

# Congress of the United States

Washington, DC 20515

March 8, 2021

The Honorable James E. Clyburn  
Chairman  
Select Subcommittee on the Coronavirus Crisis  
House of Representatives  
Washington, D.C. 20515

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives  
Washington, D.C. 20515

The Honorable Robert C. Scott  
Chairman  
Committee on Education and Labor  
House of Representatives  
Washington, D.C. 20515

The Honorable Frank J. Pallone  
Chairman  
Committee on Energy and Commerce  
House of Representatives  
Washington, D.C. 20515

Dear Chairman Clyburn, Chairwoman Maloney, Chairman Scott, and Chairman Pallone:

We write to request a full, thorough, and bipartisan investigation into the effects school closures are having on our Nation's children with disabilities, and state and local compliance with federal special education requirements. Ensuring America's children are not left behind by state and local leaders afraid to stand up for what is right should be a bipartisan goal. We urge you to join us in following the science to get children back in the classroom.

The *Individuals with Disabilities Education Act* (IDEA) requires that each school provide students with disabilities a "free appropriate public education" (FAPE).<sup>1</sup> While distance learning is acceptable under IDEA, state-wide or district-wide policies that reduce or limit services specifically for students with disabilities without reasonable modifications or services are not.<sup>2</sup> Additionally, school districts must make every effort to provide distance learning consistent with the child with a disability's Individualized Education Program (IEP).<sup>3</sup> In some cases, prioritizing students with disabilities for in-person instruction is required to provide a FAPE or avoid discrimination based on disability.<sup>4</sup>

Unfortunately, students with disabilities are falling behind. States and localities are not meeting even the minimal requirements. We are hearing from parents across the U.S. whose children with disabilities are bearing the greatest burden as schools remain closed. Below are just

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<sup>1</sup> 20 U.S.C. § 1401(9), 20 U.S.C. § 1412(a)(1).

<sup>2</sup> Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, U.S. Dep't of Educ. (March 12, 2020), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment, Office for Civil Rights, U.S. Dep't of Educ. (Sept. 28, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-covid-20200928.pdf>.

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a few of the stories from concerned parents. These are not unique. This is happening around the country.

**1. A mother of three in Oregon shared this story about her daughter, Lizzie, who has Down Syndrome:**

Lizzie's frustrations maxed out quickly. By the third week, she threw the Chromebook away without us knowing and asked for "far away school with her friends," as she called in-person learning.

We sent video clips to the principal, the superintendent and school board members. They said their hands were tied. But we pushed and pried open the doors in mid-October. Lizzie was the first student in our district (and the entire metro area) to return to something called 'limited in-person' by the Oregon Department of Education.

But it was (and is) "limited." No friends. No teachers. No therapies.

Maybe this is a temporary experience and hardship for some but not for Lizzie. Today we completed the paperwork to hold Lizzie back in the third grade; she will be forced to make all new friends. We have hired a behavior specialist to rebuild the lost routines and tutors because the school refused to help. We are spending \$3,000 a month on these supports. This has permanently altered her life.

**2. Another mother in Oregon shared this story about her 4-year-old son with Autism:**

My 4-year-old has Autism, and he did NOT receive the services at all last spring. Just 3 emails. And his district wanted to do a virtual preschool this fall.

Because I am a teacher and know the rules, I was able to force the issue and they are paying [for] him to attend a private preschool in person.

**3. A mother from Maryland shared this story about her twin sons and daughter:**

We are an active-duty military family that had to do a cross country move during the pandemic. Our children have not been able to start school or make many friends since moving.

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I have twin boys with IEPs that have not had services for almost a year now.

I also have an older daughter who is on the Spectrum and significantly behind. She is going to private school part time which has wiped out 12 years of college savings for her.

Our kids need to go back to school.

My children cannot handle virtual and are homeschooling now, but it is a battle daily. They have been getting more and more angry and aggressive due to being stuck home with no social or academic improvement.

Open schools for the full five days.

There are more than seven million students with disabilities in the U.S.—about 14 percent of national public school enrollment.<sup>5</sup> Many special needs children benefit from consistent and attentive, in-person instruction. Many special needs children also receive afternoon in-school therapy sessions. The lack of access to these services raises serious concerns about the impact on their mental health. These children would also benefit from seeing their friends in school and from recreation. As noted by the Centers for Disease Control and Prevention’s (CDC) guidance, the absence of in-person education options may disadvantage students with disabilities.

We urge a bipartisan oversight request to CDC and the National Institutes of Health (NIH) to provide data related to experiences of special education schools that have reopened or special education students that are attending school in person. Further, the CDC and the NIH should provide studies on the impact of the COVID-19 pandemic on children with disabilities in the U.S. and other countries.

We are particularly disappointed the Biden administration is not more forcefully recommending schools open because the science is clear. A recent study, published by CDC scientists, found that “there has been *little evidence* that schools have contributed meaningfully to increased community transmission.”<sup>6</sup> It went further and stated, “schools [are] *not associated*

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<sup>5</sup> Department of Education FY 2021 Budget Proposal, Vol. I: Special Education, Page I-23, <https://www2.ed.gov/about/overview/budget/budget21/justifications/i-special.ed.pdf>.

<sup>6</sup> Margaret Honein, et. al., *Data and Policy to Guide Opening Schools Safely to Limit the Spread of SARS-CoV-2 Infection*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (Jan. 26, 2021), <https://jamanetwork.com/journals/jama/fullarticle/2775875?guestAccessKey=9961f22d-99e6-4861-8fa6->

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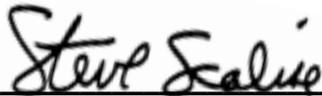
with accelerating community transmission.”<sup>7</sup> Finally, the study states, “the type of rapid spread that was frequently observed in congregate living facilities or high-density worksites has *not* been reported in education settings in schools.”<sup>8</sup>

This study strongly suggests that schools can reopen safely and not pose a serious threat to community spread. Dr. Anthony Fauci, President Biden’s Chief Medical Advisor, said, “I would back the CDC recommendations...it’s less likely for a child to get infected in the school setting than if they were just in the community.”<sup>9</sup> Dr. Rochelle Walensky, Director of the CDC, said, “[t]here is increasing data to suggest that schools can safely reopen and that safe reopening does not suggest that teachers need to be vaccinated.”<sup>10</sup> Unfortunately, both Dr. Fauci and Dr. Walensky have walked back these positions, likely due to political pressure,<sup>11</sup> and the CDC’s updated guidance may lead to more closures.

The science is clear—it is safe to reopen schools. Getting all children back to full time, in-person instruction, especially those with special needs and disabilities, must be a bipartisan priority. If states or localities are violating federal civil rights laws to the detriment of students, they must be investigated, and their actions corrected.

We call on you to put children over unions and science over politics. We must open an immediate, bipartisan investigation to ensure students’ needs are met and federal law is followed.

Sincerely,



Steve J. Scalise  
Ranking Member  
Select Subcommittee on the  
Coronavirus Crisis



James R. Comer  
Ranking Member  
Committee on Oversight and  
Reform

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cf0b3463ef92&utm\_source=For\_The\_Media&utm\_medium=referral&utm\_campaign=ftm\_links&utm\_content=tf1  
&utm\_term=01262 (*emphasis added*).

<sup>7</sup> *Id* (*emphasis added*).

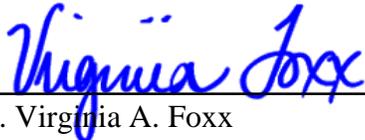
<sup>8</sup> *Id* (*emphasis added*).

<sup>9</sup> Marisa Schultz, *Fauci backs CDC research on reopening schools dismissed by Biden chief of staff*, FOX NEWS (Jan. 28, 2021), <https://www.foxnews.com/politics/fauci-backs-cdc-research-reopening-schools-dismissed-biden-chief-of-staff>.

<sup>10</sup> Press Briefing by White House COVID-19 Response Team and Public Health Officials, White House (Feb. 3, 2021) available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/02/03/press-briefing-whitehouse-covid-19-response-team-and-public-health-officials/>.

<sup>11</sup> Transcript: CDC Update on COVID-19 (Feb. 12, 2021), <https://www.cdc.gov/media/releases/2021/t0212-cdc-update-covid-19.html>.

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Dr. Virginia A. Foxx  
Ranking Member  
Committee on Education and  
Labor



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Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and  
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