



Special Needs Advocacy Network, Inc.  
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FEDERATION FOR CHILDREN  
WITH SPECIAL NEEDS

Federation for Children with Special Needs  
529 Main Street, Suite 1M3  
Boston, MA 02129



The Arc of Massachusetts  
217 South Street  
Waltham, MA 02453

March 23, 2020

Senior Associate Commissioner Russell Johnston  
Massachusetts Department of Elementary and Secondary Education  
75 Pleasant Street  
Malden, MA 02148

Dear Commissioner Johnston:

As non-profit organizations that work with families of children with special needs, the Special Needs Advocacy Network, Inc. (SPaN, Inc.), the Federation for Children with Special Needs (FCSN) and The Arc of Massachusetts (ARC) would like to take this opportunity to address the current situation in Massachusetts due to school closures as the result of COVID-19. We write as parent advocates to provide input on behalf of the thousands of families and students we assist whose access to special education services has been impacted by the current necessary closure of schools. We appreciate that the Massachusetts Department of Elementary and Secondary Education (MADESE) is dealing with unprecedented stressful circumstances, which are evolving daily.

We have the unique opportunity to see and experience what is happening “in the trenches.” Over the past week, we have seen wonderful efforts by school districts to arrange for students to pick up personal belongings and families to access medicine stored by schools, as well as their herculean efforts to get food to students daily via pickup and bus delivery. We are encouraged by the school districts that are rolling out alternative learning opportunities online and making connections with families. We deeply appreciate the collaborative efforts and actions of MADESE and other state agencies to address the diverse needs of all students across the Commonwealth. We understand the mighty challenge of doing this in a very short time period.

Our chief concern is with the Commonwealth’s message and approach regarding the provision of educational services to students with special needs. As you make important decisions that

will have profound impact on how school districts respond to this pandemic, we want you to be aware of what we are seeing:

1. A general education student received home assignments, while their sibling, a student on an IEP, did not receive any materials.
2. Inconsistent follow up with families within the same district regarding IEP meetings that were cancelled due to school closures. In some cases, families are actively reaching out to their districts to determine next steps having heard nothing from them.
3. Lack of transportation provided for out of district placement students despite Governor Baker's exclusion of special education day and residential schools from mandated school closures.
4. Families who don't have access to technology in their homes or are sharing one device (at times, a cell phone) among multiple children and family members.
5. Lack of translated information for families who do not speak English.
6. Challenges families are facing with children who have a wide range of complex medical, mental health, behavioral and trauma needs.

We strongly believe that MADESE's reliance on U.S. DOE guidance allowing the denial of services to students with disabilities is short sighted; these students, by the very nature of their disabilities, are our most vulnerable. Sanctioning this practice is dangerously flawed and antithetical to the laws of the Commonwealth and IDEA.

The Commonwealth historically has led the country in recognizing and providing education and services for students with special needs. Massachusetts was the first state to pass a compulsory education law, and the first non-categorical law guaranteeing all children the right to a free appropriate public education, which became the model for the first federal special education legislation. It is our position that Massachusetts has another great opportunity to lead.

We fully support and endorse the letter from Massachusetts Special Education Attorneys dated March 20, 2020.<sup>1</sup> As stated in that letter:

"...the Massachusetts Constitution requires that the Commonwealth meet the educational needs of *all* children, including those with disabilities, and even during this extraordinary moment in our history."

It is imperative that Massachusetts continue to proactively protect and defend children with disabilities and insulate them against any Federal efforts to curtail entitlements. We must not abandon or amend the rights of our most vulnerable populations because entitlements are harder to uphold in times of crisis. We are obligated to develop and deliver reasonable and appropriate solutions to implement IDEA and the higher standard afforded to families in the Commonwealth. Our governments have (rightly) mandated the physical closure of our school buildings; it is reasonable to expect that the MADESE provide an appropriate and equitable

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<sup>1</sup> Letter to Senior Associate Commissioner Russell Johnston dated March 20, 2020. Signed by thirty-four attorneys from the private and public bar.

alternative educational delivery system. It is unduly burdensome and inequitable to leave that task and responsibility to each district.

We look to MADESE to take the lead in implementing the following, but not limited to, tasks:

- 1) Establish alternative instructional and service delivery methods — with a time component. One year's educational instruction, services and opportunity to progress must remain the standard, regardless of an arbitrary 185-day school calendar that ends in June.
- 2) Establish a protocol and calendar for the continuation of the IEP process including but not limited to:
  - a) Parent participation, including informed consent,<sup>2</sup>
  - b) Team Meetings,
  - c) Evaluations, and
  - d) Timely progress reports to establish current performance levels.
- 3) Develop an infrastructure that encourages and supports multi-district efforts (i.e., expand on WGBH partnership, private related service agencies and individual LEA initiatives).
- 4) Ensure/provide equitable accessibility to technology, personnel, curriculum and services.
- 5) Assist private special education schools and collaboratives as needed, as well as provide access to alternative public-school instruction and enrichment programming for their students - ensuring that OOD students have access to district resources if needed.
- 6) Clarify and/or update Alternative Structured Learning Day regulations.
- 7) Encourage districts to communicate with, and assist parents, to document:
  - a) Instruction and services requested, received and not delivered.
  - b) Student access and progress on IEP goals.
  - c) Home issues of inequity of access, including cultural, linguistic, financial, technological and other family constraints
- 8) Identify individual solutions for Transition students in their final months of eligibility with anticipated graduation dates in June. Extend anticipated graduation date, placement and eligibility for days missed, even if that date extends beyond age 22.
- 9) Address the unique needs of students with complex medical, mental health, behavioral and trauma needs, including those in congregate care.
- 10) Address the education of students who have been disciplined (suspended or facing expulsion) and how this will be managed during school closure and when school resumes.
- 11) Establish protocol and calendar for the provision of direct instruction and missed direct services for when schools reopen.

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<sup>2</sup> 603 CMR 28:02 (4) *Consent* shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication, understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent is voluntary and may be revoked at any time. The consent describes the activity and lists the records (if any) that will be released and to whom.

- 12) Compensate our teachers, administrators and related service providers, which may include new legislative protocols for emergency contingencies.

The March 21, 2020 Supplemental Fact Sheet from the U.S. DOE does not change the primary ask of this letter for MADESE to take the lead on developing and providing resources for equitable access and delivery of special education instruction and services. Do not defer to lower federal standards. Do not leave it to each district to invent, develop and implement virtual class and service rooms. Collaborate with special educators and their districts, public agencies, private agencies, utilities and families. Help build an infrastructure that LEAs can tap into and individualize.

We are concerned the school closures may extend beyond the current statewide three-week order due to the nature of this virus. This is a great challenge for our educational system, and our organizations stand ready to assist the leadership of MADESE and the Commonwealth in moving forward to address these issues to better serve all students.

On behalf of children and families of children with disabilities, thank you for your kind attention and consideration of our concerns. We look forward to ongoing collaboration with you as we move forward to address this unprecedented challenge.

Sincerely,



Beth Tremblay Hall  
President, SPaN, Inc.

Sincerely,



Pam Nourse  
Executive Director, FCSN

Sincerely,



Leo V. Sarkissian, Executive Director  
The Arc of Massachusetts

CC: Governor Charles Baker  
Commissioner Jeffrey Riley, MADESE  
Teri Williams Valentine, J.D., MADESE Director of Special Education Planning & Policy  
Carmen Pimentel, Co-chair Special Education Advisory Council  
Shai Fuxman, Co-chair Special Education Advisory Council  
Jay McManus, Executive Director, Children's Law Center of Massachusetts  
Marlene Sallo, Executive Director, Disability Law Center  
Kevin Murray, Executive Director, Massachusetts Advocates for Children  
Tim Sindelar, Esq., on behalf of Massachusetts Special Education Attorneys  
Denise Marshall, Executive Director, Council of Parent Attorneys and Advocates