

May 8, 2020

Dear State and District Education Leaders,

We are national, state and local advocates who fight for the education rights of marginalized children. These children faced education and life challenges that pre-dated COVID, but those challenges are highlighted and heightened by COVID. These marginalized children include low-income children, children of color, children with disabilities, English-language learner children, children in immigrant families, Native children, children in foster care, migrant children, homeless children, LGBTQ children, children in the juvenile justice system, and children whose identities span two or more of these categories.

With the numerous and significant COVID-related challenges for our nation's PreK-12 public education systems, we commend the extraordinary efforts being made by so many educators and leaders to do everything possible to ensure that all of our children can receive education and related services, especially marginalized children. While many educators and leaders have done everything they should (see the excellent recent [statement by NAACP-LDF and others](#) on what can and should be done), we have great concerns regarding some education leaders taking actions they should NOT take – actions that fly in the face of moral and legal obligations of education systems to their students.

Some violations of legal obligations that education leaders must avoid are:

- Violations of [state constitutional](#) (and, in many cases state statutory) requirements for providing elementary and secondary education services for a full school year, such as providing no or only very limited education services when the schools are physically closed, or ending the school year significantly early;
- Violations of federal constitutional and statutory requirements (e.g., Equal Protection Clause as interpreted by the U.S. Supreme Court's [Plyler v. Doe](#) decision related to immigrant students and [Title VI of the Civil Rights Act](#)), such as asking for drivers' licenses, passports, birth certificates, etc. before providing meals, technology/equipment, education-related materials, etc.;
- Violations of federal statutory requirements (e.g., [Equal Educational Opportunities Act](#) and [Title VI of the Civil Rights Act](#) as interpreted by the U.S. Supreme Court's [Lau v. Nichols](#) decision), such as providing educational and outreach material (online and physical) in only English to English Language Learner students and parents with limited English proficiency and failing to

provide essential language supports by teachers appropriately trained to deliver such instruction;

· Violations of the [Individuals with Disabilities Education Act](#) (IDEA), and [Section 504 of the Rehabilitation Act](#), such as:

- Excluding students with disabilities from education services broadly, or inadequate outreach, accommodations, and/or services for students with disabilities;
- Compelling parents to sign waiver forms before providing education services to students with disabilities;
- Making changes to a child’s Individualized Education Program (IEP) without first obtaining informed parent consent and/or without regard to the child’s unique needs and circumstances;
- Announcing made-up rules – unsupported in the law – regarding the statutory obligation to provide a Free, Appropriate Public Education (FAPE), such as:
  - ❖ Rewriting the standard in the U.S. Supreme Court’s [Andrew F.](#) decision, from requiring a school to offer an IEP “that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” to “in light of the current circumstances” (a change that would eviscerate the [Andrew F.](#) holding);
  - ❖ Differentiating between “mandatory” and “supplemental” educational and related services;
  - ❖ Claiming that “intentional” violations of FAPE will warrant compensatory education, but “unintentional” violations will not;
  - ❖ Asserting that school-wide interventions, such as [MTSS](#) and [PBIS](#), are sufficient to meet the unique needs of students with disabilities, including in the “compensatory education” context;

· Violations of [Title VI of the Civil Rights Act of 1964](#), such as failure to address [discrimination/bullying](#) – including, in the COVID environment, [the wave of online anti-Asian bullying/harassment](#) – as well as implementing truancy, attendance, or disciplinary actions in the COVID environment that have unjustified discriminatory impact by race, color or national origin;

- Violations of state and federal constitutional:
  - [due process](#) requirements for ensuring students have access to materials, services and supports needed to meet expectations for course credit, grade level advancement and graduation; and
  - rights to [equal protection](#) under the law for ensuring all students have equitable access to essential education resources;
- Violations of [Title IX of the Education Amendments of 1972](#), such as:
  - Failure to take steps to prevent Zoom-bombing and other bullying and harassment based on sex, sexual orientation, or gender identity, since digital education platforms can lead to heightened online bullying for LGBTQ students from their peers;
  - Failure to investigate complaints of sex-based harassment, including sexual harassment and cyber harassment, or to provide accommodations to students who report sex-based harassment that ensure their equal participation both in their education programs and in their Title IX investigations;
- Violations of [state statutory requirements to address LGBTQ bias-based harassment and violence](#) and [statutory curricular requirements](#) designed to further state statutory anti-discrimination commitments.
- Violations of the [McKinney-Vento Act](#), which provides critical protections for a growing population of homeless students – such as:
  - Charging homeless families for deposits or fees related to technology equipment required to participate in schooling;
  - Not proactively identifying students who become homeless after school closures;
  - Not disseminating public notice of the rights of homeless students;
  - Not ensuring that homeless students can participate fully in distance learning, regardless of where they are staying or how often they move;
  - Not revising online enrollment systems to remove barriers for homeless students, including proof of residency or guardianship; and
  - Not ensuring the LEA homeless liaison is able to carry out their legal duties.

When schools act in the ways outlined above, it not only harms children, it violates the law and puts the district and/or state in legal jeopardy. We want to ensure that education leaders understand the importance of avoiding such actions. It is in times of

national crisis and uncertainty that we must circle around our children, especially our most vulnerable and marginalized children, with the greatest determination to protect, support, educate, and care for them. Avoiding such damaging and shameful actions is not only possible – it is essential. We urge you, as state and district education leaders, to utilize the federal CARES Act resources as a key tool for meeting the needs of marginalized students. We also urge Congress to ensure that additional resources are provided for our schools to assist them in meeting their moral – and legal – obligations to all students.

Respectfully,

Activists With A Purpose

Autistic Self Advocacy Network

Children's Defense Fund-CA

Children's Law Center, Inc.

COFI

Communities for Just Schools Fund

Council of Parent Attorneys and Advocates

Critical Exposure

Dignity in Schools Campaign

Disability Law Colorado

Disability Rights Education & Defense Fund (DREDF)

Disability Rights Maryland

Disability Rights Nebraska

Disability Rights New Mexico

Disability Rights Oregon

DWH Inspires

Education Deans for Justice and Equity

Education Law Center - PA

Equal Justice Society

Equal Rights Advocates

Equality North Carolina

Family Equality

Girls for Gender Equity

Girls Inc.

GLSEN

GSA Network

Gwinnett Parent Coalition to Dismantle the School to Prison Pipeline  
(Gwinnett SToPP)

Intercultural Development Research Association (IDRA)

Justice Systems Reform at Southern Coalition for Social Justice

Juvenile Law Center  
Labor/Community Strategy Center  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Aid at Work  
Legal Aid Justice Center  
Muslim Caucus of America  
National Association of Councils on Developmental Disabilities  
National Center for Learning Disabilities  
National Center for Transgender Equality  
National Center for Youth Law  
National Disability Rights Network  
National Indian Education Association  
National Law Center on Homelessness & Poverty  
Native American Disability Law Center  
Nollie Jenkins Family Center, Inc.  
OCA-Asian Pacific American Advocates  
Partners for Dignity & Rights  
Pegasus Legal Services for Children  
Power U Center for Social Change  
Public Advocacy for Kids (PAK)  
Public Counsel  
Racial Justice NOW!  
Southern Echo Inc.  
Systems Change Consulting  
Texas Appleseed  
The Arc of the United States  
Voices for Vermont's Children  
Washington Lawyers' Committee for Civil Rights and Urban Affairs