CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #48 Pursuant to Executive Order 2020-04 as Extended by Executive Orders 2020-05, 2020-08 and 2020-09

Special Education Requirements to Support Remote Instruction

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, experts indicate that COVID-19 is most commonly spread from an infected person to others through respiratory droplets, including:

- Through the air by coughing and sneezing;
- Close personal contact, such as touching or shaking hands;
- Touching an object or surface with the virus on it, then touching your mouth, nose, or eyes before washing your hands.

WHEREAS, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; and

WHEREAS, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

WHEREAS, Emergency Order #1, extended by Emergency Orders #19 and #32, required K-12 public school districts to transition to temporary remote instruction and support.

WHEREAS, in a report to Congress dates April 27, 2020, US Education Secretary Betsy DeVos indicated that the US Department of Education would not request waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE);

WHEREAS, the New Hampshire Department of Education has issued guidance, and the Governor reaffirms, that special education supports and services, including in-person supports and services provided to limited cohorts of students in school buildings in some circumstances, can be conducted in the remote instruction and support environment consistent with the Governor's Emergency Orders; and

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WHEREAS, New Hampshire schools face unprecedented challenges in complying with state and federal special education requirements and in assessing the educational goals of special education students given the disruption to schools and the rapid transition to remote instruction; and

WHEREAS, Individualized Education Plan team meetings are critical to the provision of special education to students who are entitled to such services.

Now therefore, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08 and 2020-09, it is hereby ordered, effective immediately, that:

1. Each school district is required to hold Individualized Education Plan ("IEP") team meetings, as set forth in RSA 186-C:7 and Ed 1107, to consider Extended-School Year ("ESY") services for every child with an IEP, regardless of whether they have been provided ESY in the past, no later than June 30th, 2020. If, at the time of the IEP team meeting, the remote instruction emergency orders have been neither removed nor extended through the summer, the IEP program team shall consider options for both traditional in-person ESY programs and for remote ESY programs.

2. Each school district must ensure that they hold IEP team meetings for every student identified for special education services no later than 30 calendar days after the first day of the school district's 2020-2021 school year. At the meeting, the IEP team will consider what Compensatory Education Services, if any, are required to be provided to make up for services not provided during period of remote instruction and support, student regression, or student's failure to make expected progress as indicated in the student's IEP.

3. The requirements of Ed 1100, et seq., ("Standards for the Education of Children with Disabilities") including but not limited to the provisions relating to the timing of evaluations and IEP team meetings, except as modified in this Order, are not waived, but remain in full force and effect, except as follows: For any evaluation criteria described in Ed 1100, et seq., that cannot be satisfied because of the shift to remote instruction and support (e.g., classroom evaluations) the school district shall: a) include in its evaluation the reason the criterion was not considered and b) use best efforts to obtain the information the IEP team needs to determine eligibility and services/supports the child needs to receive a free appropriate public education (FAPE) via other available criteria.

Given under my hand and seal at the Executive Chambers in Concord, this 26th day of May, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

Chris T. Sununu

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