



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | Mark Johnson, *Superintendent of Public Instruction*

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MEMORANDUM

TO: Local Superintendents
Directors, Exceptional Children Programs
EC Coordinators, Charter Schools

FROM: Sherry H. Thomas, Director *SH7*

DATE: March 25, 2020

SUBJECT: **Clarification on March 21, 2020 USED Supplemental Fact Sheet**

On March 20, 2020, the US Department of Education (USED) provided a webinar to state education departments. USED speakers emphasized that during these uncertain times, the safety of students and educators is the first and primary consideration when addressing the provision of special education and related services for students with disabilities (SWD). USED speakers acknowledged the difficult decisions that LEAs and families are faced with because of COVID-19. They explained that delivering instruction for students with disabilities to the greatest extent possible is encouraged – especially over the alternative of delivering no instruction. While equal access is still an important factor, LEAs must look at the best learning approach for all students, including SWD, during this most unprecedented time. There is no federal or state requirement that distance learning opportunities for SWD be identical to those of their non-disabled peers.

On March 21 USED released a supplemental fact sheet entitled “Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities.” This **new information** clarifies that federal law should not be used to prevent schools from offering distance learning opportunities to all students, including students with disabilities. This new resource from the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) explains that as a school district takes necessary steps to address the health, safety, and well-being of all its students and staff, educators can use distance learning opportunities to serve all students, including SWD. Specifically, the guidance states, “ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.”

This federal guidance also clarifies that LEAs should determine the most accessible way for students with disabilities to receive distance learning. USED acknowledges the delivery may be different from their non-disabled peers, based on the SWD’s unique learning needs. This guidance further stresses the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. For example, during school closures it may not be safe to provide hands-on therapies or tactile sign language educational services. Governor

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Cooper's Executive Order to close school buildings as instructional settings for students does not allow students to come to school facilities to receive special education and related services that is part of their instructional program. Instead, services for students with disabilities, as with all students, may be provided through virtual, online, telephonic or other remote options. This may include the provision of materials that are then followed up with some point of contact by the teacher.

The Exceptional Children Division will continue to monitor and respond to questions provided through both the DPI and the EC Division FAQs. We will continue to work together to provide LEAs with the most current guidance and are here to help you problem-solve.

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