determinations. In the event that ESY cannot be provided, IEP teams shall address the provision of compensatory education services.

Designate a liaison to facilitate agency coordination and engagement. Many medical, behavioral health, and other health-related agencies provide critical programs and related services to students with disabilities. The Department should encourage LEAs to work with these agencies

⁷ NOREPs have already been issued in compliance with Act 13’s “written notice” requirement, Chapter 14 of the Pennsylvania School Code, and the Individuals with Disabilities Education Act (“IDEA”) by LEAs around the Commonwealth. Examples include Methacton School District and Montgomery County Intermediate Unit.

to take advantage of services that can be offered for those that elect to continue to provide services during school closures.⁸

Protecting the Rights of English Learners

During this crisis, many LEP parents have reported that they are failing to receive any communications from their schools in a language they understand. Instead, written surveys and oral communications are too often provided in English alone and as a result, parents do not know what educational services their children will receive. LEAs must also address the interpretation needs of LEP parents who have low-incidence language backgrounds, may not have strong literacy skills, or their preferred language has no written form. LEP parents have also raised concerns regarding the failure to translate lesson plans and worksheets and the absence of any English language instruction. Many of these families have minimal access to technology and the internet. In light of the foregoing, we recommend the following guidance to schools.

Districts must provide LEP parents with timely, comprehensive communications in their preferred language and mode of communication, including notice of their school's Continuity of Education Plan as legally required.⁹ Such efforts should include:

- ✓ Identifying the preferred language and mode of communication for each family based on updated information.¹⁰
- ✓ Proactively engaging LEP families by establishing an LEP point person who can contact families with questions, or a department that uses interpretation services to communicate with LEP families by hotline or text app.¹¹
- ✓ Establishing communication plans to check-in with students and families regularly to determine if additional supports are needed.¹²

Provide EL students with needed technology (e.g., internet, computers, phones), including assistance on how to use the technology provided to LEP parents in their preferred language, and instructions on how to access translation features in various apps or platforms used for instruction. Without such support for parents in a language they understand, their children will be unable to access instruction remotely.

⁸ In addition, LEAs and health-related agencies should work collaboratively to ensure continuity of services for students currently served pursuant to the IEP or Section 504 Plan, including exploring options related to distance learning. To facilitate collaboration and communication about these coordinated efforts with parents, LEAs should designate a liaison who can answer questions and serve as a resource for families navigating multiple systems.

⁹ LEP parents have the right to receive important educational information in their preferred language and mode of communication. Dep't of Justice & Dep't of Educ., *Joint Response to Dear Colleague Letter: English Learner Students and Limited English Proficient Parents*, 37–39. *S*

¹⁰ See, e.g., Building Partnerships with Immigrant Families, Colorín Colorado, available at https://www.colorincolorado.org/sites/default/files/immigration-guide-families_0.pdf

¹¹ See e.g., New Mexico Public Education Department Guidance, at 19, available at https://webnew.ped.state.nm.us/wp-content/uploads/2020/03/NMPED_Implementation-Guide-for-Your-Continuous-Learning-Plan_FINAL.pdf; Pittsburgh Public Schools, *PPS COVID-19 Response FAQ*, available at <https://www.pghschools.org/Page/5351> (remote staff operating a hotline and an app for mobile devices called Let's Talk to connect with families).

¹² See e.g., School District of Philadelphia, *Guidance on Working Remotely: Teachers, Counselors, Nurses and Other School-Based Staff*, Mar. 30, 2020, at 5, available at https://www.philasd.org/wp-content/uploads/2020/03/Working-Remotely-Teachers-Counselors-Et-Al_SDP-Guidance.pdf.

*Schools must ensure that ELs receive meaningful access to education services, including modification of general education content and English language instruction.*¹³ Resources and materials provided for English Learners cannot be limited to generic online resources or independent work. Rather, their program must be aligned with the LEA’s curriculum and instruction plan for all students as required by law.¹⁴

Different formats may be needed for different LEP students, depending on their WIDA level and other individual needs. Online learning can take advantage of different formats including real-time virtual classes that have the benefit of focusing on oral language and allowing interaction, but the pace of conversation must be differentiated based on WIDA levels. Asynchronous classes allow English learners more time to process, translate, and practice, with a focus on literacy skills, but lack critical opportunities for interaction.¹⁵ Blended modalities would work well for EL students.

- ✓ Consider flexibility in instruction and student assignments that include technological and non-technological options.¹⁶
- ✓ Provide multiple ways for students to demonstrate their knowledge and skills.¹⁷
- ✓ Provide strategies that support academic language needs, using structured or sheltered English practices, and give opportunities for students to engage in conversation virtually.¹⁸

Schools must provide English Language Development instruction as well as modifications needed for ELs to access general education instruction. ESL teachers must confer with content teachers and modify materials provided by the school to identify accommodations for ELs at various ACCESS levels.¹⁹ ESL teachers should be added as a co-teacher in core classes taking place in online platforms like Google Classroom, where they can add videos, anchor charts and other supports as well as one-to-one communication for ELs.

¹³ See Title VI of the Civil Rights Act, 42 U.S.C. § 2000d (prohibiting school districts from discriminating on the basis of race or national origin); *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (holding the failure to address language barriers violates Title VI); *New York by Schneiderman v. Utica City Sch. Dist.*, 177 F.Supp.3d 739, 752 (N.D.N.Y. 2016); The Equal Educational Opportunity Act, 20 U.S.C. § 1703(f) (prohibiting the denial of equal educational opportunities on the basis of race or national origin and requiring state educational agencies and school districts to take action to overcome language barriers that impede English Learners from participating equally in educational programs).

¹⁴ For example, in Broward County Public Schools in Florida ELs are “taught grade-level standards using core materials identified by the district” in online courses, and ELs are separately offered supplemental online materials aligned to the same curriculum. See Broward County Public Schools, *Supporting Young Learners Course*, available at <https://browardschools.instructure.com/courses/627242>.

¹⁵ See e.g., Tennessee Department of Education, *Suggestions for ESL Classes and Activities: COVID-19 Guidance*, available at <https://www.tn.gov/content/dam/tn/education/health-&-safety/SuggestionsforESLClassesandActivitiesCOVID-19Guidance.pdf> (Mar. 16, 2020).

¹⁶ See, e.g., New Mexico Public Education Department, *Implementation Guide for Your Continuous Learning Plan*, at 19, available at https://webnew.ped.state.nm.us/wp-content/uploads/2020/03/NMPED_Implementation-Guide-for-Your-Continuous-Learning-Plan_FINAL.pdf.

¹⁷ See e.g., *id.*

¹⁸ See e.g., *id.*

¹⁹ See e.g., School District of Philadelphia *Guidance on Working Remotely: Teachers, Counselors, Nurses and Other School-Based Staff*, Mar. 30, 2020, at 4, available at https://www.philasd.org/wp-content/uploads/2020/03/Working-Remotely-Teachers-Counselors-Et-Al_SDP-Guidance.pdf.

*Ensure that staff, including ESL instructors and bilingual staff are accessible to LEP Parents and students. ESL teachers and general education teachers should consider scheduling office hours and communicate their schedules with students and families. ESL instructors and bilingual staff must be available to students/parents for questions in multiple formats to ensure they are accessible to families with different modality capacities.*²⁰

Meeting the Educational Needs of Students Experiencing Homelessness

Students experiencing homelessness have robust specific rights and protections under the McKinney-Vento Act.²¹ COVID-19 has, and likely will, continue to exacerbate the number of families and unaccompanied students²² who are displaced, living in shelters or doubled up due to lack of housing.²³ Many of these students lack basic school supplies, access to internet, tablets, laptops, or other materials that are needed to participate in distance learning.

The McKinney-Vento Act requires state educational entities to ensure that these students have “have equal access to the same free, appropriate public education” as their peers with stable housing, including a public preschool education.²⁴ They must also have access to necessary educational and related services to enable them to “meet the same challenging state academic standards to which all students are held.”²⁵ LEAs must remove barriers to enrollment and ensure that students can “attend school and participate fully in school activities.”²⁶ Accordingly, we recommend the Department issue specific guidance to LEAs relating to these students.

*LEAs must immediately enroll students experiencing homelessness, even without documents normally required for enrollment and permit them to continue to be educated in the same school, as required by law.*²⁷

LEAs should universally screen all students for eligibility under the Act. Non-Regulatory Guidance for the McKinney-Vento Act explicitly recommends a universal screen as a best

²⁰ See e.g., School District of Philadelphia *Guidance on Working Remotely: Teachers, Counselors, Nurses and Other School-Based Staff*, Mar. 30, 2020, at 4, available at https://www.philasd.org/wp-content/uploads/2020/03/Working-Remotely-Teachers-Counselors-Et-Al_SDP-Guidance.pdf.

²¹ The McKinney-Vento Act defines “homeless children and youths” as individuals who lack “a fixed, regular, and adequate nighttime residence.” 42 U.S.C. § 11434a(2)(B)(i). It includes students who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations or are living in emergency or transitional shelters. 42 USC § 11434a(2).

²² 42 U.S.C. §11434(a)(6) (defining unaccompanied students as students who are experiencing homelessness and are “outside of the physical custody of a parent or guardian.”)

²³ Sch. House Connection, *FAQ on COVID-19 and Homelessness*, Sch. House Connection, 1 (Apr. 1, 2020), <https://docs.google.com/document/d/1TteU6XatUxuX-kUlhk2BLDystQ3IlwrvBrj-qkgmS0/edit>.

²⁴ 42 U.S.C. §11431(1).

²⁵ 42 U.S.C. §11431(4).

²⁶ 42 U.S.C. §11433(d)(16).

²⁷ 42 U.S.C. §11431(1)

practice, as it prevents stigmatization and increases the likelihood that eligible families will be identified and connected to the supports to which they are legally entitled.²⁸

LEAs should deliver necessary materials to shelters (e.g., computers, iPads, internet access, calculators, extra chargers, school supplies) to enable students experiencing homelessness to participate in their school’s distance learning plan²⁹ and assist parents and students in utilizing new technology. Many families living in shelters are not permitted to leave during this time and therefore these items may need to be delivered.³⁰

McKinney-Vento Liaisons should proactively reach out to families and unaccompanied students experiencing homelessness. Many students will likely be forced to endure multiple displacements. Maintaining a sustained connection with the LEA will be essential during these times to ensure that students continue to have access to education, wherever they may be located.³¹

LEAs must ensure that McKinney-Vento eligible high school seniors receive additional support. Students eligible for graduation this year must receive written confirmation of their status as students experiencing homelessness and information regarding post-secondary opportunities.³²

Meeting the Educational Needs of Students in the Child Welfare System, Juvenile Justice System, and Mental Health Facilities

Enrollment of Students: The current guidance should be revised to state that children in foster care are eligible for immediate enrollment, school stability, and are to be provided with full access to the LEA’s continuity of education programming.

Continuity of Education in Residential Facilities: The Department’s current guidance explains that school closures extend to educational programming for students in non-educational placements such as residential facilities, detention centers, and hospital settings. The guidance also states that such programs “may choose to offer continuity of education that does not involve

²⁸ U.S. Dep’t of Educ., *Educ. for Homeless Children and Youth Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act as amended by Every Student Succeeds Act*, 17 (July 27, 2016); The San Antonio Independent School District has adopted this model and is developing a survey to screen students and families for McKinney-Vento eligibility during the current health crisis. See Sch. House Connection, *FAQ on COVID-19 and Homelessness*, Sch. House Connection, 1 (Apr. 1, 2020), <https://docs.google.com/document/d/1TlteU6XatUxuX-kUlhk2BLDystQ3IlwrvBrj-qkgmS0/edit>.

²⁹ *Id.* at 15-16 (discussing that Green Bay Schools in Wisconsin, New Orleans Public Schools, and Spokane Public Schools have provided critical supports including school supplies and mobile hot spots to students who are experiencing homelessness.)

³⁰ *Id.* at 16 (discussing that the Spokane Public School District has provided educational materials to shelters amid COVID-19 school closures).

³¹ *Id.* at 3 (discussing that the San Antonio Independent School District and Hernando County Public Schools are reaching out to all unidentified McKinney-Vento eligible students and families to assess how schools can continue to meet educational and basic needs of students amid school closures).

³² 42 U.S.C. §(g)(1)(K)(requiring State Plans under the McKinney-Vento Act to describe how eligible students will “receive assistance from counselors to advise such youths, and prepare, and improve the readiness of such youths for college.”; U.S. Dep’t of Educ., *Educ. for Homeless Children and Youth Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act as amended by Every Student Succeeds Act*, 2 (July 27, 2016)(stating that unaccompanied students are entitled to have their independent student status verified for the FAFSA).

in-person instruction in accordance with applicable standards and requirements...” According to multiple sources, many students placed in residential facilities by the child welfare, juvenile justice and mental health systems are largely languishing without any educational services. In many cases, the residential placement has no staff to address the educational needs of students. Many children and youth are isolated and have little to do all day.

Consistent with the obligations of host school districts pursuant to 24 P.S. 13-1306, we urge the Department to revise its current guidance to require the LEA where the residential placement is located to reach out and ensure that all students are receiving continuity of education and to ensure the provision of special education services and a free, appropriate public education for students with disabilities for whom the LEA is responsible. In cases where a residential placement is unable to offer continuity of education to students, the host LEA should provide access to that LEA’s continuity of education for all youth in accordance with governing laws. As these students are publicly placed in these facilities, the Department must ensure that these students also receive continuity of education during this crisis. Residential schools that are providing continuity of education should be required to submit their plans to the Department and make them publicly accessible.

Ensuring Education for Students Living in Poverty: The Digital Divide and Beyond

As LEAs increasingly move towards online learning platforms for the delivery of continuity of education plans, the Department must issue guidance regarding the need to consider the multi-faceted “digital divide” that exists for students living in poverty. Providing a Chromebook or laptop alone will not solve digital access issues for students living in poverty. LEAs also need to assess and ensure reliable internet connectivity for students.³³ In addition, parents and students need to be provided with training on using the required technology and accessing the online platforms. Finally, live technology support needs to be offered at convenient and variable times throughout the day in order to free teachers from endless technology questions and ensure successful access for all students.

We appreciate the opportunity to provide recommendations and welcome any chance to work with the Department to address how schools can meet the needs of all students during this challenging time. As our office is closed, I can be reached by cell phone at 610-331-8125.


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³³LEAs are solving these problems creatively, such as providing devices equipped with hotspots or securing public-private partnerships to provide data upgrades. *See, e.g.*, Unionville-Chadds Ford School District, at <https://www.ucfsd.org/departments/technology>; Council Rock School District, at <https://www.crsd.org/domain/4065>.

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