

Testimony before the Assembly Health Committee
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Thank you, Chairman Conaway and members of the committee for permitting me to speak here today about public health concerns regarding the re-opening of public schools. I speak today on behalf of students with disabilities and I appreciate that the Committee included their voices in this conversation.

Disability Rights NJ is the federally funded, designated protection and advocacy system for people with disabilities in the State of New Jersey. Under our federal enabling statutes, we provide legal representation, advocacy, education and training, and information and referral to people with disabilities, their families, and the professionals who serve them. Disability Rights NJ advocates for and represents students with disabilities throughout the state. One of Disability Rights NJ's priorities is to ensure that students with disabilities receive a free and appropriate public education as required by the Individuals with Disabilities Education Act.

The Individuals with Disabilities Education Act requires exactly what the title implies: each child with a disability is entitled to an **individualized** plan developed to address that particular student's specific needs. Just as no two disabilities are exactly the same, there can be no one-size-fits-all solution for educating all students in the midst of a pandemic. Some children with disabilities need hands-on services that are best provided in person, such as physical or occupational therapy. Returning to the classroom may be important so that they receive social interaction and inclusion with typically developing peers. Other children have certain

Advocating and advancing the human, civil and legal rights of persons with disabilities

underlying conditions that make in-person education during a pandemic a serious threat to their lives.

When COVID forced schools to close in March, districts had very little time to develop effective plans for delivering special educational services to students with disabilities. Everyone tried to adapt – districts, teachers, parents and students all did the best that they could do under the circumstances. Significantly, realizing that remote services might not be effective for all students, the Department of Education directed that when schools reopen, districts should evaluate – for each individual child with a disability -- whether the child met educational goals with the at-home services provided or whether that child needs compensatory services to make up for what was lost. In other words, if a student did not receive an educational benefit from remote services, districts should make up those services when schools reopen. DRNJ supports the Department of Education’s recommendation for compensatory services. Preserving that right is critically important to students with disabilities.

Assembly Bill A4509 was recently introduced. It requires districts to begin the school year remotely – except that “special education and related services **shall be** delivered in-person to students with disabilities unless otherwise provided in a student’s individualized education program.” In effect, **all** students without disabilities must begin the school year at home while **all** students with disabilities must begin the school year in school, because at this time no student has an Individualized Education Plan that requires the student to receive services at home.

Although Disability Rights NJ recognizes the concerns that gave rise to this bill, DRNJ has three primary concerns:

First, the bill segregates students with disabilities from students without disabilities. Segregation flies in the face of the goals of the IDEA and many other civil rights statutes designed to ensure that people with disabilities experience full community inclusion. New Jersey has a long history of segregating students with disabilities, sending them to separate schools, or placing them in segregated classrooms in the schools. IDEA requires that students receiving special educational services must be placed in the least restrictive environment so that they have the most opportunity to interact and engage with their typically developing peers. Placing students with disabilities in the school while the typically developing students receive their education virtually unnecessarily segregates the students with disabilities.

Second, as stated before, many students with disabilities have underlying medical conditions, including compromised immune systems. Requiring these children to attend school during a pandemic is simply not safe. It is illogical and dangerous. It is also discriminatory. It unnecessarily puts a child's life at risk – just because the child has a disability – especially when a particular remote service might be perfectly adequate.

Third, the bill has the unintended effect of depriving students with disabilities of educational services. Specifically, if a student with a disability cannot attend school in person, that student not only loses the educational services now, but also loses the right to any future compensatory services. The significance of this unintended consequence cannot be overstated.

It would be ideal for each student's IEP team to meet and develop a plan to provide that particular student with the services and supports that child needs to receive an education while balancing that student's need for safety during the pandemic. That is a lot to ask a school district to do in a short period of time. If it cannot be done in the next month before school reopens, then DRNJ advocates that parents should be empowered to make the decision that is right for their child, and the parent should not be forced to choose whether to risk their child's

health or to deprive their child of an education – a burden not imposed on children without disabilities. That child’s right to compensatory education should not be jeopardized.

As an aside, when schools closed in March, several districts around the state inappropriately forced parents to sign a waiver of rights before the school would provide special educational services remotely. The Department of Education has recognized that it is a violation of IDEA to withhold educational services if a parent refuses to waive their child’s rights. We hope that districts will not repeat that misguided attempt to absolve themselves of responsibility for compensatory services when schools reopen.

Finally, and briefly, any plan to reopen schools must recognize the mental health effects of the pandemic and the chaos it has caused. Educational experts predict some of those effects to manifest as an increase in challenging behavior when school reopens. There is a danger that these behaviors will be viewed strictly as a disciplinary issue, and not as a mental health issue. If that happens, children who exhibit challenging behavior are at risk of being suspended, being placed in alternative educational settings and losing the ability to receive an education. Two things are crucial here: districts must be equipped to provide guidance and support to teachers and other district professionals to address these issues and to provide appropriate mental health related transition services to returning students.

Thank you again for allowing me to testify here today, and I would be happy to answer any questions you may have.

