



## **Summary: Protecting Marginalized Students During COVID-19**

The attached letter details advocates' concerns about the disparate impact and potential non-compensable harm to marginalized students during the Coronavirus Disease 2019 (COVID-19) school facility closures. We are particularly concerned for our students and families of color and students with disabilities who have reported significant barriers to accessing educational and related services during this pandemic. We believe that the Office of Superintendent of Public Instruction's (OSPI) has the authority to implement a series of steps that will most equitably ensure ongoing learning for all students.

### *A. Planning Use of Federal Stimulus Funds with Stakeholder Input*

OSPI can ensure the appropriate provision of needed educational and related services for all students, during and after the pandemic, by ensuring use of funds appropriated under the federal Coronavirus Aid, Relief and Economic Security (CARES) Act is equitable and effective. OSPI can do so by developing and implementing a transparent plan, with accountability, and broadly diverse stakeholder input, that specifically addresses reduction of educational inequities of marginalized students. Rather than using stimulus funds to meet existing educational costs, OSPI can guide districts to plan and report how their stimulus monies will supplement education funding to meet COVID-19 expenses for marginalized students.

### *B. Consider Impact of Waiving Federal or State Education Discrimination Laws or Rules*

OSPI can also ensure the equitable provision of educational and related services during, and following, the pandemic, by refraining from requesting or supporting waivers of rights for students with disabilities under Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. Formally changing or waiving core protections of these laws may cause harm, particularly to children from low-income and traditionally underserved communities and those with disabilities, and is unnecessary, as districts and schools have sufficient flexibility in providing educational services under these federal disability rights laws to ensure that no such waiver is necessary.

### *C. Maintain Individualized Education Plans (IEPs) under the IDEA During Remote Learning*

OSPI can also ensure the adequacy of education services during, and after the pandemic, by clarifying that temporary changes to delivery of IEP services during COVID-19 do not, in most cases, amend IEPs. This is crucial because, among many reasons, IEPs capture a student's current level of performance. This snapshot provides a baseline of services needed to meet Free Appropriate Public Education (FAPE)<sup>1</sup> requirements when schools are closed. This information will help gauge a student's regression during closure and provide a path to recoup skills once schools reopen.

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<sup>1</sup> See e.g.; 20 U.S.C. §1412(a)(1)(A) and 20 U.S.C. § 1401(9).

#### *D. Provision of Robust Technical Assistance to Families and Educators*

OSPI is uniquely qualified to build a technical assistance and technology platform to support districts in innovatively engaging families. OSPI can support districts to build strong technical platforms on a foundation of universal design for learning<sup>2</sup>, with strong assistive technology for students who need it.

#### *E. Identify Students at Risk of Regression or Destabilization and Offer Enhanced Supports*

Washington has an obligation to ensure that students with disabilities receive a FAPE, including specialized services as required by IEPs or 504 plans, during the pandemic.<sup>3</sup> OSPI's support for schools and districts in meeting these obligations is critical. Support may include advising schools on how to provide as much IEP and 504 services as possible during school closures (e.g., one-on-one support and curricular modifications, speech and language therapy, mental health services, sign language interpreters, physical and occupational therapy, and trauma supports, among others).

#### *F. Punitive Practices Make School Difficult for Marginalized Students*

Measures OSPI can take to ensure equitable access to education during, and after the pandemic, include issuing guidance to LEAs on the elimination of punitive practices that make school more difficult for marginalized students during school facility closures including ending all suspensions and expulsions for the year that were occurring before, or concurrent with, school facility closures.<sup>4</sup> OSPI can also help schools and districts integrate previously suspended or expelled students back into their school and classroom learning plans so that they can learn alongside their peers in the online and remote program.

#### *G. Facilitation of Meaningful, culturally relevant, and linguistically accessible communication with by Schools and Districts with students and their families.*

Clear, culturally relevant, and linguistically accessible communication between schools and/or districts, with students and families, while always essential, is of particular importance during the pandemic. Engaging families necessarily involves providing information in the language spoken at home. However, this is only the first step. Monitoring and enforcement is also needed to ensure these services are being provided. OSPI can also assist schools and districts in addressing these problems by encouraging them to create and implement communication plans including daily COVID-19 routine or schedules to give parents basic supports to enhance the communication between student-school-family in a way that re-engages all in meaningful strategies for school readiness for the student.



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<sup>2</sup> See About Universal Design for Learning, available at <http://www.cast.org/our-work/about-udl.html#.XqYlOmhKiUk> (last visited April 26, 2020) and The 7 Principles of Universal Design, available at <http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/> (last visited April 26, 2020).

<sup>3</sup> DOE Questions and Answers March 2020, page 2. Also OSPI, Supporting Inclusionary Practices during School Facility Closure. P. 5. April 2020, available at <https://www.k12.wa.us/sites/default/files/public/specialed/inclusion/Supporting-IP-School-Facility-Closure.pdf>. (last visited April 28, 2020).

<sup>4</sup> See RCW 28A.600.015(1)-(4); WAC 392-400-430(8).