



HAWAII DISABILITY RIGHTS CENTER

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April 23, 2020

Via Electronic Mail to: christina.kishimoto@k12.hi.us

By Regular Mail to:
Christina Kishimoto
Superintendent
Hawaii Department of Education
1390 Miller St.
Honolulu, HI 96813

Re: Guidance Needed for Education Services for Students with Disabilities during School Closure

Dear Superintendent Kishimoto:

The Hawaii Disability Rights Center is a nonprofit organization that protects the legal rights of persons with disabilities. We are also the authorized state designated agency to advocate for the protection of persons with disabilities and protection of their human rights.

We have seen last Friday's announcement that all Hawaii's schools run by the Department of Education have closed for the remainder of the 2019-20 School Year because of the urgent COVID-19 health crisis.

Given this decision, we are writing to urgently request that HIDOE, as the State Educational Agency (SEA), act quickly to ensure that your students with disabilities have access to education and essential services that they were receiving in school. Additionally, HIDOE should utilize the significant spending stream anticipated under the CARES Act to meet the learning needs of students with disabilities during this unprecedented time, including compensatory education during this summer.



Publicize and Clarify Services to Be Provided to Students with Disabilities and Provide a Contact Person

We have heard that some HIDOE personnel are informing parents that no educational services will be provided to students during the school closure and that only “enrichment” activities (mailed packets of homework and other study material) are to be provided. We ask HIDOE to be proactive in ensuring students with disabilities are receiving their education services as much as feasible given the lack of direct contact allowed during the closure; that their caretakers know that their children are entitled to receive services, and that the parents know who to contact if the services are not being provided.

We ask that HIDOE immediately issue written directions to schools to provide uniform and consistent guidance concerning the actions HIDOE schools can and will take to meet the needs of students with disabilities. To date, as far as we know this guidance has not been provided. The most useful guidance we are aware of are Heidi Armstrong’s memorandums to school administrators dated March 27, 2020.ⁱ Ms. Armstrong says therein that “Schools must, to the greatest extent possible, provide the special education and related services identified in the students [IEP].” Although this directive is helpful, it does not appear to have been made public. We are very concerned that the parents of students with disabilities are not aware of HIDOE’s commitments in those memorandums and do not know that they can seek these services, or how to do so.

Provide Guidance, Computers and Internet Access to Students

Many schools in other states have issued guidance concerning the development of continuous learning, remote learning or distance learning plans for students during school closures.ⁱⁱ Some schools are finding ways to offer remote learning services, provide laptops and Internet to students who otherwise have no access, provide teletherapy, and work directly with families through virtual meetings or teleconferences to ensure students’ needs are met.

HIDOE should join with other states in offering online learning, and online services whenever feasible and to publicize its intent to offer these services. We specifically urge HIDOE’s to consider the technological and Internet access needs of the students it serves.

HIDOE should require its schools to provide appropriate equipment, such as tablets or laptops, with Internet access to every family that needs one in order to access education services. HIDOE should consider pre-installing necessary software on the device before it is provided to a student to ensure access. Currently, it appears that HIDOE is simply directing parents and students to low cost internet service providers. This is insufficient and does not demonstrate an active attempt to assist the many families who cannot afford internet access.

Needs of Students with Disabilities Must Be Addressed Across HIDOE and Not Just on An Ad Hoc Basis, and Compensatory Education Should be Provided

Congress has not waived any of the requirements of the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act. The law requires that HIDOE must continue to provide special education and related services to students with disabilities, and develop a plan for providing compensatory education if they cannot fully implement Individualized Education Plans (IEPs) or 504 plans. To the best of our information, HIDOE is not providing or attempting to provide the services set forth in some students IEPs, and is not providing compensatory education this summer. The information we have gathered suggests that currently both the general and special education available to children is on an “ad hoc” basis based upon the desire and organization of the school and individual teachers. HIDOE should make clear that all schools must provide all services set forth in students IEPs as long as consistent with social distancing, and that compensatory education should be provided this summer as feasible.

For students with disabilities, school is often a source of nursing, physical and occupational therapy, social emotional learning, and mental health therapy. Without school, these students are unlikely to access alternative resources for these critical services. Parents and caregivers are not equipped to provide the specialized educational services these students require, potentially resulting in significant regression and decompensation. Students with disabilities are at a high risk of disproportionate harm without therapies and supports schools provide, which can also have a far greater and longer lasting impact. It is critical HIDOE take into the account the needs of its students with disabilities when developing written guidance for its schools and protect students with disabilities from this disproportionate harm.

Utilization of CARES Act funding

HIDOE presumably is now in the process of apply for the \$43,435,000 potentially available to it under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020.ⁱⁱⁱ The application was available April 19, 2020. Please publicize HIDOE's plans to use this significant funding stream.

As you know, students with disabilities perform at lower achievement levels than other students. The achievement gap widens when you consider that many HIDOE students with disabilities are also living in poverty or in foster care. It is not difficult to imagine that these children will fall further and further behind their peers as education services move from in-school to out-of-school models - and fall even further if the HIDOE provides no educational services.

The pre-existing achievement gap is likely to be exacerbated due to inequities that these children all too often experience, such as lack of access to computers and Internet. Despite these challenges, the funding available to schools through the CARES act is designed to support the needs of students, families, and schools to address these concerns. The options for funding are very broad, but we urge you to take steps to ensure this money is used to support the specific needs of students with disabilities and their families.

HIDOE Must Provide Services While Schools are Closed

In sum, HIDOE must deliver education and other services to students with disabilities while its schools are closed. Schools need clear directives that they must continue to work individually with students to plan ways to safely offer special education and related services during the school closure so they do not find themselves further behind when schools re-open. The schools should plan to provide compensatory education this summer as much as feasible. While we appreciate that many challenges lie ahead as we work to understand and respond to the current public health emergency, we also fully hope HIDOE will act quickly to utilize the CARES Act funds to support the needs of all students with disabilities.

We look forward to hearing from you on how HIDOE plans to meet the needs of its students with disabilities during this extraordinary time. Thank you for your prompt attention to this important matter.

Sincerely yours,

Louis Erteschik

Louis Erteschik, Esq. *by JSB*

Executive Director

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ⁱ “Programming and Timelines for Students with Special Needs During School Closures” and “COVID-19-Student Support/Related Services Personnel Who Perform Essential Duties”

ⁱⁱ Such as the New Mexico Department of Public Education (NMPED), required LEAs to submit these plans for approval by the April 8, 2020 and began implementation promptly.

ⁱⁱⁱ “Hawaii will receive an estimated \$43,435,000. The Hawaii Department of Education must apply for the funds. The U.S. Department of Education (ED) will issue applications by April 19, 2020. ED will approve or deny an application within 30 days of receiving the application. Funds unawarded by the Hawaii Department of Education must be returned within one year of receiving the funds.”

<https://www.schatz.senate.gov/coronavirus/education/k12>