

Agenda

1. Call To Order and Announcement of Board of Education Meeting COVID-19 Guidelines
Speaker(s): Board President
2. Pledge of Allegiance
Speaker(s): Board President
 - 2.1. Roll Call - Excuse Board Members not in attendance
Speaker(s): Board President
3. Public Comment Sign In Procedure
 - 3.1. Public Comment
4. Consent Agenda (Action)
Speaker(s): Board President
5. Board Development and Communication
 - 5.1. Board Members' Update
6. Superintendent's Report
Speaker(s): Superintendent
 - 6.1. RPS Return to Learn Protocol Update
Speaker(s): Dr. Mark Adler
 - 6.2. District Safety and Security Plan Update
Speaker(s): Mr. Jason Buckingham
 - 6.3. District Equity and Diversity DRAFT Plan
Speaker(s): Dr. Mark Adler and Mr. Jim Frederick
 - 6.4. New York Class Action Suit Update
Speaker(s): Mr. Jason Buckingham
 - 6.5. Government Relations Update
Speaker(s): Dr. Mark Adler
 - 6.6. NASB Updates and Information
Speaker(s): Dr. Jay Irwin
 - 6.7. Enrollment Update
Speaker(s): Dr. Mark Adler
7. Standards Based School Improvement
8. Policy Review
 - 8.1. Policy 4043 - Professional Boundaries
Speaker(s): Dr. Michael Rupprecht
 - 8.2. Policy 3001 Budget
Speaker(s): Mr. Jason Buckingham
 - 8.3. Policy 3004.1 Federal Funds Purchasing
Speaker(s): Mr. Jason Buckingham
9. Executive Session Disclosure
Speaker(s): Mrs. Heather Johnson

9.1. Executive Session (Action)

Speaker(s): Mrs. Heather Johnson

10. Pre-Adjournment Information and Activities

10.1. Announcements

10.2. Board of Education Supplemental Meeting Information

10.3. Future Board Calendar

11. Adjourn



STATE *of* NEBRASKA

OFFICE OF THE GOVERNOR

LINCOLN

EXECUTIVE ORDER No. 20-34

**CORONAVIRUS – PUBLIC MEETINGS REQUIREMENT LIMITED
WAIVER FOR ALTERNATIVE PARTICIPATION FOR ELECTED
OFFICIALS**

WHEREAS, a state of emergency was declared in Nebraska on March 13, 2020, to control the spread of the coronavirus known as COVID-19;

WHEREAS, recommendations to slow the spread of this disease include social distancing and avoiding large public gatherings;

WHEREAS, state and local governmental boards, commissions and other public bodies must comply with the Open Meetings Act to provide Nebraskans the opportunity to exercise their democratic privilege of participating in meetings of public bodies; and

WHEREAS, the requirement to isolate or quarantine is immediate and can prevent attendance at public meetings preventing a quorum of elected officials attending.

WHEREAS, continued participation by elected officials that have been ordered to isolate or quarantine by the local public health agency is beneficial to ensure continued government operations and continued representation of constituents.

NOW THEREFORE, I Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, hereby issue this limited waiver of certain requirements of the Nebraska Open Meetings Act.

Pursuant to this declaration, I hereby order the following:

1. This executive order applies to public bodies as defined in Neb. Rev. Stat. §84-1409(1) that are elected and to public meetings as defined in Neb. Rev. Stat. §84-1409(2).
2. Elected officials who have been ordered to quarantine or isolate by the local public health agency due to exposure to COVID-19, in conformance with guidance from the Nebraska Department of Health and Human Services, may fully participate, vote, and be counted as part of a quorum in meetings when attending by videoconference or by telephonic conferencing or by conferencing by other electronic communication without having the meeting site where that elected official is located open to the public as required in §84-

1411 so long as the public body has at least one physical location that provides access to members of the public and to members of the media.

3. For any videoconference location, telephonic conference location, or a conference location held by other electronic communication that is used solely for an elected official ordered to quarantine or isolate the following requirements are hereby waived:
 - a. Neb. Rev. Stat. §84-1411(2)(a) and Neb. Rev. Stat. §84-1411(3)(b) which requires reasonable advance publicized notice of the conference location.
 - b. Neb. Rev. Stat. §84-1411(3)(c) that requires a telephone conference meeting sites must be in a public building.
 - c. Neb. Rev. Stat. §84-1411(2)(c) and Neb. Rev. Stat. §84-1411(3)(e) which require the public body to provide at least one copy of all documents being considered to the public.
 - d. Neb. Rev. Stat. §84-1411(3)(g) which requires that a telephone conference call can last no more than five hours.
4. For purposes of §84-1413(2), votes by videoconference or by telephonic conferencing or by conferencing by other electronic communication shall be recorded in the minutes. Such minutes shall reflect the method of voting if the individual is not physically present.
5. Public meetings of an elected public body where one or more elected officials participate by videoconference, telephone conference, or conference by other electronic communication solely due to orders to isolate or quarantine shall not be subject to the one-half limitation contained in §84-1411(2)(e)(i) or §84-1411(3)(h).
6. The advanced publicized notice and the agenda requirements for meetings that are set forth in Neb. Rev. Stat. §84-1411 and the remaining provisions of Nebraska's Open Meetings Act shall continue to be complied with by all public bodies and are not waived by this executive order.
7. This waiver shall apply to all public governing body meetings that occur from today through December 31, 2020.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 30th day of October, 2020.

ATTEST:



Pete Ricketts, Governor

Robert B. Evnen, Secretary of State



The Ralston Schools Public Schools will be conducting Board of Education Meetings in person beginning July 1, 2020. To create a safe and healthy environment for everyone wishing to attend a Board of Education Meeting, the following guidelines will be expected of everyone involved. The Board of Education and Administration want to thank you in advance in partnering with us to respectfully and appropriately respond to the COVID-19 pandemic.

Board of Education Meeting COVID-19 Guidelines (Beginning July 1, 2020)

- Social distancing is expected of all Board members, visitors, and staff (stay at least 6 ft away from others at all times)
- All board members, visitors, and staff must review screening questions prior to all board of education meetings
- Anyone answering yes to any of the screening questions should stay home and consult a physician
- Anyone attending the board meeting will be asked to wear a mask at all times. Disposable masks will be provided when needed.
- Hand sanitizer will be readily available in the board room and should be generously used by all attendees
- Each Board Member will be assigned to their own table during meetings
- The Superintendent and other administrators will also be assigned individual tables during board meetings
- Although public comment will be allowed, public comments will also be accepted via electronic submission by visiting the District Webpage at www.ralstonschools.org
- The Board Room will be thoroughly cleaned prior to every meeting
- All regulatory DHHS policies and procedures will be followed

Screening Questions

Prior to entering any Ralston Public Schools facility, visitors and staff are asked to review the following screening questions. If anyone answers yes to any of these questions they will not be allowed into any Ralston Public Schools facility.

- In the last 14 days have you been exposed to anyone with COVID-19?
- Do you currently exhibit any symptoms: Cough, Shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, fatigue, new loss of taste or smell?
- Other less common symptoms include gastrointestinal symptoms like nausea, vomiting, or diarrhea?
- Have you traveled outside of the country in the last 14 days?

2009 Public Participation at Board Meetings

The board of education shall conduct its meetings in accordance with the Nebraska Open Meetings Act.

The board shall make reasonable efforts to accommodate the public's right to hear the discussions and testimony presented at its meetings. The board shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed in open session of the meeting.

The board is not required to allow citizens to speak at each meeting, but it will provide the opportunity for public participation at least four times per year. The board may make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, photographing, or recording its meetings.

The board shall not require members of the public to identify themselves as a condition for admission to the meeting, nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. However, the board may require members of the public desiring to address the board to identify themselves.

Adopted on: March 25, 2019

Revised on:

Reviewed on: March 25, 2019

Ralston Board of Education Public Comment Procedures

The Ralston Board of Education appreciates the public's right to provide public comment. It is the practice of the Ralston Board to listen to the public comment, without discussion between the public and the Board. Should you have a question or ask for follow-up from the Board, the Board President or Chair of the meeting will direct the Superintendent to address the requests and provide additional information to you as appropriate. We ask that you refrain from personal comments about individuals and the use of vulgar or inappropriate language in addressing the Board.

The following will help guide the Public Comment agenda item at Board Meetings and Public Hearings:

1. Persons speaking during Public Comment will be called forward individually by the Board President or Chair to the location identified for such purpose.
2. The board will generally allow a total of 30 minutes for the presentation of all public comments. Individuals may only speak one time per topic and must limit comments to around three (3) minutes. In the event more than 10 individuals wish to address the board, the 30 minutes will be divided equally between the number of speakers. At the discretion of the Board President or Chair, speakers may be allotted additional time.
3. Each individual speaking to the Board will be required to identify himself or herself prior to giving public comment or when related business is on the agenda. A "Record of Appearance" card is provided for this purpose.
4. Persons wishing to appear will be heard in the order in which the Board President or Chair of the meeting determines appropriate.
5. In cases where more than one person wishes to speak on the same topic, their presentations to the Board may, at the discretion of the Board President or Chair, be grouped together by topic.
6. Persons speaking to the Board during public comment may make printed materials available to the Board but may not use any other form of media.

Public Participation at Board Meetings Form

**Ralston Board of Education
PUBLIC COMMENTS**

The purpose of "Public Participation" is for the Board of Education to hear comments from the public. Since comments are not on the published agenda the Board will not discuss and/or answer questions during "Public Comments."

The board will generally allow a total of 30 minutes for the presentation of all public comments. Individuals may only speak one time per topic and must limit comments to around three (3) minutes. In the event more than 10 individuals wish to address the board, the 30 minutes will be divided equally between the number of speakers. At the discretion of the Board President or Chair, speakers may be allotted additional time.

PLEASE PRINT

Name _____ Date _____

Address _____

City _____ State _____ Zip Code _____

Subject of Public Comment: _____

Ralston Public Schools
Board of Education Regular Meeting

Monday, November 9, 2020

The Ralston Public Schools Board of Education met in an open and public session on November 9, 2020 at 6:00 pm. The meeting took place in the Ralston High School Media Center, 8969 Park Drive, Ralston, NE. Advanced notice of the meeting was provided by publication in the *Ralston Recorder* as well as the District's website, www.ralstonschools.org.

Call to Order

Board President, Mrs. Heather Johnson, called the meeting to order at 6:00 pm. She informed everyone in attendance of the Ralston Public Schools Board of Education COVID-19 meeting guidelines.

Roll Call

The Board voted to excuse board member Mrs. Linda Richards. In addition to the Board Members, those in attendance included Dr. Mark Adler, Mr. Jason Buckingham, Dr. Michael Rupprecht, Dr. Cecilia Wilken, Mrs. Melissa Stolley, Mr. Jim Frederick, and Mrs. Marci Carroll. Motion to excuse Mrs. Richards was made by Mrs. Kumru and seconded by Ms. Roarty.

Mrs. Kumru:	Yes
Mrs. Johnson:	Yes
Mrs. R. Richards:	Yes
Dr. Irwin:	Yes
Ms. Roarty:	Yes

Consent Agenda

Consent agenda items include minutes from the October 12th meeting; October Financial Reports, October bills in the amount of \$782,760.66 for the General Fund, and \$152,923.75 for the Building Fund. Prior to the meeting Ms. Roarty and Dr. Irwin reviewed the bills. Local Substitute Certificate for Brianna Mather. Motion to approve the Consent Agenda was made by Ms. Roarty and seconded by Mrs. Kumru.

Mrs. R. Richards:	Yes
Dr. Irwin:	Yes
Ms. Roarty:	Yes
Mrs. Kumru:	Yes
Mrs. Johnson:	Yes

BOARD DEVELOPMENT AND COMMUNICATION

Board Comments

Mrs. Kumru enjoyed taking part in a recent NASB meeting on the topic of reinventing schools. Ms. Roarty enjoyed virtually attending part of the UNO's CodeCrush three-day technology

workshop and congratulated the RMS students who were accepted and participated. Ms. Roarty also expressed her gratitude for those who assist with keeping the RHS Pantry open for families in need. Mrs. Robin Richards thanked everyone who voted for her and her fellow board members in the recent election. Mrs. Johnson thanked RMS teacher Mrs. Christine Redemske, for assisting students who participated in CodeCrush and shared her appreciation for all who voted to elect her and her and another current board member to a new term on the school board.

Superintendent's Report

Dr. Adler provided an exciting announcement from the Nebraska Department of Education. NDE issued our District a Rule 47 Career Academy approval on the following career academy programs at RHS for the 2020-21 school year: Accounting; Entrepreneurship; Marketing; Marketing Entrepreneurship; Culinary Arts; Data Science; Information Technology; Health Sciences; Therapeutic Certificated Services; Education and Training; Design; Construction; Manufacturing; and Transportation, Distribution, and Logistics Technician.

While our programs of study, Career Academies, and blueprint model have been in existence for some time, this is the first year that the Nebraska Department of Education has issued us Rule 47 Career Academy approval. While many districts first seek to approve for 1-2 programs, we were issued accreditation for 14 programs!

According to NDE, it was evident our academy program addressed local, regional, and statewide workforce needs. The program also prepares learners for careers in high-skill, high-wage, and in-demand fields.

Specifically, our application was reviewed for the Required Career Academy Program Components: Curriculum; Career Exploration Course, Program of Study, Career Development, Career & Technical Student Organizations, Work-Based Learning, Recruitment of Students, and Instructors; Participation; and an Advisory Board.

We will continue to work to sustain each of these programs and to grow accredited CTE opportunities in our District. This approval is a credit to the strength of our teachers, staff, and programs as a collective.

RPS Return to Learn Protocol Update

Dr. Adler and District Administrators shared the latest information concerning the RPS Return to Learn Protocol.

- Dr. Adler stated there has been an uptick in COVID-19 cases in the community. However, the plan at this time (Monday, November 9th) is to remain in our Yellow Instructional Level. There have been just a few instances of students and/or staff who have tested positive as a result of school spread. The vast majority of the positive cases we have been seeing have been contracted from outside sources.

- In the event COVID-19 has a more increased effect on our District staff or student population, RPS may consider targeted closings of individual buildings, grade levels, or classrooms.
- The District's Health Team has been working seven days a week to keep on top of COVID-19 in our District. They have been making phone calls to families and working with District staff on contact tracing.
- Our District custodial staff, along with other staff members are working hard at keeping our buildings clean and disinfected, continuing to adhere to and practice all cleaning and disinfecting protocols.
- For the start of the third term, the District plans to remain in the Yellow Instructional Level.
- Dr. Adler discussed the statistics shared on the District's COVID-19 dashboard. The dashboard is posted on the District website and is updated every Monday morning. The purpose of the dashboard is another way to keep lines of communication open and provide the most up-to-date information with our community.
- The District will continue to offer the Extended Campus Learning Program for all students throughout the second term of the 2020-2021 school year.

District Special Education Update

Mrs. Melissa Stolley provided an update on the District's Special Services Department. She first presented information on the District's partnerships with three mental health organizations. Ralston Schools has partnered with Arbor Family Counseling since June of 2014, with hundreds of families taking advantage of this service over the past six years. Arbor Family provides two free counseling sessions per incidence to District families.

Children's Respite Care Center provides one full-time licensed mental health counselor who works with students at RMS and Mockingbird Elementary. The newest collaboration is with Project Harmony, which began in March of 2020. Project Harmony currently serves students at both Blumfield and Wildewood and includes free sessions for families as well.

Mrs. Stolley concluded her report on the mission of the Special Education Department and how it supports our students and families. The Special Education team consists of three elementary counselors, one full-time middle school counselor, three full-time high school counselors, and one social worker. The team members provide instruction and resources to prepare students to be productive citizens in society.

Mrs. Stolley provided information on Level I, II, and III programs and Alternative Programming for students. She stated Level II programs include students with autism, hearing impairment, behavioral issues, social skills, and young adult transition.

Level III students attend other facilities such as Alpha School, Boys Town, Brook Valley, Daybreak, and Heartland School. Ralston Public Schools alternative program is the RISE (Ralston Individualized Student Education) and helps students who are struggling or do not do well in a large school setting.

Superintendent Evaluation Contract Renewal

Dr. Adler officially notified the Board of his required Superintendent Evaluation, which is to be completed by June 2021. Dr. Adler also stated he is currently in the second year of a three-year contract. In wanting to be transparent, he informed the Board he has been thinking about retiring at the end of the 2022-23 academic year. A discussion will take place at the November 23, 2020 Board of Education meeting on Superintendent contract negotiations.

Government Relations Update

Board members are welcome to attend an upcoming Legislative Issues Conference offered by the Nebraska Association of School Boards.

NASB Update

Dr. Irwin reported the State Conference would now be held entirely virtually.

Enrollment Update

Dr. Cecilia Wilken reported the District has been adding approximately two students per week, consisting of both residential and option enrollment students.

Advanced Bond Repayment Resolution

Mr. Scott Keene, Managing Director at Piper Sandler, outlined the details of the proposed Advanced Bond Repayment Resolution. This proposal allows early repayment of general obligation bonds, the bonds used to renovate Ralston High School. Approval of the resolution would provide savings to the District of over \$100,000 per year for total savings of over \$500,000. Early repayment of the bonds also increases the District's credit rating. Dr. Irwin made a motion to pass the bond resolution as presented. Mrs. Kumru seconded the motion.

Ms. Roarty:	Yes
Mrs. Kumru:	Yes
Mrs. R. Richards:	Yes
Mrs. Johnson:	Yes
Dr. Irwin:	Yes

MOU – Ralston Public Schools and Baright Library

Mr. Jason Buckingham outlined the details of an MOU between the District and the Ralston Baright Public Library at the November 9th meeting. Mrs. Robin Richards motioned to approve the MOU with the City of Ralston as presented. Ms. Mary Roarty seconded the motion.

Dr. Irwin:	Yes
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Mrs. R. Richards: Yes
Ms. Roarty: Yes
Mrs. Johnson: Yes
Mrs. Kumru: Yes

Voluntary Separation Program

The Voluntary Separation Program rewards certified staff who have been with the District 20 years or more. Staff members can receive up to \$35,000, which is invested in a 403B plan for them to use after leaving the District. The program provides cost savings to the District. Voluntary Separation allows a long-term teacher to retire. The District can then hire a new teacher at a level normally lower on the salary scale. Motion to approve the Voluntary Separation Agreement Resolution as presented was made by Mrs. Kumru and seconded by Mrs. R. Richards.

Mrs. R. Richards: Yes
Ms. Roarty: Yes
Mrs. Kumru: Yes
Dr. Irwin: Yes
Mrs. Johnson: Yes

POLICY REVIEW

No policies were reviewed.

Adjournment

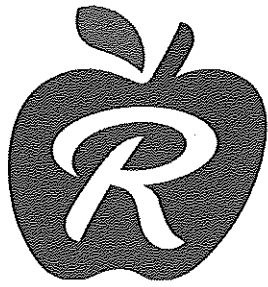
The Board voted to adjourn at 8:30 pm with a motion by Dr. Irwin and seconded by Mrs. Kumru.

Ms. Roarty: Yes
Dr. Irwin: Yes
Mrs. R. Richards: Yes
Mrs. Kumru: Yes
Mrs. Johnson: Yes

The next regular meeting will take place on Monday, November 23, 2020, at 6:00 pm.

Mrs. Heather Johnson, President

Mrs. Liz Kumru, Secretary



Ralston
PUBLIC SCHOOLS

Dr. Mark Adler
Superintendent

Mr. Jason Buckingham
Executive Director of Fiscal Affairs

Dr. Michael Rupprecht
Executive Director of Human Resources

November 23rd, 2020

Teacher Certification Office
P.O. Box 94987
Lincoln, NE 68509-4987

To Whom It May Concern:

The use of the local substitute teaching certificate has been approved by the board of education of the Ralston Public Schools. I request that you issue a local substitute teaching certificate to:

Kelly Beaman

(SSN withheld)

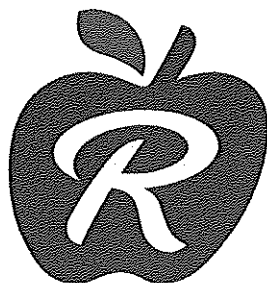
Sincerely,

Dr. Mark Adler, Superintendent
Ralston Public Schools

Achievement. Character. Technology.

www.RalstonSchools.org Facebook.com/RalstonPublicSchools

8545 Park Drive Ralston, NE 68127 Office: (402) 331-4700 Fax: (402) 331-4873



Ralston

PUBLIC SCHOOLS

Dr. Mark Adler

Superintendent

Mr. Jason Buckingham

Executive Director of Fiscal Affairs

Dr. Michael Rupprecht

Executive Director of Human Resources

November 23rd, 2020

Teacher Certification Office
P.O. Box 94987
Lincoln, NE 68509-4987

To Whom It May Concern:

The use of the local substitute teaching certificate has been approved by the board of education of the Ralston Public Schools. I request that you issue a local substitute teaching certificate to:

Laura Carlow

(SSN withheld)

Sincerely,

Dr. Mark Adler, Superintendent
Ralston Public Schools

Achievement. Character. Technology.

www.RalstonSchools.org Facebook.com/RalstonPublicSchools

8545 Park Drive Ralston, NE 68127 Office: (402) 331-4700 Fax: (402) 331-4873

Cynthia Kiper

5161 South 132 Street

Omaha NE 68137

402-597-9790

Cindy_Kiper@ralstonschools.org

November 9, 2020

Dr. Rupperct

Human Resource Director

Ralston Public Schools

8545 Park Drive

Ralston NE 68127

Dear Dr. Rupperct,

I would like to inform you that I am resigning from my position as Wildewood Kindergarten teacher effective November 27, 2020.

Thank you for the support and the opportunities that the district has provided me during the last fourteen years. I have truly enjoyed my tenure with Ralston Public Schools, and am more than grateful for the encouragement the district has given me in pursuing my professional and personal growth objectives.

If I can be of any assistance during this transition in order to facilitate the seamless passing of my responsibilities to my successor, please let me know. I would be glad to help however

I can.

Sincerely,



Cynthia Kiper

Students with 1 Failing Grade or More																																																					
2019-2020 Term 2 End Data									10/23/2020									10/30/2020									11/6/2020									11/13/2020									11/20/2020								
	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students																										
7th	16	251	6%	82	253	21%	127	252	50%	92	253	36%	82	252	33%	65	252	26%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
8th	98	222	44%	141	244	58%	138	244	57%	117	244	48%	117	244	48%	121	244	50%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
9th	59	242	24%	89	230	39%	130	231	56%	131	231	57%	119	232	51%	107	231	46%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
10th	48	249	19%	93	240	39%	131	241	54%	127	243	52%	116	242	48%	114	242	47%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
11th	49	257	19%	73	246	30%	113	245	46%	119	245	49%	111	247	45%	106	247	43%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
12th	49	271	18%	58	275	21%	95	274	35%	84	274	31%	94	274	34%	82	274	30%			#DIV/0!			#DIV/0!			#DIV/0!			#DIV/0!																							
Total Failing Grades																																																					
	Term 2 End 2019-2020	10/23/2020	10/30/2020	11/6/2020	11/13/2020	11/20/2020	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count																								
7th	31	68	208	168	173	124																																															
8th	240	229	288	269	260	276																																															
RMS	271	297	496	437	433	400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0																								
9th	98	110	229	249	247	219																																															
10th	85	133	246	245	234	227																																															
11th	80	99	205	216	216	202																																															
12th	82	73	156	139	154	136																																															
RHS	345	415	836	849	851	784	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0																								

Students with 1 Failing Grade or More																																																																																
2018-2019 Term 2 End Data									10/25/2019									11/1/2019									11/8/2019									11/15/2019									11/22/2019									11/29/2019									12/6/2019									12/13/2019								
	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students																																																		
7th	3	222	1%	111	252	44%	69	252	27%	43	252	17%	38	252	15%	29	252	12%	23	251	9%	31	251	12%	21	251	8%			#DIV/0!																																																		
8th	30	229	13%	74	222	33%	127	223	57%	124	225	55%	111	223	50%	101	223	45%	83	222	37%	107	222	48%	91	222	41%			#DIV/0!																																																		
9th	25	243	10%	86	240	36%	118	240	49%	103	241	43%	104	241	43%	111	242	46%	101	242	42%	93	242	38%	84	242	35%			#DIV/0!																																																		
10th	47	255	18%	92	252	37%	108	252	43%	102	252	40%	96	251	38%	101	251	40%	86	250	34%	72	250	29%	71	250	28%			#DIV/0!																																																		
11th	36	266	14%	105	259	41%	116	258	45%	112	258	43%	117	260	45%	114	259	44%	103	259	40%	96	258	37%	92	258	36%			#DIV/0!																																																		
12th	76	326	23%	63	278	23%	109	276	39%	87	275	32%	96	272	35%	83	273	30%	74	271	27%	74	272	27%	78	271	29%			#DIV/0!																																																		
Total Failing Grades																																																																																
	Term 2 End 2018-2019	10/25/2019	11/1/2019	11/8/2019	11/15/2019	11/22/2019	11/29/2019	12/6/2019	12/13/2019	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count																																																				
7th	9	128	102	61	51	47	30	44	30																																																																							
8th	48	107	270	303	301	257	150	231	165																																																																							
RMS	57	235	372	364	352	304	180	275	195	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0																																																			
9th	43	116	183	180	168	183	168	158	153																																																																							
10th	73	130	177	178	172	172	152	142	138																																																																							
11th	51	138	189	195	189	189	174	163	150																																																																							
12th	107	88	165	143	150	135	122	124	132																																																																							
RHS	274	473	714	676	689	679	616	587	573	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0																																																			

Students with 1 Failing Grade or More																																				
2019-2020 Term 1 End Data			2020-2021 Term 1 End Data			8/14/2020			8/21/2020			8/28/2020			9/4/2020			9/11/2020			9/18/2020			9/25/2020			10/2/2020			10/9/2020			10/16/2020			
Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students				
7h	27	252	11%	42	250	17%	1	244	0%	68	247	28%	57	247	23%	76	247	31%	91	249	37%	73	248	29%	62	248	25%	63	249	25%	59	250	24%	59	250	24%
8h	84	222	38%	76	243	31%	2	241	1%	52	241	22%	77	242	32%	102	242	42%	130	241	54%	142	242	59%	127	243	52%	117	243	48%	110	243	45%	85	243	35%
9h	46	240	19%	51	228	22%	37	228	16%	101	227	44%	128	228	56%	133	228	58%	127	228	56%	117	228	51%	117	228	51%	120	228	53%	107	228	47%	81	228	36%
10h	41	251	16%	50	238	21%	64	237	27%	113	237	48%	125	237	53%	123	237	52%	115	236	49%	111	237	47%	113	238	47%	114	238	48%	102	238	43%	85	238	36%
11h	39	257	15%	42	245	17%	51	245	21%	100	246	41%	112	245	46%	110	246	45%	111	246	45%	107	246	43%	110	245	45%	105	245	43%	100	245	41%	73	245	30%
12h	45	279	16%	37	275	13%	49	280	18%	99	280	35%	90	281	32%	93	281	33%	88	277	32%	91	278	33%	90	276	33%	88	276	32%	89	276	32%	61	276	22%
Total Failing Grades																																				
Term 1 End 2019-2020	Term 1 End 2020-2021	8/14/2020	8/21/2020	8/28/2020	9/4/2020	9/11/2020	9/18/2020	9/25/2020	10/2/2020	10/9/2020	10/16/2020																									
Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count	Count																									
7h	41	83	1	93	135	168	139	140	138	134	138																									
8h	178	156	2	75	128	205	302	370	318	287	195																									
RMS	219	239	3	168	226	340	470	509	458	425	333																									
9h	82	96	43	172	276	281	269	268	268	251	240																									
10h	27	244	11%	66	238	28%	71	237	30%	64	238																									
11h	67	77	61	160	226	223	225	222	233	221	210																									
12h	88	63	55	152	162	175	172	177	173	176	164																									
RHS	311	327	243	669	923	938	921	912	930	899	847																									
Students with 1 Failing Grade or More																																				
2018-2019 Term 1 End Data			8/16/2019			8/23/2019			8/30/2019			9/6/2019			9/13/2019			9/20/2019			9/27/2019			10/4/2019			10/11/2019									
Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students	Count	Total Student Count	Percent of Students							
7h	20	226	9%	7	248	3%	77	248	31%	96	249	39%	86	249	35%	58	248	23%	67	249	27%	63	249	25%	47	252	19%	53	251	21%						
8h	53	228	23%	15	220	7%	48	220	22%	129	220	59%	140	220	64%	113	221	51%	85	222	38%	105	223	47%	95	222	43%	97	222	44%						
9h	27	244	11%	66	238	28%	71	237	30%	64	238	27%	82	238	34%	83	238	35%	78	240	33%	77	240	32%	80	242	33%	65	241	35%						
10h	37	255	15%	80	255	31%	91	254	36%	78	253	31%	84	252	33%	80	252	32%	82	252	33%	76	252	30%	80	251	32%									
11h	50	264	19%	56	258	22%	84	257	33%	76	259	29%	85	258	33%	85	258	34%	77	258	30%	84	259	32%	75	258	29%									
12h	47	324	15%	53	287	18%	85	288	30%	89	287	31%	89	285	31%	89	285	31%	97	285	34%	93	285	33%	92	285	32%	87	285	31%						
Total Failing Grades																																				
Term 1 End 2018-2019	8/16/2019	8/23/2019	8/30/2019	9/6/2019	9/13/2019	9/20/2019	9/27/2019	10/4/2019	10/11/2019																											
Count	Count	Count	Count	Count	Count	Count	Count	Count	Count																											
7h	33	7	92	151	137	94	98	89	65	84																										
8h	102	15	61	212	280	255	187	219	206	214																										
RMS	135	22	153	363	397	349	285	308	271	298																										
9h	40	85	101	110	129	129	134	142	158	164																										
10h	61	100	139	118	137	135	138	147	151	160																										
11h	87	73	128	119	137	163	159	146	163	152																										
12h	65	88	149	162	167	161	177	170	183	172																										
RHS	253	346	517	509	569	588	608	655	648																											

RPS Remote Learning Plan

Updated 11/20/2020



Circumstances for Use: If the District determines that a classroom, grade level, school, or the entire District needs to shift temporarily to remote learning, the following plan will be utilized.

Overview: Instruction will be completely virtual. K-12 students will engage in a blend of face to face (synchronous) and on your own/independent (asynchronous) digital learning. PK students will engage in asynchronous activities. K-6 will be provided a device to use at home in this plan. 7-12 will use the Chromebooks provided at the start of the year.

Specific Roles & Responsibilities for Staff in the RPS Remote Learning Plan

All Teachers	<ul style="list-style-type: none">• Collaborate with members of your team or department to design remote learning experiences for your students• Collaborate with interventionists to schedule intervention that follows district procedures in regards to core instruction as needed• Provide synchronous and asynchronous learning for students remotely in accordance with the RPS Remote Learning Plan• Attend IEP/MDT meetings as needed• Teachers with students who are deaf/hard of hearing in their classes will include the sign language interpreter and/or signing paraprofessional assigned to the class/course on all Google Classroom, Seesaw materials and video conferencing links.
Special Educators	<ul style="list-style-type: none">• Communicate regularly with the subject or classroom teachers who teach the students on your caseload• Provide synchronous and asynchronous activities that support IEP goals• Continue to provide small group instruction via digital platforms• Communicate regularly with students on your caseload and/or their parent/guardian• Provide supplementary learning activities for students on your caseload• Speech and Language Pathologists will provide teletherapy services to students• OT/PT develop a menu of non-screen time activities being mindful of the resources families may or may not have in their home• Use conference call or video conferencing for IEP meetings• Teachers in ACP, YAP, homebound, and other specialized areas of instruction will take their guidance from the Special Education Team and follow students' IEPs.• Collaborate with classroom teachers to schedule intervention that follows district procedures in regards to core instruction• Track communications on required documentation on the Intervention Service Log by individual student
Home Visitors	<ul style="list-style-type: none">• Communicate regularly with parent/guardians

0–3 team	<ul style="list-style-type: none"> ● Provide services per the IFSP or IEP through video conferencing. ● Provide learning activities from the curriculum being mindful of non-screen time activities and the resources families may or may not have in their home ● Staff will take their guidance from the Early Childhood Team
DHH Educators	<p>Elementary Center-based:</p> <ul style="list-style-type: none"> ● Communicate regularly with the subject or classroom teachers who teach the students on your caseload ● Provide synchronous and asynchronous lessons/activities that support IEP goals ● Continue to provide small group instruction as directed by students' IEP ● Communicate regularly (weekly) with students on your caseload and/or their parents/guardians via an approved communication mode through RPS. ● Use conference calls or video conferencing for IEP meetings ● Collaborate with classroom teachers to schedule intervention that follows district procedures in regards to core instruction ● Communication regarding the weekly overview should be sent on Monday morning at the start of the school day. No additions should be made to asynchronous activities after this time. No exceptions. Teachers will have the ability to adjust or remove daily work based on student readiness if needed. ● DHH Speech-Language Pathologist will provide services as directed by the students' IEP and engage directly with the student or groups of students through video conferencing (telehealth) ● Track communications on required documentation on the Intervention Service Log by individual student <p>Secondary Center-based:</p> <ul style="list-style-type: none"> ● Provide synchronous and asynchronous lessons/activities that support IEP goals for students in the areas identified by their IEPs ● Communicate regularly with the subject or classroom teachers who teach the students on your caseload ● Communicate regularly (weekly) with students on your caseload and/or their parents/guardians via an approved communication mode through RPS. ● Use conference call or video conferencing for IEP meetings ● Collaborate with classroom teachers to support classroom lessons and accommodations that follow district procedures in regards to core instruction ● Communication regarding the weekly overview should be sent on Monday morning at the start of the school day. No additions should be made to asynchronous activities after this time. No exceptions. Teachers will have the ability to adjust or remove daily work based on student readiness if needed. ● The high school schedule will be followed daily. ● DHH Speech-Language Pathologist will provide services as directed by the students' IEP and engage directly with the student or groups of students through video conferencing (telehealth) ● Track communications and service time on required documentation on the Intervention Service Log by individual student <p>Itinerant:</p>

	<ul style="list-style-type: none"> • Communicate regularly with the case managers for resident district changes due to COVID-19 • Collaborate with classroom teachers or case managers to schedule intervention that follows the resident district process in regards to the delivery method of learning for the resident district • Continue to provide 1:1 or small group instruction as directed by the student's IEP following the resident district's plan utilizing in-person or video conferencing to support IEP goals • Communicate regularly (weekly) with students on your caseload and/or their parents/guardians via an approved communication mode through the resident district when the resident district is in a non-traditional learning environment • Use conference calls or video conferencing for IEP meetings • Track communications and service time on required documentation on the Intervention Service Log by individual student
HAL	<ul style="list-style-type: none"> • Provide supplementary learning activities for students served through HAL • Collaborate with classroom teacher to support synchronous and asynchronous activities and lessons • Provide synchronous and asynchronous learning for students remotely in accordance with the RPS Remote Learning Plan
Reading Specialists	<ul style="list-style-type: none"> • Communicate regularly with classroom teachers who teach the students on your caseload • Communicate regularly with students on your caseload and/or their parent/guardians • Collaborate with classroom teachers to schedule intervention that follows district procedures in regards to core instruction • Provide synchronous direct instruction for students based on intervention plan • Engage in Morning Meetings daily at all assigned buildings • Track communications on required documentation on the Intervention Service Log by group
EL	<ul style="list-style-type: none"> • Communicate regularly with the subject or classroom teachers who teach the students on your caseload. • Collaborate with classroom teachers to schedule intervention that follows district procedures in regards to core instruction • Communicate regularly with students on your caseload and/or their parent/guardians • Provide synchronous direct instruction for students based on intervention plan (K-6) or assigned class period (7-12). • Elementary: Engage in Morning Meetings daily at all assigned buildings • Track communications on required documentation on the Intervention Service Log by group
K-6 Specials	<ul style="list-style-type: none"> • Collaborate with department members to develop asynchronous lessons for students based on cycle day schedule • Utilize non-screen time activities for asynchronous learning when possible • Communicate with parent/guardians and students, as necessary • Engage in Morning Meetings daily at all assigned buildings • Report card grading for specials would not be required if in this plan.

Counselors/ Social Workers	<ul style="list-style-type: none"> • Serve as a liaison for communication with students/families in crisis • Proactively provide resources for students and families to support them while they are away from school • Be a resource for building administration and teaching staff in buildings of assignment • Schedule virtual small group appointments with students as needed/that were occurring while in session • Provide classroom teachers guidance lessons and activities to use virtually. • Elementary: Engage in Morning Meetings daily at all assigned buildings
School Psychologists	<ul style="list-style-type: none"> • Proactively provide resources for students and families to support them while they are away from school • Be a resource for building administration and teaching staff in buildings of assignment • Schedule virtual small group appointments with students as needed/that were occurring while in session • Follow district guidance on student testing. • Elementary: Engage in Morning Meetings daily at all assigned buildings • Middle/High School: Support SEL needs of students and staff.
Media Specialists	<ul style="list-style-type: none"> • Collaborate with colleagues to find resources for high-quality distance learning experiences and research • Regularly check in with subject and classroom teachers to identify ways to support their design of distance learning experiences • Be available for teachers and students as needed for support and respond to identified technology issues • Collaborate with Teaching & Learning Department and building administration to ensure access to text • Assist in the distribution and collection of textbooks and supplemental text

Pre-Kindergarten

- Daily activities will be provided for families to engage with their child regarding: Storytime, Literacy & Language, Music, Fine & Gross Motor, and Cognitive Development.
- The primary tool for communication between teachers and families will be Seesaw and email.
- Synchronous learning is not an expectation for preschool.
- Teachers are expected to connect with families 2x per week regarding activities and recommendations for learning that the family can engage in. This includes at least 1 personal communication via Seesaw, email, phone, or video conferencing.
- Learning activities should include the use of basic household items.
- 1-2 hours of learning activities per day focused on GOLD teaching strategies.

At this time the district is exploring programming options to maintain or adjust in-person programming for our early childhood learners. The impact of in-person early childhood programming is crucial for early development and early learners. We will continue to navigate all options to ensure the safety of our staff and students.

Elementary

- Students will attend on an every other day schedule (Red/Blue Hybrid). Students will follow the same schedule as they would in school.
- Synchronous teaching & learning will be focused on reading, math, writing, and integration of social studies and science standards **if on a modified daily schedule (K-6) or a full day schedule (K-2). If shifting to remote learning during a full schedule, 3-6 will include social studies and/or science. WIN (What I Need) or Re-teaching time will be held.**
- **Asynchronous work will be provided to support reading, writing, and math, and specials.**
- Support for social-emotional development will be provided through a daily morning meeting.
- Students should have both online and non-screen learning activities.
- The primary tools for communication between teachers and families will be Google Classroom, SeeSaw, and email.
- Parents should be emailed the week of instruction in addition to the student when appropriate
- Communication regarding assignments should be sent on Monday morning at the start of the school day via parent-teacher agreed upon platform.
- **The teacher will communicate out the specific schedule to families prior to the start of remote learning.**
- Utilize the curriculum adjustments indicated for a normal return to address unfinished learning from Spring 2020.

K-2 Time Allotments between 8:15am - 2:15pm

	K-2
Overview of the Day & Morning Meeting	20 minutes
English Language Arts - whole group, small group, conferring and independent reading/on your own learning	150 minutes
Math - whole group, small group, conferring and on your own learning	60 minutes
Lunch & Recess	60 minutes
Breaks (may be taken in smaller increments)	30 minutes
Check in, & Closing	10 minutes
WIN Time or Re-teaching	30 minutes
Specials (Art, Music, PE, & Media) at end of day	30-45 minutes
Social Studies and/or Science	Integrated only
Intervention will be based on the individual needs of the student and provided in accordance with special programming regulations.	

Middle School

- Students will attend daily. If the school is on a Red/Blue Hybrid, the students will shift to attending daily when in the Remote Learning Plan.
- Synchronous and asynchronous teaching & learning will be provided during the assigned block.
- Homework will be provided outside of the identified schedule on a limited basis.
- SEL support will be provided through the health curriculum and support from the counseling department through online activities, videos, etc.
- Students should have both online and off-line learning activities.
- Parents should be emailed the week of instruction in addition to the student when appropriate.
- Communication regarding the weekly overview should be sent on Monday morning at the start of the school day. No additions should be made to asynchronous activities after this time. No exceptions.
- **The middle school schedule will follow the current time schedule (modified or full day).**
- Students are encouraged to utilize office hours for questions they have regarding their learning.
- Utilize the curriculum adjustments indicated for a normal return to address unfinished learning from Spring 2020.

Middle School Schedule

Modified Day Schedule	Full Day Schedule
<p>Advisement - 8 to 8:15 am</p> <p>Period 1 - 8:25 to 9 am</p> <p>Period 2 - 9:05 to 9:40 am</p> <p>Period 3 - 9:45 to 10:20 am</p> <p>Period 4 - 10:25 to 11 am</p> <p>Lunch - 11 to 11:50 am</p> <p>Period 5/ 6 - 11:55 am to 12:30 pm</p> <p>Period 7 - 12:35 to 1:10 pm</p> <p>Period 8 - 1:15 to 1:50 pm</p> <p>Period 9 - 1:55 to 2:30 pm</p> <p>Teacher Virtual Office Hour - 2:30 to 3:30 pm</p>	<p>In development.</p>

High School

- Students will attend daily. If the school is on a Red/Blue Hybrid, the students will shift to attending daily when in the Remote Learning Plan.
- Synchronous and asynchronous teaching & learning will be provided during the assigned block.
- Homework will be provided outside of the identified schedule on a limited basis.
- Online lessons and activities supported through *Choose Love* online programming and platforms through the counseling department.
- Students will have both online and off-line learning activities.
- Communication regarding the [weekly overview](#) should be sent on Monday morning at the start of the school day. No additions should be made to asynchronous activities after this time. No exceptions. Teachers will have the ability to adjust or remove daily work based on student readiness if needed.
- **The high school schedule will follow the current schedule (modified or full day unless otherwise specified.)**
- Students are encouraged to utilize office hours for questions they have regarding their learning.
- Utilize the curriculum adjustments indicated for a normal return to address unfinished learning from Spring 2020.

High School Synchronous Schedule

Modified Schedule	Full Day Schedule
<p>Block 1 Instructional Time: 8:20 AM-9:10 AM Block 1 Ram Time: 9:10 AM-9:35 AM</p> <p>Block 2 Instructional Time: 9:40 AM-10:30 AM Block 2 Ram Time: 10:30 AM- 10:55 AM</p> <p>Lunch: 11:00 AM-12:00 PM</p> <p>Block 3 Instructional Time: 12:00 PM-12:50 PM Block 3 Ram Time: 12:50 PM-1:15 PM</p> <p>Block 5 Instructional Time: 1:20 PM-2:10 PM Block 5 Ram Time: 2:10 PM-2:30 PM</p>	<p>In development.</p>

Special Education Services

Elementary:

- Communicate regularly with the subject or classroom teachers who teach the students on your caseload
- Provide synchronous and asynchronous lessons/activities that support IEP goals

- Continue to provide small group instruction as directed by students IEP
- Communicate regularly (weekly) with students on your caseload and/or their parent/guardians via an approved communication mode through RPS.
- Use conference call or video conferencing for IEP meetings
- Teachers in ACP, homebound, and other specialized areas of instruction will take their guidance from the Special Education Team as directed by a students IEP
- Collaborate with classroom teachers to schedule intervention that follows district procedures in regards to core instruction
- Communication regarding intervention and assignments should be sent on Monday morning at the start of the school day via the parent-teacher agreed upon platform.
- Speech and Language Pathologists will provide services as directed by students IEP and engage directly with student or groups of students through video conferencing (teletherapy services will be provided to students as needed)
- OT/PT will provide services as directed by students IEP, in addition will develop a menu of non-screen time activities being mindful of the resources families may or may not have in their home
- Track communications on required documentation on the [Intervention Service Log](#) by individual student

Secondary:

- Provide synchronous and asynchronous lessons for students in study skills, reading strategies, etc.
- Communicate regularly with the subject or classroom teachers who teach the students on your caseload
- Provide synchronous and asynchronous lessons/activities that support IEP goals
- Communicate regularly (weekly) with students on your caseload and/or their guardians/parent/guardians via an approved communication mode through RPS.
- Use conference call or video conferencing for IEP meetings
- Teachers in ACP, YAP, homebound, and other specialized areas of instruction will take their guidance from the Special Education Team as directed by a students IEP
- Collaborate with classroom teachers to support classroom lessons and accommodations that follow district procedures in regards to core instruction
- Communication regarding the [weekly overview](#) should be sent on Monday morning at the start of the school day. No additions should be made to asynchronous activities after this time. No exceptions. Teachers will have the ability to adjust or remove daily work based on student readiness if needed.
- The high school schedule below will be followed daily.
- Speech and Language Pathologists will provide services as directed by students IEP and engage directly with student or groups of students through video conferencing (teletherapy services will be provided to students as needed)
- OT/PT will provide services as directed by students IEP, in addition will develop a menu of non-screen time activities being mindful of the resources families may or may not have in their home
- Track communications on required documentation on the [Intervention Service Log](#) by individual student

Level 2 Programming; Young Adult Programming

- At this time the district is exploring programming options to maintain or adjust in-person programming for our level two special education students. The impact of in-person programming is crucial for students who are significantly below same-aged peers. We will continue to navigate all options to ensure the safety of our staff and students.

English Learning Services

Elementary

- Elementary teachers will utilize the [EL Learning Plan](#) to determine the appropriate level of EL services for students.
- Elementary will provide synchronous and asynchronous teaching & learning that focuses on language acquisition as indicated through the EL Learning Plan.
- Students should have both online and non-screen learning activities.
- The primary tools for communication between teachers and families will be Google Classroom, SeeSaw, and email
- Parents should be emailed the week of instruction in addition to the student when appropriate
- Communication regarding intervention and assignments should be sent on Monday morning at the start of the school day via the parent-teacher agreed upon platform.
- EL teachers will communicate their intervention schedule with families
- Track communications on required documentation on the [Intervention Service Log](#) by group

Secondary

- MS & HS EL teachers and staff will follow the plan indicated above for their designated grade level.

Reading Specialists

- Elementary will provide synchronous teaching & learning that focuses on specific reading skills. Asynchronous work may be provided on a limited basis if it is appropriate for the student in relation to their present reading level.
- Students should have both online and non-screen learning activities.
- The primary tools for communication between teachers and families will be Google Classroom, SeeSaw, and email
- Parents should be emailed the week of instruction in addition to the student when appropriate
- Communication regarding intervention and assignments should be sent on Monday morning at the start of the school day via the parent-teacher agreed upon platform.
- Reading Specialists will communicate their intervention schedule with families
- Track communications on required documentation on the [Intervention Service Log](#) by group

High Ability Learner Services

- Provide supplementary learning activities for students served through HAL

- Collaborate with classroom teacher to support synchronous and asynchronous activities and lessons
- Provide synchronous and asynchronous learning for students remotely in accordance with the RPS Remote Learning Plan
- Students should have both online and non-screen learning activities.
- The primary tools for communication between teachers and families will be Google Classroom, SeeSaw, and email
- Parents/guardians should be emailed the week of instruction in addition to the student when appropriate
- Communication regarding enrichment and assignments should be sent on Monday morning at the start of the school day via the parent-teacher agreed upon platform.

Elementary Specials (Media, Art, Physical Education, & Music)

- Asynchronous teaching & learning will be provided on a daily basis following a 4 day cycle listed on the [Elementary Schedule for Remote Learning](#)
- Students should have both online and non-screen learning activities
- The primary tools for communication between teachers and families will be Google Classroom, SeeSaw, and email
- Elementary specials will utilize a consistent mode to communicate learning - Seesaw, Google Classroom, Website, or classroom website. This will be determined pending additional learning about the various options.



Return to Learn Protocol

In response to the COVID-19 pandemic, and with the safety and health of our students, staff, and community as our focus, Ralston Public Schools has outlined the following return to learn protocol for the 2020/2021 school year.

Protocol Overview

Outlined in the chart below are three options or levels for the return to learning for Ralston Public Schools for the 2020-2021 school year. Flexibility between options will be important and will be based upon the current health of the school and our local community. In all cases, the health and safety of our students, staff, and community will remain a priority. Health and safety measures have been established and will be followed within each level. School calendars and daily schedules have been developed for each level of operation. Movement between levels will be driven by the current health of the school and our local community.

Calendar, Time Management, and Learning Environment Considerations

	Calendar, Time Management, and Learning Environment Considerations	Notes
<p>Low Level - Virus</p> <ul style="list-style-type: none"> • <i>Flexibility between levels will be key.</i> • <i>DCHD Green and Yellow</i> 	<ul style="list-style-type: none"> • Start school on time with current daily schedule • Limit large group gatherings when possible • Social distance when possible • Consider the adoption of a flexible calendar to include identified 	<ul style="list-style-type: none"> • Wash hands/focus on Hygiene • Daily symptom check • Random temperature checks • Social distance as much as possible • Remote teaching and learning options for vulnerable populations • Follow established

	<p>make up days in the event of required school closure</p> <ul style="list-style-type: none"> Consider accelerated school calendar options advancing between quarters more quickly 	<p>health and safety measures outlined in the RPS Return to Learn Protocol</p> <ul style="list-style-type: none"> Blended learning options available
<p>Medium Level - Virus</p> <ul style="list-style-type: none"> <i>Flexibility between levels will be key.</i> <i>DCHD Orange</i> 	<ul style="list-style-type: none"> Follow all elements in green as well as items listed below Start school on time based upon adopted calendar De-densify population Adjust daily instructional time at each campus Limit large group gatherings when possible 	<ul style="list-style-type: none"> Follow established health and safety measures outlined in the RPS Return to Learn Protocol A/B Instructional Days or 50% student population Five day week with adjusted instructional time at each campus Blended learning with technology support Remote teaching and learning options for vulnerable populations Consider restricting PE/Choir/Band classes. Limit physical contact in any educational environment
<p>High Level - Virus</p> <ul style="list-style-type: none"> <i>Flexibility between levels will be key.</i> <i>DCHD Red</i> 	<ul style="list-style-type: none"> Discontinue daily attendance and move to remote learning Established daily learning and teacher support schedules 	<ul style="list-style-type: none"> Teaching and learning provided through technology resources Scheduled daily video conference instruction



Health and Safety Measures

	Elementary PK-6	Secondary 7-12
Low Level - Virus	<ul style="list-style-type: none"> • Wash hands/focus on Hygiene • Daily symptom check • Limit large groups when possible • Random temperature checks • Limit visitors to school • Social distance when possible 	<ul style="list-style-type: none"> • Wash hands/focus on Hygiene • Daily symptom check • Limit large groups when possible • Random temperature checks • Limit visitors to school • Social distance when possible
Medium Level - Virus	<ul style="list-style-type: none"> • De-densify population 50% • A/B Days • Lunch/Breakfast in the classroom or limit group size in lunchroom • Wash hands/focus on Hygiene • Daily symptom check • Limit large groups • Random temperature checks • No visitors to school • Social distancing • Stagger arrival and dismissal • Stagger hallway movement • Blended learning with technology support • No out of state travel • Limit in state travel and field trips 	<ul style="list-style-type: none"> • De-densify population 50% • A/B Days • Social distance breakfast and lunch possibly by limiting group size in lunchroom • Wash hands/focus on Hygiene • Daily symptom check • Limit large groups • Random temperature checks • No visitors to school • Social distancing as much as possible • Stagger arrival and dismissal • Stagger hallway movement • Blended learning with technology support • No out of state travel • Limit in state travel • Limit assemblies/pep rallies



		<ul style="list-style-type: none"> Reconsider athletics/activities at all levels
High Level - Virus	<ul style="list-style-type: none"> Fully remote learning Scheduled daily video conference instruction All students assigned a technology device 	<ul style="list-style-type: none"> Fully remote learning Scheduled daily video conference instruction All students assigned a technology device Use of Edgenuity for extended credit earning opportunities

Student and Employee Daily Pre-Screening Guide

- Parents screen children at home for temperature, runny nose, cough, and other symptoms.
- Staff screen at home for temperature, runny nose, cough, and other symptoms.
- Students and staff do not report to school if symptomatic, call medical professional

Masks

- Students, staff, and visitors will be required to wear masks while on any campus while school is in session.
- Periodic mask breaks will be conducted when social distancing can be achieved.
- Masks will be expected to be worn in a manner that covers the mouth and nose area.
- Exceptions to wearing a mask could be documented through medical, behavioral, or developmental issues or concerns causing impairment.
- All students and staff will be provided at least two masks per person.
- Students and staff may use personal masks as long as they cover the mouth and nose area.
- Disposal masks will be available at every campus location as needed.



Social Distancing at School

- Social Distancing is defined as creating physical space between individuals.
- Try to stay at least 6 feet (about 2 arms' length) from other people when possible
- Try to limit large group gathering or crowded spaces when possible

Protocol for Cleaning at All Levels--CDC Guidelines will be followed

- Custodians and/or staff are to clean all high touch surfaces including door knobs, restrooms, light switches, classroom sink handles, keyboards, and countertops on a regular basis.
- Toys and shared materials are to be sanitized, cleaning materials are to be kept out of the reach of children
- Children and Staff are to wash their hands before handling any food and after helping students eat
- Students are to wash or sanitize their hands every two hours.

Positive Cases and Response from Douglas County Health Department

- Information will be obtained about a positive case of COVID-19 or a positive assessment of symptoms outlined by the DCHD
- School Nurse will make immediate contact with the DCHD
- School nurse and DCHD will evaluate the situation and begin contact tracing
- School nurse and DCHD officials will establish a plan to address the situation
- School nurse and administration will execute the plan and communicate to all appropriate parties
- Please see the guidance document from DCHD entitled: RPS Exposure Determination



Special Topics and Considerations (DRAFT from Supt. Council)

Topic	High Level - Virus	Medium Level - Virus	Low Level - Virus
Temperature and Symptom Check	<ul style="list-style-type: none"> Students not in attendance. 	<ul style="list-style-type: none"> Students, parents, and staff are asked to do a daily temperature and symptom check before coming to school Please see the pre-screening guide Do not report if symptomatic or with a temperature above 100° F) 	<ul style="list-style-type: none"> Students, parents, and staff are asked to do a daily temperature and symptom check before coming to school Please see the pre-screening guide Do not report if symptomatic or with a temperature above 100° F)
Travel	<ul style="list-style-type: none"> No in state or out of state travel. 	<ul style="list-style-type: none"> No field trips or assemblies Limited in state travel for students and staff with prior administrative approval No out of state student or staff travel without prior administrative approval. 	<ul style="list-style-type: none"> Limited field trips and assemblies permitted with prior administrative approval In state travel permitted for students and staff with prior administrative approval No out of state student or staff travel without prior administrative approval.
Hand Washing Hand Sanitizing	<ul style="list-style-type: none"> Students not in attendance. 	<ul style="list-style-type: none"> Students and staff sanitize their hands upon 	<ul style="list-style-type: none"> Students and staff sanitize their hands upon

		<p>entering the building (i.e.- first classroom a student enters), entering and exiting individual classrooms, entering & exiting cafeteria, and exiting building. (70% alcohol)</p> <ul style="list-style-type: none"> • Staff are responsible for ensuring the sanitizer is utilized for all students upon entering and exiting their classroom 	<p>entering the building (i.e.- first classroom a student enters), entering and exiting individual classrooms, entering & exiting cafeteria, and exiting building. (70% alcohol)</p>
<p>Passing Periods</p>	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • Longer or flexible passing periods throughout the day to ensure enough time for touch-surface cleaning protocols to occur. • Staggered passing periods may be necessary 	<ul style="list-style-type: none"> • Longer or flexible passing periods throughout the day to ensure enough time for touch-surface cleaning protocols to occur.
<p>Busing</p>	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • Students are assigned seats and wear masks, staff also required to wear masks. • Surfaces are wiped down 	<ul style="list-style-type: none"> • Students are assigned seats and wear masks, staff also required to wear masks.. • Surfaces are wiped down between routes



		<ul style="list-style-type: none"> between routes • Staggered routes to limit the number of students on a bus at one time (limited one per seat or 50% capacity) • Buses will be “fogged” at the conclusion of the day’s route 	<ul style="list-style-type: none"> • **If needed, staggered routes to limit number of students on a bus at one time (% based on Health Department recommendations) • Buses will be “fogged” at the conclusion of the day’s route
Cafeteria/Lunch	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • Sanitize hands upon entering cafeteria line • Placement of distancing marks on the floor for cafeteria lines. • Social distancing when possible. • Served or box meals only--no offering bars. • Meals may be served in classrooms when necessary • Staggered or extended lunch periods as necessary 	<ul style="list-style-type: none"> • Sanitize hands upon entering cafeteria line • Placement of distancing marks on the floor for cafeteria lines. • Social distancing when possible. • Served or box meals only--no offering bars. • Meals may be served in classrooms when necessary
Entering and Exiting School	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • Social distancing practices will be in place for entering / exiting the building as much as possible • Straight will progress to first 	<ul style="list-style-type: none"> • Social distancing practices will be in place for entering / exiting the building as much as possible • Straight will progress to first



		<ul style="list-style-type: none"> period class Sanitize hands as students enter their first classroom. Staggered arrival and dismissal may be required. 	<ul style="list-style-type: none"> period class Sanitize hands as students enter their first classroom.
Pick-up / Drop Off of Students	<ul style="list-style-type: none"> No students in attendance. 	<ul style="list-style-type: none"> No congregating at entrance or exit area while waiting for students, Social distancing practices should be followed Parents are encouraged to stay in their vehicle during pick-up and drop off 	<ul style="list-style-type: none"> No congregating at entrance or exit area while waiting for students, Social distancing practices should be followed Parents are encouraged to stay in their vehicle during pick-up and drop off
Signage and Communication	<ul style="list-style-type: none"> Students not in attendance. District Communication again on Thursdays every two weeks or when necessary. Page on District website dedicated to virus info. Important information posted on District social media pages. 	<ul style="list-style-type: none"> Signage/protocol: Displayed at entrance, restrooms, cafeteria, media center, computer lab, locker rooms, & hallways. Reminders of healthy habits (handwashing, stay home if exhibiting symptoms, etc.) in school newsletters & social media. 	<ul style="list-style-type: none"> Signage/protocol: Displayed at entrance, restrooms, cafeteria, media center, computer lab, locker rooms, & hallways. Reminders of healthy habits (handwashing, stay home if exhibiting symptoms, etc.) in school newsletters & social media. Handwashing signs in

		<ul style="list-style-type: none"> • Handwashing signs in bathrooms • District level communication on policy/procedures communicated early to families. Review or highlights of certain topics either on social media or directed through Blackboard 	<p>bathrooms</p> <ul style="list-style-type: none"> • District level communication on policy/procedures communicated early to families. Review or highlights of certain topics either on social media or directed through Blackboard
Co/Extra Curricular Activities	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • NSAA Guidelines will be followed for all extracurricular activities • RPS health and safety measures and expectations will also apply. • May limit attendance at activities to only immediate family. • Consider intramurals at the middle school level 	<ul style="list-style-type: none"> • NSAA Guidelines will be followed for all extracurricular activities • RPS health and safety measures and expectations will also apply.
Drinking Fountains	<ul style="list-style-type: none"> • Students not in attendance. 	<ul style="list-style-type: none"> • No mouth drinking from fountains • Water bottles are provided by students and families or made available by 	<ul style="list-style-type: none"> • No mouth drinking from fountains • Water bottles are provided by students and families or made available by school building



		school building	
Visitors	<ul style="list-style-type: none"> No outside visitors on campus. 	<ul style="list-style-type: none"> No outside visitors on campus without 	<ul style="list-style-type: none"> Standard district protocols apply Pre screening of

	<ul style="list-style-type: none"> Limited building and campus use. 	<p>an advanced appointment.</p> <ul style="list-style-type: none"> Pre screening of visitors is required. 	<p>visitors is required.</p>
Teacher Breakroom	<ul style="list-style-type: none"> Students and staff not in attendance. 	<ul style="list-style-type: none"> Social distancing when possible Table cleaned before and after use Like groups encouraged 	<ul style="list-style-type: none"> Social distancing when possible Table cleaned before and after use Like groups encouraged
Common Space Use (i.e. hallways, commons, restrooms, cafeteria, playground)	<ul style="list-style-type: none"> Students not in attendance. 	<ul style="list-style-type: none"> Utilization of common space needs to be scheduled to ensure social distancing and proper cleaning Assigned restroom utilization (i.e. by class, locations, grade, etc.) Increase level of cleaning in all common spaces 	<ul style="list-style-type: none"> Utilization of common space needs to be scheduled to ensure social distancing and proper cleaning Assigned restroom utilization (i.e. by class, locations, grade, etc.) Increase level of cleaning in all common spaces
Touch Surface Cleaning	<ul style="list-style-type: none"> Students not in attendance. Deep building cleaning by school staff. 	<ul style="list-style-type: none"> Desks cleaned between each period, (i.e. elementary transition or 45 minute blocks - MS and HS blocks of time between 45 to 90 minutes), 	<ul style="list-style-type: none"> Desks cleaned between each period, (i.e. elementary transition or 45 minute blocks - MS and HS blocks of time between 45 to 90 minutes), restrooms cleaned



		restrooms cleaned during the day and in the evening. (EPA standard)	during the day and in the evening. (EPA standard)
Facility usage by outside organizations	<ul style="list-style-type: none"> No outside facility use. 	<ul style="list-style-type: none"> Daycares that operate in school facilities will follow state DHM guidance (Ex. Tiny and Lil Rams) Limited to no facility use by outside organizations. 	<ul style="list-style-type: none"> Daycares that operate in school facilities will follow state DHM guidance (Ex. Tiny and Lil Rams) Staggered start times for practices, only two coaches and participants will be allowed in the facility



Athletic COVID-19 Contest Protocols

Ralston Public Schools will follow guidance from the Nebraska Schools Activity Association, Nebraska Department of Education, and local public health officials for all extracurricular activities.

Pre-Screening

- Parents will screen their children at home for fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.
- If symptomatic, students will not report to school/practice/contest and parents will consult a medical professional.
- Temperature checks will be performed by coach/sponsor before students leave for away games. Students with a temperature above 100.4° will not be allowed to participate and should not be allowed to travel to the away site.

Spectators

- Each RPS student athlete in football, volleyball, and softball will be given a game voucher allowing for six (6) family members or close friends to purchase tickets. All six people need to be present when the tickets are purchased. The vouchers are numbered and the number will be crossed off when tickets associated with the particular voucher are purchased. Families will use the game voucher for each home game in the sport in which their student participates. RPS does not host cross country or golf matches. For tennis, RPS is asking only six family members or close friends to attend, and the fans need to social distance around the courts.
- For visiting fans, RPS will use the game roster sent by the opposing team for attendance. Visiting fans will state which player they are related to and will then be allowed to purchase up to six tickets. All fans associated with one specific player should be present when tickets are purchased as that player's name will be crossed off and no other purchases would be allowed under that player's name. We ask only immediate family members or close friends attend the events.
- For outside events a home student section will be allowed with up to 100 students. For inside events a home student section will be allowed with up to 50 students. Students must wear masks at all times and are asked to social distance within the

student section as much as possible. Students are asked to not go on the field or court at any time.

- Media may attend games.
- Social distancing is expected at all times at all venues.
- Family units will sit six-feet apart from non-family members.
- Both indoor and outdoor venues will be marked, indicating which rows of seating are open, and which are prohibited.

Entering Building or Field

- Social distancing practices will be in place.
- Use of designated home and visitor entry and departure points when possible to prevent intermixing of participants and spectators. Ralston Public Schools will send specific information for all visiting teams to their Activities/Athletic Director prior to each athletic event.

Masks

- Players are not expected to wear masks during actual physical competition.
- Players will be encouraged to wear masks while sitting on benches, standing or sitting on the sidelines or in dugouts. Coaches of indoor activities are encouraged to wear masks at all times.
- Masks are expected of any spectator attending activities at inside venues. For outside venues, masks are expected if social distancing is not possible.
- Students in student sections must wear masks at all times.

Hand Washing/Hand Sanitizing

- Players and staff will wash or sanitize their hands upon arrival, during and throughout the contests as is practical.

Cleaning and Disinfecting Surface

- District cleaning procedures will be followed.
- Surfaces will be cleaned and disinfected before and after each competition.

Water Fountains

- Only water bottles will be allowed. No drinking from water fountains.
- Players are to bring their own water bottles.

Officials

- All officials are encouraged to wear masks.
- Social distancing may not be possible in the official's locker room. This will be communicated prior to the contest.
- Social distancing rules are in effect for coach/official interactions.

Training Room

- Ralston Public Schools will communicate training room procedures to visiting schools.
- Signage will be posted indicating training room procedures.
- Masks are to be worn by athletes, coaches, and trainers in the training room.

Social Distancing

- Coaches and players will be asked to practice proper social distancing as much as possible. Visiting teams may not be provided a locker room. Teams should arrive prepared for competition.
- When possible, six-foot social distancing is expected in the locker room.
- Masks are to be worn in the locker room/training room.
- Coaches are responsible for supervision.
- No loitering in locker rooms. A team may have to use the locker room in shifts.

Exiting the Building/Competition Area

- Social distancing should remain in place.
- Spectators and players are expected to leave campus/facility after competitions have finished.

Student Groups

- Marching band may perform at halftime.
- Varsity Cheer and Varsity Dance are both allowed with social distancing. This is for home teams only. Visitor cheer/dance/band are prohibited.
- No Student Section.

Workers

- Workers are to follow internal safety protocols.
- While on duty, ticket takers will be expected to wear masks and gloves when handling money.

Concessions

- Concessions will be offered as conditions permit. Changes to our community's health status may affect the offering of concessions.

Handshaking

- Not permitted. Teams are to leave the competition site as soon as possible.

UPDATED 9/17/2020



Protocolos del Concurso Atlético Durante el COVID-19

Las Escuelas Públicas de Ralston seguirán la guía de la Asociación de Actividades de las Escuelas de Nebraska, el Departamento de Educación de Nebraska, y los funcionarios de salud pública locales para todas las actividades extracurriculares.

Evaluación Previa

- Los padres examinarán a sus estudiantes en casa para detectar fiebre o escalofríos, tos, falta de aire o dificultad para respirar, fatiga, dolores musculares o corporales, dolor de cabeza, nueva pérdida del gusto u olfato, dolor de garganta, congestión o secreción nasal, náuseas o vómitos y diarrea.
- Si es sintomático, los estudiantes no se reportarán a la escuela / práctica / concurso y los padres consultarán a un profesional de medicina.
- El entrenador / patrocinador realizará controles de temperatura antes de que los estudiantes se vayan a los partidos fuera de casa. Los estudiantes con una temperatura por encima de los 100.4 no podrán participar y no se les debe permitir viajar al sitio alejado.

Espectadores

- A cada atleta estudiante de RPS en fútbol, voleibol y softbol se le dará un cupón de juego que permite a seis (6) miembros de la familia o amigos cercanos a comprar entradas. Las seis personas deben estar presentes cuando se compren las entradas. Los cupones están numerados y el número se tachará cuando se compren los boletos asociados con el cupón en particular. Las familias utilizarán el cupón de juego para cada partido en casa en el deporte en el que participa su estudiante. RPS no tenemos partidos de campo traviesa o de golf. Para el tenis, RPS está pidiendo sólo seis miembros de la familia o amigos cercanos asistir, y los aficionados necesitan distancia social alrededor de las canchas.
- Para los aficionados visitantes, RPS usará la lista de los jugadores enviada por el equipo contrario para la asistencia. Los aficionados visitantes indicarán con qué jugador están relacionados y luego se les permitirá comprar hasta seis entradas. Todos los aficionados asociados con un jugador específico deben estar presentes cuando se compren las entradas, ya que el nombre de ese jugador será tachado y no se permitirían otras compras bajo el nombre de ese jugador. Pedimos que solo asistan a los eventos familiares inmediatos o amigos cercanos.

- Para eventos externos se permitirá una sección de estudiantes en casa con hasta 100 estudiantes. Para eventos internos se permitirá una sección de estudiantes en casa con hasta 50 estudiantes. Los estudiantes deben usar máscaras (cubre bocas) en todo momento y se les pide el distanciamiento social dentro de la sección de estudiantes tanto como sea posible. Se pide a los estudiantes que no vayan al campo o a la cancha en ningún momento.
- Los medios de comunicación pueden asistir a los juegos.
- Se espera el distanciamiento social en todo momento en todos los lugares.
- Las unidades familiares se sentarán a 6 pies de distancia de los miembros que no sean familiares.
- Se marcarán tanto los lugares interiores como los exteriores, indicando qué filas de asientos están abiertas y cuáles están prohibidas.

Entrando al Edificio o al Campo del Juego

- Se implementarán prácticas de distanciamiento social.
- Uso de puntos de entrada y salida designados para los de nuestra escuela y visitantes cuando sea posible para evitar la mezcla de participantes y espectadores. Las Escuelas Públicas de Ralston enviarán información específica para todos los equipos visitantes a su Director de Actividades / Deportes antes de cada evento deportivo.

Máscaras (Cubre bocas)

- No se espera que los jugadores usen máscaras (cubre bocas) durante la competencia física real.
- Se alentará a los jugadores a que usen máscaras (cubre bocas) mientras estén sentados en los bancos, de pie o sentados al margen o en las casetas. Se les pide a los entrenadores de actividades de adentro a que usen máscaras (cubre bocas) en todo momento.
- Uso de máscaras (cubre bocas) se esperan de cualquier espectador que asista a las actividades en los lugares interiores. Para los lugares al aire libre, se espera que usen máscaras (cubre bocas) si no es posible el distanciamiento social.
- Los estudiantes en las secciones de los estudiantes deben usar máscaras (cubre bocas) en todo momento.

Lavado de Manos / Desinfección de Manos

- Los jugadores y el personal se lavarán o desinfectarán las manos al llegar, durante y entre el tiempo de los concursos, según sea práctico.

Limpieza y Desinfección de Superficies

- Se seguirán los procedimientos de limpieza del Distrito.
- Las superficies se limpiarán y desinfectarán antes y después de cada competición.

Fuentes de Agua

- Solo se permitirán botellas de agua. No pueden beber de las fuentes de agua.
- Los jugadores deben traer sus propias botellas de agua.

Oficiales

- Se alienta a todos los oficiales a usar máscaras (cubre bocas).
- Es posible que el distanciamiento social no sea posible en el vestuario de los oficiales. Esto se comunicará antes del concurso.
- Las reglas de distanciamiento social están vigentes para las interacciones entre el entrenador y el oficial.

Salón de Entrenamiento

- Las Escuelas Públicas de Ralston comunicarán los procedimientos del salón de entrenamiento a las escuelas visitantes.
- Se colocarán carteles indicando los procedimientos del salón de entrenamiento.
- Los atletas, entrenadores y personal deben usar máscaras (cubre bocas) en el salón de entrenamiento.

Distanciamiento Social

- Se les pedirá a los entrenadores y jugadores que practiquen el distanciamiento social adecuado tanto como sea posible. A los equipos visitantes no se les puede proporcionar un vestuario. Los equipos deben llegar preparados para la competencia.
- Cuando sea posible, se espera un distanciamiento social de seis pies en el vestuario.
- Las máscaras (cubre bocas) se deben usar en el vestuario / salón de entrenamiento.
- Los entrenadores son responsables de la supervisión.
- Ninguna holgazanería en los vestuarios, ya que un equipo necesitará usar el vestuario en turnos.

Salida del Edificio / Área de Competencia

- El distanciamiento social debe permanecer en su lugar.
- Se espera que los espectadores y los jugadores salgan del campus / instalación después de que las competencias hayan terminado.

Grupos de Estudiantes

- La banda de marcha puede tocar durante el descanso.
- Varsity Cheer y Varsity Dance están permitidos con distanciamiento social. Esto es solo para el equipo local, está prohibido el cheer / dance / banda de los visitantes.
- No habrá una sección de estudiantes

Trabajadores

- Los trabajadores deben seguir los protocolos de seguridad internos.
- Mientras están de servicio, se espera que los tomadores de boletos usen máscaras (cubre bocas) y guantes cuando tomen el dinero.

Puestos Alimentarios

- Los puestos de comida se ofrecerán como lo permitan las condiciones. Los cambios en el estado de salud de nuestra comunidad pueden afectar la oferta de los puestos.

Apretón de Manos

- No será permitido. Los equipos deben salir del lugar de la competencia lo antes posible.

ACTUALIZADO 17/09/2020



9-12 Student in Quarantine: Academic Procedures for Staff

Overview

If a student is in quarantine, we will be providing students the opportunity to stay current on learning that is occurring in the classroom through a webinar-like experience. This option is a short term way to navigate students falling behind in quarantine and alleviate the burden on teachers and students in trying to catch up. It is not intended to be a method to engage students at home fully into the classroom experience.

Before Class

- The teacher would share with the student a Zoom link to provide them the option to listen to the class when quarantined as well as the information sheet on what to expect when distance learning during quarantine.
- The teacher should continue to share assignments on Google Classroom like normal.
- Charge bluetooth microphone.
- Pair bluetooth microphone with computer before initial use (see bluetooth directions on how to pair a device).

During Class

- Students would Zoom in for their assigned class and the teacher would have access to a bluetooth microphone so the student could hear if the teacher is moving around the classroom.
- The Zoom would either display the presentation or the whiteboard.
- The student would listen to the content similar to how one would listen to an audio-recording.
- The teacher should mute students learning from home and turn off their video.
- The Zoom screen of students quarantined should not be projected.

After Class

- The student who is quarantined is expected to reach out to staff if they have questions or need follow-up support.



9-12 Student in Quarantine: Academic Procedures for Staff

A Few Notes

- If a student is sick and cannot engage in this, they are not expected to Zoom into the classroom. If students become ill during quarantine and cannot do this, they should communicate with their teacher.
- If a student has an interpreter, the Zoom would focus on the interpreter.
- There may be certain courses or times within a course where this is not feasible to do given the content (i.e. Team Sports) or environment (i.e. Construction class). If this is the case, the teacher is expected to work with the student to navigate catching up when they return or modifying assignments.



9-12 EXTENDED CAMPUS LEARNING - TERM 2

- *The Program follows an everyday schedule*
- *Minimum of 2 courses should be with a Ralston teacher*

Request window: September 21 - October 2

TO REGISTER:

1. Enroll at [RalstonPublicSchools.org](https://www.ralstonschools.org)
2. School counselor will reach out and discuss schedule options
3. Enrollment change will be processed and schedule will be finalized (*may take 2 days*)
4. Family will review schedule in R-Kids
5. Course instructor will email a start date and Zoom links

***8:00 a.m. - 2:00 p.m.
Zoom with Teacher
and On Your Own
Learning****

**Daily attendance is
required*

Technology Help:

<https://www.ralstonschools.org/domain/2237>



K-8 Student(s)/Staff in Quarantine: Academic Procedures for Staff

Overview - Student Quarantine

If a student or teacher is in quarantine and healthy, we will be providing students the option to stay connected and current on learning. This option is a short term way to navigate students falling behind in quarantine and alleviate the burden on teachers and students in trying to catch up. It is not intended to be a method to engage students at home fully into the classroom experience.

- **K-6.** The District Nurse/ Health Office informs the Administration, Building Secretary, and Classroom Teacher of students that are being placed on quarantine. The teacher and principal should coordinate a way to support the family based on the students individual circumstances. The following considerations should be made if a student is able to engage in this work.
 - Students may Zoom into the classroom and participate in Morning Meeting.
 - It is recommended that K-2 focus on phonological awareness
 - If possible, schedule a short window of time to connect with the student either through having the student listen to the class lesson or meeting with the student individually/ in a small group for a period of time (i.e. 10 minutes to deliver direct instruction on a major component needed to complete asynchronous work)
 - Have the student complete the asynchronous work (it is not recommended to create additional asynchronous work for the student)
 - Intervention, EL, and Special Education services should continue
- **7-8.** The District Nurse/ Health Office informs Administration, Attendance Secretary and School Counselor of students that are being placed on quarantine. The School Counselor then will communicate with staff regarding what students are on quarantine.
 - A teacher will be identified as being the primary communicator with a family.
 - Students should continue to complete asynchronous work.
 - Staff should work with families to navigate whether Zoom, connecting via email, or finding a time to meet virtually is appropriate.
 - Intervention, EL, and Special Education services should continue
 - Flexibility will be provided if assignments are completed late.



K-8 Student(s)/Staff in Quarantine: Academic Procedures for Staff

Other Considerations

- This is not intended for students who are ill.
- This is an option, and not required. Families all navigate quarantine differently, so connecting with the family to see what works is recommended.
- Students should NOT be on Zoom all day and the teacher is not expected to navigate running two classrooms (online and in person).
- This option is only for students on quarantine due to COVID-19 and is not to continue beyond the quarantine end date.
- Staff are not expected to meet with a student during plan time. Consideration of meeting with a student during the reading block or math block on their in person day is recommended.
- Staff are not expected to make significant alterations to the class schedule.

Overview - Teacher Quarantine Options for Teaching & Learning

- If a teacher is quarantined (not sick) and students are also quarantined the teacher would teach normal lessons from home via Zoom and include all students who are quarantined.
- If a teacher is quarantined (not sick) and students are not quarantined, the teacher teaches normal lessons via Zoom and a para/specialist monitors the room.
- If the teacher is quarantined (not sick), and some students are quarantined but others at school. Teacher teaches normal lessons via Zoom. Quarantined students view lessons at home via Zoom. In-class students learn via Zoom while a para/specialist monitors the classroom.
- If the same grade has one teacher who is sick, and another who is quarantined (not sick) in addition to some students being quarantined and some are at school the teacher who is not sick teaches via Zoom to both sections of students. Quarantined students learn from home via Zoom and in person students learn at school via Zoom while para/specialist monitors.
 - Note: Based on the negotiated contract this option would meet the coverage of two classrooms, meaning the teacher covering would be compensated accordingly.

HOW TO NAVIGATE RHS CLASSES WHILE IN QUARANTINE



If you are healthy, you can continue to participate in class from home by listening to the classroom instruction in a live webinar-like audio recording. Your teacher will wear a microphone so you can hear no matter where in the room they are. If you become ill during quarantine, please let your teacher know as you are not expected to be on Zoom if you are ill.

How do I get started?

- If you are quarantined, your teacher will connect with you to see if you are healthy enough to join class to listen to instruction.
- On your designated day and time for class, you will log into the Zoom link provided by your teacher.

What will it look like being in class during quarantine?

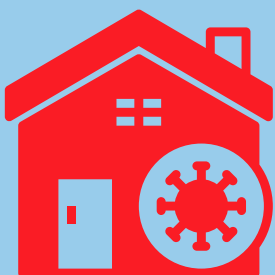
- Your video and audio will be turned off
- Your teacher will project a presentation, screen, or the whiteboard for you to view
- Other students won't see you on quarantine and you won't see them, you will just be listening and viewing what is projected on the whiteboard or shared via a presentation

What if I have questions?

- You are encouraged to check in with your teacher via email if you have any questions

How will I participate in class?

- Participation will be limited to listening during this time. You will not be engaging in the activities with your classmates, you will just be listening so you can stay caught up in your classes.



Can I Zoom into all courses?

- Certain courses are not conducive to video conferencing due to the noise or the activities that students are doing in the classroom. If this is the case, your teacher will let you know that Zoom is not an option for the course.



7-8 EXTENDED CAMPUS LEARNING

The Program follows the Red Square, Blue Triangle schedule and includes English Language Arts, Math, Science, & Social Studies.

TO REGISTER:

1. Enroll at [RalstonPublicSchools.org](https://www.ralstonschools.org)
2. School will reach out and set up a time to get materials *(if needed)*
3. Enrollment change will be processed and schedule will be developed *(may take 2 days)*
4. Family will review schedule in R-Kids
5. Administrator will email a start date and Zoom links

8:00 a.m. - 2:00 p.m.
**Day 1 - Zoom with
Teacher**
**Day 2 - On Your Own
Learning***

**Daily attendance is
required, both on
Zoom days, and on
self-directed learning
days*

Technology Help:

<https://www.ralstonschools.org/domain/2237>



APRENDIZAJE EXTENDIDO DEL CAMPUS DE 7-8

El programa sigue el horario del Cuadro Rojo, el Triángulo Azul e incluye Artes del Lenguaje de Inglés, Matemáticas, Ciencias, y Estudios Sociales.

Para Inscribirse

1. Inscríbese en [RalstonPublicSchools.org](https://www.ralstonschools.org)
2. La escuela se comunicará y establecerá un horario para obtener materiales (si es necesario)
3. Se procesará el cambio de inscripción y se desarrollará un horario (puede demorar 2 días)
4. La familia revisará el horario en R-Kids
5. El administrador enviará por correo electrónico una fecha de inicio y enlaces de Zoom

Ayuda tecnológica:

<https://www.ralstonschools.org/domain/2237>

8:00 a.m. - 2:00 p.m.

**Día 1 - Zoom con el
maestro**

**Día 2 - *Aprendizaje
por su propia cuenta**

**Se requiere asistencia
diaria, tanto en los días
de Zoom como en los
días de aprendizaje
autodirigido*

Ralston Public Schools 2020-2021 Kindergarten – 12th Grade Calendar

Final 6/9/20

JULY '20						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JANUARY '21						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

1 Winter Break

3-5 New Teachers
6-10 Pre-Service
11 First Day PK, Kg, 7 & 9
1:30 dismissal
12 All Students

AUGUST '20						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY '21						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

12 District In-Service
15 Comp Day for Conferences

7 Labor Day
18 District In-Service

SEPTEMBER '20						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MARCH '21						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

12 End of 3rd Quarter
15 In-Service/Collaborative Planning
29-31 Spring Break

14 End of 1st Quarter
15 District In-Service/
Collaborative Planning
16 Comp Day for Conferences

OCTOBER '20						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL '21						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

1-2 Spring Break

2 District In-Service
26-27 Thanksgiving Break

NOVEMBER '20						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY '21						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

16 Graduation
25 Last Student Day/End of 4th Quarter
26 Last Staff Day/
Collaborative Planning (or possible makeup day)

21 End of 2nd Quarter & 1st Semester
22 Collaborative Planning
23-31 Winter Break

DECEMBER '20						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE '21						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

- No School for Students/Staff Report
- No School for Students or Staff
- No School for Students or Staff or Possible Makeup Day due to Pandemic or Snow Day

Note: Quarter end dates may be adjusted if closure occurs.



In response to the COVID-19 pandemic, and with the safety and health of our students, staff, and community as our focus, the following guidelines will be strictly followed while working at or visiting the Ralston Public Schools District Office.

Visitors to Ralston Public Schools Buildings

- Masks must be worn by any visitor to a Ralston Public Schools building
- Social distancing is expected of all visitors and staff (stay at least 6 ft away from others at all times)
- All visitors and staff must review screening questions prior to entering any Ralston Public Schools facility each day
- Outside visitors to the schools or district office are encouraged to be limited to individuals who have critical school business to complete
- Masks will be worn by receptionists, secretaries, and other school staff when working with visitors
- Hand sanitizer will be readily available in all office areas and is encouraged to be used regularly
- Sneeze guards will be implemented in all high contact areas
- All regulatory DHHS policies and procedures will be followed

Screening Questions

Prior to entering any Ralston Public Schools facility, visitors and staff are asked to review the following screening questions. If anyone answers yes to any of these questions they will not be allowed into any Ralston Public Schools facility.

- In the last 14 days have you been exposed to anyone with COVID-19?
- Do you currently exhibit any symptoms: Cough, Shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, fatigue, new loss of taste or smell?
- Other less common symptoms include gastrointestinal symptoms like nausea, vomiting, or diarrhea?
- Have you traveled outside of the country in the last 14 days?

District and Building Office Staff

- Masks will be worn by receptionists, secretaries, and other school staff when working with visitors
- All staff must have a mask readily available at all times
- All staff must wear a mask while moving around the building or away from their desk
- All staff must review screening questions prior to entering any RPS facility each day
- Social distancing is expected at all times (stay at least 6 ft away from others at all times)
- Virtual meetings will be encouraged to be used whenever possible
- Hand sanitizer will be readily available in all office areas and is encouraged to be used regularly



- Sneeze guards will be implemented in all high contact areas
- Hand washing will be expected at least every two hours
- If you answer yes to any of the screening questions please stay home and consult a physician
- Cleaning materials will be provided and ALL staff are encouraged to assist with keeping their work area cleaned, particularly high touch areas and computer devices
- Thorough cleaning will be completed at the end of each day
- All regulatory DHHS policies and procedures will be followed



Calendar Revisions Due to COVID-19 Pandemic

Overview

Include in this revised calendar are a few additions and revisions to the initial 2020-2021 school calendar. These revisions allow for flexibility in scheduling to provide an opportunity to adapt and navigate the potential unknowns as the 2020-2021 school year unfolds. These additions and revisions will allow the District to serve, communicate, and adapt to the needs of our school community better amidst a public health crisis.

Recommendation: Build possible make-up days into the calendar.

Make-up days would provide flexibility within our school calendar. It will allow the District the opportunity to communicate early on regarding our potential make-up plans if we have no school days in the school building or remotely. These days are spread throughout the year, allowing the District the opportunity to make timely situational decisions related to when we should make up these dates.

Recommendation: End of quarter flexibility.

Creating flexible quarter-end dates allows the District to address meeting the instructional hour requirements and the unknown timing implications of the virus. By having minimum and maximum end dates for each quarter, it allows us to make decisions to transition between quarters at a faster or slower pace based on what is happening with the health status of our community as we move through the year.

1st Quarter	Scheduled: 10/14/2020 Earliest end date: 10/8/2020 Latest end date: 11/3/2020
2nd Quarter	Scheduled: 12/21/2020 Earliest end date: 12/14/2020 Latest end date: 1/21/2021
3rd Quarter	Scheduled: 3/12/2021 Earliest end date: 3/1/2021 Latest end date: 3/24/2021
4th Quarter	Scheduled: 5/25/2021 Earliest end date: 5/5/2021 Latest end date: last student day

*without makeups

Building Safety Plan Annual Requirements

Beginning of Year

Review Safety Plan with Staff, New staff to receive SRP training

Walk through the building to determine if evacuation signage and emergency kits are in place and accurate.

Perform two fire drills within the first two weeks of school operation.

Throughout the school year:

Two (2) lock down drills during the school year. One each semester.

Ten (10) fire drills during the year.

One (1) tornado drill during the year.

Two (2) bus evacuation drills, one per semester.

Once per month an assigned staff member inspects the building to identify any safety issues.

Test all building AED's once per month.

Communicate to all staff the procedure for submitting a safety or security concern to the District Safety Team.

Conduct a minimum of 6 Safety Committee Meetings

End of school year:

Ensure documentation of Safety drills has been recorded



Resource Guide for Parents & Students

Resource	Contact Information	Service Description
Safe2HelpNE	<ul style="list-style-type: none"> • safe2helpne.org • 531-299-7233 • App available – Google Play & Apple Store • Available 24/7 	24/7 – Trained crisis counselors to assist Douglas County students, parents and community members with school safety related concerns. Your information can be submitted anonymously to a crisis center. The information is triaged by trained crisis counselors and can be shared with school officials or law enforcement to address school safety related concerns. The information can be related to harmful, dangerous or violent activity that is directed at schools, students, or staff members or even the threat of these activities.
Your Life Your Voice	<ul style="list-style-type: none"> • Yourlifeyourvoice.org • Boys Town National Hotline 800-448-3000 • Text “Voice” to 20121 12p-12a • “My Life My Voice” mood app 	24/7 – A struggling youth does not have to face their problem alone. Trained Crisis Counselors available to assist young people with various issues and emotions this can include abuse, anger, anxiety feeling of depression, relationship issues, stress, thoughts of suicide and self-harm, and any other issue they may be struggling with.
Nebraska Family Helpline	<ul style="list-style-type: none"> • 888-866-8660 	24/7 - Trained Helpline operators help families by assessing immediate safety needs, identifying the potential level of a behavioral health crisis, making recommendations or referrals to appropriate resources, and helping callers connect to emergency resources. They also connect eligible families to the Family Navigator Service to help them move through Nebraska's child- and family-care system more efficiently.
211 Helpline	<ul style="list-style-type: none"> • https://www.unitedwaymidlands.org/ • 211 or 402-444-666 • Text: Your zip code to 898211 	24/7 - Rent & Utility Assistance, other base needs
Nebraska DHHS COVID-19 Information Line	<ul style="list-style-type: none"> • 402-552-6645 (8am-8pm, 7 days a week) • http://dhhs.ne.gov/pages/Coronavirus.aspx 	Covid-19 Hotline and website with - Nebraska Health measures, case information, State Overview, Traveler Recommendations, Protection & CDC Information, Take Action Tools & Resources
Nebraska Total Care website	<ul style="list-style-type: none"> • https://nebraskatotalcare.auntbertha.com/ 	Search by Zip Code for free or reduced cost services like medical care, food, job training, and more.
Food Bank for the Heartland	<ul style="list-style-type: none"> • 855-444-5556 • https://foodbankheartland.org/covid-19/ 	For Nebraska food locations & safety protocol
Disaster Distress Hotline	<ul style="list-style-type: none"> • 800-985-5990 • Text ‘TalkWithUs’ to 66746 	24/7 - Trained crisis counselors offer help and support for any distress that you or someone you care about may be feeling related to any disaster.
Unemployment	<ul style="list-style-type: none"> • https://dol.nebraska.gov/UIBenefits 	Department of Labor
Transportation	<ul style="list-style-type: none"> • http://www.ometro.com/index.php/alert/covid-19/ 	Covid-19 Updates related to bus and MOBY services
Legal	<ul style="list-style-type: none"> • 844-268-5627 • https://lawhelpne.legalaidofnebraska.org/ 	Disaster Relief Hotline is available to Nebraskans affected by COVID-19 and in need of legal assistance. When connected to the hotline voicemail, callers should leave their name, phone number, brief details of the assistance needed and in which county they are located.

Screen/Assess Gather Initial Information

Preliminary Considerations

Assessment of Immediacy of Threat and Accessibility of Person/Object of Focus

- Nature and intensity of threat posed.
- Nature of the contact behavior
- Is the subject identifiable? Subject factors.
- Why is the subject acting now?
- Is there a presence of precipitating stressors for the subject?
- Does the subject have the means to carry out the threats?
- What is the subject's proximity to the person/object of focus?
- What information is still required to properly assess the situation?
- What other agencies should be made aware of this situation?
- Initial steps for protective actions.

Screening Considerations:

- Behavior of concern is isolated and not part of a pattern of behavior.
- Behavior of concern is a nuisance activity in nature with no threatening or intimidating activity.
- Threatened behavior or behavior of concern is vague and indirect.
- Information contained with the communicated threat is inconsistent, implausible, or lacks detail.
- Content related to the behavior of concern suggest the person is unlikely to carry it out.

Risk Factors

Patterns of contacts

- Indicators of Intensity of Effort, (i.e. multiple prior contacts).
- Escalation of behavior or language

Expression of Violent Intention

- Leaking (telling friends, family, etc. about plans to attack)
- Threats expressed or simulated in written, electronic, audio, or video form announcing threats or plans to hurt others.
- Rehearsal of fantasy activity (journal, social media, drawings, video)
- Hit list?
- Details provided, how will act be accomplished?
- Recruiting others to assist with the act.
- Evidence of attack-related behaviors.
- Capacity to carry out the threat.

Mention/Presence of Weapons

- Carrying a weapon (real or fake)
- Access to weapons
- Reported to have brought a weapon to schools
- Weapon mentioned in the threat?
- Weapon present or available?
- Communication about ideas and intentions.

Other Behavioral Factors

- History of grievance with the person or object of focus?
- Prior arrest record or discipline record of threat related activity.
- Contact with other agencies (law enforcement)
- Recent life stressors
- Presence of serious mental illness symptoms

Subject's motivation as implied by Behaviors and Communications

- Nature of subject's motivation? (The more personal, the higher the concern)
- Target of threat is viewed as responsible.
- Motives driven by mental health
- Seeking revenge for a perceived injustice
- Communication of desire for revenge

Contextual Factors

- Why now? Anniversary of an event
- Copycat effect

References to Prior Violence

- Subject made reference to other act(s) of violence (ex. Columbine, Parkland etc.)
- Unusual interest in targeted violence
- Research of prior acts of violence

Key Communication Content

- Describes/presents feelings of hopelessness or despair (including suicidal ideation or attempts)
- Losses, real or perceived
- Asserts that violence is a solution to his/her problems
- Reflects anger, frustration in school essays or writing projects

Threatening Language

- Nature of the threat (Direct vs. indirect vs. conditional)

Assigning Level of Concern/Risk

Low Level-Behavior poses a minimal risk to the victim and school safety. Investigation suggest low potential for harm to the targeted individual, group or institution. No inappropriate approach to behaviors has been exhibited. Subject's interest can generally be considered a nuisance, non-threatening and non-dangerous.

- A non-threatening or nuisance statement found to pose minimal risk to the victim or public
- Threatened behavior or behavior of concern is vague and indirect
- Information contained within the communicated threat is inconsistent, implausible, or lacks detail.
- Threatened behavior not realistic or plausible.
- Content related to the behavior of concern suggest the person is unlikely to carry it out
- Available information suggests follow through is unlikely

Moderate Level- Moderate potential for disruptive or threatened behavior of concern. Investigation suggests a moderate potential for harm or serious disruption to a targeted individual, group or institution. The subject can be considered to have threatening, inappropriate, or otherwise unusual interest to toward a targeted person, and has exhibited the ability or interest to harm such person. Though immediate risk of harm or serious disruption is not likely after initial investigation management strategies are in place along with future monitoring.

- Subject suffers from mental illness and has a persistent grievance.
- Threatened behavior is more direct and more concrete than low level threat
- Communications suggest that the subject has given some thought to how the act will be carried out.
- There is no strong indication that the subject has taken preparatory steps
- Indications that the subject has demonstrated planning for carrying out the act
- Other behaviors of concern exist to suggest that the threatening statements or behaviors of concern are not in isolation.

High Level-Investigation indicates a likelihood of harm or serious disruption toward a targeted individual, group or institution. Further investigation is required. Imminent harm is possible. Immediate investigation is initiated with focus on obtaining collaborative data concerning the subject's location, behavior and lethality. Additional steps necessary (contact law enforcement) to initiate safety measures.

- Threat is direct, specific and plausible.
- Threat suggests concrete steps have been taken towards carrying out the threat (obtained weapons, had victim under surveillance)
- Subject suffers from serious mental health illness and has made a threat
- Patterns of behavior/communications have increased in intensity/tone from harassing to threatening.

Interventions

Low level

- Document Behavior
- Restrict privileges
- Connect with and adult (teacher/mentor)
- Redefine expectations
- Give corrective feedback on how to handle the situation differently
- Apology and restitution
- Contact case/probation worker if applicable
- Follow up with parents

Moderate level;

- Document behavior
- Consider assessment by Arbor Family
- Separate aggressor and target of the threat
- Restrict privileges (hallway /restroom access, cafeteria access)
- Random searches of student's materials/possessions
- Meeting with in-school counselor on an as needed basis
- Assign staff to monitor behavior
- Supervise before and after school as needed
- Contact case/probation worker if applicable
- Follow disciplinary procedures
- Follow up with parents/guardians
- Initiate SAT process if applicable.

High Level

- Work with law enforcement to contain threat
- Welfare check if necessary
- Hospitalization/Committal if necessary
- Consider emergency exclusion with eventual Level 3 placement or home instruction placement
- Notify parents/student of readmission requirements
- Daily search of student upon arrival to school, dissipating over time as conditions improve
- Regular checks of vehicle, bag, locker as conditions for reinstatement
- Follow disciplinary procedures
- Contact case/probation worker if applicable
- Follow up with parents
- Restrict school privileges
- No unsupervised time before/after school
- Initiate SAT process if applicable.

Threat Assessment
Coordinator's Checklist and Summary

School: _____

Date: _____

Student Name: _____

Threat Assessment Team Members: _____

1. Threat reported. What is the threat and how was it reported to staff? Be sure to include exact wording and the manner of delivery.

2. Preliminary Considerations (P. 2) What factors are significant to assessing the immediacy and the severity of the threat? Should action be taken immediately?

3. What risk factors contribute to the severity of this threat? (P. 3-4)

4. Level of Threat (P. 5-6)

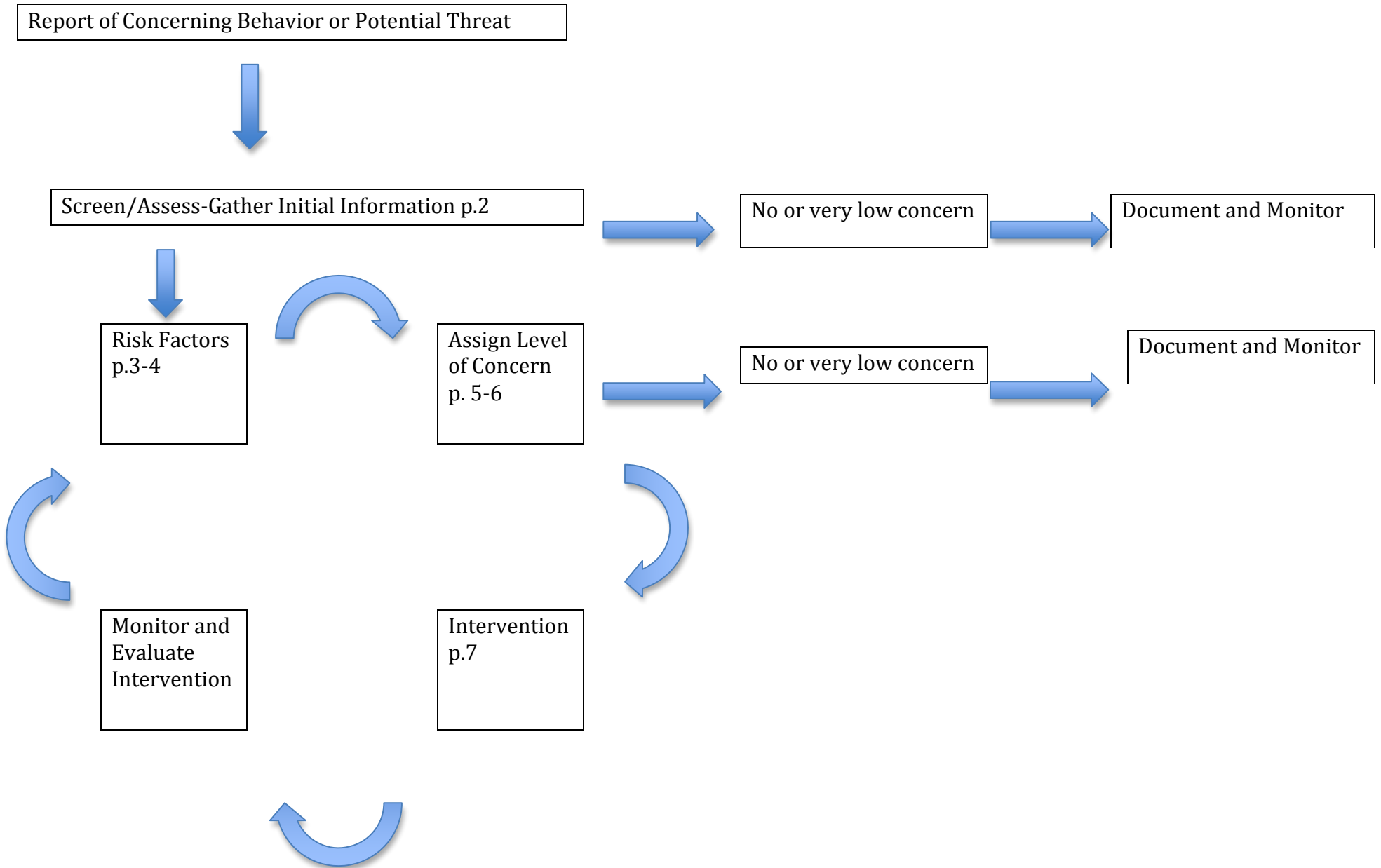
- Low
- Moderate
- High

5. What circumstances led to assigning this level of Threat?

6. Intervention (P.7) What steps will be taken to address this threat? (ie evaluation by Arbor Family, law enforcement contacted, wellness check, etc).

(over)

Threat Assessment Flowchart





standardTM response protocol

Student Safety

A critical ingredient in the safe school recipe is the classroom response to an incident at school. Weather events, fire, accidents, intruders and other threats to student safety are scenarios that are planned and trained for by students, teachers, staff and administration.

SRP

Our school is expanding the safety program to include the Standard Response Protocol (SRP). The SRP is based on these four actions. Lockout, Lockdown, Evacuate and Shelter. In the event of an emergency, the action and appropriate direction will be called on the PA.

Lockout - "Secure the Perimeter"

Lockdown - "Locks, Lights, Out of Sight"

Evacuate - "To the Announced Location"

Shelter - "Using Announced Type and Method"

Training

Please take a moment to review these actions. Students and staff will be trained and the school will drill these actions over the course of the school year.

More information can be found at <http://iloveguys.org>



Lockout Secure the Perimeter

Lockout is called when there is a threat or hazard outside of the school building.

Students:

- Return to inside of building
- Do business as usual

Teachers

- Recover students and staff from outside building
- Increased situational awareness
- Do business as usual
- Take roll, account for students



Lockdown Locks, Lights, Out of Sight

Lockdown is called when there is a threat or hazard inside the school building.

Students:

- Move away from sight
- Maintain silence

Teachers:

- Lock classroom door
- Lights out
- Move away from sight
- Maintain silence
- Wait for First Responders to open door
- Take roll, account for students



Evacuate To the Announced Location

Evacuate is called to move students and staff from one location to another.

Students:

- Leave stuff behind
- Form a single file line
- Take the hands of person in front and behind
- Be prepared for alternatives during response.

Teachers:

- Grab roll sheet if possible
- Lead students to Evacuation Location
- Take roll, account for students



Shelter Using the Announced Type and Method

Shelter is called when the need for personal protection is necessary.

Types:

- For Tornado
- For Bomb
- For Hazmat

Methods:

- Drop, Cover and Hold
- And Seal
- In Silence

Students:

- Use Appropriate Method

Teachers:

- Use Appropriate Method
- Take roll, account for students





Ralston Public Schools Equity and Diversity District Plan Overview

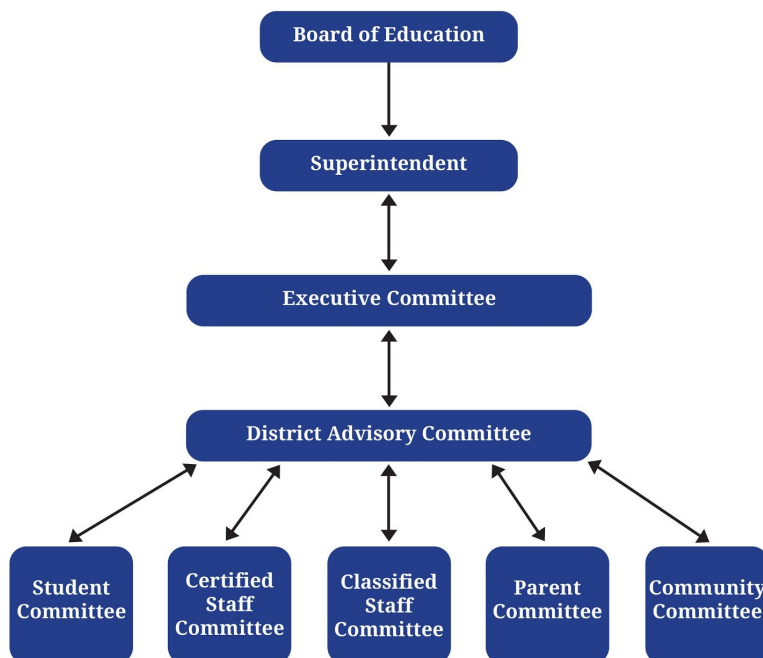
Ralston Public Schools (RPS) wants to enhance and improve our commitment to equity and diversity to our District's students, families and staff. We are a community dedicated to achieving excellence through purposeful instruction and nurturing a climate of hope.

Through the proposed plan outlined below, RPS hopes to become deeply engaged in the work around equity, race and identity to better foster and support an environment in which our students, families and staff grow and thrive. We believe this will provide engagement opportunities for students, families, staff and community to be part of this process and create an inclusive and barrier-free school community where students will have access to a high-quality education and can follow their own path in reaching their full potential.

RPS Equity and Diversity Committee Structure and Organizational Chart



District Equity & Inclusion



EXECUTIVE COMMITTEE

• **Committee Make-Up**

- Six to ten members
- Membership would be made up of a equal mix the following:
 - Staff, Administration, Board, Parent, Student, General Community
- Board of Education and District Administration will be asked to submit member recommendations
- District Administration will determine final membership

• **Committee Member Roles**

- Provide overall leadership
- Develop discussion topics for subcommittee meetings
- Select members will be asked to lead the subcommittees
- Help generate names and recruit subcommittee members

• **Committee Goals**

- Will work to define “equity” in Ralston Public Schools
- Develop District Equity and Diversity mission statement and goals
- Provide feedback on timeline and structure

• **Committee Commitment**

- Executive Committee will meet on a bi-monthly basis. They will meet prior to the main committee meeting during their scheduled month.
- Executive Committee meetings will take place the first week of each month.
- A member of the Executive Committee will be asked to provide a report/update at a BOE meeting (either the second or fourth Monday of the month).

• **Background Information to Members**

- District will provide members with:
 - Background or the “why” the District wanted to start this group.
 - Current demographics of District & community
 - District information on current equity and diversity District efforts.

DISTRICT ADVISORY COMMITTEE

• Committee Make-Up

- Twenty-five to thirty members
- Membership is made up of:
 - Members of each subcommittee
 - Members of Executive Committee

• Committee Member Roles

- In small groups, discuss issues relating to equity and diversity in RPS
- Each subcommittee will meet prior to the main committee meeting. Topics discussed at the District Advisory Committee meeting will be the same as what was discussed at subcommittee meetings. Each group will bring a consensus or ideas of what was discussed at their subcommittee meeting to the District Advisory Committee meeting. Ideas will be shared and the large group will come to a decision based on the discussion.
- Meetings will consist of breakout groups, consisting of a mix of people from each subcommittee
- At each meeting, members will discuss one to three topics previously discussed within each subcommittee.

• Committee Goals

- Will work to define “equity” in Ralston Public Schools.
- Develop District Equity and Diversity mission statement and goals
- Further develop, enhance and improve our commitment to equity and diversity to our District’s students, families and staff.

• Committee Commitment

- District Advisory Committee will meet on a bi-monthly basis.
- To start, each meeting will last 90 minutes.
- These meetings will take place the third week of each month.

SUBCOMMITTEES

• **Committee Make-Up**

- Certified Staff Committee: 12 members
- Classified Staff Committee: 12 members
- Student Committee/Superintendent Student Group: 12 members
- Parent Committee: 12 members
 - General Community Committee: 12 members
 - (Individuals with no students currently in the District/Local Business Representatives)

• **Committee Member Roles**

- Each group will have two topics to discuss per meeting. Group leaders will present discussion topics and will run each meeting.
- Subcommittees will meet at least once (but no more than two times) in the month between each Main Committee meeting.
- Leaders will then attend the District Advisory Committee meeting and report what the group discussed to the large group.

• **Committee Goals**

- Will work to define “equity” in Ralston Public Schools within their specific subcommittee.
- Further develop, enhance and improve our commitment to equity and diversity to our District’s students, families and staff.

• **Committee Commitment**

- Sub Committees will meet on a bi-monthly basis.
- To start, each meeting will last 90 minutes.

PROPOSED SCHEDULE

- Wednesday, Dec. 9th: Brainstorming session on Executive Committee volunteers
- Friday, Dec. 18th: Invites out to individuals to ask to be part of Executive Committee
- Friday, January 8: Responses back to CO.
- Tuesday, January 12: Send meeting calendar invite

- Thursday, February 4, 2021: First meeting of Executive Committee

- February 18, 2021: Second Meeting of Executive Committee
 - Continue discussion and confirm mission statement and goals
 - Brainstorm subcommittee members

- March 1, 2021: Send out subcommittee invites.
- March 12, 2021: Request responses back to CO.

- During the weeks of April 5 and 19th:
Subcommittees meet

- May 6, 2021: Executive Committee meet before Main Committee
- May 20, 2021: District Advisory Committee meets for the first time

ADDITIONAL NOTES

- Look at the demographics of our RPS community - our committees should reflect those demographics.
- Also need to take into account the groups dynamics - making sure we don't have someone who will dominate conversations or have a larger influence over other group members
- Define time commitment, will the meetings be in-person or virtual, how many times will the group meet and location.



Mark Adler <madler@ralstonschools.org>

New York Class Action

2 messages

Margaret C. Hershiser <Margaret.Hershiser@koleyjessen.com>
To: Mark Adler <madler@ralstonschools.org>

Mon, Nov 16, 2020 at 11:12 AM

Good morning, Mark— Good news on the NY lawsuit front. On Friday the court dismissed the Plaintiffs' Complaint against all defendants (in state and out of state) without prejudice and determined the case was closed. Opinion, Order, and Docket Sheet attached.

Margaret Hershiser

Margaret C. Hershiser | Attorney

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KOLEY ■ JESSEN

ATTORNEYS

CONFIDENTIALITY: This message (including any attachment) is confidential. It may also be privileged or otherwise protected by work-product immunity or other legal rules. If you have received it by mistake, please delete it from your system; you may not copy or disclose its contents to anyone.

3 attachments

200.pdf
691K

201.pdf
41K

Docket Sheet - 11-16.pdf
1369K

Mark Adler <madler@ralstonschools.org>
To: Jason Buckingham <Jason_Buckingham@ralstonschools.org>

Wed, Nov 18, 2020 at 11:07 AM

FYI


Dr. Mark Adler
Superintendent
Ralston Public Schools
8545 Park Drive
Ralston, NE 68127
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madler@ralstonschools.org

[Quoted text hidden]

3 attachments

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 **Docket Sheet - 11-16.pdf**
1369K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.T., Individually and On Behalf Of D.T.;
K.M., Individually and On Behalf Of M.M. and
S.M.; J.J., Individually and On Behalf Of Z.J.;
C.N., Individually and On Behalf Of V.N.;
and, All Others Similarly Situated,

Plaintiffs,

No. 20 Civ. 5878 (CM)

-against-

BILL de BLASIO, in his official capacity as the
Mayor of New York City; RICHARD
CARRANZA, in his official capacity as the
Chancellor of New York City Department of
Education; the NEW YORK CITY
DEPARTMENT OF EDUCATION;
the SCHOOL DISTRICTS IN THE UNITED
STATES; and, STATE DEPARTMENTS OF
EDUCATION IN THE UNITED STATES,

Defendants.

OPINION & ORDER

McMahon, C.J.:

This case purports to be a class action brought by the parents and/or natural guardians (“Parents”) of students who are classified under federal law as disabled or having an educational disability (“Students”) (collectively, “Plaintiffs”).

The four plaintiff parents named in the caption of the complaint (Dkt. No. 1) (“Complaint”) are from Staten Island, New York (K.M./M.M and S.M); Middletown, New Jersey (J.T./D.T.);

Meriden, Connecticut (J.J./Z.J.); and Leander, Texas (C.N./V.N.). An appendix to the Complaint identifies approximately 100 additional “named plaintiffs” located in sixty-two separate school districts around the country.¹ (*See* Dkt. No. 1-12.)

The defendants specifically named in the caption of the Complaint include Bill DeBlasio, in his official capacity as the Mayor of New York City (“Mayor DeBlasio”); Richard Carranza, in his official capacity as the Chancellor of New York City Department of Education (“Chancellor Carranza”); and the New York City Department of Education (“NYCDOE”) (collectively, the “NYC Defendants” or the “City”). The caption also purports to sue “THE SCHOOL DISTRICTS IN THE UNITED STATES” – over 13,800 of them² – and “STATE DEPARTMENTS OF EDUCATION IN THE UNITED STATES” – which would encompass all 50 States, the District of Columbia and Puerto Rico – as listed in appendices to the Complaint. (*See* Dkt. No. 1-1 (School Districts); Dkt. No. 1-2 (State Departments of Education).)

Under the Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq.* (“IDEA”), disabled students are entitled to a “free appropriate public education” (“FAPE”). To guarantee students receive a FAPE, each student with disabilities has an Individualized Education Program (“IEP”) that lays out the terms of his or her special education and related services, supplementary aids and services, and program modifications or supports for school personnel that will be provided for the student. *See* 20 U.S.C. § 1414(d). Under the IDEA, a local educational agency (“LEA”) – most often, a school district – cannot alter a student’s IEP without complying with certain procedural requirements, including notifying parents of any change. If a parent initiates an IDEA

¹ As it turns out, not all of these “named plaintiffs” realized what they were getting into by signing on with Plaintiffs’ counsel and more than a few have subsequently withdrawn from this lawsuit. (*See e.g.*, Dkt. No. 133; *compare* Dkt. No. 1-12 (all “named plaintiffs”) *with* Dkt. Nos. 148-149 (“named plaintiffs” that attend NYCDOE schools).)

² Plaintiffs list 13,821 entities in their Appendix B of Defendant School Districts. (Dkt. No. 1-1.)

proceeding against an LEA, the IDEA’s “stay put” or “pendency” provision requires that the child remain in his or her then-current educational placement until the proceedings are complete, unless the State or local agency and parent otherwise agree. 20 U.S.C. § 1415(j).

Plaintiffs allege that, when schools were shut down due to the public health emergency created by the COVID-19 pandemic, every school district in the United States that went from in-person to remote learning (1) automatically altered the pendency placement of every special education student in the United States; and (2) ceased providing every one of those students with a FAPE, in violation of IDEA’s substantive and procedural safeguards.

Approximately one month after filing this lawsuit, Plaintiffs’ counsel moved before the Part I judge for a temporary restraining order (“TRO”) and a preliminary injunction. The application for an immediate TRO was denied, with the Part I judge expressing grave doubt about the ability of this case to go forward in the posture proposed by Plaintiffs. At about the same time, some of the defendants around the country who had received service of process (or at least attempted service of process) began filing motions to dismiss the case, or indicated by letter their intent to do so.

In an effort to manage so unwieldy a lawsuit, this Court issued a number of orders to show cause, which were designed to tease out some of the many defects that seemed apparent, first to my colleague in Part I and then to me, from the face of the Complaint. The Court allowed Plaintiffs’ motion for a preliminary injunction to proceed only against the only defendants named in the actual caption of the complaint – the NYC Defendants – who not only opposed the motion but promptly moved to dismiss the Complaint as against them. The action as to all other defendants was stayed until the Court could address the potential pleading deficiencies that were immediately apparent.

This opinion explains the reasons for the Court’s entry of the following orders:

(1) An order dismissing the Complaint without prejudice as against all defendants located outside the State of New York – 49 State Departments of Education, D.C. State Board of Educations, Departamento De Educación Gobierno De Puerto Rico, and the over 13,000 school districts in states other than New York – for myriad reasons: (1) the Court lacks personal jurisdiction over any of those defendants, (2) venue does not lie against those defendants in this district; and (3) even if (1) and (2) were not the case, permissive joinder pursuant to Fed. R. Civ. P. 20 – the only applicable form of joinder, by Plaintiffs’ admission – is so grossly inappropriate that severance and dismissal is the appropriate remedy. *See Nassau Cnty. Ass’n of Ins. Agents, Inc. v. Aetna Life & Cas. Co.*, 497 F.2d 1151, 1153–54 (2d Cir. 1974) (“The misjoinder here, resting on thousands of unrelated transactions, is such a gross abuse of procedure that dismissal under F[ed.] R. Civ. P. 41(b) for failure to comply with the federal rules is warranted.”).

(2) An order dismissing the Complaint as against all defendants except the NYC Defendants and the New York State Department of Education, on the ground that permissive joinder is not appropriate and that dismissal rather than severance is the appropriate remedy. *See Nassau Cnty.* 497 F.2d at 1153–54.

(3) An order dismissing as plaintiffs all parents who do not have children enrolled in the New York City public schools (non-New York City Plaintiffs), on the ground that they lack standing to assert any claims against the NYC Defendants.

(4) An order denying the New York City Plaintiffs’ motion for a preliminary injunction and dismissing the Complaint as against the NYC Defendants without prejudice; and

(5) An order *sua sponte* dismissing the claims against the only remaining Defendant in this case, which is the New York State Department of Education.

BACKGROUND

Schools Close in Response to COVID-19

By March 2020, COVID-19 was quickly spreading across the United States. Plaintiffs allege that the governors of the several states directed Defendant School Districts to close school buildings and require that all students and school staff remain at home, with traditional in-person instruction changed to “remote learning.” (“Compl.” at ¶¶ 6-7, Dkt. No. 1.)

The Complaint is peppered with specifics about New York State and New York City, which Plaintiffs use as an “example” of how every other state and school district allegedly reacted to the pandemic. Plaintiffs specifically plead that New York State Governor Andrew Cuomo issued two executive orders closing schools, and refer to an appendix for a complete list of every other state’s gubernatorial executive orders closing school buildings. (*Id.* ¶ 6.) They also plead that Mayor DeBlasio and Chancellor Carranza unilaterally moved all instruction to remote learning for the remainder of the 2019-2020 school year. (*Id.* ¶ 7.)

Plaintiffs allege that “many” School Districts asked Secretary of Education Betsy DeVos (“Secretary DeVos”) for waivers from IDEA requirements during the crisis, and assert that Secretary DeVos did not recommend giving school districts the option to bypass major parts of federal special education law. (*Id.* ¶ 9.) Indeed, they allege that “there has been no change in federal or state law” relating to IDEA during the pandemic crisis (*Id.*). Nonetheless, they acknowledge that, “. . . the United States Department of Education (‘USDOE’) provided great flexibility in the provision of educational services during the coronavirus crisis . . .” (*id.*), though they do not discuss any of the particulars about the “great flexibility” that USDOE afforded school districts when dealing with disabled students during the pandemic.

In fact, USDOE did provide school districts with considerable latitude in unprecedented circumstances. It published two guidance documents to school districts in March 2020, as soon as it became clear that the pandemic would lead to widespread school closures: a Questions and Answers document (“USDOE Q&A,” Dkt. No. 139-1) and a Supplemental Fact Sheet (“USDOE Fact Sheet,” Dkt. No. 139-2). Although Plaintiffs deliberately did not mention or quote from these documents in their Complaint, they can nonetheless be considered, both in response to the motion for a preliminary injunction and on motions to dismiss the Complaint, because (1) they are integral to the allegations of the Complaint, which affirmatively alleges that USDOE offered school districts “great flexibility” in the administration of IDEA during the pandemic, *see Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002); and (2) they are matters of public record that were published on an official government web site, which means a court can take judicial notice of them without converting any motion to dismiss into a motion for summary judgment. *Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC*, 127 F. Supp. 3d 156, 166 (S.D.N.Y. 2015) (collecting cases); *see Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 262 (S.D.N.Y.), *aff’d*, 788 F. App’x 85 (2d Cir. 2019) (taking judicial of information published by the NYCDOE – a governmental entity – published on a government website).³

To say that USDOE provided flexibility to school districts confronting how to educate disabled students during the pandemic is an understatement. In particular, the USDOE Fact Sheet straight-forwardly authorized the provision of distance instruction in bolded letters: **“To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities**

³ The USDOE Q&A is available at: <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>.

The USDOE Fact Sheet is available at:

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>.

Act should not prevent any school from offering educational programs through distance instruction.” (USDOE Fact Sheet at 1 (emphasis original).) USDOE acknowledged that, “these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible,” and that “school districts must remember that the provision of FAPE may include, as appropriate, special education and related services *provided through distance instruction provided virtually, online, or telephonically.*” (*Id.* at 1-2.) (emphasis added)

The Fact Sheet acknowledges the constraints of the pandemic, noting that:

it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

(*Id.* at 2.)

Finally, the USDOE Fact Sheet emphasizes what the IDEA is all about – equal *access* to education for students with disabilities vis-à-vis their non-disabled peers:

Finally, although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities *equally effective alternate access to the curriculum or services provided to other students.*

(*Id.* at 2 (emphasis added).) Plaintiffs admit that the law provides that, if a student’s program becomes unavailable, a school district must find a “comparable alternative placement” or a “similar program.” (Compl. ¶ 144).

The Q&A that USDOE issued supplements the Fact Sheet guidance by noting, in more than one place, that, “there may be exceptional circumstances that could affect how a particular

service is provided.” (USDOE Q&A at 2, 3, 4.) Moreover, “If a child does not receive services after an extended period of time,” the USDOE does not recommend the principal relief Plaintiffs seek in this lawsuit – that schools be forced to reopen in the middle of a pandemic – but rather, that the school “make an *individualized determination* whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.” (*Id.* at 3, 4 (emphasis added); *see id.* at 2.) Notably, the only time the USDOE requires an LEA to consider placement decisions regarding the continuum of alternative placements under the IDEA’s procedural protections is when a child with a disability who is at high risk of severe medical complication is excluded from a school that remains open to other students – not a school that is closed to all students. (*Id.* at 4.)

What is clear from the foregoing is that USDOE would neither permit school districts to wash their hands of disability education because of the pandemic nor tie their hands about how to provide that education in light of the emergency confronting them.

In conformity with USDOE, the various State Education Departments began issuing guidance to the School Districts within their states on how to provide proper education services to students during coronavirus shutdowns. (Compl. ¶ 12.) While “a complete list of every State Education Department’s COVID-19 Guidance and Memos” is appended to the Complaint (*id.*; *see* Dkt. No. 1-4), the pleading does not purport to assert, or even summarize, what all of those many documents said. The text of the Complaint discusses only the guidance provided to school districts in New York State by the Office of Special Education of the New York State Education Department (“NYSED”). (Compl. ¶ 12.) Fortunately, the NYC Defendants provided some of the missing details about the State’s guidance in connection with their motion to dismiss and opposition to the motion for a preliminary injunction (a single document), by attaching NYSED’s

March 27 letter regarding the provision of services to students with disabilities during statewide school closures to their motion to dismiss. (*See* Dkt. No. 139-3.)

Specifically, on March 27, NYSED sent New York State school districts a letter with Questions and Answers about the provision of IDEA-mandated special education services during the pandemic. (“NYSED Q&A,” Dkt. No. 139-3.) NYSED’s guidance – which can be found on a governmental web site⁴ – echoes and reflects the guidance issued by USDOE. For example, it notes that the USODE’s “guidance indicated the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” (NYSED Q&A at 3.) It also stresses equal access, noting, “Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students.” (*Id.*)

Importantly NYSED posed the following question: “If a school district is using virtual online learning during a school closure, will students’ IEPs have to be amended?” (*Id.* at 5.)

NYSED answered:

No. Guidance provided by OSEP [USDOE’s Office of Special Education Programs] during the March 13, 2020 Joint Webinar on COVID- 19 with OSEP, Council of Administrators of Special Education, Council of Chief State School Officers, National Association of State Directors of Special Education indicated that if online or virtual learning is part of a school closure recommendation, the school district would not be required to amend students’ IEPs as online or virtual learning would be considered an alternate mode of instructional delivery.

⁴ The NYSDE Q&A is available at: <http://www.p12.nysed.gov/specialed/publications/2020-memos/nysed-covid-19-provision-of-services-to-swd-during-statewide-school-closure-3-27-20.pdf>

(*Id.*) Additionally, NYSED advised that “During the time period the school district is closed pursuant to NYS Governor Executive Order, school districts are not required to amend students’ IEPs if continuing the provision of related services via telepractice is part of a school closure recommendation.” (*Id.*)

Plaintiffs omit this document from the appendix to their pleading. (*See* Dkt. No. 1-4.) Instead, they provide hyperlinks to each State Education Department’s (live) website. (*See id.*)⁵ They specifically plead only the contents of an April 27 memo by Christopher Suriano,⁶ which stated school districts “must ensure that, to the greatest extent possible, each student with a disability is provided the special education and related services identified in the student’s IEP.” (Compl. ¶ 12.) As will be discussed later in this opinion, the guidance cited above bears significantly on Plaintiffs’ motion for a preliminary injunction.

At the school district level, Plaintiffs identify a single memo issued by NYCDOE’s Office of Related Services concerning the provision of special education services to disabled students during the pandemic school closures. (Compl. ¶ 13; Dkt. No. 1-11.) They emphasize that NYCDOE instructed its related services providers to offer therapies only remotely, not in-person. (Compl. ¶ 13.)

Plaintiffs ignore the rest of the memo, which outlines NYCDOE’s rather robust plan for providing tele-therapy to students. (*See* Dkt. No. 1-11.) That is because Plaintiffs take issue with the executive decision to close the schools in order to deal with the health crisis. Rather than

⁵ The letter provided by the NYC Defendants is two clicks away from the NYSED homepage provided by Plaintiffs by selecting “P-12 School Guidance,” and then clicking on the link to a PDF of “Memo: Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in New York State – March 27, 2020.” *See Coronavirus (COVID-19)*, New York State Educ. Dep’t, <http://www.nysed.gov/coronavirus> (last visited November 13, 2020).

⁶ Plaintiffs cite to an online version of this memo (*see* Compl. ¶ 12, n.24), available at: <http://www.p12.nysed.gov/specialed/publications/2020-memos/special-education-supplement-1-covid-qa-memo-4-27-2020.pdf>.

acknowledge the steps New York State and New York City have taken to provide special education and related services to the greatest extent possible in an unprecedented emergency, Plaintiffs allude to advice from labor unions, law firms, and doctors from the Center of Disease Control (the “CDC”) about how best to serve students during the pandemic. (*See* Compl. ¶¶ 14-15, 17-19.) They cite to surveys discussing the undoubted difficulties inherent in providing services to students with disabilities during a pandemic. (*See id.* ¶¶ 20-23) And they discuss articles in scientific literature and reports from various doctors who took the position that, health and safety risks notwithstanding, public schools should not have been closed and/or should be reopened. (*See id.* ¶¶ 49-80.) Plaintiffs clearly believe that the Governors, State Education Departments and School Districts made the wrong policy decision by closing schools in the early, frantic days of the pandemic’s outbreak in the United States; they allege that this potentially life-saving decision violated the IDEA.

Plaintiffs allege that, because opinions questioning or disagreeing with school closure decisions were published, State Education Departments and school districts became “aware they were not in compliance of [*sic*] the IDEA, Section 504 or the ADA,” (*id.* ¶ 17) and “had knowledge of the harm that was occurring to Plaintiff-Students because of a denial or unilateral modification of special education and related services,” (*id.* ¶ 24) thereby rendering the decision to close the schools a “knowing[], willful[] and deliberate[] violat[ion of] the rights of Plaintiff-Students and Plaintiff-Parents” that was taken “in bad faith.” (*Id.* ¶ 25.)

Schools Re-Open As the Pandemic Continues

By mid-April, at least the Governor of New York had begun the process of modifying his original executive order, in order to permit school buildings to reopen during the summer in order to provide in-person education to special education students who were entitled to receive services

during the extended school year (“ESY”). (*Id.* ¶ 16.) Plaintiffs specifically plead Governor Cuomo’s executive order, and append a list of supposedly similar orders from the governors of other states, in yet another appendix to the complaint. (*Id.*; *see* Dkt. No. 1-3.) Plaintiffs emphasize that these modifications “eliminated any potential legal barrier” to the provision of in-person special education services. (Compl. ¶ 16.) Plaintiffs acknowledge that some of the defendant school districts began to reopen their buildings, but assert, in conclusory fashion, that “most” School Districts remained closed to in-person services through the summer and into the fall. (*Id.* ¶ 28.) They do not identify which of the 13,821 school districts reopened and which remained closed.⁷

Insofar as New York City is concerned, the Complaint pleads that NYCDOE devised a plan to opening sites where one-on-one speech, physical, and occupation therapy services for students with special needs would be offered, albeit without providing bus transportation. (*Id.* ¶ 29.) Plaintiffs also allege that, in September, NYCDOE planned to offer in-person services would be offered 1-3 days a week. (*Id.* ¶ 29.)

The Complaint, which was filed on July 28, does not indicate what actually happened in New York City in September 2020. For that information, we must look to the NYC Defendants’ response to Plaintiffs’ motion for a preliminary injunction and their motion to dismiss. (*See* “Health Decl.,” Dkt. No. 138; “Foti Decl.,” Dkt. No. 139.) Most facts are drawn from the September 18 declaration of Christian Foti, Deputy Chief Academic Officer of NYCDOE’s Division of Specialized Instruction and Student Support. NYCDOE’s public-facing website is

⁷ The Complaint does include a summary of the plans made for in-person provision of special education services in the “top 50 largest school districts since July 2020” – those districts being located in states from Hawaii to New York, Wisconsin to Texas, Illinois to Florida. (*See id.*, ¶¶ 24-27). The discussion in this opinion will focus on the plans of the NYCDOE because NYCDOE’s situation is what the Complaint actually pleads.

regularly updated to provide parents with information about the provision of special education programs, services, and supports. (*See* Foti Decl. ¶ 21.)

Beginning in September 2020, NYCDOE reopened its schools to all students, abled and disabled. It provided all parents a choice between two ways of “going to school:” 100% remote learning, or a blended model where students attend school several days a week and engage in remote learning other days. (Health Decl. ¶ 18.) The blended model, which provided for several days of in-person education each week, was the default option; but all parents in the system (whether their children were abled or disabled) were contacted and afforded the opportunity to opt into full-time remote instruction. (Foti Decl. ¶ 12.)

As of September 18, 42.6% of all families of students with disabilities had opted not to send their children back into school buildings, but instead chose 100% remote instruction for their children. (*Id.*) Under this model, special education programs are being provided to disabled students remotely, though both synchronous and asynchronous instruction. (*Id.* ¶ 13.) Related services are for the most part provided remotely, though some students may be able to receive in-person related services, depending on demand and provider availability. (*Id.*)

Students, both abled and disabled, who did not opt into remote learning were automatically scheduled for the blended learning model. (*Id.* ¶ 12.) Under this model, students attend school in person for five days out of every ten or fifteen days, depending on classroom capacity. (*Id.* ¶ 12.) On the remaining school days, students receive remote learning, with a mix of synchronous and asynchronous instruction. (*Id.*) Students with disabilities are provided with in-person general instruction, as well as the program and services in their IEP “to the extent feasible.” (*Id.* ¶ 13.) Those related services are provided both in-person and remotely. (*Id.*)

Yet another model was developed for District 75, NYCDOE’s citywide district that provides highly specialized support for students with disabilities with significant challenges. Because students assigned to District 75 are in smaller classes, social distancing is easier, so severely disabled students have the option to attend classes more frequently – some even full-time, five days a week. (*Id.* ¶¶ 3, 12, 14.) As far as the record shows, the option of full-time in person instructions is not offered to any non-disabled students in the New York City School District. District 75 schools were slated to recommence in-person instruction on September 21. (*Id.* ¶ 14.)

Additionally, NYCDOE developed new forms relating to “adaptations” in the provision of special education programs and related services – including how these services will be provided in-person and remotely, and the delivery of related services, assistive technology, and paraprofessional support. (*Id.* at ¶¶ 16-17.) Its staff has been reaching out to families of students with disabilities to discuss each family’s instruction service choice (remote or blended) and the mode of service delivery to implement the child’s program. (*Id.*) Finalization of these “adaptations” require a discussion between NYCDOE and parents, or three documented attempts to reach the family on at least two different days. (*Id.*) This tracks, and in fact exceeds the IDEA’s standards, which allows an IEP team meeting to proceed without a parent who cannot be contacted after two attempts. *See* IDEA § 300.322(c). (*Id.*)

How School Closures Allegedly Violated Plaintiffs’ Rights

Plaintiffs’ allege that the closure of schools in response to the COVID pandemic violated disabled students’ rights under IDEA in three ways.

First, Plaintiffs allege that, in March 2020, Defendants’ “unilateral” decision to close schools altered the educational program status quo of Students. (Compl. ¶ 136.) By closing schools, Defendants “essentially failed” to provide Students with the special education and related

services set forth in their IEPs. Plaintiffs assert that Students' IEPs provide for "direct" rather than remote services (*Id.* ¶ 143), and note that, prior to the pandemic, disabled students "generally" received in-person services in a school classroom. Plaintiffs further plead that, "in most instances," Defendants also unilaterally, substantially and materially altered the frequency and duration of Students' services, while in some cases failing to provide services at all. (*Id.*) Therefore, by closing the schools, Defendants "unilaterally, substantially and materially" altered both the location where Students were to receive services and the manner in which those services were delivered (*id.* ¶¶ 139-42) – and the closure orders, thought by policymakers to be necessitated by a public health emergency, denied the Plaintiff Students a FAPE under IDEA. (*Id.*)

These allegations are all pleaded at a level of high generality; no specific student in any specific district for whom this allegation is true is identified.

Second, when Defendants made these changes by closing schools, they did so unilaterally – i.e., without first obtaining parental input or consent. According to Plaintiffs, this constituted a failure to comply with the IDEA's procedural safeguards – specifically those provisions of the IDEA that guarantee parents an opportunity for meaningful input into all decisions affecting their child's education. (*Id.* ¶¶ 137-38.)

Third, Plaintiffs allege that the defendant school districts failed to keep the Named Students (i.e., the five students whose initials appear in the caption and those listed in Appendix A) in their "then current" education placement (pendency) when they closed the schools during the pandemic. The Complaint alleges that the parents of these students sent "Ten Day" notices to their LEAs (i.e., school districts), advising that the LEA had improperly modified Students' IEPs and denied their pendency rights, and requesting relief (*id.* ¶ 145.); and then filed due process complaints with their LEAs alleging violations of the IDEA and Section 504, both by unilaterally modifying the

Students' IEPs and failing to maintain their pendency programs and placements. (*Id.* ¶ 146.) There is no allegation that any impartial hearing has yet been held, or that the decision of any Impartial Hearing Officer ("IHO") has been reviewed by any State Review Officer ("SRO"), although Plaintiffs assert that some impartial hearing requests have been assigned to IHOs. (*See* Dkt. No. 148 ¶ 17.)

Relief Sought

In a prolix complaint of eighty-three pages and one hundred and ninety-four paragraphs and six appendices, Plaintiffs assert eleven separate causes of action against all defendants, arising under 42 U.S.C. § 1983; the IDEA; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* ("Section 504"); Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"); and state constitutions, statutes, laws, and regulations. (Compl. ¶¶ 155-94.)

Ten of Plaintiffs' eleven claims allege a denial of FAPE. The remaining claim (Count IV) alleges a failure to keep students in their pendency placement.

Count I and II plead that Defendants' failure to maintain in person education for the Plaintiff students as per their IEPs deprived Students of their rights to a FAPE and due process under (I) the IDEA and the regulations promulgated thereunder and (II) the Due Process Clause of the Fourteenth Amendment. These counts are brought pursuant to 42 U.S.C. § 1983

Counts III, IV, and V are brought under the IDEA. They claim that Defendants' (III) failed to comply with various procedural requirements of the IDEA and provide Students a FAPE, (IV) failed to maintain Students' educational program and placement during the pendency of their due process complaints in violation of 20 U.S.C. § 1415(j), and (V) failed to comply with the substantive requirements of the IDEA, denied Students a FAPE, and unilaterally modified Students' educational programs.

Plaintiffs bring Count VI under state law. Specifically, Plaintiffs allege that Defendants (VI) failed to comply with state procedural requirements and thereby denied Students a FAPE as required by each state's laws and regulations.

Plaintiffs bring Counts VII, VIII, and IX under Section 504 of the Federal Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, *et seq.* They claim that Defendants (VII) discriminated against Students by failing to provide access to a FAPE pursuant to their IEPs, and unlawfully denied Students access to appropriate educational services as compared to the access provided to non-disabled students, (VIII) failed to provide Students with a FAPE such that Parents are entitled to compensatory damages for out-of-pocket expenses for special education and related services as well as lost income or employment when required to provide or supervise the provision of educational and/or related services, and (IX) intentionally and willfully failed to provide students with a FAPE such that Plaintiffs and Students are entitled to punitive damages.

Plaintiffs bring Count X under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.* They claim that Defendants (X) failed to provide in-person special education and related services that have been provided to other special education students, subjected Students to discrimination solely on the basis of their disability by their failure to provide Students with a FAPE, and denied Students the opportunity to participate in or benefit from the special education services in their IEPs.

Finally, Plaintiffs bring Count XI, alleging violations of various state constitutions and statutes. They claim that Defendants (XI) violated Students' rights to receive educational benefits as per their respective state constitution or statute by failing to provide Students in-person educational and related services.

The Named Plaintiffs purport to sue on behalf of “all similarly situated persons,” which is classic class action pleading. They define two classes:

Plaintiff-Parent is defined as a parent or legal guardian of a student, aged 3-21, who was receiving or was entitled to receive special education services under IDEA as of March 2020 and/or through the 2020-2021 school year, however, Defendants failed to provide a FAPE to the Plaintiff-Students. In addition, Plaintiff-Parents were required to do the job and satisfy the responsibilities the Defendants were legally obligated to do and had received federal funds to do. Many such Plaintiff-Parents were required to pay out-of-pocket expenses to arrange and provide educational or related services for their child, and many such Plaintiff-Parents lost their employment so as to be able to provide said services or supervision to their children for “remote” services

(Compl. ¶ 128.) The second class is the students themselves:

Plaintiff-Student is defined as a student who was 3 to 21 years of age between March 2020 and July 2020, and who is classified as having a disability as defined by IDEA (20 U.S.C. § 1401(3)), who have qualifying disabilities under Section 504, and who are afforded protection under Section 504 and the Americans with Disabilities Act, and who were denied these rights because of their disability by the Defendants. Plaintiff-Students are also entitled to receive educational benefits from the LEAs as per their respective State Constitutions or statutes.

(*Id.* ¶ 129.)

As pleaded, all claims are asserted by all plaintiffs against all of the defendants – even though it is perfectly obvious that no student or his/her parents has a claim against any school district other than the one in which s/he is enrolled, or against any State Education Department located in a state other than the student’s state of residence. No class allegations are lodged against all of the purported defendants.

As a result of these alleged violations of law, Plaintiffs seek either (1) the immediate reopening of every school in the United States, notwithstanding the public health emergency, or (2) the issuance of “pendency vouchers” (i.e., money), which Parents can use to “self-cure,” presumably by enrolling their children in some private school or program that is not open for in-person instruction notwithstanding the COVID pandemic. They also seek ask for independent

evaluations of Students to determine regression and/or loss of competencies and abilities because of the shutdown; the immediate convening of each student’s Committee on Special Education (“CSE”) to develop modified IEPs to deal with the pandemic; and a variety of forms of damages, including a compensatory education award (an award of educational services designed to remedy a deprivation in a student’s education), damages for out-of-pocket expenses incurred by the parents due to school closure (including, apparently, damages for any loss of parental employment occasioned thereby) and punitive damages (again, on the theory that because some people thought the schools should have remained open, the decision to close the schools constituted a knowing, willful and bad faith violation of the Students’ rights). (*Id.* ¶¶ 147-154.)

Plaintiffs also assert claims under the Racketeering Influenced and Corrupt Organizations Act (“RICO”), although that occurred after the filing of the complaint, and solely as a transparent (and futile) effort to manufacture jurisdiction over all defendants in this court. The RICO aspect of the case will be discussed below.

Procedural History

The Complaint in this action was filed on July 28, 2020. Summonses began to issue and service to be effected.

On August 22, 2020, plaintiffs presented an *ex parte* application for a TRO and preliminary injunction to the Hon. Gregory H. Woods, sitting in Part I. Judge Woods ordered all “above-named Defendants” – which included the NYC Defendants, as well as “the School Districts in the United States” and “the State Departments of Education in the United States” – to show cause why the Court should not grant Plaintiffs’ application, and directed plaintiffs to serve all defendants or their counsel on or before August 24 and to retain proof of service. (Dkt. No. 29.)

Plaintiffs' counsel commenced serving Judge Woods' order across the country (although I have no proof that he served everyone in the two days allotted to him, and no belief that he did or could have done so – indeed, the Clerk of Court complained to me that she had no idea how to issue summonses to THE SCHOOL DISTRICTS IN THE UNITED STATES, especially as there were no addresses listed in the pleading or any appendix thereto for all 13,821 of them). But some districts were served, because this Court was quickly inundated with letters from school districts across the country, complaining that Plaintiffs had not properly served either their Complaint or the application for a TRO and preliminary injunction; that this Court lacked both personal and subject matter jurisdiction over the various school districts; and that venue was improper. Several school districts made formal motions on these and other grounds. Additionally, certain districts also advised the court that Plaintiffs' counsel had not obtained the consent of some of the families listed as plaintiffs in Appendix A to file due process complaints and request impartial hearings on behalf of those children, and indicating that those parents wanted nothing to do with Plaintiffs' counsel or with this lawsuit. (*See* Dkt. No. 110 (Eastchester Union Free School District); Dkt. No. 120 (Clarkston Area Schools); Dkt. No. 132 (Leander Independent School District); Dkt. No. 136 (Hicksville Union Free School District); Dkt. No. 146 (Bristol Board of Education); Dkt. No. 155 (Cherry Hill, NJ School District)).

This court quickly concluded that the matter would be unmanageable if it were handled in the ordinary course. Aside from the number or purported parties, the rolling nature of service and appearance made it impossible to set realistic motion schedules. I also concluded that it would be inappropriate to put stressed states, and over 13,800 school districts, to the trouble and expense of filing individual responses to a pleading that appeared in many respects deficient on its face. Therefore, pursuant to Fed. R. Civ. P. 1, this Court issued an Order to Show Cause on September

2 (the “OTSC”), directing Plaintiffs to address several threshold procedural issues. (“OTSC,” Dkt. No. 84.) Specifically, this Court ordered Plaintiffs to show cause (1) why the Complaint should not be dismissed as against all school districts from states other than New York; (2) why venue is proper in this district as to any school district located in the Eastern, Western or Northern Districts of New York; and (3) why all Defendants other than the NYC Defendants should not be severed, and the complaint dismissed against them without prejudice to the institution of individual actions against any district that is allegedly refusing to comply with IDEA during the pandemic. (*Id.*) I did not issue any sort of temporary restraining order. I allowed Plaintiff’s motion for a preliminary injunction to continue as against the NYC Defendants, but stayed the action as to all other Defendants.

Plaintiffs responded to each of this Court’s inquiries (*see* Dkt. Nos. 121, 122, 123, 124) and NYCDOE, Mayor DeBlasio, and Chancellor Carranza filed a motion to dismiss and in opposition to the application for a preliminary injunction. (Dkt. No. 137, 140.)

DISCUSSION

Rule 1 of the Federal Rules of Civil Procedure provides as follows:

These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

This lawsuit presents unusual challenges in complying with Rule 1.

Although only four plaintiffs are named in the caption of the case, the Complaint purports to be brought on behalf of a nationwide class consisting of what must be literally hundreds of thousands of learning disabled children and their parents, only 104 of whom are identified by name. Each of those children has his or her own individualized education plan (“IEP”), which was developed by a CSE in the child’s home school district (of which there are well over 13,000 in the

United States, according to Plaintiffs' Appendix B). Although only three identified individuals and entities are named as defendants in the caption, the eleven causes of action are alleged against fifty-two⁸ Departments of Education and every school district in the United States. While the Complaint explicitly purports to be brought on behalf of a plaintiff class,⁹ it does not purport to be brought against a defendant class – there are no defendant class allegations in the pleading, and any injury that was caused to an individual student and his/her parents was not caused by all defendants collectively, but by the school district where the student attends school and the State Education Department in the student's state of residence. Yet as pleaded, all claims are lodged against all defendants by all plaintiffs.

It is obvious that this is no class action at all, but rather tens of thousands of individual cases that Plaintiffs' counsel has tried to amalgamate into a single lawsuit. Issues of subject matter jurisdiction, *in personam* jurisdiction, misjoinder and failure to state a claim are apparent from the face of the Complaint. Simply allowing the action to proceed as though it were a normal lawsuit would present unprecedented and insurmountable case management issues, if thousands of defendant school districts and States were forced – during a pandemic, when resources, both human and financial, are strained – to try to figure out who was suing whom and file individual motions to deal with the manifold obvious defects in the pleading. And this does not take into account mention the strain it would place – indeed, has already placed – on the resources of the

⁸ Although I will use the term “State Departments of Education” to refer to all 52 Departments, Washington D.C. and Puerto Rico are not states; Washington is a special federal district and Puerto Rico is a Commonwealth. Nonetheless, their Departments of Education are the ranking educational authority in their respective geographic territories, just as the fifty State Departments of Education are.

⁹ Were there any doubt on that score, the retainer letter entered into between Plaintiffs' counsel and his putative clients specifically states Plaintiffs' counsel is “seeking national class action status for the claims associated with [his] representation.” (Dkt. No. 176-2 at 2; Dkt. No. 176-3 at 1 (amended retainer agreement).)

court, especially the Office of the Clerk of Court, at a time when those resources are desperately needed elsewhere.

An unorthodox pleading demands unorthodox response. For that reason, in a series of orders to show cause, the court identified issues that were either apparent from the face of the Complaint or were raised by those few defendants who moved to dismiss the Complaint before the court stayed this action as to all defendants other than the NYC Defendants. In those orders to show cause, I in essence required Plaintiffs to explain (1) why States other than the State of New York and out-of-state school districts can or should be sued here, and (2) why it was appropriate – even for students located in New York, and in this district – to join what appeared to be individual claims against individual defendants into a single massive action.

Plaintiffs' responses to the court's questions demonstrate that this action should – indeed, must – be dismissed in significant part, before the thousands of defendants are burdened with the need to respond to a patently deficient complaint. Fortunately, several of the school district defendants, both in New York City and out of state, have, by motion or by letter, assisted the court in formulating the issues to be addressed.

I. All Claims Against the Out of State Defendants Are Severed and Dismissed Without Prejudice To their Assertion in an Appropriate Forum

For purposes of this discussion, the term “out-of-state” defendants refers to any school district located outside the State of New York, and the State Departments of Education in the District of Columbia, Puerto Rico and the 49 States other than the State of New York.

Between motions to dismiss (Dkt. Nos. 74, 92, 94, 96, 98, 181)¹⁰ and letters to the court indicating an intent to move to dismiss (*see, e.g.*, Dkt. Nos. 35, 40, 63), the court's attention has

¹⁰ Four Georgia school districts – Clayton County Public Schools, the Cobb County School District, the DeKalb County School District, and Marietta City Schools – filed motions to dismiss, as did the County School Board of York County, Virginia and the Omaha Public School District.

been called to several reasons why the complaint as against these defendants would have to be dismissed in its entirety: lack of subject matter jurisdiction due to the failure to exhaust administrative remedies; lack of *in personam* jurisdiction over these entities – none of which had any reason to believe they would be haled into a court in New York City to answer allegations relating to issues of local education in their respective jurisdictions; improper venue; insufficient service of process; and failure to state a claim.

Additionally, insofar as the out-of-state defendants are arms of the state of their respective states, they enjoy Eleventh Amendment immunity, which means that they cannot be sued under Section 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989); *Bd. of Educ. of Pawling Ctr. Sch. Dist. v. Schutz*, 290 F.3d 476, 480 (2d Cir. 2002). This argument would appear to apply to every out-of-state Department of Education, plus Puerto Rico, but not the District of Columbia, *See Lunceford v. D.C. Bd. of Educ.*, 745 F.2d 1577, 1579 (D.C. Cir. 1984); *J.T. v. D.C.*, 2020 WL 5865243 (D.D.C. Oct. 1, 2020) (IDEA case). It appears also to apply to the school districts themselves in some, but not all, states. (*Compare Sato v. Orange Cnty. Dep't of Educ.*, 861 F. 3d 923, 934 (9th Cir. 2017) (under California law, school districts are arms of the state), *with Mt. Healthy Cnty. Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (under Ohio law at the time, school districts were not arms of the State).

For the following reasons, plaintiffs' effort to sue the out of state defendants in the Southern District of New York must end today.

A. The Court Lacks In Personam Jurisdiction Over the Out of State Defendants For the Claims Asserted in this Lawsuit

Jurisdictional arguments should be addressed first, and the easiest basis on which the court can dismiss all claims against the out-of-state defendants is that the court lacks *in personam* jurisdiction over them.¹¹

“[S]ua sponte dismissal for lack of personal jurisdiction is generally only resorted to upon a motion for default judgment.” *Hewes v. Alabama Sec’y of State*, No. 19-cv-9158, 2020 WL 4271708, at *4 (S.D.N.Y. July 23, 2020) (collecting cases). However, at least six defendants have moved to dismiss for want of personal jurisdiction, and “it is in the power of the Court to order Plaintiff to show cause why all of the claims against [any] Non-Moving Defendants should not be dismissed for lack of personal jurisdiction.” *Id.* at *5 (citing *Sinoying Logistics Pte Ltd. v. Yi Da Xin Trading Corp.*, 619 F.3d 207, 213 (2d Cir. 2010)). The Court has given Plaintiffs an opportunity to show cause why the claims against the out of state defendants should not be dismissed on that ground.

Plaintiffs have not come close to showing that this Court has personal jurisdiction over the out-of-state School Districts – or the out of state Departments of Education. The most efficient

¹¹ The out of state defendants who have moved or indicated an intention to move to dismiss the complaint as against them raised as their primary ground lack of subject matter jurisdiction/failure to exhaust administrative remedies, and ordinarily subject matter jurisdiction would be the first issue addressed. However, at least some of the out of state plaintiffs assert that they have filed due process complaints, which might make it impossible to dismiss Count IV of the Complaint (which asserts a pendency claim) as against at least some out of state defendants *for lack of subject matter jurisdiction* (as opposed to for lack of personal jurisdiction, improper venue, or failure to state a claim, the last of which being the basis on which the pendency claim will be dismissed against the New York City Defendants later in this opinion). Therefore, in dealing with the out of state defendants, I have chosen to move directly to *in personam* jurisdiction and venue, both of which mandate the dismissal without prejudice of all claims against all out of state defendants. It would appear, however, that as to all out of state defendants, all claims other than those asserted in Count IV would have to be dismissed without prejudice for failure to exhaust administrative remedies, 20 U.S.C. §§ 1415(i)(2)(A), 1415(l) – which, under Second Circuit precedent, deprives this court of subject matter jurisdiction over those claims. *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 483, 488 (2d Cir. 2002). Because the IDEA’s exhaustion requirement implicates the Court’s subject matter jurisdiction, the Court may address it *sua sponte* with respect to moving and non-moving Defendants alike. See *Wenegieme v. U.S. Bank Nat’l Ass’n*, No. 16 -cv-6548, 2017 WL 1857254, at *8 (S.D.N.Y. May 4, 2017), *aff’d*, 715 F. App’x 65 (2d Cir. 2018) (internal citations omitted).

resolution is for the Court to dismiss the claims against all out-of-state Defendants, without prejudice. *See Sinoying Logistics*, 619 F.3d at 214.

1. The Court Lacks Long-Arm Jurisdiction Under New York Law

In federal question cases, courts first determine whether the defendant is subject to jurisdiction under the law of the forum state – here, New York. *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 224 (2d Cir. 2014) (citing *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 168 (2d Cir. 2013)). This requires analysis of New York C.P.L.R. §§ 301 and 302.

New York’s general jurisdictional statute simply states that, “A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” N.Y. C.P.L.R. 301. Courts previously held that C.P.L.R. § 301 “confers jurisdiction where a company has engaged in such a continuous and systematic course of ‘doing business’ in New York that a finding of its ‘presence’ in New York is warranted.” *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 224 (2d Cir. 2014) (internal quotations and citations omitted).

However, as the United States Supreme Court has recently made clear, an assertion of general jurisdiction requires that a defendant “corporation’s affiliations with the State are so ‘continuous and systematic’ as to render it essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (internal quotations and citations omitted). “*Daimler* established that, except in a truly exceptional case, a corporate defendant may be treated as essentially at home only where it is incorporated or maintains its principal place of business.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 498 (2d Cir. 2020) (quoting *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016)). The old “doing business” test for

general jurisdiction was effectively abolished by *Daimler*, making it much harder to sue an out-of-state entity in New York for conduct that has no connection to New York.

The out-of-state defendants in this case are not subject to general jurisdiction in New York. The Departments of Education, as arms of the several states, are sovereign entities. The out-of-state school districts are generally understood to be quasi-municipal corporate entities created under the laws of the states in which they are located. *See Mt. Healthy Cty. Sch. Dist. Bd. of Educ.*, 429 U.S. at 280; *Woods v. Rondout Valley Ctr. Sch. Dist. Bd. of Educ.*, 466 F.3d 232, 236–37 (2d Cir. 2006). They are not incorporated, chartered or located in New York. And the contacts Plaintiffs allege that defendants have with New York – the receipt of federal funding by those districts and the (alleged) fact that their pension funds are invested with New York-based entities – are, after *Daimler*, insufficient to render the School Districts “at home” in New York. *See Chen*, 954 F.3d at 500.

Neither are the out-of-state defendants subject to specific jurisdiction under New York’s long arm statute, which governs when New York courts will exercise jurisdiction over non-domiciliaries.

“As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who . . . transacts any business within the state or contracts anywhere to supply goods or services in the state.” N.Y. C.P.L.R. 302.

Plaintiffs assert that the various out-of-state defendants “transact business” in New York, both through their receipt of federal funding for IDEA and through their pension fund investments. But even assuming that were true (and it is not), that does not render them amenable to suit in this district for their local IDEA violations.

Plaintiffs claim that federal funding, including Medicare and Medicaid, is administered through the Center of Medicare and Medicaid Services (“CMS”) – which, they assert, is “located here in New York.” (P.I. Mem. at 9, Dkt. No. 122.) But CMS (an agency of the federal government) is headquartered in Baltimore, Maryland – which is perfectly clear on the very website to which plaintiffs cite. *Financial Alignment Initiative (FAI): New York*, Ctrs. for Medicare & Medicaid Servs. (Sept. 28, 2020), <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-CoordinationOffice/FinancialAlignmentInitiative/New-York>. This court is not required to accept as true an allegation contradicted by Plaintiff’s own evidence.

Moreover, the OSEP’s guidance clearly explains that, under the IDEA’s grant provision, federal Medicaid funds for the education of disabled students are provided to *states*, which then pass the money on to LEAs. *See Special Education--Grants to States*, U.S. Dep’t of Educ. (May 5, 2016), <https://www2.ed.gov/programs/osepgts/index.html>. Therefore, out-of-state school districts receive their federal IDEA funding from the states in which they are located. Plaintiffs do not and cannot credibly allege that any out of state school district receives Medicaid funding under the IDEA from the State of New York.

Finally, plaintiffs specifically allege that IDEA funds are administered through *local* agencies. (Dkt. No. 122 at 9.) It should go without saying that a school district located in Omaha, Nebraska or in Cobb County, Georgia is not “locally administered” in the State of New York.

The fact that some of the out-of-state defendants (which ones are not identified) may have pension funds that are invested with New York-based financial institutions, or may have issued bonds through New York-based financial institutions, also does not give this court *in personam* jurisdiction over the claims asserted in this lawsuit. To establish specific, or transactional, personal

jurisdiction, Plaintiffs' causes of action must "aris[e] from" the School District's in-state transactions. N.Y. C.P.L.R. 302(a). The claims in this lawsuit, which arise out of the closure of school districts due to the COVID-19 pandemic and the alleged impact of those closures on the receipt of special education services pursuant to students' IEPs, do not arise out of or relate to any state's or school district's activities in the financial markets relating to their pension funds. *See Licci*, 732 F.3d at 168–69.

Thus, Plaintiffs have not and cannot established specific personal jurisdiction over any out-of-state School District under New York's long-arm statute.

2. Plaintiffs Fail to Plead a Viable RICO Claim, and so Cannot Acquire *In Personam* Jurisdiction by that Gambit

Perhaps intuiting that his claim for long-arm jurisdiction was weak, Plaintiffs' counsel tried to manufacture personal jurisdiction where none existed by asserting that the over 13,000 out-of-state defendants could be sued in this district pursuant to the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. That, too, fails, because Plaintiff's theory for relief under RICO is deficient in multiple respects.

RICO entered this case by the back door.

There is no RICO count in the pleading. However, when Plaintiffs' counsel appeared before the Part I judge, he filed an *ex parte* brief in support of his application for a temporary restraining order – subsequently filed on the public record at Docket #90-7 – in which he asserted that jurisdiction could be acquired over all defendants, wherever located in the United States, pursuant to the Racketeering Influence and Corruption Act (RICO), 18 U.S.C. §§ 1961-1968. Plaintiffs argues that Defendants violated RICO by receiving federal Medicare and Medicaid funds by electronic means while failing to provide special education students in various school districts with the services required by their IEPs during the pandemic. This alleged constituted mail and

wire fraud under 18 U.S.C. §§ 1341 and 1343, and gave this court so-called “ends of justice jurisdiction” over all Defendants.

Section 1965(b) of the RICO statute provides for national jurisdiction over “additional defendants of any kind,” but only if the plaintiff shows “that the ‘ends of justice’ so require.” *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 71 (2d Cir. 1998). Generally, “‘ends of justice’ jurisdiction is authorized where the RICO claim could not otherwise be tried in a single action because no district court could exercise personal jurisdiction over all of the defendants.” *Elsevier Inc. v. W.H.P.R., Inc.*, 692 F. Supp. 2d 297, 315 (S.D.N.Y. 2010) (citations omitted). To comply with due process, any such additional defendant need only have minimum contacts with the United States. *See Hitachi Data Sys. Credit Corp. v. Precision Discovery, Inc.*, 331 F. Supp. 3d 130, 145 (S.D.N.Y. 2018) “If these requirements are satisfied, the Court may also be permitted to exercise personal jurisdiction over such defendants for other claims that arise out of the same operative facts as the civil RICO claim, even if personal jurisdiction would not otherwise be present as to those claims.” *Id.* (citing *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1056–57 (2d Cir. 1993)).

So Plaintiffs are correct about one thing: it is possible to obtain nationwide service of process in a civil action brought under the RICO statute as long as suit is brought “in a district court where personal jurisdiction based on minimum contacts is established as to at least one defendant.” *Hitachi*, 331 F. Supp. 3d at 145 (quoting *PT United*, 138 F.3d at 71).

But that is all that Plaintiffs get right about RICO.

Counsel’s reliance on RICO in the brief filed in support of the application for a TRO, naturally led this court to assume that a RICO claim was asserted somewhere in the prolix Complaint. Accordingly, when Plaintiffs were ordered to show cause why there was personal

jurisdiction over out-of-state Defendants, I directed Plaintiffs to address the RICO argument they had raised before Judge Woods. (*See* Dkt. No. 84 at 2.)

Subsequent line-by-line analysis of the Complaint revealed that it did not assert any cause of action under RICO. Nonetheless, in conformity with my individual rules (RICO Case Standing Order, Sept. 8, 2010), Plaintiffs filed a RICO Case Statement in response to the court's Order to Show Cause (Dkt. No. 121), which automatically amended the complaint to include a RICO count. In that RICO Case Statement, Plaintiffs contended that Defendants had violated both Sections 1962(a) and (c), as well as engaged in a conspiracy to violate RICO under Section 1962(d).

Five days later, on September 16, 2020, Plaintiffs sought leave to amend their Complaint in a letter filed on September 16, 2020, both to add additional plaintiffs and defendants and to "include their Civil RICO claims." (Dkt. No. 133.) The court denied the request for leave to amend without prejudice – principally to avoid adding additional parties when orders to show cause why parties should not be dismissed were outstanding, but also noting that, under this court's individual rules, the contents of the RICO Case Statement would be deemed to amend the pleading in any event. (Dkt. No. 145 at 5; RICO Case Standing Order, Sept. 8, 2010.) Accordingly, for purposes of the instant omnibus opinion, I deem the complaint amended to assert the claims outlined in the RICO Case Statement of September 11, 2020.

When the NYC Defendants moved to dismiss the complaint on September 18, they did not initially move to dismiss any RICO claim, as the Complaint itself contained none. (*See generally* Dkt. No. 140.) However, in their opposition to the City's motion to dismiss, Plaintiffs found it "curious to note DOE failed to deny any of the allegations in the RICO Case Statement," since the Case Statement was deemed incorporated into their Complaint. (Dkt. No. 150 at 12.) This

prompted the City to respond to that argument by arguing in their reply papers that Plaintiffs had failed to plead an adequate RICO claim. (Dkt. No. 157 at 7-9.)

The usual rule is that arguments raised for the first time in reply are not to be considered. *See Dukes v. New York City Emps. Ret. Sys.*, 361 F. Supp. 3d 358, 369 n. 8 (S.D.N.Y. 2019) (citations omitted). However, rather than start the motion process all over again, I ordered Plaintiffs to respond to the City's argument, which they did. (Dkt. Nos. 183, 194.)¹²

After reading the RICO Case Statement, and with the benefit of everyone's input, it is perfectly apparent that Plaintiff has not and cannot plead a viable RICO claim. This "in terrorem" contention was introduced into this action as an afterthought, not *ab initio*, and solely to try to manufacture jurisdiction over parties who could not be sued on these claims in this court. I will, therefore, explain why Plaintiffs' effort to assert a RICO claim must be denied – and eliminate this gambit for acquiring jurisdiction over the out-of-state defendants. It is imperative that the issue be addressed now and in this context because, once a civil RICO claim is dismissed, the plaintiff can no longer rely upon the statute's authorization of national personal jurisdiction. *Hitachi*, 331 F. Supp. 3d at 145–46.

The RICO Case Statement Fails to Allege A Viable RICO Claim for Multiple Reasons

To sustain a RICO claim, a plaintiff must show that the defendant has violated the substantive RICO statute in "(1) that the defendant (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise,' (7) the activities of which affects interstate or foreign commerce." *Moss v. Morgan Stanley*, 719 F.2d 5, 17 (2d Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984).

¹² None of the moving out-of-state defendants addressed RICO because, at the time they moved for dismissal, the RICO Case Statement had not been filed and they were unaware of this novel claim.

Courts generally approach RICO claims with caution and an understanding of Congress's goal in enacting the RICO statute: to prevent legitimate businesses from becoming infiltrated by organized crime – though the statute's reach is not limited to mobsters. *See United States v. Porcelli*, 856 F.2d 1352, 1362 (2d Cir. 1989). “Because the mere assertion of a RICO claim has an almost inevitable stigmatizing effect on those named as defendants, courts should strive to flush out frivolous RICO allegations at an early stage of the litigation.” *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998). Indeed, although plaintiffs often zealously pursue RICO claims, particularly in cases involving fraud, plaintiffs asserting RICO frequently miss the mark. *See Gross v. Waywell*, 628 F. Supp. 2d 475, 479–80 (S.D.N.Y. 2009) (conducting a survey of 145 civil RICO cases filed in the Southern District of New York from 2004 through 2007 and finding that all 36 cases that were resolved on the merits resulted in judgments against the plaintiffs, including 30 at the motion to dismiss stage). RICO claims premised on allegations of mail or wire fraud warrant particular scrutiny, “because of the relative ease with which a plaintiff may mold a RICO pattern from allegations that, upon closer scrutiny, do not support it.” *Id.* at 493 (citing *Efron v. Embassy Suites (Puerto Rico), Inc.*, 223 F.3d 12, 20 (1st Cir. 2000)).

Here, Plaintiffs allege two substantive violations of RICO's prohibitions pursuant to Sections 1962(a) and (c), as well as conspiracy to violate RICO's substantive prohibitions pursuant to Section 1962(d). The violations are predicated on Defendants' alleged commissions of mail fraud under 18 U.S.C. § 1341, wire fraud under 18 U.S.C. § 1343, fraudulent transfer of money under 18 U.S.C. § 2314, fraudulent receipt of money under 18 U.S.C. § 2315, and financial institution fraud under 18 U.S.C. § 1344 – all of which qualify as predicate acts under Section 1961(1) of RICO.

Plaintiffs' RICO claim, as outlined in the RICO Case Statement, fails in every particular.

a. No Standing

As a threshold issue, Plaintiffs cannot assert a viable RICO claim because they lack standing to sue under the RICO statute on the ground they have asserted.

RICO grants standing to sue to “Any person injured in his business or property by reason of a violation of section 1962.” 18 U.S.C. § 1964(c) (1988). “This language limits standing to plaintiffs whose injuries were both factually and proximately caused by the alleged RICO violation.” *In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 399 (2d Cir. 1994) (collecting cases). Thus, “To have standing, plaintiffs must show that they were the intended targets of the RICO violations.” *G-I Holdings, Inc. v. Baron & Budd*, 238 F. Supp 2d 521, 549 (S.D.N.Y. 2002) (internal quotation marks omitted); *see also Chandrat v. Navillus Tile*, No. 03 10093, 2004 WL 2186562 (S.D.N.Y. Sept. 28, 2004). The success of this endeavor depends on the RICO plaintiff’s ability to show that the injuries alleged were the “preconceived purpose” or the “specifically intended consequence” of the defendant’s racketeering activities – if not, the injuries can be neither the “necessary result” or “foreseeable consequence” of the defendant’s actions. *See id.*; *see also Medgar Evers Houses Tenants Assoc. v. Medgar Evers Houses Assoc.*, 25 F. Supp. 2d 116, 122 (E.D.N.Y. 1998).

Simply put, a RICO plaintiff cannot establish standing if the alleged injury is the derivative result of a fraudulent scheme that targets another victim. Yet that is precisely what Plaintiffs have alleged here.

The gravamen of Plaintiffs’ case is that disabled students were not provided with a FAPE during the pandemic, due to school closures and the provision of remote services. But failure to provide a FAPE is not a RICO predicate act. So in the RICO Case Statement, plaintiffs allege that the Defendant school districts submitted false Medicaid claims to the federal government in order

to obtain federal funding to educate disabled children. Those purportedly false submissions are the frauds, the “racketeering acts,” that Plaintiffs have identified. Failure to provide a student with a FAPE does not constitute a racketeering act under the RICO statute.

But this alleged fraud was not perpetrated on Plaintiffs. Rather, the purported frauds targeted the United States, which disburses Medicaid funding on certain conditions that Plaintiffs claim were not met. Therefore, any claim for relief resulting from those frauds belongs, not to these plaintiffs, but to the United States (or to a civil relator suing on behalf of the United States in a *qui tam* action). As a result, the alleged frauds cannot form the basis for relief under the civil RICO statute in a case brought by disabled students and their parents, whose claim is that the children were not provided with a FAPE – not that they (the Plaintiffs) were defrauded in any way.

Additionally, Plaintiffs plead no facts tending to show that the injury they allege – denial of a FAPE – was either the “preconceived purpose” or “specifically intended consequence” of Defendants’ alleged racketeering activities. *See In re American Express. Co.*, 39 F.3d at 400.

Lack of standing to assert a RICO claim on the facts pleaded in the Case Statement is enough to compel dismissal of any RICO claim that Plaintiffs might try to assert. But even if Plaintiffs did have standing to assert a RICO claim against these defendants, based on the Medicaid frauds identified in the RICO Case Statement, the claim they outline in the RICO Case Statement is multiply deficient.

b. Failure to Allege an Enterprise

First and foremost, Plaintiffs’ substantive RICO claims fail because the RICO Case Statement fails to allege the existence of any enterprise – a necessary element to any RICO claim.

Section 1961(4) defines “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any . . . group of individuals associated in fact.” 18 U.S.C. §

1961(4). “[A]n association-in-fact enterprise is ‘a group of persons associated together for a common purpose of engaging in a course of conduct.’” *Boyle v. United States*, 556 U.S. 938, 946 (2009) (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981)). Where a plaintiff alleges an association-in-fact enterprise, courts in this Circuit look to the “hierarchy, organization, and activities” of the association to determine whether “its members functioned as a unit.” *First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 174 (2d Cir. 2004) (internal citations omitted).

At minimum, an association in fact must have “at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.” *Boyle*, 556 U.S. at 946. “To satisfy the first ‘purpose’ feature, the individuals that [compose] the enterprise ‘must share a common purpose to engage in a particular fraudulent course of conduct and work together to achieve such purposes.’” *New York v. United Postal Serv., Inc.*, No. 15-cv-1136, 2016 WL 4203547, at *3 (S.D.N.Y. Aug. 9, 2016) (quoting *First Capital*, 385 F.3d at 174). To satisfy the second feature, “a plaintiff must demonstrate the relationships between the various members and their roles in the purported RICO scheme.” *Id.* (collecting cases). And most importantly, “A plaintiff’s conclusory naming of a string of entities does not adequately allege an enterprise.” *First Capital*, 385 F.3d at 175.

With these requirements in mind, the Court turns to the specifics of the “enterprise” alleged by Plaintiffs.

The RICO Case Statement alleges an enterprise consisting of all of the thousands of Defendants as well as “other wrongdoers,” (unidentified), together with “passive instruments and victims” (also unidentified) at three different levels: the local school district level, the state level, and the national level. (Dkt. No. 121 at 36.) At the local level, Plaintiffs claim that Superintendents and other school administrators, school boards, school employees, contractors, and community

members are involved in budgets, financing, reimbursements and development of students' IEPs. (*Id.*) At the state level, the governor, state legislators, state departments of education, state Medicaid offices, and other administrators, employees, and contractors are involved in setting and managing state funding and policy, as well as oversight and enforcement of these policies. (*Id.*) And at the national level, the federal Department of Education, the Department of Health and Human Services (including the Centers for Medicaid and Medicare), the Justice Department, and Members of Congress are involved in education and Medicaid funding, federal policy, and oversight and enforcement of federal rules, regulations and laws. (*Id.* at 36-37.) Plaintiffs allege that unnamed financial institutions that are "victims of Defendants' racketeering activities" are also members of the enterprise. (*Id.* at 37.)

In essence, Plaintiffs assert that the entire educational system throughout the United States is being run as a single massive "racketeering enterprise," and that everyone involved with the implementation of IDEA – from the individuals employed by individual schools to individual school districts to State Departments of Education to State Legislatures to Congress and regulators at the federal Department of Education – is acting together and in concert to deprive disabled students of their rights during the pandemic by committing Medicaid fraud.

Unfortunately for Plaintiffs, not a single factual allegation in either the Complaint or the RICO Case Statement tends to show that these manifold parties constitute an "association in fact;" that they bonded together with the singular purpose of depriving disabled students of the benefit of in-person education during the pandemic; or that they acted together as a unit to achieve that purpose. Nor could Plaintiffs plausibly so allege.

Indeed, allegations that every school district and State Education Department acted in concert to close schools so as to effectuate an illegal result would contradict allegations that *are*

made in the Complaint, which underscore and emphasize the separateness of school districts and the states within which they are located. Plaintiffs allege, for example, that the School Districts “are the official bodies charged with the responsibility of developing and enforcing policies with respect to the administration and operation of the public schools *in their respective geographic areas . . .*” (Dkt. No. 121 at 15 (emphasis added).) Similarly, the Departments of Education “are the State Educational Agencies (‘SEA’) which exercise general supervision over all programs *in the State* that provide educational services to disabled students, and must ensure that all such meet *State* education standards.” (*Id.* at 16 (emphasis added).) This language renders Plaintiffs’ conclusory rhetoric about a “massive racketeering scheme across every state” utterly implausible. (*See id.* at 25.) If hundreds of independent entities are alleged to have made “*local* decisions that take into consideration the health, safety, and well-being of all their students and staff” (*id.* at 18 (emphasis added)) – and that is what Plaintiffs say in their Complaint – then they did not organize themselves into a structured collective for the purpose of defrauding the government of Medicaid funds and depriving their students of FAPEs.

Plaintiffs’ allegations of an enterprise are, at best, “the conclusory naming of a string of entities” coupled with legal conclusions. *See First Capital*, 385 F.2d at 175. The RICO Case Statement alleges no facts concerning the “hierarchy” or “organization . . . of the alleged association,” let alone facts that support an inference that the various school boards, administrators, and policymakers have any sort of relationship that forms a coherent entity. *Id.* at 174; *see also Boyle*, 56 U.S. at 956.

Nor does the RICO Case Statement contain any concrete factual assertions supporting the inference that the constituent institutions, including Congress and the USDOE, share a common interest in the success of the so-called enterprise. *See Continental Petroleum Corp., Inc. v.*

Corporation Funding Partners, LLC, No. 11-cv-7801, 2012 WL 1231775, at *6 (S.D.N.Y. Apr. 12, 2012); *see also Abbot Laboratories v. Adelpia Supply USA*, No. 15-cv-5826, 2017 WL 57802, at *4 (E.D.N.Y. Jan. 4, 2017) (holding that the plaintiff’s factual allegations, which included few details of the defendants’ interactions, could not support “an inference than over 300 ‘disparate defendants’ formed an enterprise”). It is not plausible that all of the entities alleged to be part of the “enterprise” want either to deprive special education students of their rights or want school districts to misuse federal funds.

Plaintiffs assert that there must be a nationwide enterprise because – *mirabile dictum* – all the states and districts reached the initial conclusion that schools needed to be closed last spring in light of the pandemic. (Dkt. No. 121 at 16, 37.) But that is a classic example of *post ergo propter hoc* illogic. Yes, state and local school officials across the country reached the conclusion that, for the safety of students and teachers alike, schools needed to be closed in the early and confusing days of a pandemic that has thus far sickened millions and cost over 240,000 Americans their lives. But no, it does not logically follow that they did so as part of a single unitary association in fact. Plaintiffs’ Case Statement contains no facts suggesting that the states and districts acted jointly in deciding to order school closures, or that the districts across the country acted in concert with each other, in associational fashion, to comply with those orders. They do not even allege that any States or school districts consulted with any other. At best the contentions in the RICO Case Statement and the Complaint add up to “conscious parallelism” of the sort that is insufficient to give rise to any inference that there exists an association in fact. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553–54 (2007).

Plaintiffs thus have not and cannot plausibly allege the existence of the nationwide enterprise that undergirds their RICO claim.

c. Plaintiffs Do No Allege the Existence of a Conspiracy

Plaintiffs also fail to plead the existence of a conspiracy among all the school administrators and districts in the fifty states – a necessary element of Plaintiffs’ claim for RICO conspiracy under 18 U.S.C. § 1962(d). Their conclusory allegation of a conspiracy is contradicted by the same particulars of the Complaint and RICO Case Statement that led this Court to conclude that there was no enterprise. Even with all inferences drawn in Plaintiffs’ favor, it is evident from the text of the pleading that the defendant school districts in each individual state were independently following the separate orders of their respective Governors and State Education Departments. (*See* Dkt. No. 121 at 15-16, 18, 25.)

The mere fact that multiple defendants reached the same result acting independently is insufficient to plead conspiracy. When faced with the same scenario, the Supreme Court in *Twombly*, 550 U.S. at 555 – the quintessential case on pleading standards – held that, “An allegation of parallel conduct . . . gets the complaint close to stating a claim [for conspiracy], but without some further factual enhancement it stops short of the line between possibility and plausibility of entitlement to relief.” (Internal citation and quotation marks omitted). Although *Twombly* arose in the antitrust context, its logic is applicable here. Indeed, numerous courts have held that allegations of parallel conduct alone cannot support the inference that RICO defendants are joined together for a common purpose. *See Gucci, Inc. Alibaba Grp. Holding Ltd.*, 15-cv-3784 (PKC), 2016 WL 6110565, at *6-7 (S.D.N.Y. Aug. 4, 2016) (collecting cases); *see also In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300 (3d Cir. 2010). Plaintiffs allege nothing more than parallel conduct.

They have thus failed to allege conspiracy in violation of 18 U.S.C. § 1962(d).

Additionally, the failure to allege the existence of an enterprise, without more, means that Plaintiffs have failed to plead any underlying substantive violations of RICO – which means that the RICO conspiracy claim alleged pursuant to Section 1962(d) and must be dismissed. *See First Capital Asset Mgmt.*, 385 F.3d at 182.

d. Plaintiffs Do Not Plausibly Allege Predicate Acts

It is not necessary to go further in analyzing Plaintiffs’ defective RICO claim; the lack of standing and the failure to allege the existence of either an enterprise or a conspiracy doom this misguided effort to manufacture nationwide jurisdiction. However, Plaintiffs’ RICO Case Statement is equally deficient in identifying any RICO predicate acts. While the Case Statement throws around terms that might qualify as predicate acts if they were undergirded by any plausible factual allegations – wire fraud, mail fraud, fraudulent transfer of money, fraudulent receipt of money, and financial institution fraud – those plausible factual allegations are missing altogether.

Because Plaintiffs’ RICO allegations are predicated on fraud, they are subject to the heightened pleading standards in Rule 9(b); the allegations “must adequately specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements. *Lundy v. Catholic Health Sys. of Long Island*, 711 F.3d 106, 119 (2d Cir. 2013); Fed. R. Civ. P. 9(b); *see* RICO Case Standing Order, Sept. 8, 2010 at 2. Although knowledge of a defendant’s fraud or intent to defraud may be averred generally under Rule 9(b), these allegations of scienter must be supported by facts “giving rise to a strong inference that defendant knew the statements to be false and intended to defraud the plaintiff” at the time they were made. *Ouaknine v. MacFarlane*, 897 F.2d 75 ,79-80 (2d Cir. 1990). “Where multiple defendants are accused of mail or wire fraud, plaintiffs must plead particularity as to each

defendant, unless such defendants are corporate insiders.” *United States Fire Ins. Co. v. United Limousine Serv., Inc.*, 303 F. Supp. 2d 432, 444 (S.D.N.Y. 2004) (citing *Allen v. New World Coffee, Inc.*, No. 00-cv-2610, 2001 WL 293683, at *4 (S.D.N.Y. Mar. 27, 2001); *DiVittorio v. Equidyne Extractive Indus., Inc.*, 822 F.2d 1242, 1247 (2d Cir. 1987)).

The essence of the alleged frauds that constitute the RICO predicate acts in this case is the receipt of federal funds by the school district defendants for special education purposes without intending to abide by the IDEA and other federal regulations touching on the education of disabled students. But no facts asserted in the RICO Case Statement support a conclusion that *any* School District – let alone every one in the United States (and it would need to be alleged for each one, *see United States Fire Ins. Co.*, 303 F. Supp. 2d at 444) – accepted federal funds for special education purposes while knowing that (1) there was going to be a massive worldwide pandemic, resulting in millions of cases of illness and hundreds of thousands of deaths in this country alone; (2) in response to that pandemic, and in an effort to provide for physical safety of students and educators, states would issue emergency orders directing school districts to close down as a public health measure; or (3) in complying with those orders, school districts would necessarily and knowingly violate the IDEA’s substantive and procedural requirements, including its stay-put rules. The utter implausibility of such a contention speaks for itself. No one knew that there was going to be a pandemic; it took the entire world by surprise. No one knew how fast or how far it would spread; no one knew what public health response it would require; no one knew how quickly emergencies would arise; no one knew how states would in fact respond to the imminent danger they confronted. Therefore, it cannot be plausibly alleged that the school districts took IDEA funds with the intent to defraud anyone.

Thus, Plaintiffs have failed to allege any facts – let alone allege them with the particularity required by Rule 9(b) – that would give rise to an inference of fraudulent intent by ANY defendant, let alone by all of them. *See First Capital Asset Mgmt.*, 385 F.3d at 178–79. That alone renders implausible the allegations of wire fraud, mail fraud, fraudulent transfer and receipt of money and financial institution fraud – of any fraud whatsoever – and means that Plaintiff has not asserted a viable RICO claim on that ground.

Finally, it bears noting that Plaintiff’s “pattern of racketeering” allegations do not come close to meeting the pleading standards in this Circuit for “continuity” of a racketeering enterprise.

“[A] plaintiff in a RICO action must allege either an ‘open ended’ pattern of racketeering activity (*i.e.*, past criminal conduct coupled with a threat of future criminal conduct) or a ‘closed-ended’ pattern of racketeering activity (*i.e.*, past criminal conduct ‘extending over a substantial period of time’).” *GICC Capital Corp.* 67 F.3d at 466 (2d Cir. 1995). To satisfy a closed-ended continuity, a plaintiff must prove “a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months . . . do not satisfy this requirement.” *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 242 (1989).

Here, even under the most liberal reading of the RICO statement, Plaintiffs have not and could not allege predicate extending over “a substantial period of time.” The pandemic broke out about ten months ago. Widespread school closings did not begin until March 2020. No fact is alleged tending to show that anyone submitted a false Medicaid claim before the pandemic started, because no fact is alleged tending to show that anyone was aware, prior to the outbreak, that the pandemic was going to happen. This means any purported predicate acts of fraud took place over a period of less than eight months. That number is far less than the Second Circuit’s benchmark of two years. *Cofacredit, S.A. v. Windsor Plumbing Supply Co., Inc.*, 187 F.2d 229, 242 (2d Cir.

1999) (“[T]his Court has never held a period of less than two years to constitute a ‘substantial period of time.’”).

“To satisfy open-ended continuity, the plaintiff need not show that the predicates extended over a substantial period of time but must show that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed.” *Id.* “[W]here the enterprise primarily conducts a legitimate business . . . there must be some evidence from which it may be inferred that the predicate acts were the regular way of operating that business, or that the nature of the predicate acts themselves implies a threat of continued criminal activity.” *Id.*; *see also H.J. Inc.*, 492 U.S. at 230 (“Otherwise, it must be shown that the predicates establish a *threat* of long-term racketeering activity—for example, because the predicates themselves involve a distinct threat of such activity; because they are part of the regular way of doing business for an ongoing entity such as a criminal association or legitimate business; or because they are a regular means of conducting or participating in an ongoing RICO enterprise.”). Plaintiffs do not and cannot meet this standard because they plead no facts tending to show that submitting fraudulent Medicaid claims is the “regular way of operating” the business of any school district, let alone all of them, and because the inherent nature of a pandemic is such that activity that takes place in response to the emergency can be expected to end once the emergency ends.

Frankly, the RICO allegations here asserted reek of bad faith and contrivance. Plaintiffs have baldly asserted that every school district in the country, in trying to respond to an unprecedented nationwide health crisis, has perpetrated a fraud on the federal government. They have not the slightest basis for so asserting. Their use of the phrase “on information and belief” does not save this patently defective pleading. *See First Asset Capital Mgmt.*, 385 F.3d at 179 (“Although it is true that matters peculiarly within a defendant’s knowledge may be pled ‘on

information and belief,' this does not mean that those matters may be pled lacking any detail at all.") (internal citation and quotation marks omitted). This effort to inject racketeering into what is simply an IDEA lawsuit is bad faith pleading writ large.

The RICO claim asserted in the RICO Case Statement is DISMISSED as against all Defendants in this lawsuit, with prejudice.

Plaintiffs' failure to assert a tenable RICO claim dooms their quest to obtain *in personam* jurisdiction over the out of state defendants. For that reason, the remainder of the complaint (Counts I through XI) is dismissed as against the out-of-state defendants, without prejudice.

B. The Claims Against the Out of State Defendants Should Be Dismissed Because Venue is Not Proper in this District

Although this court did not issue an order to show cause directing plaintiffs to explain why venue was proper in this district as to the out of state defendants, it is perfectly obvious that venue is NOT proper in this district as to those defendants. Several School Districts located outside of New York have noted as much. For instance, on September 2, 2020, four school districts in Georgia filed a motion to dismiss for, *inter alia*, improper venue in the Southern District of New York. (Dkt. Nos. 93, 95, 97, 99.) They claim that, given the absence of any specific allegations against them, venue in this district was improper because they have absolutely no connection at all with the district, and litigation in New York would be extraordinarily inconvenient for them.

Venue "serves the purpose of protecting a defendant from the inconvenience of having to defend an action in a trial court that is either remote from the defendant's residence or from the place where the acts underlying the controversy occurred." *Detroit Coffee Co., LLC v. Soup for You, LLC*, No. 16-cv-9875 (JPO), 2018 WL 941747, at *4 (S.D.N.Y. Feb. 16, 2018) (citation omitted). In other words, it guards against the "risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy v. Great Western United Corp.*, 443 U.S. 173, 184 (1979).

Venue is governed by 28 U.S.C. § 1391(b), which states that it is proper in

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

Before the Court stayed the case, at least five out-of-state defendants moved to dismiss stating, *inter alia*, that venue was improper in the Southern District of New York as to their claims. (See Dkt. Nos. 74, 92, 94, 96, 98; motions to dismiss of York Cnty., VA public schools, Clayton Cnty., GA public schools, Cobb Cnty., GA public schools, Dekalb Cnty., GA public schools, Marietta City, GA public schools.) While those motions were never fully briefed and were administratively closed when the court stayed the litigation except as to the NYC Defendants, there can be no question that venue is improper as to these out-of-state defendants because no part of the events or omissions giving rise to the claims against them occurred in this district. Only if the Plaintiffs had pleaded a viable RICO claim could venue even arguably lie in the Southern District of New York for any associated failure-to-provide-a-FAPE claim against a school district in Georgia or Nebraska. But the RICO claim Plaintiffs allege is not viable.

Moreover, it is appropriate to dismiss as against all of the thousands of non-moving out-of-state defendants for improper venue. While Second Circuit has held that "A district court may not dismiss a case *sua sponte* for improper venue absent extraordinary circumstances," *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 796 (2d Cir. 1999), this case presents such extraordinary circumstances. "[F]or venue to be proper, *significant* events or omissions *material* to the plaintiff's claim must have occurred in the district in question." *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005). There is no way that any, let alone a substantial part, of the events leading to

the out-of-state plaintiffs' claims of failure to provide a FAPE, or to maintain pendency took place in the Southern District of New York.

C. Even If There Were In Personam Jurisdiction Over the Claims Against the Out of State Defendants, The Claims Against Them are Improperly Joined and Should be Severed and Dismissed Without Prejudice.

Finally, even if all of the above were incorrect – if there were *in personam* jurisdiction over the out-of-state defendants and if and venue was properly laid in the Southern District of New York – the claims against the out-of-state defendants would and should be severed – and dismissed without prejudice, under Second Circuit precedent – because they are not properly joined in a single lawsuit.

In its Order to Show Cause #2, the Court asked plaintiffs to address whether the claims asserted against the various different School District Defendants should be severed and dismissed without prejudice to being brought in separate lawsuits. (Dkt. No. 84.) In that OTSC, the Court observed that, in its experience, individual school districts are autonomous entities that make decisions independently from one another. Plaintiffs acknowledge as much, for they allege that the School Districts “are the official bodies charged with the responsibility of developing and enforcing policies with respect to the administration and operation of the public schools *in their respective geographic areas . . .*” (Dkt. No. 121 at 15 (emphasis added).)

Moreover, as noted above, there are no allegations in the complaint suggesting that the defendants are being sued as a defendant class – and properly so, for no such class could be certified without violating the law of standing. To have standing to sue an opposing party, a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992). As should go without saying, each individual child and his/her parents

has standing to bring a claim only against that child's school district and the State Education Department in the child's state of residence. Named Plaintiff J.T. and J.T.'s child D.T. have standing to assert a claim for violation of D.T.'s rights under IDEA, the Rehabilitation Act, Section 1983, the ADA, and state law against only one school district – the Middletown, New Jersey school district – and perhaps (and with the exception of claims under Section 1983) against the New Jersey State Department of Education. But the T. family has no claim against the NYC Defendants or the New York State Department of Education, because they suffered no injury that can be traced to the actions of the NYC Defendants or the New York State Department of Education, or that could be redressed by a judgment against those entities. Similarly, J.J. and Z.J. have standing to sue the Meriden, Connecticut School District, and perhaps the Connecticut State Department of Education – but lack standing to pursue any claim against the NYC Defendants. Lastly, C.N. and V.N. have standing to sue the Leander, Texas Independent School District, and perhaps the Texas State Department of Education – but lack standing to pursue any claim against the NYC Defendants.

“[T]he Second Circuit has made clear that ‘no class may be certified that contains members lacking Article III standing’ and that any ‘class must therefore be defined in such a way that anyone within it would have [Article III] standing.’” *In re LIBOR-Based Fin. Instruments Antitrust Litigation*, 299 F. Supp.3d 430, 459 (S.D.N.Y. 2018) (quoting *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006)). It is readily apparent to the Court that it is impossible for all Plaintiffs to currently be joined in a putative class action against *all* Defendants, because the Plaintiffs do not have claims against *all* Defendants. Therefore, what we have is not a class action at all, but an extraordinarily large number (probably hundreds of thousands) of discrete lawsuits that are properly brought only against different subsets of defendants (local and state), which have

been joined together in a single lawsuit. The question is whether that joinder should be allowed. The obvious answer is no.

Two rules of civil procedure govern the joinder of individual claims in a single lawsuit. Rule 19 of the Federal Rules sets out the rules for the compulsory joinder of two or more claims.

Under Rule 19(a), a party *must be joined* if feasible, if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Plaintiffs do not argue that compulsory joinder is required here, and understandably so. Because no individual parent/student plaintiff has standing to sue any school district except the student's own school district, it is not necessary for ANY other district to be joined in order to accord any individual plaintiff complete relief, and no one except that plaintiff and those defendants can claim any interest relating to the subject of that particular dispute.

Instead, Plaintiffs rely on Federal Rule of Civil Procedure 20, which permits (but does not require) the joinder defendants if “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; *and* (B) any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2) (emphasis added).

Because Rule 20 joinder is permissive, not required, a court is perfectly free to deny a plaintiff permission to join claims against different defendants. And in this respect the plaintiff is not the master of his complaint; Fed R. Civ. P. 21 allows a court, on its own motion and at any time, to add or drop a party or to sever claims, on just terms. This means, “If a court concludes that defendants have been improperly joined under Rule 20, it has broad discretion under Rule 21 to

sever parties or claims from the action.” *Kalie v. Bank of Am. Corp.*, 297 F.R.D. 552, 556 (S.D.N.Y. 2013) (citation omitted); *see also T.S.I. 27, Inc. v. Berman Enterprises, Inc.*, 115 F.R.D. 252, 254 (S.D.N.Y. 1987) (“Courts may order a Rule 21 severance when it will serve the ends of justice and further the prompt and efficient disposition of litigation.”).

The test for whether parties or claims should be joined under Rule 20 involves answering five questions:

(1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for the separate claims.

Kalie, 297 F.R.D. at 556–57 (citations omitted).

As has already been discussed, no IDEA child or his/her parents has any claim or cause of action or right to relief except as against the school district in which that child resides. The mere fact that each district is alleged to have violated IDEA by closing its schools during the pandemic in response to a state order does not make permissive joinder appropriate. An allegation that “the defendants merely committed the same type of violation in the same way” is, by itself, insufficient to justify joinder; the Second Circuit has held that “the fact that a large number of people use the same method to violate the law does not authorize them to be joined as defendants in a single lawsuit.” *Next Phase Distribution, Inc. v. John Does 1-27*, 284 F.R.D. 165, 169 (S.D.N.Y. 2012) (quoting *Digital Sins* 245, 2012 WL 1744838, at *2 (citing *Nassau Cnty. Assoc. of Ins. Agents, Inc. v. Aetna Life & Casualty*, 497 F.2d 1151, 1154 (2d Cir. 1974))).

For example, in *Next Phase*, my colleague the Hon. Victor Marrero exercised the court’s discretion to sever, and dismissed, *sua sponte*, twenty-six Defendants from an action alleging that the Defendants had illegally downloaded one of Plaintiff’s copyrighted films because “joining 27

defendants, a substantial number of whom may have no liability . . . could prove to be a costly and futile exercise[.]” *Id.* at 171. Likewise, in *Digital Sins, Inc. v. John Does 1-245*, No. 11 Civ. 8170 (CM), 2012 WL 1744838, at *3 (S.D.N.Y. May 15, 2012), this court exercised discretion to sever the claims against 244 John Doe defendants in a similar copyright action, observing that, “There are no litigation economies to be gained from trying what are in essence 245 different cases together, because each of the John Does is likely to have some individual defense to assert” and each one’s guilt “will have to be proved separately and independently.” *Ibid.*

Here, the complaint asserts that most of the 13,821 school districts in the United States closed their schools at more or less the same time because of the pandemic – albeit pursuant to the separate orders of fifty-two different sovereignties. It does not allege any facts tending to show that any individual state’s or school district’s decisions about how to handle special education during the pandemic was related to or dictated by the decision of any other district. Indeed, Plaintiffs acknowledge that some school districts actually remained open, even as most closed; that some districts re-opened earlier than others; that different districts provided different levels of special education during the pandemic; and that different school districts provided their special education teachers and staff with different levels of resources. (Compl. at ¶¶ 13, 26, 28.)

The claim asserted by any student against his/her school district will require the presentation of unique evidence. Each child will have to exhaust administrative remedies as a predicate to bringing suit under IDEA, and the record in those administrative proceedings will be pertinent only to the claims asserted by that child against his/her district. In order to resolve the claims asserted by any student, that student’s IEP and supporting documentation will have to be introduced and evaluated. Each child’s situation will require the testimony of different witnesses (CSE members, teachers, service providers), as well as the introduction of different reports,

evaluations and other documents. Different districts will not only call different witnesses, but a single district could and doubtless will assert different defenses as to individual children.

There is not the slightest possibility that joinder would facilitate settlement, since there is no possibility of the creation of a common fund – the Atlanta School District would only settle with Atlanta students, and the New Trier School District with its students. Nor would joinder facilitate the fashioning of a single order that could be applicable to the *individualized* educational plans of the various students.

In sum, Plaintiffs have identified no savings of time or effort that would result if these cases were severed and no prejudice that would result if the cases against the out of state defendant districts dismissed without prejudice. The lack of manageability of allowing these claims to remain joined almost dictates severance.

Plaintiffs argue that the “systemic violation of law” by all districts and states justifies joinder. But that precise argument was rejected by the Second Circuit long ago, in *Nassau Cnty. Ass’n of Ins. Agents, Inc. v. Aetna Life & Cas. Co.*, 497 F.2d 1151, 1153-54 (2d Cir. 1974). In that case, four unincorporated associations of insurance agents alleged antitrust violations against 164 insurance companies for threatening to terminate the contracts of insurance agents if they did not meet certain minimum volume requirements, sell new lines of insurance, or maintain a low commission rate. *Id.* at 1152. However, the Second Circuit held – despite a blanket allegation that all 164 defendants had harmed plaintiffs – that the joinder of antitrust claims resting on thousands of separate transactions was, not just improper, but a “gross abuse of procedure,” because there were no plausible allegations of conspiracy, nor an allegation that there was any “connection at all between the practices engaged in by each of the 164 defendants.”¹³ *Id.* at 1154. Similarly, in

¹³ The principal holding in *Nassau County* was that the plaintiffs lacked antitrust standing.

Arista Records LLC v. Does 1–4, 589 F. Supp. 2d 151, 155 (D. Conn. 2008), the district court exercised its discretion to dismiss all but one defendant from the case because, “Plaintiffs have not alleged that the Does conspired or acted jointly.”

Plaintiffs also argue that their RICO claim warrants joinder, but that argument no longer works, since Plaintiffs have neither standing to assert a RICO claim nor any viable claim to assert.

The specific allegations in the complaint focus squarely on the policies of NYCDOE, with a modicum of detail about the pandemic policies (i.e., schools closing and then reopening at different times) in a few of the thousands of other defendant districts. There are, as noted above in the discussion of Plaintiffs’ “Hail Mary” RICO claim, no facts alleged that tend to demonstrate either allegations of joint action or conspiracy – only conscious parallelism, as districts throughout the nation responded to the orders of various state Governors and Education Departments. Allegations that one or more defendants acted similarly, without more, do not justify permissive joinder of those defendants in a single action. *See Michaels Bldg. Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 682 (6th Cir. 1988) (affirming a severance of defendants because “the loan transaction forming the basis for the claims against the Ameritrust defendants was wholly unrelated to other matters,” had “no relation to the loans made by the other defendants,” and involved “different banks, different contracts and different terms.”).

The purpose of permissive joinder is efficient litigation, but there is no way to handle this mish-mash of a case efficiently. A joint litigation with all School District Defendants, each likely with particularized facts pertinent to each district and quite possibly each child, renders the case unmanageable.

Ordinarily, the remedy for misjoinder is severance, not dismissal; indeed Fed. R. Civ. P. 21 so provides. However, in *Nassau County*, the Court of Appeals held that the litigation

constituted “such a gross abuse of procedure that dismissal under Fed. R. Civ. P. 41(b) for failure to comply with the federal rules is warranted.” *Id.* at 1154. The court acknowledged that, “Although the usual remedy under Rule 21 [for misjoinder] is severance, that would be inadequate to remedy the present abuse . . .” *Ibid.*

Plaintiffs’ lack of compliance with the federal rules is even more apparent here. And given the number of putative parties (many of whom have not been identified) and the pleading posture of the case, severance and transfer – which would be imperative, in light of the court’s rulings on personal jurisdiction and venue – would be impossible to manage administratively.

Severance and dismissal here may well result in the bringing of numerous individual cases against the more than 13,800 school districts across the United States. But that is the nature of IDEA litigation involving individual students and their parents, each of whom has standing to bring claims against just one or two of the thousands of defendants purportedly sued here. No one who was allegedly injured by these thousands of decisions will be denied a chance to obtain a remedy; any individual student who believes s/he is being denied a FAPE by virtue of the closure of schools during the pandemic and/or the provision of services remotely can bring a claim against his/her school district and state, in a federal or state court in that state, for redress. Plaintiffs have attempted to craft a one-size-fits all omnibus lawsuit. But that is not how IDEA cases can or should be handled.

* * * * *

For all of the above reasons – lack of personal jurisdiction, improper venue and improper joinder – the court severs and dismisses all of the out-of-state defendants from this lawsuit. This dismissal is without prejudice. Whether groups of parents from a single out of state district can band together to sue that district is not an issue I can or should address today; it is enough that the

claims asserted in this action can be brought against the out of state defendants in a more other forum.

The fact that the lawsuit is being dismissed as against the out of state defendants means that the out of state plaintiffs who are listed in Appendix A to the Complaint – those who have no child enrolled in a New York State schools and who are not suing any defendant located in the State of New York – should also be dismissed as parties. And so they are.

II. All Claims Against All New York State School Districts Outside New York City School District are Severed Pursuant to Rule 21 and Dismissed, the RICO Claim With Prejudice and All Other Claims Without Prejudice

Having disposed of the out-of-state defendants, the court next turns to the efficient management of claims against those defendants located in New York State. Pursuant to Rules 20 and 21 and in the interest of efficient case management, the claims against all of the school districts in the State of New York other than the New York City Department of Education and the NYC Defendants are also severed and dismissed without prejudice.

The immediately preceding discussion informs this conclusion. This is not really a class action, but a large number of individual cases, brought by individual parents of disabled children against their child's individual school district and ONLY their child's school district, as well as the State of New York. No student or parent has standing to assert any of the claims pleaded in the complaint against a school district other than the one in which s/he is a student. The allegations of the complaint undermine any suggestion that the 688 school districts in New York State have acted collectively, or even uniformly, insofar as concerns the provision of services to disabled students during the pandemic, except in one respect: all obeyed Governor Cuomo's initial order to close the schools when this state was COVID-19's Ground Zero for the country and the globe. The complaint contains numerous allegations about how disability education is being handled or

mishandled in New York City, but not a single allegation that ties the City's response to the pandemic to anything that has happened in any other district in the state. In fact, the only allegation in the complaint that relate to a school district other than New York City is the fact that three school districts on Long Island – Massapequa, Hauppauge, and Merrick – reopened their schools over the summer for special education services, while other districts (only one of which – NYCDOE – is identified) did not. (Compl. ¶ 19.) Plaintiffs also allege that many Catholic schools on Long Island planned to have all students return to in-person classes five days a week beginning in September (*id.* ¶ 26.); but that has nothing to do with whether these individual lawsuits can be maintained jointly, because no Catholic schools are defendants – nor could they be, since IDEA requires *public school districts* to provide special education services to children with disabilities who are placed by their parents in (and accepted by) Catholic and other private schools. *See* 34 CFR § 300.132.

Otherwise, the complaint alleges, without any specificity, that some schools in New York State reopened for in person education and some did not; that some are open now and some are not; that some are open full time and some only part time; and that some are providing services at some level and others are not – all without in any instance identifying which school districts fall into which categories. The only thing that is clear from the pleading is that it is every school district for itself.

The arguments in favor of severance applicable to the out-of-state defendants apply with equal force to the in-state school district defendants. This is not, as Plaintiffs admit, a case in which joinder is mandatory. There are no economies whatever to be realized from litigating claims asserted by various students against the Buffalo, Plattsburgh, Elmira, Albany, Arlington Central, Yorktown, Yonkers and Great Neck school districts (to name but a few of the 688 separate school

districts in the State of New York, *see* Ballotpedia.org) in a single lawsuit. Although all these districts were subject to the original gubernatorial order to close down at the height of the pandemic, no fact is alleged that would support any conclusion except the conclusion that each district, acting locally and individually, responded to school closure by coming up with its own way of handling disability education; made its own decision about when and how to reopen; and did whatever it chose to do with respect to (1) consulting the parents of disabled children, (2) following the guidance of federal and state officials, and (3) amending or standing on any individual child’s IEP in light of that guidance. There is simply no basis to allow this lawsuit to proceed in the unwieldy manner chosen by Plaintiffs’ counsel.

Again, it is not enough simply to sever these claims, because it is impossible to identify who is asserting claims against whom. There are 687 school districts outside of New York City, but 687 identified students have not asserted claims in this lawsuit, and there is no way to “sever” this complaint into individual actions. *Nassau County* dismissal, again without prejudice, is warranted here as well.

Whether groups of disabled students located in a single district outside of New York City can maintain a single action against that district or must all sue separately, and in what court any action against any district can (venue) or should (*forum non conveniens*) be filed are questions this court need not answer – and are, indeed, best answered when and if lawsuits are filed, individually or collectively, against particular school districts arising out of their particularized conduct of disability education during the continuing pandemic. For now it is sufficient to note, for all the reasons set forth at pages 45-52 above, that all claims against the 687 school districts outside the City of New York are hereby severed and dismissed without prejudice.¹⁴

¹⁴ The discussion in footnote 11 concerning the lack of subject matter jurisdiction due to the failure of any identifiable plaintiff to exhaust administrative remedies is equally apt as to the claims asserted against the 687 dismissed New

III. The New York City Plaintiffs’ Motion for a Stay Put Preliminary Injunction Against the NYC Defendants is DENIED.

The plaintiffs in this action are now the thirty-eight New York City parents identified in the caption of the Complaint (K.M.) and Appendix A to the Complaint (Dkt. No. 1-12), who represent the interests of a total of forty-three disabled students.¹⁵ These parents are the applicants on the pending motion for a preliminary injunction to restore their children’s pendency, under the IDEA’s stay-put provision.

In order to trigger the IDEA’s stay-put provision, a student’s parent or guardian must have filed a due process complaint with the student’s LEA (i.e., the child’s school district). In the Complaint, Plaintiffs allege that “Plaintiff-Parents” – defined in the Complaint as including all parents named in Appendix A (*see* Compl. at 1) – allegedly filed due process complaints with their LEAs alleging violations of the IDEA and Section 504 by unilaterally modifying the Students’ IEPs and failing to maintain their pendency programs and placements. (*Id.* ¶ 146.) Similarly, Plaintiffs’ counsel stated in his declaration in support of Plaintiffs’ application for a preliminary injunction – originally submitted *ex parte* in August (*see* Dkt. No. 29) – that “Parents subsequently filed due process complaints with their LEAs.” (“Albert Decl.” ¶ 19, Dkt. No. 90-1.) Plaintiffs’ counsel reiterated in a September 3 letter that administrative due process complaints were filed with NYCODE on behalf of all New York City parents. (Dkt. No. 106.)

Plaintiffs never specifically allege when any particular parent filed a due process complaint with NYCDOE. Plaintiffs’ counsel did, however, submit a declaration in response to this Court’s

York State school districts. And lest the language at page 43, *supra*, not be sufficiently clear, the belatedly-asserted RICO claim that was dismissed as against the out of state defendants in order to defeat any suggestion of personal jurisdiction is dismissed with prejudice against the in state defendants as well -- because it is every bit as deficient as to them as it is to the out of state defendants.

¹⁵ Plaintiffs #51-76, 78-88: M.R., D.R., E.I., L.P., M.B., A.D., C.M., K.M., J.O., B.A.B., L.B., K.M., R.N., M.B., K.T., D.G., D.G., S.G., B.H., S.L., M.P., N.B., R.B., M.M., K.P., C.F., C.G., B.H., B.S., A.R., E.P., N.K., S.C., J.L., H.D., L.W., and F.R. Plaintiffs #54 L.P., #58 K.M., #84 S.C., and #87 L.W. each bring claims on behalf of two students.

September 14 order to show cause (Dkt. No. 128), in which he stated that “Between June 1, 2020 and September 14, 2020, counsel filed 199 administrative due process complaints on behalf of Plaintiff-Parents” in the putative class. (“Albert OTSC Decl.” ¶ 5, Dkt. No. 141.) Under seal, Plaintiffs filed a list of these 199 due process complaints. (*See* Dkt. No. 142-1.) Upon review, only twenty-five pairs of Student/Parent initials from the Complaint and Appendix A match the Student/Parent pairs on the due process list.¹⁶

However, I will assume, for purposes of this motion only, that all 43 students who are identified in the Complaint have requested due process hearings, and so have at this moment the right to assert pendency claims against the NYCDOE.¹⁷

The prayer for “preliminary” relief in the application that was presented in Part I sought mostly the sort of ultimate relief that Plaintiffs would be entitled to obtain only if they actually won this lawsuit on the merits: the issuance of “pendency vouchers” (effectively, tuition reimbursement); the funding of evaluations (which may or may not be necessary, depending on whether Plaintiffs prevail on their claims on the merits); reimbursement for expenses incurred by the parents other than those relating directly to their children’s education (apparently these parents believe that they, unlike any other parents of school children in New York City, are entitled to recover damages if they lost work due to the closure of the schools); and punitive damages.

¹⁶ #2 K.M. (M.M. and S.M.), #54 L.P. (A.R. and O.R.), #55 M.B. (C.B.), #56 A.D. (A.F.), #57 C.M. (B.M.), #59 J.O. (N.O.), #61 L.B. (L.B.), #65 K.T. (K.T.), #66 D.G. (A.R.), #67 D.G. (A.R.), #68 S.G. (S.G.), #69 B.H. (C.H.), #73 R.B. (G.B.), #75 K.P. (R.P.), #76 C.F. (Z.F.), #79 B.H. (E.H.), #82 E.P. (R.C.), #83 N.K. (S.H.), #84 S.C. (N.C. and S.C.), #86 H.D. (J.D.), #87 L.W. (J.W. and E.W.).

¹⁷ In an appendix the court will file shortly, the court will explain the efforts we made to try to figure out who the plaintiffs were and to review their IEPs, which no party chose to discuss in any detail in moving or opposing papers. We finally gave up – which is why I will assume, for purposes of this motion, that all 43 students identified in the complaint have in fact requested due process hearings and are asserting pendency claims. As to anyone who has not requested an impartial hearing, the assertion of a pendency claim is premature.

The only aspect of Plaintiffs’ motion that seeks appropriate *preliminary* injunctive relief is their claim that their children’s pendency was altered by virtue of the shut down and the conversion to remote learning and the remote provision of services. I thus interpret Plaintiffs’ request for a preliminary injunction requiring the New York City public schools to “reopen” as a prayer that their children be provided with in-person education and services pending the results of the impartial hearings they have requested, on the ground that in person education in open schools is their “pendency” placement. In other words, the motion for a preliminary injunction seeks the entry of a “stay-put” injunction *pendente lite*.

For a variety of reasons, Plaintiffs’ application for a stay put injunction is DENIED.

The Factual Record

“In deciding a motion for preliminary injunction, a court may consider the entire record including affidavits and other hearsay evidence.” *Sterling v. Deutsche Bank Nat’l Tr. Co. as Trustees for Femit Tr. 2006-FF6*, 368 F. Supp. 3d 723, 725 n.2 (S.D.N.Y. 2019) (internal quotations omitted). Accordingly, in deciding Plaintiffs’ application for a preliminary injunction, this Court will consider the declarations submitted by both sides, and the attachments thereto.

Before discussing the law, I will briefly summarize what the evidence – not the allegations, but the evidence – does or does not show.

The City of New York closed its schools on March 13. It did not stop providing special education services to its disabled students on that date. If anything, the record before this Court reveals the herculean efforts of NYCDOE to attend to the needs of those students despite the emergency unfolding around them.

The Complaint and the moving papers assert that as of March 13, 2020 Mayor DeBlasio and Chancellor Carranza unilaterally moved all instruction to “remote learning” where students

and staff would remain in their homes until April 20, 2020. On April 11, they announced that schools would remain closed for the remainder of the 2019-2020 school year. (Compl. ¶ 7.)

On the very day that they closed the schools, USDOE held a joint webinar between its Office of Special Education Programs (“OSEP”), the Council of Administrators of Special Education, the Council of Chief State School Officers, and the National Association of State Directors of Special Education, during which they issued guidance about the provision of special education services remotely during the pandemic. NYSED relayed this guidance to all New York schools. *See supra* pp. 8-9.

NYCDOE subsequently offered its own guidance. On March 31, 2020, Executive Director of NYCDOE Office of Related Services Michael van Biema issued a memo regarding NYCDOE’s provision of related services to students during the shutdown. (*Id.* ¶ 13; “NYCDOE Memo,” Dkt. No. 1-11.) As Plaintiffs point out, NYCDOE advised that service providers could “**NOT provide in-person services.**” (NYCDOE Memo at 1 (emphasis original); Compl. ¶ 13.) However, the very next paragraph in this memorandum (conveniently not quoted by Plaintiffs) provides that “Per federal guidance, and where appropriate and feasible, students with disabilities will continue to receive their recommended special education programs and related services remotely during this time.” (NYCDOE Memo at 1) The memo proceeds to outline a fairly robust plan for the provision of related services via tele-therapy. NYCDOE instructed its service providers to “make initial contact with each student’s parent using the script in the consent form instructions, and obtain consent for tele-therapy by completing this on-line form. [The provider] must document [its] discussion with the parent, including a statement indicating whether consent was provided, denied, or withdrawn.” (*Id.* at 2.)

And as noted previously, Plaintiffs also do not mention that USDOE, while refusing to waive any school district's obligations to its students with disabilities, also specifically indicated that, "... ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction." (*See* P.I. Mem. at 13.)

Plaintiffs acknowledge that NYSED issued "clear guidance... about providing live, synchronous instruction" to students with disabilities. (Compl. ¶ 14.) And indeed, On April 27, 2020, the New York State Education Department ("NYSED") Office of Special Education issued a memo that school districts "must ensure that, to the greatest extent possible, each student with a disability is provided the special education and related services identified in the student's IEP." (*Id.* ¶ 12.)

While Governor Cuomo allowed school districts to reopen their buildings to accommodate extended school year ("ESY") special education starting July 1 (Comp. ¶ 16), NYCDOE did not permit students return to the classroom over the summer. (*Id.* ¶ 29.) Rather, it continued to provide them with remote educational services. It also opened sites across the City to offer some one-on-one or small group in-person speech, physical, and occupational therapy services for special needs students. (*Id.*; Foti Decl. ¶ 11.) The NYC Defendants did not provide transportation for students over the summer. (Compl. ¶ 29.)

As discussed above, the schools did reopen for in-person instruction in September, with the choice of whether to send a child into the school buildings resting squarely on the shoulders of the parents. Plaintiffs allege that September in-person schooling was be limited to in-person instruction 1-3 days a week (*Id.*), while NYCDOE claims to be offering in-person instruction either

five days out of every fifteen school days or five days out of every ten school days. (Foti Decl. ¶ 12.) In either event, except for District 75 students (some of whom may be Plaintiffs in this lawsuit, but this court has not been told one way or the other), in-classroom education is only available on a part-time basis, not on a full time basis.

As for what is occurring today, Plaintiffs allege precious little about the individual Students, the condition of their schools, the current educational services they are receiving – or even whether their parents are among the 42.6% of special education parents who have opted to keep their children at home this fall, notwithstanding the reopening of the New York City schools.¹⁸ Instead, Plaintiffs (1) rest on the truism that each Student’s “current educational placement” is his or her last agreed-upon IEP (*see* P.I. Mem. at 35, Dkt. No. 90-7), (2) allege that no student’s IEP specifically provides for remote education (Albert Decl. ¶ 16) – an allegation that I am prepared to accept as true – and (3) reason, *ipse dixit*, that every student’s pendency was altered by the closure of the schools and the provision of remote education. It is that pendency that Plaintiffs want restored.

The City, on the other hand, paints a more complete, if generalized, picture of its response to the COVID crisis.

First, as soon as the schools closed, NYCDOE created a Special Education Remote Learning Plan for 98% of students with disabilities. The parents of disabled students were consulted about the development of these plans. (Foti Decl. ¶ 8.) Significantly, not a single parent purportedly affected by this lawsuit has submitted an affidavit indicating that his or her

¹⁸ Parents who opted for remote learning arguably amended their children’s IEPs – whether or not it was reduced to a new IEP, and so would have no right to bring a pendency claim. *See Arlington Cent. Sch. Dist. v. L.P.*, 421 F. Supp. 2d 692, 697 (S.D.N.Y. 2006) (citing *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 86 F. Supp. 2d 354, 358 (S.D.N.Y. 2000), *aff’d*, 297 F.3d 195 (2d Cir. 2002)). Again, this court has no idea whether any of the 38 Named Plaintiff Parents affirmatively chose not to have their children resume in-person learning.

child/children did not have a Special Education Remote Learning Plan, or that they were not consulted about the creation of such a plan. Of course, the City has not submitted evidence that Special Education Remote Learning Plans were devised for the 199 students whose parents had filed due process complaints at the time the NYC Defendants filed their response to the preliminary injunction motion, or that any of those specific parents were in fact consulted. However, on this motion for a preliminary injunction, the burden rests with the plaintiffs, not the defendants.

Second, NYCDOE instituted teletherapy to provide students with clinical and therapeutic services. Ms. Foti reports that “where the DOE sought consent to provide services remotely via teletherapy, *parents overwhelmingly consented* (over 80%).” (*Id.* (emphasis added).) Again, there is no evidence from any parent who is either named in this lawsuit or who has filed a due process complaint that said parent’s child was denied teletherapy services (assuming, of course, that some sort of therapy, such as speech or occupational therapy, was required by the student’s IEP), or that the parent refused to consent to the provision of such services. However, the NYC Defendants offer no evidence that the parents mentioned in the pleading, or those who have filed due process complaints, are among the 80% who consented to the provision of remote therapy.

Third, Governor Cuomo loosened restrictions on the City’s schools for the summer of 2020. (*Id.* ¶ 10.) Accordingly, NYCDOE was “able to provide in-person related services to students with IEP recommendations for extended school year services (i.e., 12-month educational programs) including related services, *where parents opted* for in-person related services.” (*Id.* ¶ 11 (emphasis added).)

Nearly all of the IEPs we have been able to correlate with a Named Plaintiff provide for ESY services. Those IEPs, however, continue to list the “location” of services as if schools were open, and the record does not reflect one way or the other whether Parents were offered or

consented to in-person services over the summer; no parent has submitted any affidavit on the subject.

Fourth, beginning in September 2020, NYCDOE provided parents a *choice* between 100% remote learning and a blended model where students are in school some days and engage in remote learning other days. (Health Decl. ¶ 18; Dkt. No. 138.) All parents were contacted and afforded the opportunity to opt into full-time remote instruction; the default option was the blended model. (Foti Decl. ¶ 12.) As of September 18, 42.6% of all families of students with disabilities opted for 100% remote instruction. (*Id.*) Unfortunately, neither side offers any evidence about what decision the plaintiff parents made on behalf of their children – if they made any decision at all. Moreover, Plaintiffs nowhere indicate that Students are presently being educated in the model chosen by their parents/guardians. In fact, Plaintiffs nowhere indicate what kind of model Students are currently enrolled in – all-remote, blended, or full-time in-person.

Fifth, different models were developed for District 75 – NYCDOE’s citywide district that provides highly specialized support for students with disabilities with significant challenges – because the smaller class sizes could accommodate more students to attend school more frequently or full-time. (*Id.* ¶¶ 3, 12.) Where classrooms are large enough to permit social distancing, schools could permit students to attend in-person for 100% of the school day in a school building. (*Id.* ¶ 14.) The IEPs provided to the court indicate that about half of the Named Plaintiff Students (for whom we have IEPs with matching initials) attend District 75 or an “NYC DOE specialized school” and the rest attend either a “NYC DOE School Non-Specialized (District 1-32)” or “NYSED-approved non public” school. (*See* the forthcoming appendix for further detail.)

However, as mentioned above, per USDOE’s guidance, the switch to remote learning did not require any change to students’ IEPs. Accordingly, when NYCDOE updated students’ IEPs –

even post-shutdown – it did not alter the “location” of where students were to receive their services. For example, per M.M.’s IEP effective May 4, 2020, the “location” of M.M.’s special education was still “General Education Classroom” and the “location” of his related services was still “Separate Location – Therapy Room.” (*See* Dkt. No. 1-8 at 10-12.) Thus, the IEPs alone – which is all the evidence Plaintiffs provide – do not indicate whether or not these Students were/are in fact receiving their educational program and related services in-person, remotely, or a blend of both.

Sixth, NYCDOE developed new forms relating its proposed “adaptations” to the provision of special education programs and related services. (*Id.* ¶ 17) Its staff has been reaching out to families of students with disabilities to discuss each family’s instruction service choice (remote or blended) and the mode of service delivery to implement the child’s program. (*Id.*) Finalization of these “adaptations” requires a discussion between NYCDOE and parents, or three documented attempts to reach the family on at least two different days. (*Id.*) Again, the Plaintiffs only argue – rather generally – that these changes were made “absent parental consent.” (P.I. Reply at 14.) However, we know nothing of whether Parents were contacted.

In short, under exceedingly stressful circumstances, the City has plainly not ignored the needs of its special education students during the COVID crisis – although I have no doubt that it has not provided those students with everything their parents would have wished for them.

Why Plaintiffs Are Not Entitled to Stay Put Injunctions

Under the IDEA, “Parents are specifically entitled to request a due process hearing in order to present complaints as ‘to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education.’” *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 245 (2d Cir. 2008) (quoting 20 U.S.C.

§ 1415(b)(6)(A)) (citing 20 U.S.C. § 1415(f)(1)(A), (g) and (h)). The IDEA’s pendency provision provides, in relevant part, that “during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” 20 U.S.C.A. § 1415(j). “[W]here the IDEA’s stay-put provision is implicated, the provision triggers the applicability of an automatic injunction designed to maintain the child’s educational status quo while the parties’ IEP dispute is being resolved.” *Ventura de Paulino v. New York City Dep’t of Educ.*, 959 F.3d 519, 529 (2d Cir. 2020) (citing *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982)).

To the extent Plaintiffs are seeking an injunction applicable to a class consisting of all NYCDOE special education students, no such relief is available. “[T]he only stay-put relief that plaintiffs could theoretically obtain would be an order allowing the individual named plaintiffs’ children to remain in their educational placement.” *V.D. v. State*, 403 F. Supp. 3d 76, 91 n.8 (E.D.N.Y. 2019). This Court agrees with the Eastern District’s assessment that the language of the statute – indeed, the very title of statute – only allows an *individual* parent to demand that a school maintain an individual student’s education program after the parent has initiated an individual proceeding under the IDEA. *See id.*

This is consistent with a very recent opinion from the District of New Mexico, *Hernandez v. Grisham*, No. cv-20-0942, 2020 WL 6063799, at *60 (D.N.M. Oct. 14, 2020). In *Hernandez*, the district court concluded that it was not likely to certify a class of “the parents of the New Mexico school children who are or will be subject to the denial of a FAPE in violation of the IDEA without any administrative remedy that would not be futile” because the plaintiff could not establish a likelihood of success on commonality, typicality, or Rule 23(b)(2)’s requirements. *See id.* at *60–62. Specifically, under the facts of that case, “some students in the putative class . . . may

have been provided with in person instruction in accordance with their IEPs.” *See id.* Thus, the plaintiff failed to identify a uniformly applicable policy that prohibits class members from attending school in person.

As this court has made abundantly clear, this lawsuit is nothing but a series of individual claims asserted against various school districts. Therefore I will address the issue of stay put relief with respect only to the forty-three students who are identified as plaintiffs in the Complaint and its Appendix A (Dkt. No. 1-12).

The City argues that, before a plaintiff enjoys the benefit of this “automatic injunction,” the plaintiff must establish that the IDEA’s stay-put provision is implicated. That is correct. The IDEA’s pendency provision provides that during an IDEA challenge, “the child shall remain in the *then-current educational placement of the child.*” 20 U.S.C.A. § 1415(j) (emphasis added). “The plain language of the IDEA clearly establishes that ‘the stay-put provision only comes into play when a child’s “educational placement” is changed or proposed to be changed.’” *V.D.*, 403 F. Supp. 3d at 91 (quoting *Roher v. D.C.*, No. cv- 89-2425, 1989 WL 330800, at *2 (D.D.C. Oct. 11, 1989)); *see also Concerned Parents & Citizens for the Continuing Education at Malcolm X (PS 79) v. New York City Board of Education*, 629 F.2d 751, 753–54 (2d Cir. 1980). Therefore, in order to obtain a stay put injunction, each of the 43 student plaintiffs must establish that his/her educational placement has been changed.

None has made the necessary showing.

In the Second Circuit, “the term ‘educational placement’ refers only to the general educational program in which the handicapped child is placed and not to all the various adjustments in that program that the educational agency, in the traditional exercise of its discretion, may determine to be necessary.” *Concerned Parents*, 629 F.2d at 756. Subsequent Second Circuit

cases have noted that a “general educational program” includes “the same general level and type of services that the disabled child was receiving,” *T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 171 (2d Cir. 2014) (citing *Concerned Parents*, 629 F.2d at 756) and “the classes, individualized attention and additional services a child will receive—rather than the ‘bricks and mortar’ of the specific school.” *T.Y. v. New York City Dep’t of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009).

It is clear that the crux of Plaintiffs’ stay-put claim rests with the school closures themselves. They argue that, “Defendants unilaterally closed its schools and required students and staff to remain home, thereby altering the status quo of the educational programs of the Plaintiff-Students.” (P.I. Mem. at 17.) By doing so – Plaintiffs argue – Defendants denied Plaintiffs their pendency rights under the IDEA. (*Id.*)

If there were any doubt that the gravamen of the pendency claim asserted on behalf of every one of the plaintiff children is that the schools were closed due to the pandemic, Plaintiffs’ counsel’s declaration (Albert Decl. ¶ 11) lays it to rest:

When the LEAs closed their doors effective on or about March 16, 2020, they unilaterally stopped providing the special education and related services set forth in Students’ IEP. This cessation of the special education and related services, guaranteed to the Students through their respective IEPs, was effectuated without notice to the Students’ Parents, the Plaintiffs herein. Such unilateral substantial and material modification of mandated education and related services was violative of the IDEA’s due process requirements. Moreover, such unilateral substantial and material modification of mandated education and related services constituted an unlawful change of placement for each Student herein. And, in this regard, upon information and belief, each Student herein was adversely affected by this unilateral substantial and material modification of mandated education and related services.

Plaintiffs’ argument is as follows: None of the IEPs for the forty-three New York City Students who are plaintiffs in this case says anything about providing services remotely – not even those IEPs that were updated *after* NYCDOE schools closed in March. (Albert Reply Decl. ¶ 16.)

Therefore, when schools closed in March due to the pandemic, and the City began providing services remotely, this worked a change in their pendency. Plaintiffs' counsel, Mr. Albert, states in his declaration, "When the DOE closed their doors effective on or about March 16, 2020, they unilaterally stopped providing the special education and related services set forth in Students' IEP." (Albert Reply Decl. ¶ 13.) In the following paragraph, he states "[NYC]DOE's unilateral change in the Students' educational program and placement was violative of the 'stay put' or 'pendency' provision of the IDEA, codified at 20 U.S.C. § 1415(j)." (*Id.* ¶ 14.)

The fair inference, from these statements and others, is that the provision of remote services to students as a result of the closure of the schools during the pandemic worked a change in the students' pendency.

But there are three reasons why the student Plaintiffs who have filed due process complaints have not established that the pandemic-induced closure of the schools wrought a change in their pendency.

First, the agency charged with administering the IDEA program has issued guidance indicating that the provision of remote services does not work a change in placement. This guidance – which would likely be entitled to *Skidmore* deference if plaintiffs were challenging the USDOE's informal interpretation of the IDEA, *see Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)) – dooms Plaintiffs' pendency claim without more.¹⁹

¹⁹ In *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court held that "a court must give effect to an agency's regulation containing a reasonable interpretation of an ambiguous statute." *Christensen*, 529 U.S. at 586. However, the Supreme Court has distinguished, between – one the one hand – interpretations contained in opinion letters, policy statements, agency manuals, and enforcement guidelines, "all of which lack the force of law," and – on the other hand – interpretations "arrived at after, for example, a formal adjudication or notice-and-comment rulemaking." *Id.* at 587. The former "do not warrant *Chevron*-style deference. Instead, interpretations contained in formats such as opinion letters are 'entitled to respect' under our decision in *Skidmore*[], but only to the extent that those interpretations have the 'power to persuade.'" *Id.* (internal citations omitted).

USDOE, while refusing to provide school districts with a waiver of their obligations under IDEA, issued guidance about how they could comply with the statute in the unprecedented circumstances of the pandemic. USDOE's guidance is clear: **“ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.”** (USDOE Fact Sheet at 1 (emphasis original).) In the specific context of the COVID-19 pandemic, the USDOE has clearly embraced an approach of granting schools maximum flexibility to keep their students safe so long as they continue to offer all students a free appropriate public education. (*See generally* USDOE Q&A.)

Moreover, the USDOE expressly endorsed “special education and related services provided through distance instruction provided virtually, online, or telephonically.” (*Id.* at 1-2.) Per NYSED, USDOE's Office of Special Education Program (“OSEP”) indicated that “online or virtual learning would be considered an alternate mode of instructional delivery.” (NYSED Q&A at 5.)

It is impossible to square the USDOE's contemporaneous guidance with Plaintiffs' assertion that the City's switch to remote learning in light of the pandemic constituted a change in placement in and of itself. This Court will not second guess the USDOE. Accordingly, Plaintiffs have failed to sufficiently allege a change in placement that triggers the stay-put provision, and Plaintiffs are not entitled to pendency.

Plaintiffs rely on *Letter to Fisher*, 21 IDELR 992 [OSEP 1994], in which the USDOE's OSEP opined that a “change of placement” has occurred if “the proposed change would

substantially or materially alter the child’s educational program.” OSEP identified four factors to aid this analysis:

[1] whether the educational program set out in the child's IEP has been revised; [2] whether the child will be able to be educated with nondisabled children to the same extent; [3] whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and [4] whether the new placement option is the same option on the continuum of alternative placements.

Cruz v. New York City Dep’t of Educ., No. 19-cv-856, 2020 WL 1322511, at *9 (S.D.N.Y. Mar. 20, 2020) (quoting *Gore v. D.C.*, 67 F. Supp. 3d 147, 152 n.4 (D.D.C. 2014) (quoting *Letter to Fisher* at 3)).

However, Plaintiffs’ reliance on the outdated and generalized guidance in *Letter to Fisher* is completely upended by the more recent guidance provided by USDOE in the specific and unprecedented circumstances of a worldwide pandemic. Indeed, as noted above, the OSEP – the very agency that issued *Letter to Fisher* back in 1994 – conducted a Joint COVID-19 Webinar with the Council of Administrators of Special Education, Council of Chief State School Officers, and National Association of State Directors of Special Education on March 13, 2020, during which, OSEP “indicated that if online or virtual learning is part of a school closure recommendation, the school district would *not be required to amend students’ IEPs* as online or virtual learning would be considered an alternate mode of instructional delivery.” (NYSESED Q&A at 5 (emphasis added).)

If the USDOE does not consider the provision of remote services to disabled students during a pandemic (which, significantly, is no different than the way services were being provided to abled students), this court will not second guess the agency.

Second, plaintiffs are challenging a system-side administrative decision of general applicability – an order shutting schools to all students (abled and disabled) and all staff during an unprecedented and life-threatening health crisis. There can be no question that the order applied to

the entire school system and that it was of general applicability – that is, it applied equally to abled and disabled students. Such an order does not work a change in pendency.

There is not a great deal of precedent on this point, but the court has read one reasonably close case – *N.D. v. Hawaii Department of Education*, 600 F.3d 1104, 1108, (9th Cir. 2010). In that case, the plaintiffs – disabled minors in Hawaii’s public school system – challenged Hawaii’s system-wide decision to shut down public schools on seventeen Fridays to alleviate a financial crisis. This decision provided all students – abled and disabled – with seventeen fewer days of instruction than they would otherwise have had. Nonetheless, the Ninth Circuit affirmed the district court’s order denying the plaintiffs’ motion to enjoin the shutdown, ruling that the shuttering of all the schools in Hawaii did not constitute a change in the educational placement of the disabled children. *Id.* at 1116.

The IDEA does not define “educational placement.” Accordingly, the Ninth Circuit considered the purpose of the stay-put provision to interpret the meaning of this undefined term. *See id.* at 1114. “Part of Congress’s concern was that ‘children were excluded entirely from the public school system and from being educated with their peers.’ To alleviate that, disabled children were to have ‘access to the general education curriculum in the regular classroom, to the maximum extent possible.’” *Id.* at 1115 (quoting 20 U.S.C. §§ 1400(c)(2)(B), 1400(c)(5)(A)). The Ninth Circuit also found that “When Congress enacted the IDEA, Congress did not intend for the IDEA to apply to system wide administrative decisions” such as Hawaii’s Friday shutdowns that “affect all public schools and all students, disabled and non-disabled alike.” *Id.* at 1116. The Ninth Circuit continued:

To allow the stay-put provisions to apply in this instance would be essentially to give the parents of disabled children veto power over a state’s decisions regarding the management of its schools. The IDEA did not intend to strip administrative

powers away from local school boards and give them to parents of individual children, and we do not read it as doing so.

Id. at 1117.

In this context, the Ninth Circuit ruled that the Friday shutdowns did not constitute a change in students' general education placement. "The children continue to attend the same school, have the same teachers, and stay in the same classes. The educational setting of the disabled children remains the same post-[shutdowns]." *Id.* 1117.²⁰

In a case closer to home, if not as closely on point as to the facts, the Second Circuit reversed a district court order preliminarily enjoining a decision to close P.S. 79 for budgetary reasons. *Concerned Parents*, 629 F.2d 751, 752 (2d Cir. 1980). Approximately 185 of the 310 students at P.S. 79 were enrolled in special education classes, part of an "extremely innovative educational program" for students with disabilities. *See id.* P.S. 79 students were transferred to other schools within the district. The district court, concluding that this worked a change in the students' pendency, directed NYCDOE to provide transferred students with disabilities with the broad array of curricular and extra-curricular programs and services that had been available at P.S. 79. *See id.* at 753. The Second Circuit reversed after deciding that the transfer did not constitute a "change in placement" because the transferred students "remain[ed] in the same classification, the same school district, and the same type of educational program special classes in regular schools." *Id.* at 756. The court also noted "that the full notice and hearing requirements of s 1415(b)" – which guarantee parents an opportunity for meaningful input into decisions affecting their child's education – "were limited to certain fundamental decisions regarding the existence and

²⁰ The court additionally concluded that the one-day-a-week shutdowns did not work any change in the students' IEPs, because those IEPs assumed that some school weeks would not be a full five days (due to federal and state holidays). *Id.* at 1117.

classification of a handicap, and the most appropriate type of educational program for assisting a child with such a handicap.” *Id.* at 754.

As was the case in both *N.D.* and *Concerned Parents*, the student plaintiffs in this case have not experienced any change in their pendency. They all remain in the same classification, in the same school district, and likely have the same teachers. Plaintiffs’ primary issue is that the City unilaterally forced Students home and required remote learning without providing in-person services. But that was true of every student in the district, abled and disabled. And it was the product of (I say it yet again) a health crisis of unprecedented proportions – and an administrative decision made to protect the lives and health of students and staff, which this court is neither equipped nor prepared to second guess.

The two reasons discussed above are dispositive – and, indeed, require dismissal of the Plaintiff Students’ pendency claims. However, there is a third reason why entry of a stay put injunction would not be appropriate: the record as it currently exists does not justify it.

Injunctive relief is forward looking, not backward looking. If a condition that would have warranted the entry of an injunction has been cured and it is clear that the condition could not reasonably be expected to recur, then there is no basis to enjoin. *Feltenstein v. City of New Rochelle*, 254 F. Supp. 3d 647, 656 (S.D.N.Y. 2017) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)).

Many things have changed since plaintiffs first made their motion. In particular, the schools have reopened for in-person instruction in New York City (at least for part time in-person instruction), and it is entirely the parents’ choice whether their children (abled or disabled) should attend them or remain at home. But the record is barren of evidence about the 43 plaintiff children’s current educational circumstances. This court has no idea whether their parents have chosen to

send their children to school several days a week or to keep them at home full time – or even whether they were given a choice, as the City contends. I do not know whether the children are being offered or are receiving services, either in person or remotely. I do not know whether some of them are enrolled in a District 75 school and are actually attending school full time. Plaintiffs complain that NYCDOE did not provide students with transportation over the summer, but (1) they do not say which students were entitled to transportation but did not get it; (2) it is no longer summer, and (3) no plaintiff has affirmatively indicated that s/he was entitled to transportation services under his/her IEP but is not receiving them now. Plaintiffs controvert none of the City’s evidence on these points.

Since the record is curiously and completely devoid of information about what was happening to the plaintiff students on September 24, when Plaintiffs’ filed their reply brief – never mind what is happening now, today, in November 2020 – it is hard to see why any sort of injunction to “open the schools” (to use the words used by Plaintiffs) should emanate from this court, since as far as the record shows, the schools are open and the plaintiff students can receive IEP-mandated educational services in person if their parents so desire.

Finally, it bears noting that, if this motion were being assessed using the four principles for obtaining preliminary injunctive relief articulated by the Supreme Court in *Winter v. National Resource Defense Council*, 555 U.S. 7, 24 (2008) – which is not the standard applied in this Circuit to stay-put injunctions, see *Ventura de Paulino v. New York City Dep’t of Educ.*, 959 F.3d 519, 529 (2d Cir. 2020) (citing *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982)) – it would also be denied. To obtain an injunction from a district court, movants generally bear the burden of showing that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor;

and (4) an injunction is in the public interest. *Id.* at 20. In this case, plaintiffs have failed to demonstrate any likelihood of success on the merits of their claim that their pendency has been changed (for the reasons discussed *supra* at pp. 66-74); the balance of equities does not tip in their favor, since there is no evidence that they are being denied a FAPE; and given the continuing (nay, re-escalating) public health crisis, with which City and State officials are trying to deal in the best way they can for all students, abled and disabled, the public interest would not be served by forcing the New York City schools to reopen as fully as at least these Plaintiffs would like.

For all of these reasons, the Plaintiffs' application for a preliminary "stay put" injunction is denied.²¹

IV. The NYC Defendants' Motion to Dismiss is Granted

Having disposed of the stay put injunction issue, the court turns finally to the motion to dismiss the Complaint made by the NYC Defendants. (Dkt. No. 137.) For the reasons stated below, the motion is GRANTED as to all claims.

A. Plaintiffs' Denial-of-FAPE Claims are Dismissed Without Prejudice.

The City argues that Plaintiffs have failed to exhaust their administrative remedies under the IDEA, which, if true, deprives the court of subject matter jurisdiction over their claims of denial of a FAPE. That is correct.

²¹ I decline to reach the City's alternative argument that each plaintiff child's IEP was changed on consent of the parents. See *Arlington Cent. Sch. Dist. v. L.P.*, 421 F. Supp. 2d 692, 697 (S.D.N.Y. 2006) (citing *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 86 F. Supp. 2d 354, 358 (S.D.N.Y. 2000), *aff'd*, 297 F.3d 195 (2d Cir. 2002)). The City's theory is that parents effectively agreed to a change in their child's IEP by deciding whether to send the child back to school part-time this fall ("blended learning") or to continue with full time remote learning. (See Defs.' Mem. at 18, Dkt. No. 140.) This argument might prove attractive if the City had provided the court with evidence that the parents of these 43 specific students were in fact consulted and made the affirmative decision to do one or the other. I am not prepared to infer parental consent from a general argument that relies entirely on statistics, without evidence about these specific families. Fortunately for the NYC Defendants, it is not necessary to address this issue. The same will not be true at an administrative hearing or in any subsequent litigation.

A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it. *See* Fed. R. Civ. P. 12(b)(1). The plaintiff bears the burden of proving by a preponderance of the evidence that subject matter jurisdiction exists. *See Malik v. Meissner*, 82 F.3d 560, 562 (2d Cir. 1996).

In reviewing whether it has subject matter jurisdiction, this Court assumes the facts in the Complaint are true, unless contradicted by “more specific allegations or documentary evidence.” *Amidax Trading Group v. S.W.I.F.T. SCRL*, 671 F.3d 140, 145 (2d Cir. 2011). In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a district court may refer to evidence outside the pleadings. *See Kamen v. American Tel. & Tel. Co.*, 791 F.2d 1006, 1011 (2d Cir. 1986).

As discussed above, the purpose of the IDEA is to provide students with disabilities with a free appropriate public education (“FAPE”). The IDEA “establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child’s education and the right to seek review of any decisions they think inappropriate.” *Honig v. Doe*, 484 U.S. 305, 311–12, (1988). Parents may request a due process hearing to present complaints relating to the educational placement of their child, or the provision of a free appropriate education. *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 245 (2d Cir. 2008) (quoting 20 U.S.C. § 1415(b)(6)(A)).

New York has a two-tier administrative system for review of IEPs: “First, an impartial hearing officer is selected from a list of certified officers and appointed by the local board of education or the competent state agency to conduct the initial hearing and issue a written decision. That decision can then be appealed to a state review officer of the New York Education Department.” *Id.*

Each individual student plaintiff must exhaust these administrative procedures before filing an IDEA action in court. *See* 20 U.S.C. § 1415(i)(2)(A). “A plaintiff’s failure to exhaust administrative remedies under the IDEA deprives a court of subject matter jurisdiction.” *Avaras v. Clarkstown Cent. Sch. Dist.*, No. 18-cv-6964, 2019 WL 4600870, at *9 (S.D.N.Y. Sept. 21, 2019) (quoting *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 483 (2d Cir. 2002)).

The exhaustion requirement applies with equal force to claims under the ADA, the Rehabilitation Act, or other, similar laws when the plaintiff seeks relief for the denial of a FAPE. *See* 20 U.S.C. § 1415(l); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 752 (2017). This requirement also applies to claims arising under the New York State Constitution and state regulations that expressly allege the plaintiff was denied a FAPE. *See Dallas v. Roosevelt Union Free Sch. Dist.*, 644 F. Supp. 2d 287, 293–94 (E.D.N.Y. 2009) (citing *Cave*, 514 F.3d at 247). Additionally, even though compensatory and punitive damages are not available under the IDEA, the Second Circuit has held that plaintiffs are not excused from the exhaustion requirement “merely because in their suit they seek, *inter alia*, pecuniary damages, a remedy unavailable under the IDEA.” *Cave*, 514 F.3d at 247. Similarly, the exhaustion requirement applies to claims arising under § 1983 where those claims complain of a denial of FAPE. *See Avaras v. Clarkstown Cent. Sch. Dist.*, No. 18-cv-6964, 2019 WL 4600870, at *18 (S.D.N.Y. Sept. 21, 2019).

To determine “whether a suit indeed ‘seeks’ relief for such a denial, a court should look to the substance, or gravamen, of the plaintiff’s complaint.” *Fry*, 137 S. Ct. at 752 The Court provided two hypothetical questions to guide this analysis:

First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school—say, a public theater or library? And second, could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance?

Id. at 756. When the answer to those questions is “no,” the complaint probably concerns a FAPE, even if it does not explicitly say so. *Id.*

Here, every claim except for Count IV is based on the same violation: Defendants’ asserted failure to provide Students with a free appropriate public education. Counts I, II, III, V, VI, VII, VIII, IX, and X all expressly allege that Defendants denied Plaintiffs a “free appropriate public education” or a “FAPE.” (*See* Compl. ¶¶ 156, 159, 164, 170, 171, 172, 173, 176, 178, 181, 185, 189.) Count XI refers to “education benefits” rather than a “free appropriate public education.” (*See id.* ¶¶ 192-93.)

For each of these ten claims, the answers to the *Fry* questions are “no,” and “no.” Every claim is inextricably tied to Plaintiffs’ chief accusation that Defendants denied Students a FAPE. The facts that support these claims are identical. *See Avaras*, 2019 WL 4600870, at *18. If this Court needed more convincing, Plaintiffs’ counsel’s own declaration states that “The *gravamen* of the Complaint concerns the improper *unilateral modification and/or denial of special education and related services* of disabled students since mid-March 2020, when schools were closed by state and local officials in response to the COVID-19 pandemic.” (Albert OTSC Decl. ¶ 2, Dkt. No. 141 (emphasis added)). Accordingly, all ten claims are subject to the IDEA’s exhaustion requirement.

There are three exceptions to the exhaustion requirement:

Exhaustion is not necessary if (1) it would be futile to resort to the IDEA’s due process procedures; (2) an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law; or (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies.

Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199 (2d Cir. 2002). “It is the plaintiffs’ burden to prove the applicability of one of these exceptions.” *S.W. by J.W. v. Warren*, 528 F. Supp. 2d 282, 293 (S.D.N.Y. 2007) (citing *Murphy*, 297 F.3d at 199).

Plaintiffs do not allege to have exhausted their administrative remedies under the IDEA. And in fact none of them has exhausted because, while some of the plaintiff parents may have requested impartial hearings, there is no evidence that any hearing have been completed, that an IHO has issued a ruling, or that any appeal has been taken to an SRO.

Instead, plaintiffs make two arguments why their claims are not exhausted: (1) they filed a stay-put claim and (2) exhaustion would be futile. Both arguments fail.

Plaintiffs note – correctly – that “an action alleging violation of the stay-put provision falls within one, if not more, of the enumerated exceptions to this jurisdictional prerequisite.” *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002). Accordingly, Plaintiffs’ need not exhaust their administrative remedies before pursuing Count IV – failure to provide pendency under the IDEA. *See id.* And this court has ruled on the request for pendency relief.

But the exception that applies to a stay-put claim does not excuse Plaintiffs’ other, FAPE-based claims from the exhaustion requirement. Plaintiffs assert “conceptually distinct claims: (I) [] denial-of-FAPE claim[s] . . . , *see* 20 U.S.C. § 1412(a)(1); and (II) a stay-put claim . . . , *see* 20 U.S.C. § 1415(j).” *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 447 (2d Cir. 2015). Other courts in this district have applied the exhaustion requirement claim-by-claim, and have not found that a valid stay-put claim excuses the exhaustion of denial-of-FAPE claims. *See, e.g., Avaras*, 2019 WL 4600870, at *10.

Plaintiffs also attempt to invoke the futility exception. “If a plaintiff has shown that, due to administrative backlog or otherwise, an IHO or SRO has failed to timely issue a decision on a fully briefed due process complaint or appeal, a district court can assume jurisdiction.” *J.Z. v. New York City Dep’t of Educ.*, 281 F. Supp. 3d 352, 363 (S.D.N.Y. 2017) (quotations and citations omitted). While there is no bright-line rule for when a delay renders a claim futile, “courts have found exhaustion after a delay in cases ranging from two months to two years.” *Id.* (citing *M.G. v. New York City Dep’t of Educ.*, 15 F. Supp. 3d 296, 303 & n. 44 (S.D.N.Y. 2014) (collecting cases)). In their reply brief, Plaintiffs argue that only a handful of the NYC-Plaintiffs’ due process complaints have been assigned to an impartial hearing officer (“IHO”). Thus, they claim that their exhaustion of administrative remedies would be futile.

But futility is not measured by the fact that it takes time to hold hearings. Plaintiffs conveniently do not allege that their impartial hearings have been held, let alone that no decision has been entered on a “fully briefed” due process complaint. I greatly doubt that any complaint has been “fully briefed;” indeed, most of the hearings that have been requested in this case were requested a month or less prior to the date when counsel argued that exhaustion was futile—thereby falling within New York’s 30-day resolution period before the City need even hold a due process hearing. *See* 34 C.F.R. § 300.510; *J.Z.*, 281 F. Supp. 3d at 363. (*See* “IHO Emails,” Dkt. No. 149-13.) Plaintiffs’ futility argument is premature.

Moreover, this court is prepared to make allowances for the fact that the pandemic will inevitably result in delays in the holding of impartial hearings. I am not prepared to divorce this lawsuit from the circumstances that precipitated it.

In sum, Plaintiffs have not come close to demonstrating futility.

B. Plaintiffs' Stay-Put Claim is Dismissed

Because the court has concluded that (1) no change in pendency has been worked by the emergency closure of the schools, and (2) plaintiffs cannot complain about an administrative order of general applicability to all students (*see supra* pp. 66-73), Count IV, the count that seeks a stay-put injunction, must also be dismissed, for failure to state a claim on which relief may be granted. Fed. R. Civ. P. 12(b)(6). This dismissal does not preclude individual students from asserting in appropriately commenced lawsuits that something other than the closure of the schools and the provision of remote educational services during the pandemic. worked a change in pendency.

C. Plaintiffs' RICO Claim is Dismissed

For all of the reasons in Part I(A)(2), *supra* pp. 49-23, Plaintiffs lack standing to pursue the RICO claim they outline in their RICO Case Statement (which amends the complaint) and they fail to plead essential elements of a RICO claim. Therefore, any RICO claim asserted against the NYC Defendants is dismissed with prejudice.

V. The Claims are Dismissed As Against the New York State Education Department

This leaves New York State.

In August, the New York State Education Department (NYSED) has filed a letter with this court indicating that it had not yet been properly served (it was purportedly served by email) (Docket #32). A review of the docket sheet revealed no proof of service on NYSED, so it has incurred no obligation to respond to anything as yet.

However, the court can *sua sponte* dismiss the claims asserted against NYSED for the reasons discussed above.

It can dismiss Counts I-III and IV-XI for failure to exhaust administrative remedies, which deprives this Court of subject matter jurisdiction. *See supra* fn. 11.

This Court can dismiss Count IV against NYSED *sua sponte* because pendency claims lie against individual school districts, not against the State, which would not be a proper party on any such claim.

And of course the RICO claim, which is fatally deficient in so many respects, must be dismissed against NYSED as well as against every other defendants.

“While dismissing a complaint as to a non-moving defendant is not an ordinary practice, a district court may dismiss claims *sua sponte* for failure to state a claim, at least so long as the plaintiff had notice and an opportunity to be heard on the issue.” *Antidote Int’l Films, Inc. v. Bloomsbury Pub., PLC*, 467 F. Supp. 2d 394, 399 (S.D.N.Y. 2006) (quoting *First Capital Asset Mgmt., Inc. v. Brickellbush, Inc.*, 219 F. Supp. 2d 576, 580 (S.D.N.Y. 2002), *aff’d sub nom. First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159 (2d Cir. 2004)). In most cases, the *sua sponte* dismissal of claims against a non-moving defendant arise in circumstances like this one, in which (i) a defendant has not been properly served, and (ii) it is apparent that the same arguments that warranted dismissal against the moving defendants warrant dismissal against the unserved defendant. Here, NYSED submitted a letter on August 26 – prior to the issuance of the stay – asserting both improper service of process (it was purportedly served by email) and that it is not a proper party. (Dkt. No. 32); and the arguments discussed in the preceding 83 pages apply with equal or greater force to NYSED.

Plaintiffs have had many opportunities to be heard on the sufficiency of their Complaint. They have had an opportunity to respond to this Court’s Orders to Show Cause via supplemental briefing (Dkt. Nos. 122, 123, 124) and to oppose the NYC Defendants’ motion to dismiss – which argued that the Complaint should be dismissed for failure to state a claim (Dkt. No. 150). They have filed a RICO Case Statement (Dkt. No. 121) and were afforded an opportunity to further brief

the sufficiency of their RICO claims (Dkt. No. 194). It would be a waste of judicial resources to allow Plaintiffs' legally defective claims, as to which Plaintiffs have been fully heard, to be pursued against NYSED simply because the State – complying with a court-ordered stay -- has not yet moved to dismiss them. *See Antidote*, 467 F. Supp. 2d at 399.

Plaintiffs assert the same claims, based on the same facts, and the same legal theories against *all* defendants in this case. The reasons stated above for dismissing the Complaint against the NYC Defendants carry no less weight as applied to NYSED.²²

Accordingly, the Complaint is similarly DISMISSED without prejudice against NYSED.

CONCLUSION

For the reasons stated above, Plaintiffs' claims against all out-of-state Defendants are DISMISSED without prejudice. The remaining claims against all New York State School Districts outside NYCDOE are SEVERED and DISMISSED without prejudice.

Plaintiffs' application for a preliminary injunction is DENIED, and all claims are DISMISSED as against the NYC Defendants.

The court sua sponte dismisses all claims against the New York State Education Department.

²² NYSED no doubt would raise Eleventh Amendment issues as well, but the court will not litigate on the State's behalf.

The Clerk of Court is directed to close the open motion at Docket Number 137. The motions at Dockets # 74, 92, 94, 96, 98 and 181, which were closed administratively due to the stay imposed by the court, should be closed permanently.

This is a written opinion. It is the opinion and order of the Court.

Dated: November 13, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Robert M. Kolch", written over a horizontal line.

Chief Judge

BY ECF TO ALL PARTIES

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/13/2020

-----X
J.T., Individually and On Behalf of D.T.;
K.M., Individually and On Behalf of M.M. and
S.M.; J.J., Individually and On Behalf of Z.J.;
C.N., Individually and On Behalf of V.N.; and
All Others Similarly Situated,

Plaintiffs,

-against-

20 CIVIL 5878 (CM)

JUDGMENT

BILL de BLASIO, in his official capacity as the
Mayor of New York City; RICHARD CARRANZA,
in his official capacity as the Chancellor of New
York City Department of Education; the NEW
YORK CITY DEPARTMENT OF EDUCATION;
the SCHOOL DISTRICTS IN THE UNITED
STATES; and, STATE DEPARTMENTS OF
EDUCATION IN THE UNITED STATES,

Defendants.

-----X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the
Court's Opinion & Order dated November 13, 2020, Plaintiffs' claims against all out-of-state Defendants are
DISMISSED without prejudice. The remaining claims against all New York State School Districts outside
NYCDOE are SEVERED and DISMISSED without prejudice. Plaintiffs' application for a preliminary
injunction is DENIED, and all claims are DISMISSED as against the NYC Defendants. The court sua sponte
dismisses all claims against the New York State Education Department; accordingly, this case is closed.

Dated: New York, New York

November 13, 2020

RUBY J. KRAJICK

Clerk of Court

BY:

**mango*

Deputy Clerk

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CLOSED,ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-05878-CM

J.T. et al v. de Blasio et al
Assigned to: Judge Colleen McMahon
Cause: 20:1400 IDEA: Individuals With Disabilities Education Act (short title)

Date Filed: 07/28/2020
Date Terminated: 11/13/2020
Jury Demand: None
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Federal Question

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*ATTORNEY TO BE NOTICED***Defendant****Lakeside Joint School District**represented by **Randall L. Winet , I**

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Lemon Grove School District

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

McCabe Union School District

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Mountain Empire Unified School District

represented by **Randall L. Winet , I**
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ATTORNEY TO BE NOTICED

Defendant

Ramona Unified School District

represented by **Randall L. Winet , I**
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ATTORNEY TO BE NOTICED

Defendant

**Rancho Santa Fe Elementary School
District**

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

San Diego County Office of Education

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

San Dieguito Union High School District

represented by **Randall L. Winet , I**
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ATTORNEY TO BE NOTICED

Defendant

San Marcos Unified School District

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**San Pasqual Union Elementary School
District**

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**San Pasqual Valley Unified School
District**

represented by **Randall L. Winet , I**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Santee School District**represented by **Randall L. Winet , I**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Solana Beach Elementary School District**represented by **Randall L. Winet , I**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Spencer Valley Elementary School District**represented by **Randall L. Winet , I**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Sweetwater Union High School District**represented by **Randall L. Winet , I**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Vallecitos Elementary School District**represented by **Randall L. Winet , I**
(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Valley Center-Pauma Unified School District**represented by **Randall L. Winet , I**
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*ATTORNEY TO BE NOTICED***Defendant****Warner Unified School District**represented by **Randall L. Winet , I**
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(See above for address)

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

West Orange Public Schools

represented by **Eric Labes Harrison**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Readington Township Public Schools

represented by **Eric Labes Harrison**
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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

**Certain School Districts Located in the
State of Virginia**

represented by **Eric Labes Harrison**
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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

**Certain School Districts Located in the
State of California**

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Defendant

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Defendant

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Defendant

City of Stamford Board of Education

represented by **Ryan Patrick Driscoll**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

City of Bridgeport Board of Education

represented by **Ryan Patrick Driscoll**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Omaha Public School District

represented by **Nicholas Miller**
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ADR Provider**Martha's Vineyard High School**

represented by **Christopher Andrew Long**
 (See above for address)
ATTORNEY TO BE NOTICED

ADR Provider**Middletown Township Public Schools**

represented by **Eric Labes Harrison**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus**MICHIGAN ASSOCIATION OF
SCHOOL BOARDS**

represented by **Timothy J Mullins**
 Giarmarco, Mullins & Horton, P.C.
 101 West Big Beaver Rd
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/28/2020	1	COMPLAINT against Richard Carranza, School Districts in the United States, State

		Education Departments in the United States, The New York City Department of Education, Bill de Blasio. (Filing Fee \$ 400.00, Receipt Number ANYSDC-20891299) Document filed by C.N.(on behalf of V.N.), K.M.(Individually), J.J.(Individually), J.T.(on behalf of D.T.), J.J.(on behalf of Z.J.), J.T.(Individually), K.M.(on behalf of S.M. and M.M.), C.N.(Individually). (Attachments: # <u>1</u> Appendix Defendant School Districts, # <u>2</u> Appendix Defendant State Education Departments, # <u>3</u> Affidavit Governor's Executive Orders, # <u>4</u> Appendix COVID-19 Guidance Memoranda, # <u>5</u> Appendix State Constitutions and Statutes, # <u>6</u> Appendix DT - IEP, # <u>7</u> Appendix SM - IEP, # <u>8</u> Appendix MM - IEP, # <u>9</u> Appendix VN - IEP, # <u>10</u> Appendix ZJ - IEP, # <u>11</u> Appendix NYC DOE Memo, # <u>12</u> Appendix Plaintiffs).(Albert, Peter) Modified on 7/29/2020 (dnh). Modified on 7/29/2020 (pne). (Entered: 07/28/2020)
07/29/2020		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Peter Glenn Albert. The party information for the following party/parties has been modified: J.T.; K.M.; J.J.; C.N.. The information for the party/parties has been modified for the following reason/reasons: party text was entered incorrectly. (dnh) (Entered: 07/29/2020)
07/29/2020		***NOTICE TO ATTORNEY REGARDING REMOVAL OF PARTY. Notice to attorney Peter Glenn Albert. The following party/parties has been removed from this case: J.T.; K.M.; J.J.; C.N.. The party was added to the case in error. (dnh) (Entered: 07/29/2020)
07/29/2020		***NOTICE TO ATTORNEY TO ELECTRONICALLY FILE CIVIL COVER SHEET. Notice to Attorney Peter Glenn Albert. Attorney must electronically file the Civil Cover Sheet. Use the event type Civil Cover Sheet found under the event list Other Documents. (dnh) (Entered: 07/29/2020)
07/29/2020		***NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Peter Glenn Albert. The following case opening statistical information was erroneously selected/entered: Fee Status code due (due). The following correction(s) have been made to your case entry: the Fee Status code has been modified to pd (paid). (dnh) (Entered: 07/29/2020)
07/29/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Valerie E. Caproni. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions ..(dnh) (Entered: 07/29/2020)
07/29/2020		Magistrate Judge Gabriel W. Gorenstein is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (dnh) (Entered: 07/29/2020)
07/29/2020		Case Designated ECF. (dnh) (Entered: 07/29/2020)
07/29/2020	<u>2</u>	CIVIL COVER SHEET filed..(Albert, Peter) (Entered: 07/29/2020)
07/31/2020	<u>3</u>	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Bill de Blasio, re: <u>1</u> Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) Modified on 8/3/2020 (dnh). (Entered: 07/31/2020)

07/31/2020	4	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Richard Carranza, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) Modified on 8/3/2020 (dnh). (Entered: 07/31/2020)
07/31/2020	5	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to New York State Education Departments and all State Education Departments in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) Modified on 8/3/2020 (dnh). (Entered: 07/31/2020)
07/31/2020	6	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to The New York City Department of Education and All School Districts in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Rider - All School Districts in the United States).(Albert, Peter) Modified on 8/3/2020 (dnh). (Entered: 07/31/2020)
08/03/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Peter Glenn Albert to RE-FILE Document No. 4 Request for Issuance of Summons, 5 Request for Issuance of Summons, 6 Request for Issuance of Summons, 3 Request for Issuance of Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct. Caption Error; the caption contains a typographical error in the listed party text. If party text is included on the summons PDF, it must appear exactly as it does in the pleading caption (..Mayor of the City of New York..). Summonses may only be issued to parties of record. 'As to' party name in the docket entry text and on the PDF must exactly correspond with the pleading caption. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (dnh) (Entered: 08/03/2020)
08/04/2020	7	LETTER addressed to Judge Valerie E. Caproni from Peter G. Albert dated 8/4/20 re: Corrected Filing. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 08/04/2020)
08/04/2020		NOTICE OF CASE REASSIGNMENT to Judge Colleen McMahon. Judge Valerie E. Caproni is no longer assigned to the case..(wb) (Entered: 08/04/2020)
08/05/2020	8	REQUEST FOR ISSUANCE OF SUMMONS as to Bill de Blasio, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 08/05/2020)
08/05/2020	9	REQUEST FOR ISSUANCE OF SUMMONS as to Richard Carranza, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 08/05/2020)
08/05/2020	10	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST As To - REQUEST FOR ISSUANCE OF SUMMONS as to New York State Education Department, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Supplement Rider of State Education Departments).(Albert, Peter) Modified on 8/6/2020 (dnh). (Entered: 08/05/2020)
08/05/2020	11	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST As To - REQUEST FOR ISSUANCE OF SUMMONS as to New York City Department of Education and All Defendant School Districts, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Supplement Rider of School Districts).(Albert, Peter) Modified on 8/6/2020 (dnh). (Entered: 08/05/2020)
08/06/2020	12	ELECTRONIC SUMMONS ISSUED as to Bill de Blasio..(dnh) (Entered: 08/06/2020)

08/06/2020	13	ELECTRONIC SUMMONS ISSUED as to Richard Carranza..(dnh) (Entered: 08/06/2020)
08/06/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Peter Glenn Albert to RE-FILE Document No. 10 Request for Issuance of Summons, 11 Request for Issuance of Summons,. The filing is deficient for the following reason(s): 'As to' Error; summonses may only be requested for parties of record. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (dnh) (Entered: 08/06/2020)
08/06/2020	14	REQUEST FOR ISSUANCE OF SUMMONS as to The New York City Department of Education, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 08/06/2020)
08/06/2020	15	REQUEST FOR ISSUANCE OF SUMMONS as to School Districts in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Supplement Rider).(Albert, Peter) (Entered: 08/06/2020)
08/06/2020	16	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST As To - REQUEST FOR ISSUANCE OF SUMMONS as to State Education Departments in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Supplement Rider).(Albert, Peter) Modified on 8/7/2020 (dnh). (Entered: 08/06/2020)
08/07/2020	17	ELECTRONIC SUMMONS ISSUED as to The New York City Department of Education..(dnh) (Entered: 08/07/2020)
08/07/2020	18	ELECTRONIC SUMMONS ISSUED as to School Districts in the United States..(dnh) (Entered: 08/07/2020)
08/07/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Peter Glenn Albert to RE-FILE Document No. 16 Request for Issuance of Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; 'As to' party name in the docket entry text and on the PDF must exactly correspond with the pleading caption. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (dnh) (Entered: 08/07/2020)
08/07/2020	19	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to State Departments of Education in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Supplement Rider).(Albert, Peter) Modified on 8/10/2020 (pc). (Entered: 08/07/2020)
08/10/2020		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Peter Glenn Albert to RE-FILE Document No. 19 Request for Issuance of Summons,. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; summonses may only be requested for parties of record;. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (pc) (Entered: 08/10/2020)
08/10/2020	20	FILING ERROR - DEFICIENT SUMMONS REQUEST - REQUEST FOR ISSUANCE OF SUMMONS as to State Education Departments in the United States, re:

		1 Complaint. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) Modified on 8/12/2020 (sj). (Entered: 08/10/2020)
08/10/2020	21	REQUEST FOR ISSUANCE OF SUMMONS as to State Departments of Education in the United States, re: 1 Complaint,,,. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 08/10/2020)
08/12/2020	22	SUMMONS ISSUED as to State Departments of Education in the United States. (sj) (Entered: 08/12/2020)
08/14/2020	23	AFFIDAVIT OF SERVICE of Summons and Complaint,,,. Bill de Blasio served on 8/13/2020, answer due 9/3/2020. Service was made by Email. Document filed by C.N.; J.T.; J.J.; K.M...(Albert, Peter) (Entered: 08/14/2020)
08/14/2020	24	AFFIDAVIT OF SERVICE of Summons and Complaint,,,. Richard Carranza served on 8/13/2020, answer due 9/3/2020. Service was made by Email. Document filed by C.N.; J.T.; J.J.; K.M...(Albert, Peter) (Entered: 08/14/2020)
08/14/2020	25	AFFIDAVIT OF SERVICE of Summons and Complaint,,,. The New York City Department of Education served on 8/13/2020, answer due 9/3/2020. Service was made by Email. Document filed by C.N.; J.T.; J.J.; K.M...(Albert, Peter) (Entered: 08/14/2020)
08/20/2020	26	LETTER MOTION for Leave to File Excess Pages addressed to Judge Gregory H. Woods from Peter G. Albert dated 8/20/20. Document filed by C.N., J.J., J.T., K.M... (Albert, Peter) (Entered: 08/20/2020)
08/20/2020	27	ORDER granting 26 Letter Motion for Leave to File Excess Pages. Application granted. SO ORDERED. (Signed by Judge Gregory H. Woods on 8/20/2020) (mml) (Entered: 08/21/2020)
08/21/2020	28	ORDER SCHEDULING AN INITIAL PRETRIAL CONFERENCE: Initial Conference set for 9/18/2020 at 10:15 AM before Judge Colleen McMahon by telephone. Parties should dial in at 1(888)363-4749, access code (9054506) to join the conference, and as further set forth in this order. (Signed by Judge Colleen McMahon on 8/21/2020) (jwh) (Entered: 08/21/2020)
08/22/2020	29	ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION: Upon Plaintiffs' Memorandum of Law in Support of an Order to Show Cause for a Temporary Restraining Order and a Preliminary Injunction, dated August 20, 2020, and the Declaration of Peter G. Albert, Esq., dated August 20, 2020, and the exhibits annexed thereto, it is ORDERED, that the above-named Defendants shall, by on or before September 4, 2020, file a written response to the Plaintiffs' application for a Temporary Restraining Order and Preliminary Injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure; Defendants are also directed to file any motion to dismiss, sever, or transfer or for any other relief for any Defendant by September 4, 2020; and, be it further ORDERED, that the Plaintiffs shall, by on or before September 18, 2020, file a written reply to the Defendants' opposition and a response to any motion by any defendant; Plaintiffs must file a separate brief responding to each individual motion made by any Defendant but may file one reply brief to Defendants' opposition to their motion for a preliminary injunction. The Court will schedule a hearing only if it deems one to be necessary. Plaintiffs are directed to serve a copy of this order to Defendants or their counsel on or before August 24, 2020 at 10 a.m. and to retain proof of service. (Signed by Judge Gregory H. Woods on 8/22/2020) (mro) (Entered: 08/24/2020)
08/22/2020		Set/Reset Deadlines: Motions due by 9/4/2020. Responses due by 9/18/2020 (mro) (Entered: 08/24/2020)

08/24/2020	30	NOTICE OF APPEARANCE by Fredric Paul Gallin on behalf of School Districts in the United States..(Gallin, Fredric) (Entered: 08/24/2020)
08/24/2020	31	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION for Eric L. Harrison to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21297088. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # 1 Affidavit Affirmation of Fredric P. Gallin, # 2 Affidavit Affidavit of Eric L. Harrison, # 3 Text of Proposed Order proposed Order, # 4 Exhibit Certificate of Good Standing).(Gallin, Fredric) Modified on 8/24/2020 (vba). (Entered: 08/24/2020)
08/24/2020		>>>NOTICE REGARDING DEFICIENT MOTION TO APPEAR PRO HAC VICE. Notice to RE-FILE Document No. 31 MOTION for Eric L. Harrison to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21297088. Motion and supporting papers to be reviewed by Clerk's Office staff... The filing is deficient for the following reason(s): missing Certificate of Good Standing from SUPREME COURT OF NEW JERSEY;. Re-file the motion as a Corrected Motion to Appear Pro Hac Vice - attach the correct signed PDF - select the correct named filer/filers - attach valid Certificates of Good Standing issued within the past 30 days - attach Proposed Order.. (vba) (Entered: 08/24/2020)
08/26/2020	32	LETTER MOTION for Extension of Time <i>and Clarification on behalf of the New York State Education Department</i> addressed to Judge Gregory H. Woods from Alissa Wright dated August 26, 2020. Document filed by State Departments of Education in the United States..(Wright, Alissa) (Entered: 08/26/2020)
08/26/2020	33	NOTICE OF APPEARANCE by Fredric Paul Gallin on behalf of School Districts in the United States..(Gallin, Fredric) (Entered: 08/26/2020)
08/27/2020	34	NOTICE OF APPEARANCE by Adam I. Kleinberg on behalf of School Districts in the United States..(Kleinberg, Adam) (Entered: 08/27/2020)
08/27/2020	35	LETTER MOTION for Extension of Time to File Response/Reply as to 1 Complaint,, 29 Order to Show Cause,,,,, and for clarity addressed to Judge Gregory H. Woods from Adam I. Kleinberg dated august 27, 2020. Document filed by School Districts in the United States. (Attachments: # 1 Exhibit letter to plaintiffs' counsel, # 2 Exhibit email from plaintiffs' counsel).(Kleinberg, Adam) (Entered: 08/27/2020)
08/27/2020	36	ORDER: denying without prejudice 35 Letter Motion for Extension of Time to File Response/Reply. Application denied without prejudice. The Court has reviewed this letter motion and the similar letter motion filed at Dkt No.32. While framed as requests for "clarity," the applications functionally ask the Court to advise the applicants whether they have been properly served with the complaint, and to provide guidance regarding whether the claims against them have merit. The Court cannot determine whether any party has been properly served based on these letter motions. The Court expects that each of the applicants can draw its own conclusions about whether it has been properly served based on the relevant statutes and, if not, what consequences flow from that failure, and develop a litigation strategy based on its analysis. The Court expresses no view about whether the parties have been properly served or on the merits of Plaintiffs' claims at this stage in the litigation. The application for an extension of the deadlines in the Court's order to show cause, Dkt No. 29, in this letter motion and the similar letter motion at Dkt No. 32 is denied. The Clerk of Court is directed to terminate the motions pending at Dkt Nos. 32 and 35. SO ORDERED. (Signed by Judge Gregory H. Woods on 8/27/2020) (ama) (Entered: 08/28/2020)
08/28/2020	37	MOTION for Jonathan Griffin Brush to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21377946. Motion and supporting papers to be reviewed by

		Clerk's Office staff. Document filed by Austin Independent School District. (Attachments: # 1 Proposed Order).(Brush, Jonathan) (Entered: 08/28/2020)
08/28/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 37 MOTION for Jonathan Griffin Brush to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21377946. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (vba) (Entered: 08/28/2020)
08/28/2020	38	MOTION for AMY DAWN DEMMLER to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21378430. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Austin Independent School District. (Attachments: # 1 Proposed Order).(Demmler, Amy) (Entered: 08/28/2020)
08/28/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 38 MOTION for AMY DAWN DEMMLER to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21378430. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (vba) (Entered: 08/28/2020)
08/28/2020	39	NOTICE OF APPEARANCE by Jill M. O'Toole on behalf of School Districts in the United States..(O'Toole, Jill) (Entered: 08/28/2020)
08/28/2020	40	LETTER MOTION for Extension of Time <i>to respond to Complaint and to respond to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction</i> addressed to Judge Colleen McMahan from Ashford Board of Education, Bolton Board of Education, Branford Board of Education, Bristol Board of Education, Danbury Board of Education, Eastford Board of Education, East Hartford Board of Education, Greenwich Board of Education, North Haven Board of Education, Plainfield Board of Education, Regional School District 17 Board of Education, Rocky Hill Board of Education, Seymour Board of Education, Southington Board of Education, Windsor Board of Education, and Woodstock Board of Education dated Aug. 28, 2020. Document filed by School Districts in the United States. (Attachments: # 1 Text of Proposed Order Proposed Revised Scheduling Order).(O'Toole, Jill) (Entered: 08/28/2020)
08/29/2020	41	MOTION for Sherry Hall Culves to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21393296. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Atlanta Independent School System, Fulton County School District. (Attachments: # 1 Affidavit, # 2 Exhibit, # 3 Text of Proposed Order).(Culves, Sherry) (Entered: 08/29/2020)
08/31/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 41 MOTION for Sherry Hall Culves to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21393296. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb) (Entered: 08/31/2020)
08/31/2020	42	LETTER addressed to Judge Gregory H. Woods from Fredric P. Gallin dated 8/31/2020 re: filing briefs. Document filed by School Districts in the United States..(Gallin, Fredric) (Entered: 08/31/2020)
08/31/2020	43	NOTICE OF APPEARANCE by Lewis R. Silverman on behalf of School Districts in the United States..(Silverman, Lewis) (Entered: 08/31/2020)
08/31/2020	44	NOTICE OF APPEARANCE by Caroline Beth Lineen on behalf of School Districts in the United States..(Lineen, Caroline) (Entered: 08/31/2020)
08/31/2020	45	LETTER MOTION for Extension of Time addressed to Judge Colleen McMahan from

		Lewis R. Silverman dated August 31, 2020. Document filed by School Districts in the United States. (Attachments: # 1 Exhibit A-Email to Superintendent).(Silverman, Lewis) (Entered: 08/31/2020)
08/31/2020	46	MOTION for Kyle J. Kaiser to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21411951. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States, State Departments of Education in the United States. (Attachments: # 1 Affidavit Affidavit of Kyle J. Kaiser, # 2 Exhibit A-Texas Certificates of Good Standing, # 3 Exhibit B-Utah Certificate of Good Standing, # 4 Exhibit C-Minnesota Certificate of Good Standing, # 5 Text of Proposed Order).(Kaiser, Kyle) (Entered: 08/31/2020)
08/31/2020	47	ORDER FOR ADMISSION PRO HAC VICE granting 41 MOTION for Sherry Hall Culves to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 8/31/2020) (jca) (Entered: 08/31/2020)
08/31/2020	48	NOTICE OF APPEARANCE by Dennis Michael Rothman on behalf of School Districts in the United States..(Rothman, Dennis) (Entered: 08/31/2020)
08/31/2020	49	NOTICE OF APPEARANCE by Mark Galen Toews on behalf of Richard Carranza, The New York City Department of Education, Bill de Blasio..(Toews, Mark) (Entered: 08/31/2020)
08/31/2020	50	FIRST LETTER MOTION for Extension of Time addressed to Judge Gregory H. Woods from Mark G. Toews dated August 31, 2020. Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio. (Attachments: # 1 Text of Proposed Order Proposed Revised Scheduling Order).(Toews, Mark) (Entered: 08/31/2020)
08/31/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 46 MOTION for Kyle J. Kaiser to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21411951. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. (aea) (Entered: 08/31/2020)
09/01/2020	51	NOTICE OF APPEARANCE by Fredric Paul Gallin on behalf of School Districts in the United States. (Attachments: # 1 Exhibit Rider).(Gallin, Fredric) (Entered: 09/01/2020)
09/01/2020	52	NOTICE OF APPEARANCE by Mark Anthony Radi on behalf of School Districts in the United States..(Radi, Mark) (Entered: 09/01/2020)
09/01/2020	53	NOTICE OF APPEARANCE by Chelsea Ella Weisbord on behalf of School Districts in the United States..(Weisbord, Chelsea) (Entered: 09/01/2020)
09/01/2020	54	ORDER denying without prejudice 50 Letter Motion for Extension of Time. The Court has reviewed this letter and the other letter addressed to Judge Woods filed on the docket of this case at Dkt No. 42. Both applications are denied without prejudice. Judge Woods ruled on the prior applications as the Part I judge; he is no longer on Part I duty. Applications with respect to this case should be addressed to the assigned district judge, or, in her absence, to the judge serving on Part I duty. SO ORDERED. (Signed by Judge Gregory H. Woods on 9/1/2020) (va) (Entered: 09/01/2020)
09/01/2020	55	MOTION for Martha J. Casserly to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21430033. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Minnesota State Department of Education. (Attachments: # 1 Affidavit Affidavit of Martha J. Casserly, # 2 Supplement Certificate of Good Standing, # 3 Text of Proposed Order proposed Order).(Casserly, Martha) (Entered: 09/01/2020)

09/01/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <u>55</u> MOTION for Martha J. Casserly to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21430033. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb) (Entered: 09/01/2020)
09/01/2020	<u>56</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION for Eric L. Harrison to Appear Pro Hac Vice <i>Corrected Motion to Appear Pro Hac Vice</i>. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # <u>1</u> Affirmation of Fredric P. Gallin, # <u>2</u> Affidavit Affidavit of Eric Harrison, # <u>3</u> Exhibit Exhibit Certificate of Good Standing NY, # <u>4</u> Text of Proposed Order Proposed Order, # <u>5</u> Certificate of Service).(Gallin, Fredric) Modified on 9/1/2020 (aea). (Entered: 09/01/2020)
09/01/2020		>>>NOTICE REGARDING DEFICIENT MOTION TO APPEAR PRO HAC VICE. Notice to RE-FILE Document No. <u>56</u> MOTION for Eric L. Harrison to Appear Pro Hac Vice <i>Corrected Motion to Appear Pro Hac Vice</i>. Motion and supporting papers to be reviewed by Clerk's Office staff. The filing is deficient for the following reason(s): the last page of the PDF for the Affidavit/Declaration is not viewable. Re-file the motion as a Motion to Appear Pro Hac Vice - attach the correct signed PDF - select the correct named filer/filers - attach valid Certificates of Good Standing issued within the past 30 days - attach Proposed Order. (aea) (Entered: 09/01/2020)
09/01/2020	<u>57</u>	MOTION for Eric L. Harrison to Appear Pro Hac Vice <i>Corrected Motion to Appear Pro Hac Vice</i> . Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # <u>1</u> Affirmation of Fredric P. Gallin, # <u>2</u> Affidavit Affidavit of Eric L. Harrison, # <u>3</u> Exhibit Exhibit Certificate of Good Standing NY, # <u>4</u> Text of Proposed Order Proposed Order, # <u>5</u> Certificate of Service).(Gallin, Fredric) (Entered: 09/01/2020)
09/01/2020	<u>58</u>	ORDER FOR ADMISSION PRO HAC VICE: granting <u>38</u> Motion for AMY DAWN DEMMLER to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 9/01/2020) (ama) (Entered: 09/01/2020)
09/01/2020	<u>59</u>	ORDER FOR ADMISSION PRO HAC VICE: granting <u>46</u> Motion for Kyle J. Kaiser to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 9/01/2020) (ama) (Entered: 09/01/2020)
09/01/2020	<u>60</u>	ORDER FOR ADMISSION PRO HAC VICE: granting <u>37</u> Motion for Jonathan Griffin Brush to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 9/01/2020) (ama) (Entered: 09/01/2020)
09/01/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <u>57</u> MOTION for Eric L. Harrison to Appear Pro Hac Vice <i>Corrected Motion to Appear Pro Hac Vice</i>. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. According to the affidavit, the attorney is awaiting Certificate of Good Standing from New Jersey and will need to supply once received. (aea) (Entered: 09/01/2020)
09/01/2020	<u>61</u>	NOTICE OF APPEARANCE by Bryan L. LeClerc on behalf of School Districts in the United States..(LeClerc, Bryan) (Entered: 09/01/2020)
09/01/2020	<u>62</u>	FIRST LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from Mark G. Toews dated September 1, 2020. Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio. (Attachments: # <u>1</u> Text of

		Proposed Order Proposed Revised Scheduling Order).(Toews, Mark) (Entered: 09/01/2020)
09/01/2020	63	FIRST LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from Bryan L. LeClerc dated September 1, 2020. Document filed by School Districts in the United States..(LeClerc, Bryan) (Entered: 09/01/2020)
09/01/2020	64	MOTION for Eric A. Mentzer to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21438057. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by State of Washington, Washington State School for the Blind, Washington State School for the Deaf. Return Date set for 9/2/2020 at 05:00 PM. (Attachments: # 1 Declaration of Eric A. Mentzer, # 2 Certificate of Good Standing, # 3 Proposed Order).(Mentzer, Eric) (Entered: 09/01/2020)
09/01/2020	65	MOTION for R. July Simpson to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21438175. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by State of Washington, Washington State School for the Blind, Washington State School for the Deaf. Return Date set for 9/2/2020 at 05:00 PM. (Attachments: # 1 Declaration of R. July Simpson, # 2 Certificate of Good Standing, # 3 Proposed Order).(Simpson, R.) (Entered: 09/01/2020)
09/02/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 65 MOTION for R. July Simpson to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21438175. Motion and supporting papers to be reviewed by Clerk's Office staff., 64 MOTION for Eric A. Mentzer to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21438057. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb) (Entered: 09/02/2020)
09/02/2020	66	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - MOTION to Dismiss . Document filed by State Departments of Education in the United States. Responses due by 9/4/2020.(Levine, Matthew) Modified on 9/2/2020 (lb). (Entered: 09/02/2020)
09/02/2020	67	LETTER MOTION for Leave to File Excess Pages addressed to Judge Gregory H. Woods from Fredric P. Gallin dated August 31, 2020. Document filed by School Districts in the United States..(Gallin, Fredric) (Entered: 09/02/2020)
09/02/2020	68	ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE - R. JULY SIMPSON 65 Motion for R. July Simpson to Appear Pro Hac Vice. (As further set forth in this Order.) (Signed by Judge Colleen McMahon on 9/2/2020) (cf) (Entered: 09/02/2020)
09/02/2020	69	ORDER granting 67 LETTER MOTION for Leave to File Excess Pages addressed to Judge Gregory H. Woods from Fredric P. Gallin dated August 31, 2020. Document filed by School Districts in the United States. Ok. (Signed by Judge Colleen McMahon on 9/2/2020) (rjm) (Entered: 09/02/2020)
09/02/2020	70	ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE - ERIC A. MENTZER. IT IS ORDERED that: The Motion for Admission Pro Hae Vice for Eric A. Mentzer is GRANTED, and as further set forth in this Order. Granting 64 Motion for Eric A. Mentzer to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 9/2/2020) (rjm) (Entered: 09/02/2020)
09/02/2020	71	ORDER TO ADMIT ERIC L. HARRISON, ESQ. AS PRO HAC VICE granting 57 Motion for Eric L. Harrison to Appear Pro Hac Vice. (As further set forth in this Order.) (Signed by Judge Colleen McMahon on 9/2/2020) (cf) (Entered: 09/02/2020)

09/02/2020	72	ORDER FOR ADMISSION PRO HAC VICE granting 55 Motion for Martha J. Casserly to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 9/2/2020) (rj) (Entered: 09/02/2020)
09/02/2020	73	LETTER MOTION for Extension of Time to File Answer re: 1 Complaint,, addressed to Judge Colleen McMahon from Adam I. Kleinberg dated 9/2/20. Document filed by School Districts in the United States..(Kleinberg, Adam) (Entered: 09/02/2020)
09/02/2020	74	FILING ERROR - DEFICIENT DOCKET ENTRY - (SUPPORTING DOCUMENTS TO BE FILED SEPARATELY) - MOTION to Dismiss . Document filed by School Districts in the United States. Responses due by 9/16/2020 (Attachments: # 1 Affidavit Affidavit of Victor D. Shandor, # 2 Supplement Memorandum of Law Supporting Defendant County School Board of York County, Virginia's Motion to Dismiss for Lack of Personal Jurisdiction).(Johnson, Curtis) Modified on 9/24/2020 (lb). (Entered: 09/02/2020)
09/02/2020	75	LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from Eric A. Mentzer dated September 2, 2020. Document filed by State of Washington. (Attachments: # 1 Text of Proposed Order).(Mentzer, Eric) (Entered: 09/02/2020)
09/02/2020	76	NOTICE OF APPEARANCE by Jeremy Miguel Weintraub on behalf of South Carolina Department of Education..(Weintraub, Jeremy) (Entered: 09/02/2020)
09/02/2020	77	NOTICE OF APPEARANCE by Beth L. Kaufman on behalf of South Carolina Department of Education..(Kaufman, Beth) (Entered: 09/02/2020)
09/02/2020	78	LETTER MOTION for Extension of Time <i>to respond to the complaint</i> addressed to Judge Colleen McMahon from Beth L. Kaufman dated September 2, 2020. Document filed by South Carolina Department of Education. (Attachments: # 1 Text of Proposed Order).(Kaufman, Beth) (Entered: 09/02/2020)
09/02/2020	79	NOTICE OF APPEARANCE by Johanna Gordon Zelman on behalf of School Districts in the United States..(Zelman, Johanna) (Entered: 09/02/2020)
09/02/2020	80	NOTICE OF APPEARANCE by Elizabeth Mott Smith on behalf of School Districts in the United States..(Smith, Elizabeth) (Entered: 09/02/2020)
09/02/2020	81	NOTICE OF APPEARANCE by Mohammad Shihabi on behalf of School Districts in the United States..(Shihabi, Mohammad) (Entered: 09/02/2020)
09/02/2020	82	MOTION for Ryan P. Driscoll to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21457150. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # 1 Affirmation of Bryan L. LeClerc, # 2 Declaration of Ryan P. Driscoll, # 3 Order).(LeClerc, Bryan) (Entered: 09/02/2020)
09/02/2020	83	NOTICE OF APPEARANCE by Matthew I. Levine on behalf of State Departments of Education in the United States..(Levine, Matthew) (Entered: 09/02/2020)
09/02/2020	84	ORDER TO SHOW CAUSE. The court harbors considerable doubt that it has jurisdiction over any school district in any state other than New York, where it sits. Therefore, Plaintiffs are ORDERED TO SHOW CAUSE, in a brief of no more than ten double spaced pages, why the complaint should not be dismissed as against all school districts from the other 49 states, and as further specified in paragraph 1 of this Order to Show Cause. Many of the school districts in New York State lie in districts other than this one. Plaintiff is ORDERED TO SHOW CAUSE, in a brief of no more than ten double spaced pages, why venue is proper in this district as to any school district located in the Eastern, Western or Northern Districts of New York, and as further specified in paragraph 2 of this Order to Show Cause. Plaintiffs are ORDERED TO SHOW CAUSE, in a brief

		of no more than ten double spaced pages, why all Defendants other than the New York City Department of Education should not be severed and the complaint dismissed against them, without prejudice to the institution of individual actions against any district that is allegedly refusing to comply with IDEA during the pandemic. These briefs are due to be filed with the court no later than Friday, September 11, 2020. All briefing by any Defendant on Plaintiffs' motion for a preliminary injunction is stayed, except as to the New York City Department of Education, over which the court has undoubted jurisdiction, as to which venue is proper, and as to which any lawsuit is properly filed in the Foley Square courthouse in the Southern District of New York. The City must file its opposition to the preliminary injunction motion and any motions addressed to the sufficiency of the complaint on the schedule previously set by the court. After Plaintiffs file the briefs required in paragraphs 1-3, the court will consider whether responses are necessary and, if they are, how and from whom they should be obtained. Plaintiff's counsel should immediate see to it that all papers that have been addressed to any judge of this court are filed on ECF. Failure to remedy this omission will result in sanctions. (Brief due by 9/11/2020). (Signed by Judge Colleen McMahon on 9/2/2020). BY ECF TO ALL PARTIES. (rjm) (Entered: 09/02/2020)
09/02/2020		Set/Reset Deadlines: Brief due by 9/11/2020. (rjm) (Entered: 09/02/2020)
09/02/2020	85	LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from AAG Matthew Levine, AAG Henry Salton, AAG Darren P. Cunningham, and AAG Timothy Holzman dated September 1, 2020. Document filed by State Departments of Education in the United States..(Levine, Matthew) (Entered: 09/02/2020)
09/02/2020	86	NOTICE OF APPEARANCE by Adam S. Mocchiolo on behalf of Connecticut Regional School District No. 10 (Harwinton & Burlington)..(Mocchiolo, Adam) (Entered: 09/02/2020)
09/02/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 82 MOTION for Ryan P. Driscoll to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21457150. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. The attorney states in the affidavit due to COVID-19 cannot obtain Certificates of Good Standing within the necessary time frame. The attorney needs to file a Certificate of Good Standing from New Jersey, New York, and Connecticut once received. (aea) (Entered: 09/02/2020)
09/02/2020	87	LETTER MOTION for Extension of Time <i>to Respond to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and to File a Motion to Dismiss</i> addressed to Judge Colleen McMahon from Adam S. Mocchiolo, Esq. dated September 2, 2020. Document filed by Connecticut Regional School District No. 10 (Harwinton & Burlington)..(Mocchiolo, Adam) (Entered: 09/02/2020)
09/02/2020	88	FILING ERROR - DUPLICATE DOCKET ENTRY PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) Proposed Order to Show Cause to be reviewed by Clerk's Office staff. Modified on 9/2/2020 (dt). (Entered: 09/02/2020)
09/02/2020	89	ORDER granting 62 FIRST LETTER MOTION for Extension of Time. Plaintiffs have until Friday at noon to identify by full name and birth date any student whose identity has been requested by the Corporation Counsel. Just name and birth date - nothing more. Whether this information is really necessary in order for NYCDOE to respond on the merits to Plaintiffs' claim for a preliminary injunction is not at all clear to me, but I am not going to dictate to the City what should and should not be in its response. By the way, there will be no TRO; Judge Woods did not grant one, no separate application for a TRO has been made to me, and I would not grant one if it were. I have no intention of ordering

		the New York City schools to do anything during a pandemic on the basis of an ex parte application, especially when I have already identified what appear to me to be numerous defects in the pleading that commences the lawsuit. I grant the City's motion for a two week adjournment of its time to file a response to the motion for a preliminary injunction. Plaintiffs have other things to do between now and September 11. They must file their reply to the City's response on the preliminary injunction motion by September 25. (Signed by Judge Colleen McMahon on 9/2/2020) (jca) (Entered: 09/02/2020)
09/02/2020		Set/Reset Deadlines: Richard Carranza answer due 9/18/2020; The New York City Department of Education answer due 9/18/2020; Bill de Blasio answer due 9/18/2020. Responses due by 9/18/2020, Replies due by 9/25/2020. (jca) (Entered: 09/02/2020)
09/02/2020	90	PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Declaration in Support, # 2 Appendix A - D.T. IEP, # 3 Appendix B - S.M. IEP, # 4 Appendix C - M.M. IEP, # 5 Appendix D - Z.J. IEP, # 6 Appendix E - V.N. IEP, # 7 Memorandum of Law in Support). (Albert, Peter) Proposed Order to Show Cause to be reviewed by Clerk's Office staff. (Entered: 09/02/2020)
09/02/2020		***NOTICE TO COURT REGARDING PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Document No. 90 Proposed Order to Show Cause Without Emergency Relief, was reviewed and approved as to form. The OTSC was filed Without Emergency relief, but it has a TRO. (dt) (Entered: 09/02/2020)
09/02/2020		***NOTE TO ATTORNEY THAT THE ATTEMPTED FILING OF Document No. 88 HAS BEEN REJECTED. THIS IS A DUPLICATED DOCUMENT. Note to Attorney Peter Albert : This is a Duplicate Document. Do Not Re-File. (dt) (Entered: 09/02/2020)
09/02/2020	91	NOTICE OF APPEARANCE by Matthew Eaton Draper on behalf of Clayton County Public Schools, Cobb County School District, DeKalb County School District, Marietta City Schools..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	92	MOTION to Dismiss <i>Notice of Clayton County Public Schools' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6)</i> . Document filed by Clayton County Public Schools..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	93	MEMORANDUM OF LAW in Support re: 92 MOTION to Dismiss <i>Notice of Clayton County Public Schools' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6)</i> . Clayton County Public Schools' Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6). Document filed by Clayton County Public Schools..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	94	MOTION to Dismiss <i>Notice of Cobb County School District's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6)</i> . Document filed by Cobb County School District..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	95	MEMORANDUM OF LAW in Support re: 94 MOTION to Dismiss <i>Notice of Cobb County School District's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6)</i> . Cobb County School District's Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6). Document filed by Cobb County School District. (Attachments: # 1 Exhibit 1 - Aug. 12, 2020 Email).(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	96	MOTION to Dismiss <i>Notice of DeKalb County School District's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6)</i> . Document filed by DeKalb

		County School District..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	97	MEMORANDUM OF LAW in Support re: 96 MOTION to Dismiss <i>Notice of DeKalb County School District's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6). DeKalb County School District's Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6).</i> Document filed by DeKalb County School District. (Attachments: # 1 Exhibit 1 - Aug. 12, 2020 Email).(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	98	MOTION to Dismiss <i>Notice of Marietta City Schools' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6).</i> Document filed by Marietta City Schools..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	99	MEMORANDUM OF LAW in Support re: 98 MOTION to Dismiss <i>Notice of Marietta City Schools' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6). Marietta City Schools' Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (2), (3), (4), (5), and (6).</i> Document filed by Marietta City Schools..(Draper, Matthew) (Entered: 09/02/2020)
09/02/2020	100	NOTICE OF APPEARANCE by Corinne Elisabeth Atton on behalf of Clayton County Public Schools, Cobb County School District, DeKalb County School District, Marietta City Schools..(Atton, Corinne) (Entered: 09/02/2020)
09/03/2020	101	NOTICE OF APPEARANCE by Christopher Andrew Long on behalf of City of Bristol School District, Martha's Vineyard High School, Pentucket Regional High School, Town of Branford School District, Town of Clinton and Clinton Board of Education, Pomfret CT School District, Town of Plainville and Plainville Board of Education, Seymour Board of Education, Town of Watertown and Watertown Board of Education, Town of Windham and Windham Board of Education, Town of Groton and Groton Board of Education, Town of Wallingford and Wallingford Board of Education, Town of Plymouth and Plymouth Board of Education..(Long, Christopher) (Entered: 09/03/2020)
09/03/2020	102	NOTICE OF APPEARANCE by Alexander Thomas Korn on behalf of Pennsylvania Department of Education..(Korn, Alexander) (Entered: 09/03/2020)
09/03/2020	103	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION for Randall L. Winet to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21474037. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Alpine Union School District, Bonsall Union School District, Borrego Springs Unified School District, Cardiff Elementary School District, Carlsbad Unified School District, Chula Vista Elementary School District, Coronado Unified School District, Dehesa School District, Del Mar Union School District, Encinitas Union School District, Escondido Union Elementary School District, Escondido Union High School District, Fallbrook Union Elementary School District, fallbrook union high school district, Grossmont Union High School District, Jamul-Dulzura Union School District, Julian Union School District, Julian Union High School District, La Mesa-Spring Valley School District, Lakeside Joint School District, Lemon Grove School District, McCabe Union School District, Mountain Empire Unified School District, Ramona Unified School District, Rancho Santa Fe Elementary School District, San Diego County Office of Education, San Dieguito Union High School District, San Marcos Unified School District, San Pasqual Union Elementary School District, San Pasqual Valley Unified School District, Santee School District, Solana Beach Elementary School District, Spencer Valley Elementary School District, Sweetwater Union High School District, Vallecitos Elementary School District, Valley Center-Pauma Unified School District, Warner Unified School District. (Attachments: # 1 Affidavit Affidavit of Randall L. Winet for Admission Pro Hac Vice, # 2 Text of Proposed Order Order For Admission Pro

		Hac Vice (Proposed)).(Winet, Randall) Modified on 9/3/2020 (bcu). (Entered: 09/03/2020)
09/03/2020		>>>NOTICE REGARDING DEFICIENT MOTION TO APPEAR PRO HAC VICE. Notice to RE-FILE Document No. <u>103</u> MOTION for Randall L. Winet to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21474037. Motion and supporting papers to be reviewed by Clerk's Office staff... The filing is deficient for the following reason(s): missing Certificate of Good Standing from Supreme Court of California. We do not accept certificates from a state bar registrar from this state.; Attorney Affidavit not notarized;. Re-file the motion as a Corrected Motion to Appear Pro Hac Vice - attach the correct signed PDF - select the correct named filer/filers - attach valid Certificates of Good Standing issued within the past 30 days - attach Proposed Order.. (bcu) Modified on 9/4/2020 (bcu). (Entered: 09/03/2020)
09/03/2020	104	LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from Louis F. Eckert, Esq. dated 9/3/2020. Document filed by City of Bristol School District, Martha's Vineyard High School, Pentucket Regional High School, Pomfret CT School District, Seymour Board of Education, Town of Branford School District, Town of Clinton and Clinton Board of Education, Town of Groton and Groton Board of Education, Town of Plainville and Plainville Board of Education, Town of Plymouth and Plymouth Board of Education, Town of Wallingford and Wallingford Board of Education, Town of Watertown and Watertown Board of Education, Town of Windham and Windham Board of Education..(Long, Christopher) (Entered: 09/03/2020)
09/03/2020	105	NOTICE OF APPEARANCE by Christopher Andrew Long on behalf of City of Bristol School District, Martha's Vineyard High School, Pentucket Regional High School, Pomfret CT School District, Seymour Board of Education, Town of Branford School District, Town of Clinton and Clinton Board of Education, Town of Groton and Groton Board of Education, Town of Plainville and Plainville Board of Education, Town of Plymouth and Plymouth Board of Education, Town of Wallingford and Wallingford Board of Education, Town of Watertown and Watertown Board of Education, Town of Windham and Windham Board of Education..(Long, Christopher) (Entered: 09/03/2020)
09/03/2020	106	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 9/3/20 re: List of NYC Students' Names and Birth Dates. Document filed by C.N., J.J., J.T., K.M... (Albert, Peter) (Entered: 09/03/2020)
09/04/2020	107	MOTION for Randall L. Winet to Appear Pro Hac Vice <i>Corrected Motion To Appeal Pro Hac Vice</i> . Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Alpine Union School District, Bonsall Union School District, Borrego Springs Unified School District, Cardiff Elementary School District, Carlsbad Unified School District, Chula Vista Elementary School District, Coronado Unified School District, Dehesa School District, Del Mar Union School District, Encinitas Union School District, Escondido Union Elementary School District, Escondido Union High School District, Fallbrook Union Elementary School District, Grossmont Union High School District, Jamul-Dulzura Union School District, Julian Union High School District, Julian Union School District, La Mesa-Spring Valley School District, Lakeside Joint School District, Lemon Grove School District, McCabe Union School District, Mountain Empire Unified School District, Ramona Unified School District, Rancho Santa Fe Elementary School District, San Diego County Office of Education, San Dieguito Union High School District, San Marcos Unified School District, San Pasqual Union Elementary School District, San Pasqual Valley Unified School District, Santee School District, Solana Beach Elementary School District, Spencer Valley Elementary School District, Sweetwater Union High School District, Vallecitos Elementary School District, Valley Center-Pauma Unified School District, Warner Unified School District, fallbrook union

		high school district. (Attachments: # 1 Affidavit Corrected Affidavit of Attorney Randall L. Winet for Admission Pro Hac Vice, # 2 Text of Proposed Order Corrected (Proposed) Order Granting Admission Pro Hac Vice).(Winet, Randall) (Entered: 09/04/2020)
09/04/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 107 MOTION for Randall L. Winet to Appear Pro Hac Vice <i>Corrected Motion To Appeal Pro Hac Vice. The Attorney will submit the certificate of Good Standing from the California Supreme Court once it is received.. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (bcu)</i> (Entered: 09/04/2020)
09/04/2020	108	NOTICE OF APPEARANCE by Janice Louise Birnbaum on behalf of Richard Carranza, The New York City Department of Education, Bill de Blasio..(Birnbaum, Janice) (Entered: 09/04/2020)
09/09/2020	109	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 8/28/2020, answer due 9/18/2020. Service was made by Email. Document filed by J.T.; C.N.; J.J.; K.M.. (Attachments: # 1 Rider List of School Districts Served).(Albert, Peter) (Entered: 09/09/2020)
09/09/2020	110	LETTER addressed to Judge Colleen McMahon from Lewis R. Silverman dated September 9, 2020 Document filed by School Districts in the United States..(Silverman, Lewis) (Entered: 09/09/2020)
09/09/2020	111	FIRST MOTION for Randall C. Farmer to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21573251. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Clayton County Public Schools, Cobb County School District, DeKalb County School District, Marietta City Schools. (Attachments: # 1 Affidavit Affidavit of Randall C. Farmer, # 2 Exhibit Certificate of Good Standing of Randall C. Farmer, # 3 Text of Proposed Order Proposed Order for Admission Pro Hac Vice).(Draper, Matthew) (Entered: 09/09/2020)
09/09/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 111 FIRST MOTION for Randall C. Farmer to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21573251. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (vba) (Entered: 09/09/2020)
09/10/2020	112	ORDER FOR ADMISSION PRO HAC VICE granting 111 Motion for Randall C. Farmer to Appear Pro Hac Vice. IT IS HEREBY ORDERED that Randall C. Farmer, Esq. is admitted to practice Pro Hac Vice in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. (Signed by Judge Colleen McMahon on 9/10/2020) (mml) (Entered: 09/10/2020)
09/10/2020	113	NOTICE of Notice of Filing Certificate of Good Standing (Relating to Doc. No. 107) re: 107 MOTION for Randall L. Winet to Appear Pro Hac Vice <i>Corrected Motion To Appeal Pro Hac Vice. Motion and supporting papers to be reviewed by Clerk's Office staff..</i> Document filed by Alpine Union School District, Bonsall Union School District, Borrego Springs Unified School District, Cardiff Elementary School District, Carlsbad Unified School District, Chula Vista Elementary School District, Coronado Unified School District, Dehesa School District, Del Mar Union School District, Encinitas Union School District, Escondido Union Elementary School District, Escondido Union High School District, Fallbrook Union Elementary School District, Grossmont Union High School District, Jamul-Dulzura Union School District, Julian Union High School District, Julian Union School District, La Mesa-Spring Valley School District, Lakeside Joint School

		District, Lemon Grove School District, McCabe Union School District, Mountain Empire Unified School District, Ramona Unified School District, Rancho Santa Fe Elementary School District, San Diego County Office of Education, San Dieguito Union High School District, San Marcos Unified School District, San Pasqual Union Elementary School District, San Pasqual Valley Unified School District, Santee School District, Solana Beach Elementary School District, Spencer Valley Elementary School District, Sweetwater Union High School District, Vallecitos Elementary School District, Valley Center-Pauma Unified School District, Warner Unified School District, fallbrook union high school district. (Attachments: # 1 Exhibit Certificate of Good Standing).(Winet, Randall) (Entered: 09/10/2020)
09/10/2020	114	ORDER FOR ADMISSION PRO HAC VICE granting 107 Motion for Randall L. Winet to Appear Pro Hac Vice. IT IS HEREBY ORDERED that applicant RANDALL L. WINET is admitted to practice Pro Hac Vice in the above-captioned case in the United States District for the Southern District of New York. All attorneys appearing before this court are subject to the Local Rules of the court, including Rules governing discipline of attorneys. Counsel has paid the Pro Hac Vice fee to the Clerk of Court. (Signed by Judge Colleen McMahon on 9/10/2020) (mml) (Entered: 09/10/2020)
09/10/2020	115	CERTIFICATE OF SERVICE of Summons and Complaint,,, State Departments of Education in the United States served on 8/13/2020, answer due 9/3/2020. Service was made by Email. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 09/10/2020)
09/10/2020	116	CERTIFICATE OF SERVICE of Summons and Complaint,,, State Departments of Education in the United States served on 8/21/2020, answer due 9/11/2020. Service was made by Email. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 09/10/2020)
09/10/2020	117	AFFIDAVIT OF SERVICE of Summons and Complaint,,, State Departments of Education in the United States served on 8/26/2020, answer due 9/16/2020. Service was made by Email. Document filed by J.T.; C.N.; J.J.; K.M.. (Attachments: # 1 Rider). (Albert, Peter) (Entered: 09/10/2020)
09/10/2020	118	MEMO ENDORSEMENT on re: 110 Letter filed by School Districts in the United States. ENDORSEMENT: This will be addressed by an appropriate order in due course. Thank you for calling it to my attention. (Signed by Judge Colleen McMahon on 9/10/2020) (rro) (Entered: 09/10/2020)
09/11/2020	119	MOTION for Timothy J. Mullins to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21613010. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by MICHIGAN ASSOCIATION OF SCHOOL BOARDS. (Attachments: # 1 index of exhibits, # 2 Exhibit 1. Certificate of Good Standing, # 3 Exhibit 2. Affidavit, # 4 Exhibit 3. Letter to judge).(Mullins, Timothy) (Entered: 09/11/2020)
09/11/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 119 MOTION for Timothy J. Mullins to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21613010. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (ad) (Entered: 09/11/2020)
09/11/2020	120	LETTER addressed to Judge Colleen McMahon from Timothy J. Mullins dated September 10, 2020 re: Ethical Concern. Document filed by MICHIGAN ASSOCIATION OF SCHOOL BOARDS..(Mullins, Timothy) (Entered: 09/11/2020)
09/11/2020	121	RICO STATEMENT . Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/11/2020)

		09/11/2020)
09/11/2020	122	RESPONSE TO ORDER TO SHOW CAUSE re: 84 Order to Show Cause,,,,,,,,,,,, Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/11/2020)
09/11/2020	123	RESPONSE TO ORDER TO SHOW CAUSE re: 84 Order to Show Cause,,,,,,,,,,,, Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/11/2020)
09/11/2020	124	RESPONSE TO ORDER TO SHOW CAUSE re: 84 Order to Show Cause,,,,,,,,,,,, Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/11/2020)
09/12/2020	125	NOTICE OF APPEARANCE by Clement John Colucci, III on behalf of State Departments of Education in the United States..(Colucci, Clement) (Entered: 09/12/2020)
09/14/2020	126	NOTICE of Filing Certificates Good Standing in Support of Motion Admission Pro Hac Vice as to Ryan P. Driscoll re: 82 MOTION for Ryan P. Driscoll to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21457150. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States..(LeClerc, Bryan) (Entered: 09/14/2020)
09/14/2020	127	MEMO ENDORSEMENT granting 119 MOTION for Timothy J. Mullins to Appear Pro Hac Vice. ENDORSEMENT: Motion granted. (Signed by Judge Colleen McMahan on 9/14/2020) (jca) (Entered: 09/14/2020)
09/14/2020	128	ORDER TO SHOW CAUSE AND SUA SPONTE TEMPORARY RESTRAINING ORDER: IT IS HEREBY ORDERED that plaintiff's counsel, Peter Glenn Albert of the Brain Rights Injury Group, shall provide the court, on or before Friday, September 18, 2020, with (1) a list of all impartial due process hearings that he has commenced on behalf of any putative member of the plaintiff class in any state beginning on June 1, 2020, and continuing through the date of this order, together with (2) a copy of the retainer letter by which counsel was specifically authorized to commence said impartial due process hearing, as required by 22 NYC RR 1215.1 (a) and (b)(1), or in the alternative, if Mr. Albert is not admitted to the practice of law in the State of New York and so is not subject to the rules governing attorneys at law in New York, a copy of any retainer letter than may be required by the laws or regulations of any state in which Mr. Albert is admitted to practice; and Sufficient cause having been shown to warrant an order preserving the status quo until the court can inquire into the serious allegations of impropriety that have been leveled against plaintiff's counsel, IT IS FURTHER ORDERED that, effective immediately, plaintiff's counsel, Peter Glenn Albert of the Brain Rights Injury Group, is temporarily restrained and enjoined from commencing any impartial due process hearing on behalf of any member of the putative plaintiff class in any jurisdiction unless the parents/guardian(s) of said child have, prior to the commencement of any such proceeding, signed a retainer letter that complies with the requirements of 22 NYCRR 1215.1 or of such other state in which Mr. Albert is admitted to the practice of law. Mr. Albert is hereby placed on notice that this inquiry may result in his being referred to the Grievance Committee of this Court and/or to the Disciplinary Committee of any Department in which he is admitted to practice in the State of New York. (Signed by Judge Colleen McMahan on 9/14/2020) (jca) (Entered: 09/14/2020)
09/14/2020	129	LETTER addressed to Judge Colleen McMahan from Timothy J. Mullins dated September 14, 2020 re: Plaintiff's Counsel's Misconduct. Document filed by MICHIGAN ASSOCIATION OF SCHOOL BOARDS. (Attachments: # 1 Exhibit Letter from Family). (Mullins, Timothy) (Entered: 09/14/2020)
09/15/2020	130	NOTICE OF APPEARANCE by Eric Labes Harrison on behalf of Middletown Township Public Schools, Cherry Hill Public Schools, West Orange Public Schools, Readington Township Public Schools, Certain School Districts Located in the State of Virginia,

		Certain School Districts Located in the State of California. (Attachments: # 1 Exhibit Rider).(Harrison, Eric) (Entered: 09/15/2020)
09/16/2020	131	ORDER CANCELLING CONFERENCE: The pre-trial conference that was scheduled for Friday, September 18, 2020 is cancelled. The parties need not appear at this time. SO ORDERED. (Signed by Judge Colleen McMahon on 9/16/2020) (mml) (Entered: 09/16/2020)
09/16/2020	132	LETTER addressed to Judge Colleen McMahon from Jonathan G. Brush and Amy Demmler dated September 16, 2020 re: advisory to the Court. Document filed by Austin Independent School District..(Brush, Jonathan) (Entered: 09/16/2020)
09/16/2020	133	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 9/16/20 re: Interim Response to Order to Show Cause. Document filed by C.N., J.J., J.T., K.M... (Albert, Peter) (Entered: 09/16/2020)
09/16/2020	134	LETTER MOTION to Seal <i>Documents</i> addressed to Judge Colleen McMahon from Peter G. Albert dated 9/16/20. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/16/2020)
09/16/2020	135	***EX-PARTE***REDACTION to 134 LETTER MOTION to Seal <i>Documents</i> addressed to Judge Colleen McMahon from Peter G. Albert dated 9/16/20. by C.N., J.J., J.T., K.M. (Attachments: # 1 Exhibit Retainer Agreement, # 2 Exhibit Retainer Agreement, # 3 Exhibit Retainer Agreement)Motion or Order to File Under Seal: 134 . (Albert, Peter) (Entered: 09/16/2020)
09/18/2020	136	LETTER addressed to Judge Colleen McMahon from Adam I. Kleinberg dated 09/18/2020 re: Hicksville Union Free School District. Document filed by School Districts in the United States. (Attachments: # 1 Exhibit A, # 2 Exhibit B).(Kleinberg, Adam) (Entered: 09/18/2020)
09/18/2020	137	MOTION to Dismiss <i>the Complaint</i> . Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio..(Toews, Mark) (Entered: 09/18/2020)
09/18/2020	138	DECLARATION of Demetre Daskalakis in Support re: 137 MOTION to Dismiss <i>the Complaint</i> .. Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio..(Toews, Mark) (Entered: 09/18/2020)
09/18/2020	139	DECLARATION of Christina Foti in Support re: 137 MOTION to Dismiss <i>the Complaint</i> .. Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio. (Attachments: # 1 Exhibit A1, # 2 Exhibit A2, # 3 Exhibit B, # 4 Exhibit C).(Toews, Mark) (Entered: 09/18/2020)
09/18/2020	140	MEMORANDUM OF LAW in Support re: 137 MOTION to Dismiss <i>the Complaint</i> . and <i>in Opposition to Plaintiffs' request for a Preliminary Injunction</i> . Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio..(Toews, Mark) (Entered: 09/18/2020)
09/18/2020	141	RESPONSE TO ORDER TO SHOW CAUSE re: 128 Order to Show Cause,,,,,,,, Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/18/2020)
09/18/2020	142	***EX-PARTE***RESPONSE TO ORDER TO SHOW CAUSE re: 128 Order to Show Cause,,,,,,,, Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit A - Impartial Due Process Complaints)Motion or Order to File Under Seal: 134 .(Albert, Peter) (Entered: 09/18/2020)
09/18/2020	143	***EX-PARTE***RESPONSE TO ORDER TO SHOW CAUSE re: 128 Order to Show Cause,,,,,,,, Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit B - Ret Agreements (D-G), # 2 Exhibit B - Retainer Agreements (G-H), # 3 Exhibit B - Retainer

		Agreements (M-P), # 4 Exhibit B - Retainer Agreements (P-S), # 5 Exhibit B - Retainer Agreements (S-T), # 6 Exhibit B - Retainer Agreements (T-W))Motion or Order to File Under Seal: 134 .(Albert, Peter) (Entered: 09/18/2020)
09/18/2020	144	***EX-PARTE***RESPONSE TO ORDER TO SHOW CAUSE re: 128 Order to Show Cause,,,,,,. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit B - Retainer Agreements (A-B), # 2 Exhibit B - Retainer Agreements (A-B)), # 3 Exhibit B - Retainer Agreements (A-B)), # 4 Exhibit B - Retainer Agreements (A-B)), # 5 Exhibit B - Retainer Agreements (B-D), # 6 Exhibit B - Retainer Agreements (B-D)), # 7 Exhibit B - Retainer Agreements (B-D), # 8 Exhibit B - Retainer Agreements (B-D), # 9 Exhibit B - Retainer Agreements (B-D), # 10 Exhibit B - Retainer Agreements (J-L), # 11 Exhibit B - Retainer Agreements (J-L), # 12 Exhibit B - Retainer Agreements (J-L), # 13 Exhibit B - Retainer Agreements (J-L), # 14 Exhibit B - Retainer Agreements (L-M), # 15 Exhibit B - Retainer Agreements (L-M, # 16 Exhibit B - Retainer Agreements (L-M, # 17 Exhibit B - Retainer Agreements (L-M)Motion or Order to File Under Seal: 134 .(Albert, Peter) (Entered: 09/18/2020)
09/22/2020	145	ORDER DENYING LEAVE TO AMEND THE COMPLAINT WITHOUT PREJUDICE AND ADDRESSING THE ORDER TO SHOW CAUSE ISSUED BY THE COURT ON SEPTEMBER 14, 2020 denying 134 Letter Motion to Seal. In response to the September 14 Order to Show Cause, Mr. Albert filed - under seal - a list of the 199 impartial due process hearings commenced on behalf of putative class members. (Docket #142.) He filed all pertinent retainer agreements with the court (filed ex parte at Docket #143, 144) and represented that all of the agreements were "virtually identical." (Docket #133 at 2.) Mr. Albert also filed a motion for permission to file these documents under seal, presumably to protect the identity of the minor children involved. (Docket #134.) Motion to File Under Seal (Docket # 134) The motion to file under seal is DENIED. The retainer agreements that were filed with the court contain the names of the children receiving services under IDEA, which must be redacted. So must the names of their parents (which should be indicated by initials, as they normally are in IDEA case filings) and the parents' email addresses. But the terms of the retainer agreement contain nothing that could possibly be deemed "confidential information," and there is no reason for these documents to be filed under seal if they are properly redacted. Similarly the list of the due process hearings that BIRG has initiated, purportedly pursuant to those retainer agreements, can be redacted to remove the names of the children and the full names of the parents, and can otherwise be filed without sealing. Unredacted originals should of course be filed under seal, but that does not excuse the failure to file publicly so much of these documents as does not reveal the identity of a child with a learning disability. The Order to Show Cause Dated September 14, 2020 (Docket # 128) The court has reviewed the retainer agreements and finds the argument that they authorize the commencement of impartial due process hearings on behalf of individual children deeply troubling, as further set forth. The Motion for Leave to Amend the Complaint (Docket #133) In his September 16 letter, Mr. Albert seeks leave to amend the complaint in order to add some named plaintiffs and drop others, as well as to amplify his RICO allegations in light of his RICO case statement. (Docket #133 at 2.) The motion is denied without prejudice. Fed. R. Civ. P. 1 requires this court to make sure that this action is disposed of in the most just, speedy, and inexpensive manner possible. Allowing an amendment of the complaint at this juncture would accomplish none of the above. The City of New York has filed its motion to dismiss the complaint on the merits and that motion is addressed to the complaint already on file. I intend to rule on that motion before we start amending pleadings, because the City has already gone to the trouble of responding to the original complaint and its response raises serious substantive issues that would not be cured by the proposed amendments. Indeed, once that motion is decided, it could render further amendment futile, in whole or in part. Additionally, the court has yet to rule on BIRG's responses to the court's Order to Show Cause dated September 2, 2020. (Docket #84,

		122, 123, 124) That ruling may well eliminate much of what is contained in the current pleading and could require substantial further amendment of the pleading as a result. In order to eliminate the very real possibility of serial amendments, this court intends to see what can be pruned permanently from this case as originally filed. The amendments proposed by BIRG will not address any of these issues. The addition or subtraction of named plaintiffs need not take place at this moment. And there is no reason to amend the complaint to conform its bare bones RICO allegations to the RICO case statement that was recently filed. Under this court's individual rules, the civil RICO statement is considered to be part of and integral to the complaint; it is something that I consider on a motion to dismiss. I will address the matters set forth at Docket # 121, 122, 123 and 124 in the same opinion in which I deal with the City's motion to dismiss the complaint. Mr. Albert should get his response to that motion in promptly. (Signed by Judge Colleen McMahon on 9/22/2020) (mml) (Entered: 09/22/2020)
09/25/2020	146	LETTER addressed to Judge Colleen McMahon from Jill M. O'Toole dated September 25, 2020 re: Violation of Courts Order to Show Cause. Document filed by School Districts in the United States. (Attachments: # 1 Exhibit A).(O'Toole, Jill) (Entered: 09/25/2020)
09/25/2020	147	NOTICE OF APPEARANCE by Randall C. Farmer on behalf of Clayton County Public Schools, Cobb County School District, DeKalb County School District, Marietta City Schools..(Farmer, Randall) (Entered: 09/25/2020)
09/25/2020	148	REPLY AFFIRMATION of Peter G. Albert in Support re: 137 MOTION to Dismiss <i>the Complaint</i> .. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit A - Redacted IEPs, # 2 Exhibit A - Redacted IEPs, # 3 Exhibit A - Redacted IEPs, # 4 Exhibit A - Redacted IEPs, # 5 Exhibit A - Redacted IEPs, # 6 Exhibit A - Redacted IEPs, # 7 Exhibit A - Redacted IEPs, # 8 Exhibit A - Redacted IEPs, # 9 Exhibit A - Redacted IEPs, # 10 Exhibit A - Redacted IEPs, # 11 Exhibit A - Redacted IEPs, # 12 Exhibit A - Redacted IEPs, # 13 Exhibit A - Redacted IEPs, # 14 Exhibit A - Redacted IEPs, # 15 Exhibit A - Redacted IEPs, # 16 Exhibit A - Redacted IEPs, # 17 Exhibit A - Redacted IEPs, # 18 Exhibit A - Redacted IEPs, # 19 Exhibit A - Redacted IEPs, # 20 Exhibit A - Redacted IEPs, # 21 Exhibit A - Redacted IEPs, # 22 Exhibit A - Redacted IEPs, # 23 Exhibit A - Redacted IEPs).(Albert, Peter) (Entered: 09/25/2020)
09/25/2020	149	REPLY AFFIRMATION of Peter G. Albert in Support re: 137 MOTION to Dismiss <i>the Complaint</i> .. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit A - Redacted IEPs, # 2 Exhibit A - Redacted IEPs, # 3 Exhibit A - Redacted IEPs, # 4 Exhibit A - Redacted IEPs, # 5 Exhibit A - Redacted IEPs, # 6 Exhibit A - Redacted IEPs, # 7 Exhibit A - Redacted IEPs, # 8 Exhibit A - Redacted IEPs, # 9 Exhibit A - Redacted IEPs, # 10 Exhibit A - Redacted IEPs, # 11 Exhibit A - Redacted IEPs, # 12 Exhibit A - Redacted IEPs, # 13 Exhibit B - IHO Emails).(Albert, Peter) (Entered: 09/25/2020)
09/25/2020	150	REPLY MEMORANDUM OF LAW in Support re: 137 MOTION to Dismiss <i>the Complaint</i> .. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/25/2020)
09/27/2020	151	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 9/27/20 re: Letter from Counsel - Dkt. Entry No. 146. Document filed by C.N., J.J., J.T., K.M...(Albert, Peter) (Entered: 09/27/2020)
09/28/2020	152	LETTER addressed to Judge Colleen McMahon from Louis F. Eckert, Esq. dated Sept. 28, 2020 re: Violation of the Court's TRO. Document filed by City of Bristol School District..(Long, Christopher) (Entered: 09/28/2020)
09/29/2020	153	FIRST LETTER MOTION for Extension of Time to File Response/Reply addressed to

		Judge Colleen McMahon from Mark G. Toews dated September 29, 2020. Document filed by Richard Carranza, The New York City Department of Education, Bill de Blasio. (Attachments: # 1 Exhibit A).(Toews, Mark) (Entered: 09/29/2020)
09/30/2020	154	ORDER granting 153 Letter Motion for Extension of Time to File Response/Reply. OK. Replies due by 10/2/2020. (Signed by Judge Colleen McMahon on 9/30/2020) (jca) (Entered: 09/30/2020)
10/01/2020	155	LETTER addressed to Judge Colleen McMahon from Eric L. Harrison, Esq. dated October 1, 2020 re: Correspondence from attorney Amelia Carolla. Document filed by Certain School Districts Located in the State of California, Certain School Districts Located in the State of Virginia, Cherry Hill Public Schools, Middletown Township Public Schools, Readington Township Public Schools, School Districts in the United States, West Orange Public Schools. (Attachments: # 1 Exhibit Letter from A. Carolla). (Harrison, Eric) (Entered: 10/01/2020)
10/01/2020	156	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 10/1/20 re: Redacted Documents Filed Pursuant to Dkt. Entry No. 145. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit Redacted Original Retainer Agreements (A-A), # 2 Exhibit Redacted Original Retainer Agreements (A-B), # 3 Exhibit Redacted Original Retainer Agreements (B-B), # 4 Exhibit Redacted Original Retainer Agreements (B-B), # 5 Exhibit Redacted Original Retainer Agreements (C-C), # 6 Exhibit Redacted Original Retainer Agreements (C-C), # 7 Exhibit Redacted Original Retainer Agreements (C-C), # 8 Exhibit Redacted Original Retainer Agreements (C-D), # 9 Exhibit Redacted Original Retainer Agreements (D-D), # 10 Exhibit Redacted Original Retainer Agreements (D-D), # 11 Exhibit Redacted Original Retainer Agreements (F-F), # 12 Exhibit Redacted Original Retainer Agreements (F-G), # 13 Exhibit Redacted Original Retainer Agreements (G-H), # 14 Exhibit Redacted Original Retainer Agreements (G-G), # 15 Exhibit Redacted Original Retainer Agreements (H-H), # 16 Exhibit Redacted Original Retainer Agreements (H-H), # 17 Exhibit Redacted Original Retainer Agreements (H-H), # 18 Exhibit Redacted Original Retainer Agreements (J-J), # 19 Exhibit Redacted Original Retainer Agreements (K-K), # 20 Exhibit Redacted Original Retainer Agreements (K-K), # 21 Exhibit Redacted Original Retainer Agreements (L-L), # 22 Exhibit Redacted Original Retainer Agreements (L-L), # 23 Exhibit Redacted Original Retainer Agreements (M-M)A), # 24 Exhibit Redacted Original Retainer Agreements (M-M), # 25 Exhibit Redacted Original Retainer Agreements (M-N), # 26 Exhibit Redacted Original Retainer Agreements (M-N), # 27 Exhibit Redacted Original Retainer Agreements (N-O), # 28 Exhibit Redacted Original Retainer Agreements (O-P), # 29 Exhibit Redacted Original Retainer Agreements (P-P), # 30 Exhibit Redacted Original Retainer Agreements (P-P), # 31 Exhibit Redacted Original Retainer Agreements (P-R), # 32 Exhibit Redacted Original Retainer Agreements (R-R), # 33 Exhibit Redacted Original Retainer Agreements (R-S), # 34 Exhibit Redacted Original Retainer Agreements (S-SA), # 35 Exhibit Redacted Original Retainer Agreements (S-SA), # 36 Exhibit Redacted Original Retainer Agreements (S-T), # 37 Exhibit Redacted Original Retainer Agreements (T-T), # 38 Exhibit Redacted Original Retainer Agreements (T-T), # 39 Exhibit Redacted Original Retainer Agreements (T-V), # 40 Exhibit Redacted Original Retainer Agreements (W-W), # 41 Exhibit Redacted List of Due Process Requests). (Albert, Peter) (Entered: 10/01/2020)
10/02/2020	157	REPLY MEMORANDUM OF LAW in Support re: 137 MOTION to Dismiss <i>the Complaint</i> . . Document filed by Richard Carranza. (Attachments: # 1 Exhibit Corwin decision).(Richter, Marilyn) (Entered: 10/03/2020)
10/05/2020	158	AFFIDAVIT OF SERVICE of Summons and Complaint,,,. School Districts in the United States served on 9/15/2020, answer due 10/6/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)

10/05/2020	159	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/17/2020, answer due 10/8/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	160	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/21/2020, answer due 10/13/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	161	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/22/2020, answer due 10/13/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	162	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/23/2020, answer due 10/14/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	163	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/24/2020, answer due 10/15/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	164	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/25/2020, answer due 10/16/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	165	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/26/2020, answer due 10/19/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	166	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 9/29/2020, answer due 10/20/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	167	AFFIDAVIT OF SERVICE of Summons and Complaint,,, School Districts in the United States served on 10/5/2020, answer due 10/26/2020. Service was made by Mail. Document filed by J.T.; C.N.; J.J.; K.M...(Albert, Peter) (Entered: 10/05/2020)
10/05/2020	168	MOTION for Jacqueline B. Wilson to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21983498. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # 1 Affidavit Affidavit of Jacqueline Wilson, # 2 Exhibit Certificate of Good Standing - LA, # 3 Text of Proposed Order).(Wilson, Jacqueline) (Entered: 10/05/2020)
10/05/2020	169	MOTION for James Garrison Evans to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21983962. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by School Districts in the United States. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit Certificate of Good Standing, # 3 Affidavit of James G. Evans).(Evans, James) (Entered: 10/05/2020)
10/05/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 169 MOTION for James Garrison Evans to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21983962. Motion and supporting papers to be reviewed by Clerk's Office staff., 168 MOTION for Jacqueline B. Wilson to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-21983498. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (vba) (Entered: 10/05/2020)
10/06/2020	170	NOTICE OF APPEARANCE by Ryan Patrick Driscoll on behalf of Town of Stratford

		Board of Education, City of Norwalk Board of Education, City of Stamford Board of Education, City of Bridgeport Board of Education..(Driscoll, Ryan) (Entered: 10/06/2020)
10/06/2020	171	ORDER ON MOTION TO ENROLL PRO HAC VICE granting 168 Motion for Jacqueline B. Wilson to Appear Pro Hac Vice. IT IS HEREBY ORDERED that Applicant is admitted to practice pro hac vice in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this court, including the Rules governing discipline of attorneys. (Signed by Judge Colleen McMahon on 10/6/2020) (mml) (Entered: 10/06/2020)
10/06/2020	172	ORDER ON MOTION TO ENROLL PRO HAC VICE granting 169 Motion for James Garrison Evans to Appear Pro Hac Vice. IT IS HEREBY ORDERED that Applicant is admitted to practice Pro Hac Vice In the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this court, including the Rules governing discipline of attorneys. (Signed by Judge Colleen McMahon on 10/6/2020) (mml) (Entered: 10/06/2020)
10/06/2020	173	NOTICE OF APPEARANCE by Daniel Joseph Raccuia on behalf of School Districts in the United States..(Raccuia, Daniel) (Entered: 10/06/2020)
10/08/2020	174	NOTICE OF APPEARANCE by Darren P Cunningham on behalf of State Departments of Education in the United States..(Cunningham, Darren) (Entered: 10/08/2020)
10/09/2020	175	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 10/9/2020 re: Request to "so order" subpoena. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Subpoena, # 2 Subpoena).(Albert, Peter) (Entered: 10/09/2020)
10/09/2020	176	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 10/9/2020 re: Retainer Agreement and Temporary Restraining Order. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit Original Retainer Agreement, # 2 Exhibit Amendment to Retainer Agreement, # 3 Exhibit Revised Retainer Agreement).(Albert, Peter) (Entered: 10/09/2020)
10/13/2020	177	NOTICE OF APPEARANCE by Jeremiah Charles Hollembeak on behalf of Omaha Public School District..(Hollembeak, Jeremiah) (Entered: 10/13/2020)
10/13/2020	178	LETTER MOTION for Extension of Time to File Response/Reply as to 1 Complaint,, addressed to Judge Colleen McMahon from Jeremiah C. Hollembeak dated 10.13.20. Document filed by Omaha Public School District. Return Date set for 10/16/2020 at 05:00 PM..(Hollembeak, Jeremiah) (Entered: 10/13/2020)
10/13/2020	179	MEMO ENDORSEMENT on re: 175 Letter filed by J.J., J.T., C.N., K.M. ENDORSEMENT: No discovery of any sort until all motions are decided. (Signed by Judge Colleen McMahon on 10/13/2020) (jca) (Entered: 10/13/2020)
10/14/2020	180	ORDER granting 178 Letter Motion for Extension of Time to File Response/Reply. Everyone's obligation to file an answer is stayed pending decision on outstanding motions. (Signed by Judge Colleen McMahon on 10/14/2020) (mml) (Entered: 10/14/2020)
10/19/2020	181	NOTICE of MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(1), (2), (3), AND (6). Document filed by Omaha Public School District..(Hollembeak, Jeremiah) (Entered: 10/19/2020)
10/19/2020	182	BRIEF IN SUPPORT OF OMAHA PUBLIC SCHOOL DISTRICTS MOTION TO DISMISS. Document filed by Omaha Public School District..(Hollembeak, Jeremiah)

		(Entered: 10/19/2020)
10/19/2020	183	ORDER DIRECTING FURTHER RESPONSE: Whether the plaintiffs have a viable RICO claim may affect whether the complaint can or should be dismissed as to most defendants for want of personal jurisdiction. I will, therefore, give the plaintiffs seven business days, or until October 29, 2020, to address the sufficiency of the RICO claim they wish to add to the complaint and that they outlined in the RICO case statement. If there is some reason to obtain further argument from the City of New York, I will ask for it after I see the plaintiffs' papers. (Signed by Judge P. Kevin Castel on 10/19/2020) (jwh) (Entered: 10/20/2020)
10/20/2020	184	MOTION for Nicholas F. Miller to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22217165. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Omaha Public School District. (Attachments: # 1 Certificates of Good Standing, # 2 Affidavit of Nicholas Miller, # 3 Proposed Order). (Miller, Nicholas) (Entered: 10/20/2020)
10/20/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 184 MOTION for Nicholas F. Miller to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22217165. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (bcu) (Entered: 10/20/2020)
10/22/2020	185	ORDER FOR ADMISSION PRO HAC VICE granting 184 Motion for Nicholas F. Miller to Appear Pro Hac Vice. IT IS HEREBY ORDERED that Applicant is admitted to practice Pro Hac Vice in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. (Signed by Judge Colleen McMahon on 10/22/2020) (mml) (Entered: 10/22/2020)
10/22/2020	186	ORDER TO ADMIT RYAN P. DRISCOLL, ESQUIRE PRO HAC VICE granting 82 Motion for Ryan P. Driscoll to Appear Pro Hac Vice. ORDERED that the defendants' Motion to have Ryan P. Driscoll, Esq. admitted to practice law in the United States District Court for the Southern District of New York Pro Hac Vice in connection with the above captioned case is GRANTED. (Signed by Judge Colleen McMahon on 10/22/2020) (mml) (Entered: 10/22/2020)
10/23/2020	187	LETTER addressed to Judge Colleen McMahon from Lewis R. Silverman dated October 23, 2020 re: Plaintiffs' Counsel's Contact With School Districts. Document filed by School Districts in the United States. (Attachments: # 1 Exhibit Emails Sent To School Districts Requesting Medicaid Information).(Silverman, Lewis) (Entered: 10/23/2020)
10/23/2020	188	NOTICE OF APPEARANCE by Daniel Joseph Raccuia on behalf of School Districts in the United States..(Raccuia, Daniel) (Entered: 10/23/2020)
10/26/2020	189	MEMO ENDORSEMENT: on re: 187 Letter filed by School Districts in the United States. ENDORSEMENT: Let me be clear: Plaintiffs counsel is to take No steps, either under or outside of the Federal Rule of Civil Procedure, to obtain information to use in the prosecution of this case No defendant need reply to any such request. (Signed by Judge Colleen McMahon on 10/26/2020) (ama) (Entered: 10/26/2020)
10/27/2020	190	MOTION for Jill Robb Ackerman to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22331568. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by Omaha Public School District. (Attachments: # 1 Certificates of Good Standing, # 2 of Jill Robb Ackerman, # 3 Proposed Order). (Ackerman, Jill) (Entered: 10/27/2020)
10/27/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No.

		<u>190</u> MOTION for Jill Robb Ackerman to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22331568. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb) (Entered: 10/27/2020)
10/28/2020	<u>191</u>	ORDER FOR ADMISSION PRO HAC VICE granting <u>190</u> MOTION for Jill Robb Ackerman to Appear Pro Hac Vice. (Signed by Judge Colleen McMahon on 10/28/2020) (jca) (Entered: 10/28/2020)
10/29/2020	<u>192</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION for Harry J. Philips, Jr. to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22369615. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by State Departments of Education in the United States. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing, # <u>2</u> Affidavit, # <u>3</u> Text of Proposed Order).(Philips, Harry) Modified on 10/29/2020 (aea). (Entered: 10/29/2020)
10/29/2020		>>>NOTICE REGARDING DEFICIENT MOTION TO APPEAR PRO HAC VICE. Notice to RE-FILE Document No. <u>192</u> MOTION for Harry J. Philips, Jr. to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-22369615. Motion and supporting papers to be reviewed by Clerk's Office staff. The filing is deficient for the following reason(s): The affidavit does not specify the case caption/case number. Re-file the motion as a Motion to Appear Pro Hac Vice - attach the correct signed PDF - select the correct named filer/filers - attach valid Certificates of Good Standing issued within the past 30 days - attach Proposed Order. (aea) (Entered: 10/29/2020)
10/29/2020	<u>193</u>	MOTION for Harry J. Philips, Jr. to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by State Departments of Education in the United States. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing, # <u>2</u> Affidavit, # <u>3</u> Text of Proposed Order).(Philips, Harry) (Entered: 10/29/2020)
10/29/2020		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <u>193</u> MOTION for Harry J. Philips, Jr. to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. (aea) (Entered: 10/29/2020)
10/29/2020	<u>194</u>	RESPONSE to Motion re: <u>137</u> MOTION to Dismiss <i>the Complaint. and Response to Address Sufficiency of RICO Claims</i> . Document filed by C.N., J.J., J.T., K.M.. (Attachments: # <u>1</u> Exhibit NYC Plaintiffs IEP Services).(Albert, Peter) (Entered: 10/29/2020)
10/30/2020	<u>195</u>	ORDER FOR ADMISSION PRO HAC VICE granting <u>193</u> Motion for Harry J. Philips, Jr. to Appear Pro Hac Vice. The motion of Harry J. Philips, Jr., for admission to practice Pro Hac Vice in the above captioned action is granted. IT IS HEREBY ORDERED that Applicant, Harry J. Philips, Jr. is admitted to practice, Pro Hac Vice in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. (Signed by Judge Colleen McMahon on 10/30/20) (yv) (Entered: 10/30/2020)
11/05/2020	<u>196</u>	MOTION for Matthew I. Levine to Withdraw as Attorney . Document filed by State Departments of Education in the United States..(Levine, Matthew) (Entered: 11/05/2020)
11/10/2020	<u>197</u>	MEMO ENDORSED ORDER granting <u>196</u> Motion to Withdraw as Attorney. ENDORSEMENT: Granted. Attorney Matthew I. Levine terminated. (Signed by Judge Colleen McMahon on 11/9/2020) (mml) (Entered: 11/10/2020)
11/10/2020	<u>198</u>	LETTER addressed to Judge Colleen McMahon from Peter G. Albert dated 11/10/20 re:

		RICO Case Statement Exhibits. Document filed by C.N., J.J., J.T., K.M.. (Attachments: # 1 Exhibit Exhibits A - T (email, letter, and responses)).(Albert, Peter) (Entered: 11/10/2020)
11/10/2020	199	ORDER: I have today received a letter from counsel for Plaintiffs which indicates that he has sent out discovery requests to various parties -- most of them school districts that have not yet appeared in this action, because the court stayed the entire lawsuit, except as against the City of New York, while considering whether a variety of threshold issues raised by the court or in the few motions to dismiss already filed warranted a considerable pruning, if not outright dismissal, of this action. In case Mr. Albert and his organization did not understand me, the court's order was NO DISCOVERY MAY TAKE PLACE. Plaintiffs' counsel may believe that he needs discovery in order to make further response to the court's orders to show cause and/or the papers filed by the City of New York, but the court has taken the position that no such discovery will be allowed. Plaintiffs' counsel may seek to justify his request by telling school districts that have not yet appeared in this action that they can get out from under this lawsuit by giving him information, but to this court that is a discovery request, and he is in direct violation of a court order by seeking such information. Counsel is well aware that this court is considering dismissal of this action against every party ostensibly sued; he has been ordered to stand down while these matters are considered; his behavior borders on the contemptuous. Therefore, no party or putative party to this lawsuit needs to, or should, respond to Plaintiffs' out of order discovery requests. Plaintiffs' counsel must immediately return, without making copies, any discovery that he has received from any party to whom such a request was sent. The court does not need to consider, and will not consider, such material in deciding the issues presently under review. Just so the parties are aware, the court is within days of issuing an opinion in this matter that will dispose of many issues. Until that time there is to be no activity whatever in connection with this lawsuit - aside from the return of any discovery materials that were not to have been requested or produced. None. (Signed by Judge Colleen McMahon on 11/10/2020) (mml) (Entered: 11/10/2020)
11/13/2020	200	OPINION& ORDER granting 137 Motion to Dismiss. CONCLUSION:For the reasons stated above, Plaintiffs claims against all out-of-state Defendants are DISMISSED without prejudice. The remaining claims against all New York State School Districts outside NYCDOE are SEVERED and DISMISSED without prejudice. Plaintiffs application for a preliminary injunction is DENIED, and all claims are DISMISSED as against the NYC Defendants.The court sua sponte dismisses all claims against the New York State Education Department. The Clerk of Court is directed to close the open motion at Docket Number 137. The motions at Dockets # 74, 92, 94, 96, 98 and 181, which were closed administratively due to the stay imposed by the court, should be closed permanently. This is a written opinion. It is the opinion and order of the Court.. (Signed by Judge Colleen McMahon on 11/13/2020). (mde) (Additional attachment(s) added on 11/13/2020: # 1 Appendix) (jwh). (Entered: 11/13/2020)
11/13/2020		Transmission to Orders and Judgments Clerk. Transmitted re: 200 Order on Motion to Dismiss to the Orders and Judgments Clerk. (mml) (Entered: 11/13/2020)
11/13/2020	201	CLERK'S JUDGMENT re: 200 Order on Motion to Dismiss in favor of Alpine Union School District, Atlanta Independent School System, Austin Independent School District, Bonsall Union School District, Borrego Springs Unified School District, Cardiff Elementary School District, Carlsbad Unified School District, Certain School Districts Located in the State of California, Certain School Districts Located in the State of Virginia, Cherry Hill Public Schools, Chula Vista Elementary School District, City of Bridgeport Board of Education, City of Bristol School District, City of Norwalk Board of Education, City of Stamford Board of Education, Clayton County Public Schools, Cobb

County School District, Connecticut Regional School District No. 10 (Harwinton & Burlington), Coronado Unified School District, DeKalb County School District, Dehesa School District, Del Mar Union School District, Encinitas Union School District, Escondido Union Elementary School District, Escondido Union High School District, Fallbrook Union Elementary School District, Fulton County School District, Grossmont Union High School District, Jamul-Dulzura Union School District, Julian Union High School District, Julian Union School District, La Mesa-Spring Valley School District, Lakeside Joint School District, Lemon Grove School District, Marietta City Schools, Martha's Vineyard High School, McCabe Union School District, Middletown Township Public Schools, Minnesota State Department of Education, Mountain Empire Unified School District, Omaha Public School District, Pennsylvania Department of Education, Pentucket Regional High School, Pomfret CT School District, Ramona Unified School District, Rancho Santa Fe Elementary School District, Readington Township Public Schools, San Diego County Office of Education, San Dieguito Union High School District, San Marcos Unified School District, San Pasqual Union Elementary School District, San Pasqual Valley Unified School District, Santee School District, School Districts in the United States, Seymour Board of Education, Solana Beach Elementary School District, South Carolina Department of Education, Spencer Valley Elementary School District, State Departments of Education in the United States, State of Washington, Sweetwater Union High School District, The New York City Department of Education, Town of Branford School District, Town of Clinton and Clinton Board of Education, Town of Groton and Groton Board of Education, Town of Plainville and Plainville Board of Education, Town of Plymouth and Plymouth Board of Education, Town of Stratford Board of Education, Town of Wallingford and Wallingford Board of Education, Town of Watertown and Watertown Board of Education, Town of Windham and Windham Board of Education, Vallecitos Elementary School District, Valley Center-Pauma Unified School District, Warner Unified School District, Washington State School for the Blind, Washington State School for the Deaf, West Orange Public Schools, fallbrook union high school district, Bill de Blasio, Richard Carranza against C.N., J.J., J.T., K.M. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion & Order dated November 13, 2020, Plaintiffs' claims against all out-of- state Defendants are DISMISSED without prejudice. The remaining claims against all New York State School Districts outside NYCDOE are SEVERED and DISMISSED without prejudice. Plaintiffs' application for a preliminary injunction is DENIED, and all claims are DISMISSED as against the NYC Defendants. The court sua sponte dismisses all claims against the New York State Education Department; accordingly, this case is closed. (Signed by Clerk of Court Ruby Krajick on 11/13/2020) (Attachments: # [1](#) Right to Appeal) (km) (Entered: 11/13/2020)

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Board of Education Legislative Goals 2019/2020

Ralston Public Schools Non-negotiables

- RPS will continue to cultivate a systems thinking approach to all school business and operations through our defined strategic planning process.
- RPS will continue to provide the programs and services that support the defined strategic priorities as well as AdvancED School Improvement (Cognia) and District Communications.
- RPS will continue to refine and grow our academic programs to meet the needs of all of our students.
- RPS will continue to deliver outstanding activity programs to allow our students a well rounded school experience.
- RPS will continue to evaluate the effectiveness and efficiency of all programs and services to meet the demands of a changing society.
- **RPS will refine and grow our outreach programs and service expectations to all stakeholders to include a focus on Social Emotional Learning**
- RPS will continue to offer a rich variety of research based instructional programs and curricular offerings to meet the needs of all learners.
- RPS will research and identify further opportunities and initiatives to help all of our students to be college or career ready.

Board of Education Legislative Goals

- Continued emphasis that our students and education are a priority in Nebraska as well as advocate for local control and decision making.
- Continued emphasis of State Equalization Aid (TEEOSA) and the infusion of further dollars into the aid formula.
- Oppose tax cuts that endanger any part of the State's revenue stream.
- Monitor any legislation that adjusts property valuation.
- Increase Special Education Funding.
- Continue to support and enhance Learning Community Programs that serve at-risk and diverse student populations in Ralston and within the Metro Area.
- Support legislation or the infusion of more funding for early childhood programs specifically programs serving students in high poverty high need areas. This may include the adjustment of the needs formula for pre-school students within TEEOSA
- Encourage further adjustments to the needs formula within TEEOSA specifically ELL and poverty. Are the current needs calculations in these areas addressing the increasing needs students and schools encounter?
- Support systems, initiatives, and funding options to cultivate additional opportunities to enhance college and career readiness specifically in vocational or certification focused areas.
- **Advocate for targeted programs and funding that support the "Whole Child" as it relates to students' social, emotional, and physical well being. (SEL)**
- Oppose any legislation that advances any initiative addressing charter schools or voucher systems that reduce funding and opportunities for public schools.

TENTATIVE* 2020 Legislative Session

Sun	Mon	Tues	Wed	Thur	Fri	Sat
January						
			1	2	3	4
5	6	7	8 DAY 1	9 DAY 2	10 DAY 3	11
12	13 DAY 4	14 DAY 5	15 DAY 6	16 DAY 7	17 RECESS	18
19	20 HOLIDAY	21 DAY 8	22 DAY 9	23 DAY 10	24 DAY 11	25
26	27 DAY 12	28 DAY 13	29 DAY 14	30 DAY 15	31 DAY 16	

Sun	Mon	Tues	Wed	Thur	Fri	Sat
February						
						1
2	3 DAY 17	4 DAY 18	5 DAY 19	6 DAY 20	7 RECESS	8
9	10 DAY 21	11 DAY 22	12 DAY 23	13 DAY 24	14 RECESS	15
16	17 HOLIDAY	18 DAY 25	19 DAY 26	20 DAY 27	21 DAY 28	22
23	24 DAY 29	25 DAY 30	26 DAY 31	27 DAY 32	28 RECESS	29

Sun	Mon	Tues	Wed	Thur	Fri	Sat
March						
1	2 RECESS	3 DAY 33	4 DAY 34	5 DAY 35	6 DAY 36	7
8	9 DAY 37	10 DAY 38	11 DAY 39	12 DAY 40	13 RECESS	14
15	16 RECESS	17 DAY 41	18 DAY 42	19 DAY 43	20 DAY 44	21
22	23 DAY 45	24 DAY 46	25 DAY 47	26 DAY 48	27 RECESS	28
29	30 RECESS	31 DAY 49				

Sun	Mon	Tues	Wed	Thur	Fri	Sat
April						
			1 DAY 50	2 DAY 51	3 DAY 52	4
5	6 DAY 53	7 DAY 54	8 DAY 55	9 DAY 56	10 RECESS	11
12	13 RECESS	14 DAY 57	15 DAY 58	16 DAY 59	17 RECESS	18
19	20 RECESS	21 RECESS	22 RECESS	23 DAY 60	24	25
26	27	28	29	30		

Federal & State Holidays

January 20 – Martin Luther King Jr. Day
February 17 - Presidents' Day

Legislative Recess Days

January 17
February 7, 14, 28
March 2, 13, 16, 27, 30
April 10, 13, 17, 20, 21, 22

*The Speaker reserves the right to revise the session calendar.

2020 LEGISLATIVE COMMITTEES

Committee on Committees Final Report Standing Committees

Updated 1/1/20

Agriculture (8)

Rm. 1524 - Tuesday

Halloran (C), Brandt (VC), Blood, Chambers, Hansen, B., Lathrop, Moser, Slama

Appropriations (9)

Rm. 1003 – Monday, Tuesday, Wednesday, Thursday, & Friday

Stinner (C), Bolz (VC), Clements, Dorn, Erdman, Hilkemann, McDonnell, Vargas, Wishart

Banking, Commerce and Insurance (8)

Rm. 1507 - Monday & Tuesday

Williams (C), Lindstrom (VC), Gragert, Howard, Kolterman, La Grone, McCollister, Quick

Business and Labor (7)

Rm. 1524 - Monday

Hansen, M. (C), Hansen, B. (VC), Chambers, Crawford, Halloran, Lathrop, Slama

Education (8)

Rm. 1525 - Monday & Tuesday

Groene (C), Walz (VC), Brewer, Kolowski, Linehan, Morfeld, Murman, Pansing Brooks

General Affairs (8)

Rm. 1510 - Monday

Briese (C), Lowe (VC), Arch, Blood, Brandt, Hunt, Moser, Wayne

Government, Military and Veterans Affairs (8)

Rm. 1507 - Wednesday, Thursday, & Friday

Brewer (C), La Grone (VC), Blood, Hansen, M., Hilgers, Hunt, Kolowski, Lowe

Health and Human Services (7)

Rm. 1510 - Wednesday, Thursday, & Friday

Howard (C), Arch (VC), Cavanaugh, Hansen, B., Murman, Walz, Williams

Judiciary (8)

Warner Chamber - Wednesday, Thursday, & Friday

Lathrop (C), Pansing Brooks (VC), Brandt, Chambers, DeBoer, Morfeld, Slama, Wayne

Natural Resources (8)

Rm. 1525 - Wednesday, Thursday, & Friday

Hughes (C), Bostelman (VC), Albrecht, Geist, Gragert, Halloran, Moser, Quick

Nebraska Retirement Systems (6)

Rm. 1507 - At call of Chair

Kolterman (C), Lindstrom (VC), Bolz, Groene, Kolowski, Stinner

Revenue (8)

Rm. 1524 - Wednesday, Thursday, & Friday

Linehan (C), Friesen (VC), Briese, Crawford, Groene, Kolterman, Lindstrom, McCollister

Transportation and Telecommunications (8)

Warner Chamber - Monday & Tuesday

Friesen (C), Geist (VC), Albrecht, Bostelman, Cavanaugh, DeBoer, Hilgers, Hughes

Urban Affairs (7)

Rm. 1510 - Tuesday

Wayne (C), Hunt (VC), Arch, Briese, Crawford, Hansen, M., Lowe

Select Committees

Committee on Committees (13)

Hilkemann (C)

District 1:

Bostelman

Hilgers

Pansing Brooks

Morfeld (VC)

District 2:

Howard

Lathrop

Lindstrom

Vargas

District 3:

Erdman

Friesen

Groene

Murman

Enrollment and Review (1)

Slama (C)

Reference (9)

Hilgers (C), Vargas (VC), Bolz, Chambers, Hughes, Kolterman, Lowe, McCollister, Scheer, Stinner (nonvoting ex officio)

Rules (6)

Crawford (C), Erdman (VC), Howard, Hansen, M., Lathrop, Scheer (ex officio)

Special Committees

Building Maintenance (6)

Erdman (C), Lowe (VC), Bostelman, Brandt, McDonnell, Stinner

Education Commission of the States (3)

Groene, Morfeld, Murman

Executive Board of the Legislative Council (9)

Hilgers (C), Vargas (VC), Bolz, Chambers, Hughes, Kolterman, Lowe, McCollister, Scheer, Stinner (nonvoting ex officio)

Justice Reinvestment Oversight (5)

Lathrop (C), DeBoer, McCollister, Pansing Brooks, Wayne

Legislative Performance Audit (7)

Geist (C), Crawford (VC), Friesen, Hansen, B., Hilgers, Scheer, Stinner

Legislature's Planning (9)

Vargas (C), McCollister (VC), Clements, DeBoer, Hansen, M., Hilgers, Scheer, Stinner, Williams

Midwestern Higher Education Commission (Midwest Compact) (2)

Kolowski, Slama

State-Tribal Relations (7)

Hilkemann (C), Wishart (VC), Albrecht, Brewer, Gragert, Hunt, Walz



2020 ADVOCACY HANDBOOK

FOR THE 2020 LEGISLATIVE SESSION

NASB'S LEGISLATIVE & LEADERSHIP INITIATIVES FOR 2020
AND A GUIDE FOR EFFECTIVE ADVOCACY

AS ADOPTED BY THE NASB DELEGATE ASSEMBLY ON NOVEMBER 22, 2019
FOR THE 106TH LEGISLATURE, 2ND SESSION

LEADERSHIP

INNOVATION

VISION

ENGAGEMENT

#liveNASB

The Nebraska Association of School Boards provides programs, services and advocacy to strengthen public education for all Nebraskans.

WELCOME - KNOW YOUR ROLE

106TH LEGISLATURE, 2ND SESSION

Welcome - Know Your Role	2
Advocacy, Engagement & #liveNASB	3-4
Your NASB Legislation Committee	5
Your 2019-20 Senators	6-7
Mark Your Calendars	8
NASB Positions: What Does This Represent?	8
Your 2020 Legislative Resolutions	9
Your NASB Standing Positions	10-16
2020 Legislative Issues Conference	16

NO ONE IS MORE QUALIFIED TO TALK ABOUT YOUR SCHOOL DISTRICT, YOUR COMMUNITY, AND YOUR NEEDS RELATED TO PROVIDING A QUALITY EDUCATION THAN YOU!

With your help, NASB is an advocate for public education and local school governance ... and YOUR collective voice in the Legislature

As NASB represents the state's 260+ member districts and ESUs, relationships and communication are the keys to the success of the Association's advocacy work. NASB advocates for the standing positions and legislative resolutions approved by delegates all from member boards at the annual NASB Delegate Assembly held in conjunction with the State Education Conference each November. It is here, and throughout the year where our focus is to work for and with you on all of the issues that impact public education.

Can YOU really make a difference? YES YOU CAN!

You are an elected official and a community leader. As a school board member, you are in an excellent position to educate and influence the legislative process, and are seen as a key resource on education policy for your district. We encourage all boards to include a legislative update as a part of each meeting, and to discuss/share key legislative information with key individuals in the community. Remember that advocacy is year-round, not just during the session itself. Bookmark the Government Relations page of www.NASBOnline.org for updates and information, and make sure to utilize NASB's *Legislative Notes*, summarizing all of the pertinent items related to public education in Nebraska. Another great resource is www.NebraskaLegislature.gov.

WHAT CAN NASB DO FOR YOU?

ASSIST YOU IN PREPARING TESTIMONY, TALKING POINTS, EMAILS, OR OP-ED'S
FACILITATE SENATOR INTRODUCTIONS, MEETINGS AND/OR VISITS AT HOME OR THE CAPITOL
FEATURE YOUR DISTRICT VISITS WITH SENATORS
BRIEF YOUR BOARD AT A MEETING IN YOUR COMMUNITY

2019

LEGISLATIVE SESSION HIGHLIGHTS

NASB took a position on 57 bills this session, and were closely following another 49.

NASB was represented in testimony in 12 of the 14 Committees.

School Board Members Came to Lincoln to Testify on the Following Bills on NASB's Behalf:

LB 147, LB 149, LB 314, LB 346, LB 506, LB 614, LB 634, LB 670, LB 727, LR 3 CA & LR 8 CA

NASB facilitated 1-on-1's with each member of the Revenue Committee and a school board member from their district.

NASB hosted calls with several senators throughout the session.

Legislative Lunches were held in Falls City, Fremont, Lincoln, O'Neill & Wayne.

NASB had 1-on-1 meetings with 38 of the 49 Senators this Session.

NASB produced a number of quick videos updating members on recent news or events that had just taken place at the Capitol, and posted on Facebook and Twitter.

We truly appreciate the level of engagement from local school board members this year. It has definitely made a difference, and has been recognized by your senators.

ADVOCACY, ENGAGEMENT & #liveNASB

106TH LEGISLATURE, 2ND SESSION

School Boards Make Nebraska a Great Place to LIVE!

Through Leadership, Innovation, Vision and Engagement Nebraska's School Boards are making a difference for students across the state.

LEADERSHIP

NASB will provide leadership to groups, individuals, and organizations and facilitate efforts to improve student achievement.

INNOVATION

Through innovation of programs and services, NASB will add value for our members and generate revenue to support growth.

VISION

NASB will develop a vision with other groups, individuals, and organizations to address how we fund schools and provide opportunities to bring a quality education to all children.

ENGAGEMENT

With engagement of its board and members, NASB will provide opportunities for school boards to be advocates for public education.

Advocacy is on-going. Stay up to speed on the Legislature year-round.

- ✓ Become Familiar With Your Senator & Their Staff -- Don't take for granted the access we have as Nebraskans to our Senators & Federal Representatives. It is not like that everywhere. Take advantage of it! Be involved. Build the relationship. Be ENGAGED!
- ✓ Have a "legislative update" agenda item at each board meeting, and share key legislative information with your board, and your community.
- ✓ Pass board policy specific to how you deal with legislative issues.
- ✓ Utilize NASB's Legislative links, communication, the *Legislative Notes* newsletter, track specific bills, follow along on social media, and study the annual Advocacy Handbook.
- ✓ Reach out to NASB's Legislative Team, and/or a member of the NASB Legislation Committee. Attend the various Legislative Lunches throughout the year across Nebraska.
- ✓ Stay up to speed with your local newspaper, social media, senator emails/newsletters, etc.

ASK YOURSELF: WHAT ARE YOU DOING FOR YOUR DISTRICT/COMMUNITY?

THE LEGISLATURE NEEDS TO KNOW SCHOOL BOARD MEMBERS WANT TO BE INVOLVED!

NASB LEGISLATIVE TEAM: JOHN SPATZ, COLBY COASH, MATT BELKA & VICKI WALTER-WINTERS

ADVOCACY, ENGAGEMENT & #liveNASB

106TH LEGISLATURE, 2ND SESSION

SHARE YOUR STORY ... KNOW YOUR DISTRICT'S DATA

UNDERSTAND THE DATA THAT WILL MAKE A DIFFERENCE

Below are examples of the data you should know from your schools to help tell your district's story:

NUMBER OF KIDS IN FREE/REDUCED LUNCH
SCHOOL LANDS PER PUPIL REIMBURSEMENT
CENSUS VS ENROLLMENT
NUMBER OF LANGUAGES SPOKEN IN YOUR DISTRICT
NUMBER OF ELL STUDENTS
TRANSPORTATION NUMBERS ... IF SEAT BELTS IN BUSES, IMPACT (\$)
WHAT PERCENTAGE OF YOUR BUDGET IS SPED
AVERAGE CLASS SIZE
STUDENT DISCIPLINE PROCEDURES
RETIREMENT OBLIGATION
SAFETY & SECURITY MEASURES IN THE PAST FEW YEARS
NUMBER OF OPTION KIDS
PERCENTAGE OF ADMINISTRATIVE COSTS

YOU HAVE POWER & VOICE!

The Legislature needs to know school board members want to be involved!

Remind them; You are their neighbor.

Voters also put you in office.

You are guardians for the States most precious resource ... Children.

You have an influential role in your community.

You know better than anyone the effect of a decision.

NASB LEGISLATIVE TEAM & RESOURCES

Colby Coash - Associate Executive Director, Director of Government Relations - ccoash@NASBonline.org

Matt Belka - Director of Marketing, Communications & Advocacy - mbelka@NASBonline.org

John Spatz - Executive Director - jspatz@NASBonline.org

Vicki Walter-Winters - Legal Administrative Assistant - vwinters@NASBonline.org

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NASB Twitter: www.twitter.com/NASBonline

NASB Facebook: www.facebook.com/NASBonline

NASB Videos: www.vimeo.com/NASBonline

Key Hashtags: #liveNASB #neleg

Nebraska Legislature: www.nebraskalegislature.gov

Senators Web Pages: www.nebraskalegislature.gov/senators

National School Board Association Advocacy: www.nsba.org/advocacy

YOUR NASB LEGISLATION COMMITTEE

106TH LEGISLATURE, 2ND SESSION



Brad Wilkins, Chair
NASB President-Elect
Ainsworth



Stacie Higgins
NASB President
Nebraska City



Kim Burry
NASB Vice President
Bayard



Member 1
Lou Ann Goding
Omaha



Member 2
Ben Perlman
Omaha



Member 3
Marque Snow
Omaha



Member 4
Connie Duncan
Lincoln



Member 5
Kathy Danek
Lincoln



Member 6
Linda Poole
Millard



Member 7
Sarah Centineo
Bellevue



Member 8
Beth Morrisette
Westside



Member 9
Skip Altig
North Platte



Member 10
Patti Gubbels
Norfolk



Member 11
Laura Schneider
Hastings



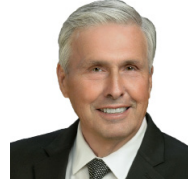
Member 12
Ryne Seaman
Seward



Member 13
Suzanne Sapp
Ashland-Greenwood



Member 14
Lisa Wagner
Central City



Member 15
Steve Koch
Hershey



Member 16
Jim Vlach
Lyons-Decatur



Member 17
Christopher Waddle
Giltner



Member 18
Ron Pearson
ESU 3



Appointed Member
Lisa Albers
Grand Island



Appointed Member
Jayson Bishop
Perkins County



Appointed Member
Linda Richards
Ralston



Appointed Member
Stephanie Summers
David City



Appointed Member
Annette Weise
Tri County

YOUR 2019-20 SENATORS

106TH LEGISLATURE, 2ND SESSION



Sen. Julie Slama
District 1
Peru



Sen. Robert Clements
District 2
Elmwood



Sen. Carol Blood
District 3
Bellevue



Sen. Robert Hilkemann
District 4
Omaha



Sen. Mike McDonnell
District 5
Omaha



Sen. Machaela Cavanaugh
District 6
Omaha



Sen. Tony Vargas
District 7
Omaha
Former School Board Member



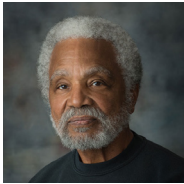
Sen. Megan Hunt
District 8
Omaha



Sen. Sara Howard
District 9
Omaha



Sen. Wendy DeBoer
District 10
Omaha



Sen. Ernie Chambers
District 11
Omaha



Sen. Steve Lathrop
District 12
Omaha



Sen. Justin Wayne
District 13
Omaha
Former School Board Member



Sen. John Arch
District 14
Papillion



Sen. Lynne Walz
District 15
Fremont



Sen. Ben Hansen
District 16
Blair



Sen. Joni Albrecht
District 17
Thurston



Sen. Brett Lindstrom
District 18
Omaha



Speaker Jim Scheer
District 19
Norfolk
Former School Board Member



Sen. John McCollister
District 20
Omaha



Sen. Mike Hilgers
District 21
Lincoln



Sen. Mike Moser
District 22
Columbus



Sen. Bruce Bostelman
District 23
Brainard



Sen. Mark Kolterman
District 24
Seward
Former School Board Member



Sen. Suzanne Geist
District 25
Lincoln

YOUR 2019-20 SENATORS

106TH LEGISLATURE, 2ND SESSION



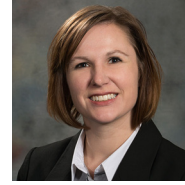
Sen. Matt Hansen
District 26
Lincoln



Sen. Anna Wishart
District 27
Lincoln



Sen. Patty Pansing Brooks
District 28
Lincoln



Sen. Kate Bolz
District 29
Lincoln



Sen. Myron Dorn
District 30
Adams



Sen. Rick Kolowski
District 31
Omaha



Sen. Tom Brandt
District 32
Plymouth



Sen. Steve Halloran
District 33
Hastings



Sen. Curt Friesen
District 34
Henderson



Sen. Dan Quick
District 35
Grand Island



Sen. Matt Williams
District 36
Gothenburg



Sen. John Lowe
District 37
Kearney



Sen. Dave Murman
District 38
Glenvil

Former School Board Member



Sen. Lou Ann Linehan
District 39
Elkhorn



Sen. Tim Gragert
District 40
Creighton

Former School Board Member



Sen. Tom Briese
District 41
Albion

Former School Board Member



Sen. Mike Groene
District 42
North Platte



Sen. Tom Brewer
District 43
Gordon

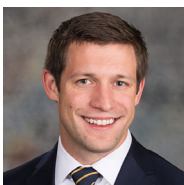


Sen. Dan Hughes
District 44
Venango

Former School Board Member



Sen. Sue Crawford
District 45
Bellevue



Sen. Adam Morfeld
District 46
Lincoln



Sen. Steve Erdman
District 47
Bayard

Former School Board Member

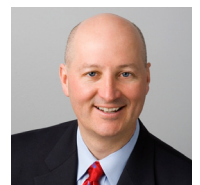


Sen. John Stinner
District 48
Gering

Former School Board Member



Sen. Andrew La Grone
District 49
Gretna



Gov. Pete Ricketts

MARK YOUR CALENDARS

106TH LEGISLATURE, 2ND SESSION

January 8	2020 Legislative Session begins
January 23	Day 10: All new bills must be introduced by this date
February 9	NASB Legislation Committee Meeting
February 9-10	Legislative Issues Conference Cornhusker Marriott-Lincoln
February 19-20	Priority Bill Designation
April 23	Day 60: Final Day of the 2020 Legislative Session
July 1	Call for Legislative Submissions for 2021 consideration due
July 18	Legislation Committee Meeting
November 20	2020 Delegate Assembly Omaha

NASB POSITIONS ENCLOSED

The Nebraska Association of School Boards is the only state organization created by school board members to represent the interests of school board members. Your Association's legislative agenda is initiated each year with the submission of local board proposals. The NASB Legislation Committee reviews all proposals, and then submits its recommendations to the NASB Board of Directors. The Board can then review and amend the submissions before presenting them to the NASB Delegate Assembly. The Delegate Assembly gives each member school district a voice in shaping the agenda of NASB. This publication represents the final agenda, set by the Delegate Assembly, for the 2020 Legislative Session. Standing Positions remain in effect until they are repealed by the Assembly. Legislative Resolutions are in effect for one year only.

WHAT DOES THIS REPRESENT?

The statements you read inside the pages of this book represent a set of belief statements which guide NASB's government relations efforts. These words guide our lobbying efforts at the State Capitol, with the State Board of Education and NDE, as well as with our representatives in Washington, D.C. While this work represents an effort to describe an issue or condition to be addressed, rarely is a bill written in such plain language. Actual legislative bills are a blend of several ideas (or perhaps a good idea, and a substantial price tag). Hence, when NASB analyzes how we will testify on a bill, we take into account a number of factors, including regular reviews by the Legislation Committee which offer guidance on the course corrections necessary to navigate the turbulent amendment process.

YOUR 2019 LEGISLATIVE RESOLUTIONS

106TH LEGISLATURE, 2ND SESSION

... as approved by the Legislation Committee on July 20, 2019
... and approved by the Board of Directors on August 10, 2019
... and adopted by the Delegate Assembly on November 22, 2019

Resolutions are statements of intended and desired legislative action on items of current needs or problems. Resolutions are in effect for one year and direct the organization and its staff in their legislative efforts with each annual session of the Legislature.

All resolutions submitted are presented for consideration and action. The Delegate Assembly shall receive, consider, and act upon legislative resolution proposals submitted to it by the Legislation Committee and the Board of Directors.

LEADERSHIP

INNOVATION

VISION

ENGAGEMENT

#liveNASB

CREATING A VISION FOR NEBRASKA'S FUTURE

NASB will lead and support the creation of a vision that revises tax policy and invests state resources for Nebraska's future.

EDUCATION PROGRAM OPPORTUNITIES

NASB believes that each student should have access to a challenging instructional program which is relevant and prepares him or her for work or further education.

EXPAND USE OF QUALIFIED CAPITAL PURPOSE UNDERTAKING FUND

NASB supports the expansion of the Qualified Capital Purpose Undertaking Fund to include modifications for student and staff security including cyber security.

HEALTHY CULTURES & RESILIENCY IN SCHOOLS

NASB will support leveraging its infrastructure and resources to support a healthy culture in schools. NASB will align with others to develop "resilient" school districts with programs to support both staff and students.

MENTAL & BEHAVIORAL HEALTH

NASB will support legislative efforts to provide services related to mental and behavioral health to school-age children across Nebraska.

SUPPORT OF EARLY CHILDHOOD PROGRAMS IN THE COMMUNITY

NASB will support early childhood education programs at the community level, which may include redefining economic development programs to include early childhood infrastructure development for communities and will support early childhood programs as an element in community comprehensive plans.

SUPPORT THE COLLECTION AND USE OF RELEVANT DATA

NASB encourages boards to use data to support its district strategic plan and goals. NASB supports collaborating with the state and other organizations in the collection and use of relevant data. NASB will identify data it can capture to help inform boards and, if necessary, support legislation to create data sources.

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

... as approved by the Legislation Committee on July 20, 2019
... and approved by the Board of Directors on August 10, 2019
... and adopted by the Delegate Assembly on November 22, 2019

Standing positions are statements of policy and purpose which are developed and maintained over time. They are considered annually by the Delegate Assembly, and remain in effect until they are actively removed.

LEADERSHIP

INNOVATION

VISION

ENGAGEMENT

BELIEF STATEMENTS FOR AN EFFECTIVE BOARD

S-1 — BOARD DEVELOPMENT

NASB encourages boards of education to take part in board in-service and development programs and to budget funds for such programs. (1995)

S-2 — BOARD RECOGNITION

NASB believes the service of school boardsmanship is fundamental to participatory democracy and deserves recognition collectively and individually from state and local communities. (prior to 1995)

S-3 — BUSINESS AND EDUCATION PARTNERSHIPS

NASB encourages boards of education to develop mutually beneficial partnerships with business to ensure mutual understanding and cooperation. (1995)

S-4 — COLLABORATIVE SERVICES TO YOUTH

NASB urges collaborative linkages between schools and other public and private agencies that serve children. (prior to 1995)

S-5 — LEADERSHIP TEAM

NASB believes that each board of education should create an administrative leadership team, which should include all supervisory and managerial employees including the superintendent and board members. (prior to 1995, amended 2007)

S-6 — PARENT INVOLVEMENT

NASB urges boards of education to support partnerships between parents and schools that encourage parent involvement in the education process. (1997)

S-7 — POLICY

NASB considers it imperative that boards of education adopt clearly defined, flexible policies after input from the administration, parents, employees, and other interested parties. Policies, based on a clear understanding of the education process, should be thoroughly reviewed annually. The execution of policy is the responsibility of professional administrators and staff. (prior to 1995)

CONDITIONS OF CHILDREN

S-8 — ABUSE OF ALCOHOL, TOBACCO, & OTHER DRUGS

NASB supports efforts by boards of education and state and national officials to strictly enforce policies regarding the sale, use or possession of illegal drugs including methamphetamine, marijuana, THC products and synthetic equivalents of THC and marijuana, alcohol, tobacco, nicotine products, vapor products (including e-cigarettes), and any products intended by appearance or effect to replicate tobacco products on school property. The designation of “drug free zones” near schools is also urged. (prior to 1995, amended 2015)

S-9 — AT-RISK STUDENTS AND THE ACHIEVEMENT GAP

NASB recognizes that there are many children and youth who are experiencing special difficulties in achieving high education standards. NASB supports increased funding to help close the gap in educational opportunity and educational achievement, and urges boards of education to work with, and obtain increased funding from the state Legislature, as well as state and federal education agencies to assist at-risk children and youth in making adequate educational progress. (prior to 1995, amended 2009)

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

CURRICULUM & INSTRUCTION

S-10 — EARLY CHILDHOOD EDUCATION

NASB supports quality early childhood education programs accessible to all children and advocates programs that provide age-appropriate activities to prepare children for school. (prior to 1995)

S-11 — ENROLLMENT OPTION; HOMEBOUND STUDENTS

NASB supports legislation stating that when an option student becomes homebound, the school district in which the student resides assumes full responsibility for educating the student. (1998, amended 2016)

S-12 — ENROLLMENT OPTION LIMITATION

NASB supports legislation returning option students to the resident school district if the option district must contract with another school district or agency for the educational services needed by the student. (1996, amended 2016)

S-13 — LIABILITY FOR MEDICATION ADMINISTRATION

NASB supports legislation that would limit the liability of a school district and school district representatives for the administering of prescription medication to students. (1999, amended 2013, 2016)

S-14 — NUTRITION EDUCATION/STUDENT WELLNESS

NASB believes that wellness programs for schools should emphasize healthy lifestyles and eating habits, mindful of all eating disorders, as well as obesity. (2004)

S-15 — SAFE SCHOOL ENVIRONMENT

NASB supports efforts to provide a school environment that is free from weapons, harassment, bullying, violence, drugs (including alcohol and tobacco), and other factors which threaten the safety of students and staff. (1997, amended 2012)

S-16 — STATEWIDE POVERTY/TRAUMA FUNDING

NASB recognizes the growing number of public school students across the state that are living in impoverished conditions and/or with traumatic experiences. NASB supports the use of research-based science to strengthen policy, program design and funding that targets those impacted by persistent poverty and/or trauma. (2017)

S-17 — STUDENT DISCIPLINE

NASB opposes legislative mandates related to student discipline. NASB supports student discipline as an essential, mutual responsibility of parents, teachers, and administrators, with final responsibility resting with school boards. (1999, amended 2019)

S-18 — ACCESS TO EQUAL EDUCATION OPPORTUNITIES

NASB supports equal educational opportunities for all students, regardless of their race, wealth or family circumstance, and urges the Legislature, the State Department of Education, and boards of education to remove all barriers that may prevent any child from having full access to such education opportunities. (1995, amended 2009)

S-19 — ACHIEVEMENT TEST SCORE USE

NASB opposes the use of test scores for the comparison of school districts or for the ranking of schools. (1998)

S-20 — ASSESSMENT OF STUDENT LEARNING

NASB supports multiple approaches to assess student learning, with decisions on assessment made at the local district level, and opposes a single “high-stakes” testing procedure. (2001)

S-21 — CULTURAL DIVERSITY

NASB urges all boards of education to support and implement curriculum which recognizes cultural diversity and enhances the knowledge of students about various ethnic and cultural backgrounds. (prior to 1995)

S-22 — CURRICULUM ADOPTION

NASB opposes legislative mandates addressing curriculum and testing. NASB supports the adoption of curriculum by local school boards and the State Board of Education. (2019)

S-23 — RESPONDING TO SPECIAL EDUCATION COSTS

NASB supports legislative efforts to give school districts that incur unforeseeable additional special education expenses assistance to alleviate cash flow problems. (2005)

S-24 — STUDENT EXPRESSION

NASB supports the authority of the local boards of education and school administration to regulate the content of school-sponsored publications and curriculum. (1997, amended 2009)

S-25 — TECHNOLOGY

NASB supports equal access to current technology for all school districts so they may engage all students in the curriculum, to equip them for an increasingly technological society and job market, and to provide them greater access to education services. (prior to 1995)

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

FUNDING & FINANCE

S-26 — ACCOUNTING OF FUNDS

NASB supports transparent accounting and full disclosure of all funds received and expended for public education consistent with federal regulations. (2005)

S-27 — BUDGET LID: GROWTH FACTOR

NASB supports legislation which would establish an education expenditures “growth factor” which reflects the actual cost of providing a public education for school districts, learning communities, and ESUs. (2001, amended 2008)

S-28 — COMPENSATION FOR STATEWIDE STANDARDS & ASSESSMENTS

NASB supports adequate funding to compensate school districts/ESUs for the cost of implementing and managing the statewide learning standards and assessments. (2008, amended 2009, 2013)

S-29 — ELIMINATION OF BUDGET RESERVE LIMITS

NASB supports legislation that eliminates reserve limitation in the Tax Equity and Educational Opportunities Support Act and in debt service funds. (2000, amended 2001)

S-30 — ELIMINATION OF EXPENDITURE LIMITATION

NASB supports legislation eliminating the limitation on general fund expenditures. (2000, amended 2011)

S-31 — ESU CORE SERVICES FUNDING

NASB supports legislation to adequately fund Educational Service Units in a manner that allows successful implementation of statewide educational initiatives that are developed by law in conjunction with the Nebraska Department of Education. (2009, amended 2015)

S-32 — FINANCING CAPITAL IMPROVEMENTS

NASB supports adequate funding for school districts and ESUs for maintenance or replacement of our rapidly deteriorating facilities. (1997, amended 2015)

S-33 — FISCAL POLICY

NASB believes the Governor and Legislature must work together to create fiscal policy that will adequately fund public education statewide based upon the needs of students and not driven by a pre-set allocation of funds for education regardless of need. Nebraska demographics and student needs are dynamic, as are the changing education standards required to be competitive nationally and internationally. To

meet this challenge, fiscal policy would be built upon a broad base with the lowest possible rates to provide stability in the tax base and revenue stream, provide local government with the tools to generate adequate financial resources, yet equalize financial support among taxpayers, and assure the principle of uniform assessment. (prior to 1995, amended 2009)

S-34 — FOR-PROFIT ENTITIES OPERATING IN TAX-EXEMPT ZONES

NASB supports legislation to ensure equitable tax payments by for-profit business ventures operating on publicly owned or otherwise exempt property. (2003)

S-35 — FUNDING OF MANDATED PROGRAMS

NASB urges full funding by the state and federal governments at statutory levels of all programs, standards, activities, and services mandated to public schools and ESUs by the Legislature and Congress, and further urges that any unfunded mandates allow authority for supplementary appropriations or outside levy lid funding. (1997, amended 2012, 2017, 2019)

S-36 — FUNDING: SCHOOL DISTRICT INFRASTRUCTURE, SITE PURCHASES AND BUILDING OPERATING EXPENSES

NASB supports legislation that would provide an alternative to property taxes for financing facility development, maintenance, and operation. (2003)

S-37 — GENERAL FUND RESERVE LIMIT EXCEPTION

NASB supports legislation that would not allow school districts to be penalized or state aid to be adjusted, to a school disadvantage, when any type of error or correction is made in calculating the state aid formula. (1999, amended 2016)

S-38 — INCLUDING GIFTS, DONATIONS, OR FOUNDATION FUNDS AS RECEIVABLES

NASB opposes the inclusion of gifts, endorsements, donations, or foundation expenditures that are not regular operating expenses in the calculation of receivables in the state aid formula. (2000)

S-39 — K-12 SCHOOL TRUST LAND AND PERMANENT SCHOOL FUND

NASB opposes reduction of any assets of the school trust or diversion of the Permanent School Fund. (prior to 1995, amended 2010)

S-40 — LEGISLATION IMPLEMENTATION

NASB supports the concept that any legislative bill that limits financial resources, or requires additional financial resources,

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

is done within a timeframe that will not negatively affect the school's ability to prepare their budget. (1997, amended 2015, 2017, 2019)

S-41 — LEGISLATIVE REVIEW OF STATUTORY DEADLINES

NASB urges legislative review of the conflicting mandatory deadlines that affect school revenues and expenditures. (2011)

S-42 — PROPERTY TAX REFORM/RELIEF

Any legislative discussion on property tax and distribution of state aid should include participation from school board and ESU board members. (2015)

S-43 — REVENUE REDUCTIONS FOR SCHOOL DISTRICTS AFFECTED BY PROPERTY VALUATION LOSSES

NASB supports legislation that would create a hold harmless effect for districts which experience a decrease in valuation. (2004)

S-44 — SCHOOL DISTRICT OPTIONS IN DEALING WITH LARGE, UNANTICIPATED REVENUES

NASB supports legislation giving school boards options in dealing with large, unanticipated revenue increases in order to minimize fluctuations in state aid. (2000)

S-45 — SPECIAL BUILDING FUND TAX LEVY EXCLUSION

NASB supports amending the Nebraska Statutes that address budgeting and spending lid restrictions to allow school districts the ability to utilize up to seven cents of the Special Building Fund tax levy outside of the budgeting and spending lid restriction so that districts can plan for and fund capital improvement projects, building repairs and upgrades, and school district infrastructure needs. (2007)

S-46 — STATE FUNDING SYSTEM

NASB supports a stable, predictable, equitable, and adequate statewide education funding system that honors the Legislature's commitment to provide for free instruction in the common schools of this state, as guaranteed by the Nebraska Constitution, by prioritizing education funding in the state budget, and that:

- Invests in the education of all Nebraska public school children;
- Establishes a state fund or funding mechanism that assists Nebraska public schools with the costs of maintaining and constructing facilities;
- Reduces our dependence on local property taxes by drawing revenue from multiple funding sources;
- Promotes the responsibility of locally elected school boards to make sound, transparent school budget decisions;
- Provides funding in a timely and predictable manner;

- Includes the principle of equalization;
- Funds the total excess allowable costs for special education and support services; and
- Recognizes that a long-term solution to education funding will require an ongoing, collaborative effort to execute a vision and strategic plan to grow and diversify our economy. (1997, amended 2009, 2018)

S-47 — USE OF A UNIFORM VALUATION CALCULATION TO DETERMINE LOCAL RESOURCES AND STATE AID

NASB supports a property tax assessment system that utilizes uniform accounting practices to determine the property valuation number from which local and state officials can calculate both the local resources available to fund schools from property taxes, and the resulting calculation of state aid payments to school districts. (2003)

S-48 — VOUCHERS AND TAX CREDITS

NASB opposes any attempt to amend or circumvent the Nebraska and United States Constitutions to permit the use of public funds for the support, either direct or indirect, of schools not controlled by the public at large. NASB opposes any state or federal legislation allowing either tax credits or vouchers for children, or the parents or guardians of children attending nonpublic schools. (prior to 1995)

GOVERNANCE & STRUCTURE

S-49 — ACCOUNTABILITY

NASB believes that boards of education are accountable to students, parents, taxpayers, and employees for providing education programs, striving for education excellence, identifying education needs, adopting clearly defined written policies, measuring the success of instruction programs, and interpreting and disseminating information to the public through a public relations plan. (prior to 1995)

S-50 — ALLIED SCHOOLS

NASB opposes legislation that would mandate the formation of an allied system of school districts. (2014, amended 2016)

S-51 — AMEND OPEN MEETINGS ACT FOR EVALUATIONS

NASB supports legislation to allow boards to go into executive session to discuss superintendent evaluations and/or for the narrowing down of superintendent candidates. (2017)

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

S-52 — AUTHORITY OF SCHOOL BOARDS

NASB supports the authority of boards of education to effectively govern and execute their statutory responsibilities. (1997, amended 2015)

S-53 — CHARTER SCHOOLS

NASB believes that any charter schools, or the like, involved with any aspect of K-12 education be authorized by a public school district, be located within the boundaries of such public school district and be accountable to the authorizing district for their student achievement, finances and operations. (1998, amended 2015)

S-54 — DUTIES OF SCHOOLS

NASB believes that the primary function of Nebraska schools should be the education of students and that the Legislature should be discouraged from placing duties on school districts which are not directly related to education. (prior to 1995)

S-55 — EDUCATIONAL SERVICE UNIT GOVERNANCE

NASB supports governance of ESUs by elected boards and supports local determination of specific mechanisms of that governance. (2005)

S-56 — EDUCATIONAL SERVICE UNIT REORGANIZATION

NASB supports the continuation of ESUs as an effective means of delivering educational services to school districts and their students. Any reforms would provide for a statutory hold harmless provision in the distribution formula for Core Service funding when an Equity Unit reorganizes with any other ESU, and must be mindful of ESUs' essential role of delivering direct services and being responsible to the local school districts they serve. (2004, amended 2005)

S-57 — INTERACTIVE REMOTE COMMUNICATION TECHNOLOGY (TELEVIDEO)

NASB urges the legislature to provide updated rules and procedures so patrons are able to readily testify at legislative hearings via televideo (interactive remote communication technology) on a regular, ongoing basis to allow for a more equitable opportunity for the public to participate in the legislative process. (2017)

S-58 — ORGANIZATION

NASB opposes legislation that would mandate consolidation of districts or administration. NASB favors cooperation between school districts as well as ESUs to remove all barriers and penalties to promote orderly and voluntary reorganization into more efficient governing and administrative units to best serve the educational needs of Nebraska's children. (prior to 1995, amended 2008, 2015, 2017, amended 2019)

S-59 — PERSONAL LIABILITY

NASB opposes unnecessary laws which make individual members of a governing board of a political subdivision personally liable for damage judgements which result from lawsuits filed against the political subdivision. (prior to 1995, amended 2015)

S-60 — RESTRICTION OF RESOURCES AND BOARD RESPONSIBILITIES

NASB supports legislation allowing local boards to function as elected officials and to continue to establish policies, including finance policies, as representatives of the constituents who elected them. (1997)

S-61 — SCHOOL ACTIVITIES

NASB supports direct involvement by boards of education in the governance and activities of the Nebraska School Activities Association. (prior to 1995)

S-62 — SCHOOL CALENDARS

NASB opposes state mandated uniform opening and closing dates for local school districts. (prior to 1995)

PROFESSIONAL STANDARDS & EMPLOYEE RELATIONS

S-63 — ACTIVITY ASSIGNMENTS

NASB opposes legislation that would require a separate written employment contract for coaching or any other activity assignment that would require that a person be notified by a specified date of the termination of an assignment for the following year. (1999)

S-64 — COMPENSATION

NASB will support a concept of compensation for teachers which is not based solely upon the experience and education attainment of teachers as found on standard salary schedules. (1995)

S-65 — CRIMINAL BACKGROUND CHECKS

NASB supports legislation which would aid public schools and ESUs in obtaining criminal background history information on prospective and current employees, and personnel provided through any contract service provider or anyone working on school property. (1999, amended 2006)

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

S-66 — EMPLOYEE BONUSES AND INCENTIVES

NASB supports legislation creating a comprehensive plan to recruit, retain and reward highly qualified individuals for teaching professions throughout the state, including offering incentives to encourage employees to sign a contract of employment. (2001, amended 2015)

S-67 — MEDICAL INSURANCE

NASB supports the concept of exploring alternatives to the costs of health insurance for the purpose of assuring the greatest allocation of our financial resources to education programs and services for children. (prior to 1995, amended 2003)

S-68 — RECOGNITION

NASB urges local school boards to develop and implement programs which recognize individuals for significant accomplishments and community service, experience, and competency. (prior to 1995, amended 2014)

S-69 — RETIREMENT

NASB supports legislation to assure a retirement system that is sound, adequate, and sustainable for school districts and ESUs. (prior to 1995, amended 2012)

S-70 — SCOPE OF BARGAINING

NASB believes negotiations with employees should be limited to matters of employee salaries and fringe benefits, and opposes any attempt to broaden the scope of negotiations to include matters of policy and management rights. (prior to 1995)

S-71 — STAFF DEVELOPMENT AND EVALUATION

NASB supports in-service training, enrichment programs, and continuing education for professional staff. Regular evaluations of performance, competency in the subject areas, and demonstrated ability to instruct or manage, in part as shown through student performance, should be conducted to promote professional growth. (1995)

STATE POLICY

S-72 — ADVISORY GROUPS

NASB requests that there be board of education representatives on all government commissions, councils, and committees which could have an impact on local school district policy or finance. (1995)

S-73 — CHOICE AND AFFILIATION

NASB supports the concepts of choice and affiliation among public schools as a means to maximize education opportunity. NASB believes any such program should result in the least amount of disruption and uncertainty for the affected school districts. (1995)

S-74 — CONSTITUTIONAL RIGHTS & RESPONSIBILITIES

NASB, and school board members, fully supports the U.S. Constitution and the rights and responsibilities embodied within it. NASB therefore supports education and behavior that teaches and models expression of these rights and responsibilities. (2009, amended 2015)

S-75 — CORPORATE SPONSORSHIPS IN SCHOOLS

NASB opposes restrictions on school districts' ability to exercise their best judgment in entering into corporate sponsorship agreements. (2004)

S-76 — EDUCATIONAL SERVICE UNITS

NASB supports Educational Service Units as an effective and efficient means to provide educational services to local school districts. ESUs should be responsible to the local school boards they serve. (1997)

S-77 — GUIDING THE P-16 EFFORT: 21ST CENTURY SKILLS

NASB urges state and local policymakers to forge a new working relationship in redesigning Nebraska's public education system for the 21st century, with a focus on improving student achievement and holding each level of the system accountable, from preschool through post-secondary education or training, in a manner that:

- a) Promotes multi-level communication and interaction between all P-16 partners to enhance student academic success;
- b) Offers all students a rigorous developmentally-appropriate curriculum designed to provide opportunities and choice, regardless of the post-secondary path they choose;
- c) Engages the assets of the full community;
- d) Utilizes data and technology to individualize education for students and to incorporate new learning into the design;
- e) Closes the achievement gap by focusing on quality teaching and learning opportunities;
- f) Implements standards-based education fully in a seamless curriculum, so one level of the system builds on the next and the end result is known and understood from the beginning;

YOUR NASB STANDING POSITIONS

106TH LEGISLATURE, 2ND SESSION

- g) Provides sufficient resources that are adequate and sustainable at every level of the system to meet the challenge, resisting unfunded or underfunded mandates; and
- h) Preserves the ability of local school boards and their communities to address local needs and challenges in a flexible manner using a variety of options.

(2009, amended 2016)

S-78 — INDEPENDENT SCHOOL DISTRICTS

NASB supports the independence of established PK-12 school districts and also supports the cooperation and equalization of opportunity among school districts within learning communities. NASB believes that any legislation introduced impacting school districts or learning communities should seek to give districts and learning communities equalized resources. Any legislation should also allow these independent districts to maintain their right to governance, district curriculum, and the allocation of resources. (2006, amended 2013)

S-79 — LOCAL CONTROL FOR PUBLIC PK-12 SCHOOLS

NASB believes public PK-12 systems should be organized to serve communities throughout Nebraska without arbitrary size limits or a single model, which would not fit our state's varied communities. NASB opposes legislating arbitrary size limits and will work to remedy such limits currently in statute. (2006, amended 2013)

S-80 — LOCAL DISTRICT ADVOCACY

NASB supports the right and obligation of local school districts to advocate for legislative action that impacts their individual interests. (1996)

S-81 — NDE AUTHORITY

NASB opposes attempts by the legislature to preempt the statutory authority of the Nebraska State Board of Education to be the policy-forming, planning and evaluative body for Nebraska schools. (2017)

S-82 — NONPUBLIC SCHOOLS STANDARDS

NASB believes that nonpublic schools should have the same state standards as the public schools, including school approval, accreditation, teacher certification and endorsement, and safety standards. (prior to 1995)

S-83 — POLICY LEADERSHIP & VISION ON THE FUTURE OF NEBRASKA'S PK-12 SCHOOLS

NASB supports efforts to bring policy makers of the executive and legislative branches, educators, school boards, learning community coordinating councils, and ESU boards, and citizens together to determine the best course for the future delivery of PK-12 education to the students of the state. NASB boards emphasize increasing student achievement through governance structures that are clear, efficient, and controlled by the local district. (2003, amended 2008, 2010, 2013)



2020 LEGISLATIVE ISSUES CONFERENCE

FEBRUARY 9-10 | CORNHUSKER MARRIOTT HOTEL LINCOLN

FINISHING STRONG IN THE SECOND HALF!

2020 NEBRASKA UNICAMERAL LEGISLATURE
Alphabetical List

Capitol Mailing Address: Senator _____
 District # State Capitol
 PO Box 94604
 Lincoln NE 68509-4604

As of 1/1/2020

Senator	District	Capitol Phone	Room	City
Albrecht, Joni	17	(402) 471-2716	1404	Thurston
Arch, John	14	(402) 471-2730	1306	La Vista
Blood, Carol	3	(402) 471-2627	1021	Bellevue
Bolz, Kate	29	(402) 471-2734	1015	Lincoln
Bostelman, Bruce	23	(402) 471-2719	1118	Brainard
Brandt, Tom	32	(402) 471-2711	1528	Plymouth
Brewer, Tom	43	(402) 471-2628	1101	Gordon
Briese, Tom	41	(402) 471-2631	1019	Albion
Cavanaugh, Machaela	6	(402) 471-2714	11 th Floor	Omaha
Chambers, Ernie	11	(402) 471-2612	1302	Omaha
Clements, Robert	2	(402) 471-2613	1120	Elmwood
Crawford, Sue	45	(402) 471-2615	1012	Bellevue
DeBoer, Wendy	10	(402) 471-2718	1114	Bennington
Dorn, Myron	30	(402) 471-2620	11 th Floor	Adams
Erdman, Steve	47	(402) 471-2616	1124	Bayard
Friesen, Curt	34	(402) 471-2630	1110	Henderson
Geist, Suzanne	25	(402) 471-2731	2000	Lincoln
Gragert, Tim	40	(402) 471-2801	11 th Floor	Creighton
Groene, Mike	42	(402) 471-2729	1107	North Platte
Halloran, Steve	33	(402) 471-2712	1022	Hastings
Hansen, Ben	16	(402) 471-2728	11 th Floor	Blair
Hansen, Matt	26	(402) 471-2610	2010	Lincoln
Hilgers, Mike	21	(402) 471-2673	2108	Lincoln
Hilkemann, Robert	4	(402) 471-2621	2028	Omaha
Howard, Sara	9	(402) 471-2723	1402	Omaha
Hughes, Dan	44	(402) 471-2805	1117	Venango
Hunt, Megan	8	(402) 471-2722	1523	Omaha
Kolowski, Rick	31	(402) 471-2327	1018	Omaha
Kolterman, Mark	24	(402) 471-2756	2004	Seward
La Grone, Andrew	49	(402) 471-2725	11 th Floor	Gretna
Lathrop, Steve	12	(402) 471-2623	1103	Omaha
Lindstrom, Brett	18	(402) 471-2618	2015	Omaha
Linehan, Lou Ann	39	(402) 471-2885	1116	Elkhorn
Lowe, John S., Sr.	37	(402) 471-2726	2011	Kearney
McCollister, John S.	20	(402) 471-2622	1017	Omaha
McDonnell, Mike	5	(402) 471-2710	2107	Omaha
Morfeld, Adam	46	(402) 471-2720	1008	Lincoln
Moser, Mike	22	(402) 471-2715	1529	Columbus
Murman, Dave	38	(402) 471-2732	1522	Glenvil
Pansing Brooks, Patty	28	(402) 471-2633	1016	Lincoln
Quick, Dan	35	(402) 471-2617	1406	Grand Island
Scheer, Jim	19	(402) 471-2929	2103	Norfolk
Slama, Julie	1	(402) 471-2733	11 th Floor	Peru
Stinner, John P.	48	(402) 471-2802	1004	Gering
Vargas, Tony	7	(402) 471-2721	1000	Omaha
Walz, Lynne	15	(402) 471-2625	1403	Fremont
Wayne, Justin T.	13	(402) 471-2727	1115	Omaha
Williams, Matt	36	(402) 471-2642	1401	Gothenburg
Wishart, Anna	27	(402) 471-2632	1308	Lincoln

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25	Geist, Suzanne	(402) 471-2731	2000	Lincoln
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LEADERSHIP

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ENGAGEMENT

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2020 STATE EDUCATION CONFERENCE | LIVE! NOVEMBER 18-20

STREAMING ON DEMAND THROUGH DECEMBER 31

GROWING GREATNESS, FROM THE COMFORTS OF HOME ...

A little different look to the State Education Conference this year. While not how we envisioned this year's Conference to look, we are still able to deliver 3-days of school leaders networking, sharing, and learning. Takeaways from this year's virtual Conference include:

Two engaging Pre-Conference sessions titled 'Risk Dial Turned Red' and 'A Silver Lining to Digital Learning in the COVID Era.'

40 breakout sessions

Commissioner Matt Blomstedt opened the conference looking back on the past year, and looking forward to the future.

A State of Your State Association presented by NASB's John Spatz, highlighting everything NASB is and does to help you become more interconnected as a community leader.

Exhibitor Engagement, Hollywood Squares, Networking and More!

Head to the State Education Conference page of
www.NASBonline.org now to ...

Register to view on demand, any and all sessions now through December 31, 2020.

Thank you to everyone who took the time to join us live, or plans to "attend" and view sessions throughout December. We look forward to seeing you face to face in 2021 and beyond! Mark your calendars now for the 2021 State Education Conference, scheduled for November 17-19, 2021, back at the CHI Health Center - downtown Omaha!



NOVEMBER 2020

UPCOMING INFO & EVENTS

2020 STATE EDUCATION CONFERENCE
GROWING GREATNESS
ON DEMAND THROUGH DECEMBER 31, 2020

<http://members.nasbonline.org/index.php/state-education-conference>

BE SURE TO REGISTER FOR THE
PRE-CONFERENCES AS WELL ...

"RISK DIAL TURNED RED"

"A SILVER LINING: DIGITAL LEARNING IN THE COVID ERA"

NEW BOARD MEMBER WORKSHOPS & WEBINARS
STARTING NOVEMBER 30, 2020
5:50 TO 8:30 PM CT

BOARD ROLE AND RESPONSIBILITIES - NOV 30/DEC 1, 2 & 3
OPEN MEETINGS LAW/ADVOCACY - DECEMBER 7, 8, 9, & 10
AT THE BOARD TABLE - JANUARY 4, 5, 6 & 7, 2021
BOARD LEADERSHIP - FEBRUARY 1, 2, 3 & 4, 2021

WEDNESDAY, JANUARY 6
FIRST DAY OF THE 2021 LEGISLATIVE SESSION

BOARD MEMBER SEATING AFTER AN ELECTION
MONDAY, JANUARY 4 - 1ST MONDAY OF THE MONTH
TUESDAY, JANUARY 5 - 1ST TUESDAY OF THE MONTH
THURSDAY, JANUARY 7 - TERMS EXPIRE ON THE FIRST
THURSDAY AFTER THE FIRST TUESDAY

ANY MEETING HELD AFTER THURSDAY, JANUARY
7 WILL NEED TO HAVE THE SWEARING IN OF NEW
MEMBERS AND ELECTION OF OFFICERS!

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Continue to check NASB's COVID-19 page
for updates for you and your Board at
www.NASBonline.org

LEADERSHIP

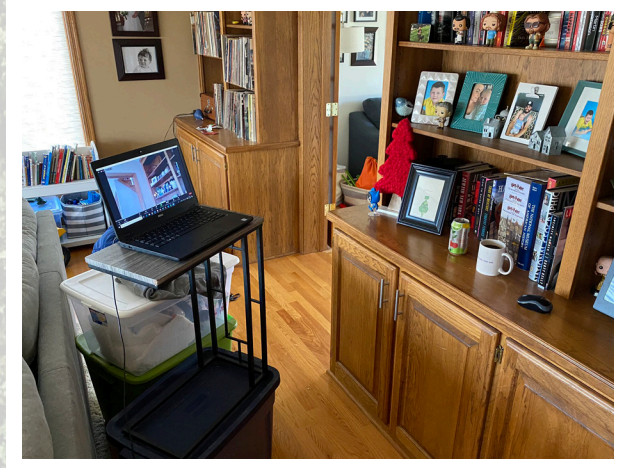
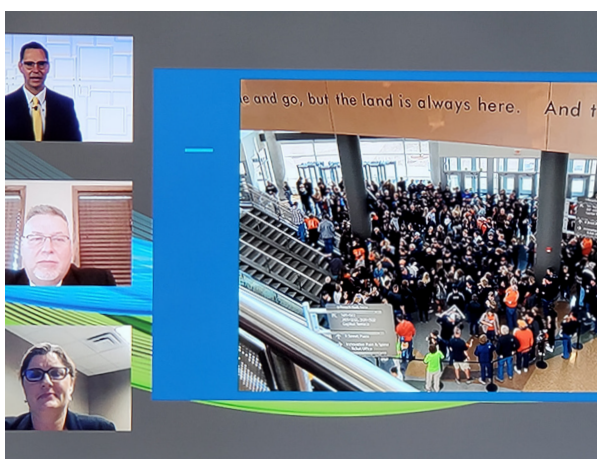
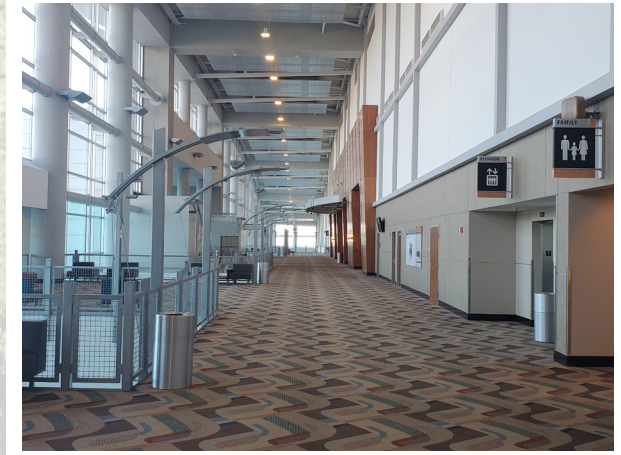
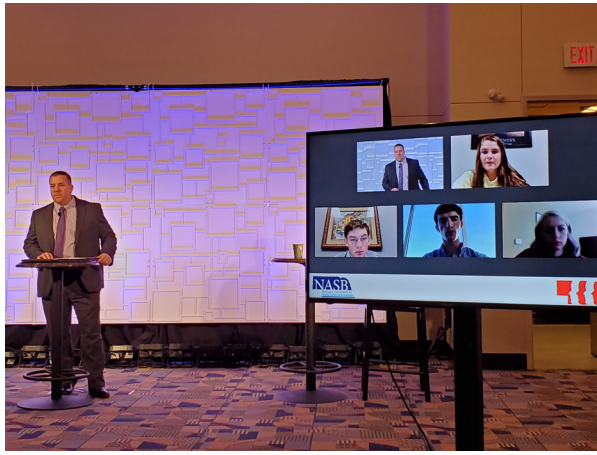
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STATE CONFERENCE: SOCIALLY DISTANCED

LEADERSHIP

INNOVATION

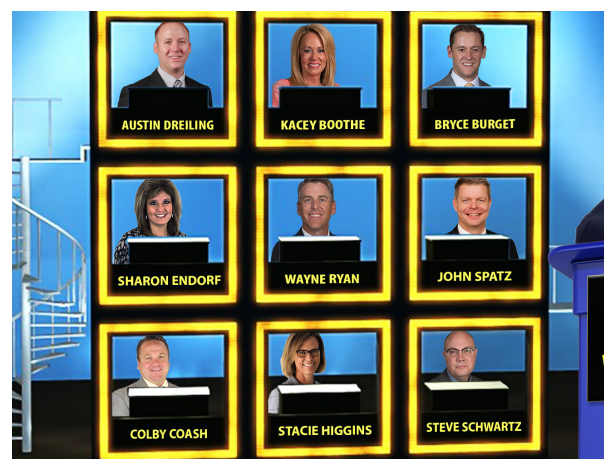
VISION

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Frank Beel @BeelFrankbeel · 4m
Building new fence while attending state conference



What's next? New year, same NASB Officers.

At the annual NASB Delegate Assembly, which was held virtually this year, the assembly voted to renew the terms of the four NASB officers for an additional year. Keeping their current roles are:

- Stacie Higgins - President (Nebraska City Public Schools)
- Brad Wilkins - President-Elect (Ainsworth Community Schools)
- Kim Burry - Vice President (Bayard Public Schools)
- Steve Blocher - Past-President (West Point Public Schools)



ELECTION UPDATE

The dust has settled, and we now know the players for the upcoming Legislative Session, and other key state and federal offices.

		<u>1st Elected</u>			<u>1st Elected</u>
District 1	Julie Slama	2019	District 26	Matt Hansen	2014
District 2	Robert Clements	2017	District 27	Anna Wishart	2016
District 3	Carol Blood	2016	District 28	Patty Pansing Brooks	2014
District 4	Robert Hilkemann	2014	District 29	Eliot Bostar	2020
District 5	Mike McDonnell	2016	District 30	Myron Dorn	2018
District 6	Machaela Cavanaugh	2018	District 31	Rich Pahls	2005
District 7	Tony Vargas*	2016	District 32	Tom Brandt	2018
District 8	Megan Hunt	2018	District 33	Steve Halloran	2016
District 9	John Cavanaugh	2020	District 34	Curt Friesen	2014
District 10	Wendy DeBohr	2018	District 35	Raymond Aguilar	1999
District 11	Terrell McKinney	2020	District 36	Matt Williams	2014
District 12	Steve Lathrop	2007	District 37	John Lowe	2016
District 13	Justin Wayne*	2016	District 38	Dave Murman*	2018
District 14	John Arch	2018	District 39	Lou Ann Linehan	2016
District 15	Lynne Walz	2016	District 40	Tim Gragert*	2018
District 16	Ben Hansen	2018	District 41	Tom Briese*	2016
District 17	Joni Albrecht	2016	District 42	Mike Groene	2014
District 18	Brett Lindstrom	2014	District 43	Tom Brewer	2016
District 19	Mike Flood	2005	District 44	Dan Hughes*	2014
District 20	John McCollister	2014	District 45	Rita Sanders	2020
District 21	Mike Hilgers	2016	District 46	Adam Morfeld	2014
District 22	Mike Moser	2018	District 47	Steve Erdman*	2016
District 23	Bruce Bostelman	2016	District 48	John Stinner*	2014
District 24	Mark Kolterman*	2014	District 49	Jen Day	2020
District 25	Suzanne Geist	2016			

* Former School Board Member

AT THE BOARD TABLE



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NOVEMBER/DECEMBER BOARD MEETING TOPICS

MISSION, VISION & GOALS

- Review School Improvement Plan
- Strategic Plan Update; District Goals Update

POLICY GOVERNANCE

- Review, update, and adopt policy

ACCOUNTABILITY & STUDENT ACHIEVEMENT

- Career Education Content Areas – Revision begins Dec 2020 to be implemented in Schools August 1, 2022
- See the NDE Standards Revision Timeline at: <https://cdn.education.ne.gov/wp-content/uploads/2019/04/TandL-Standards-Timeline-ONLY-2019.pdf>

ADVOCACY

- Review the 2021 Legislative Session Calendar <https://www.nebraskalegislature.gov/pdf/session/2021tentativecalendar.pdf>

DISTRICT/ESU RESOURCES [BUDGET]

- ESU Annual Financial Report – On or before January 31, the ESU Administrator of each ESU will submit to the Commissioner of Education an Annual Financial Report. § 79-1229

REPORTS

- Board Committees; Superintendent; Administrators
- Review the NDE State of Schools Report

BOARD-SUPERINTENDENT RELATIONS

- Review the Superintendent Evaluation Summary

BOARD PROFESSIONAL DEVELOPMENT

- NASB New Board Member Workshops
Modules I, II, III, and IV start Monday, November 30

LEARNING COMMUNITY

- Report Evaluation and Research Results. On or before January 1, each learning community coordinating council shall use any funds received pursuant to section 79-1241.03 for evaluation of programs related to the community achievement plan. § 79-2104.02

BOARD ELECTION

- Notify the County Clerk/Election Commissioner. On or before January 5, the board must notify the County Clerk of Election Commissioner of the member seats open for the upcoming election.



*Thank you for the work you are doing for Nebraska's students. Your NASB Board Leadership Team - Marcia, Kori, Melissa, and Karla.
Please call us if we can support you in any way 800-422-4572*

NEW BOARD MEMBER WORKSHOP & WEBINARS

NASB Member: \$100/person
Non-Member: \$200/person

Registration Deadline for the LIVE 4-Module Webinars is November 29

Each LIVE module will address a fundamental component of board service, scenarios for each area of board leadership, and will be provided on four different evenings from 5:50pm-8:30pm. Participant registration will include the opportunity to participate in any of the offered dates for each module and will also include the new board member publication.

Module I – Board Role and Responsibilities

Offered Nov 30/Dec 1, 2 & 3, 2020

Topics include: Board Code of Conduct, Roles and Responsibilities, & Board Standards

Module II – Open Meetings Law/Advocacy

Offered December 7, 8, 9, & 10, 2020

Topics include: Open Meetings Law, NDE Rule 10, & Advocacy

Module III – At the Board Table

Offered January 4, 5, 6 & 7, 2021

Topics include: Board Operations, Board Meeting Protocol, & Board Committees

Module IV – Board Leadership

Offered February 1, 2, 3 & 4, 2021

Topics include: Board-Superintendent Relations, Superintendent Evaluation, & School Finance

DATES FOR BOARD MEETING SEATING AFTER ELECTION

Statute 79-4, 129

Tuesday, November 3, 2020 - Election Date

Friday, January 1, 2021 - 1st date of the new year

Monday, January 4, 2021 - 1st Monday of the month meetings

Tuesday, January 5, 2021 - 1st Tuesday in January 2021

Thursday, January 7, 2021 - Term expires on the first Thursday after the first Tuesday in January

Monday, January 11, 2021 - 2nd Monday of the month meetings

Any meetings held after Thursday, January 7 will need to have the swearing in of new members and election of officers.

ALICAP RECOGNIZES ITS ANNUAL AWARD WINNERS

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ALICAP

175 NEBRASKA SCHOOLS AND ESUs

OVER \$1 BILLION IN PAYROLL INSURED

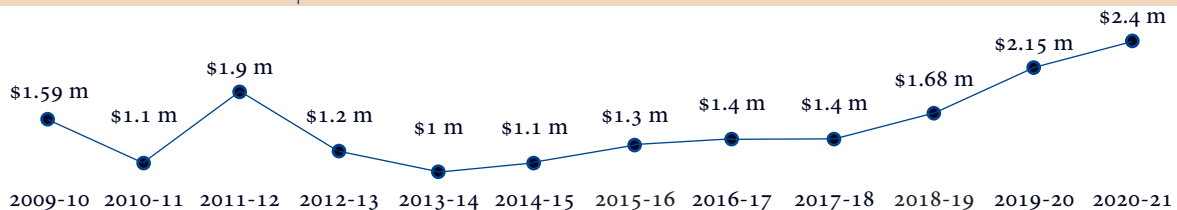
OVER \$6 BILLION IN PROPERTY VALUES INSURED

28,000 EMPLOYEES COVERED

3,000 VEHICLES ON SCHEDULE

1,000 CLAIMS HANDLED ANNUALLY

OVER \$25 MILLION GIVEN BACK IN DIVIDENDS SINCE 1990



MANY THANKS TO ALL ALICAP MEMBERS FOR THEIR TRUST, LOYALTY, AND DEDICATION.

2019-2020 RECOGNITION PROGRAM AWARD WINNERS

LOSS RATIO AWARD WINNER
BLUE HILL COMMUNITY SCHOOLS

EXPERIENCE MODIFIER AWARD WINNER
GRETNA PUBLIC SCHOOLS

SAFESCHOOLS AWARD WINNER
ESU 13

ALICAP WOULD LIKE TO CONGRATULATE THESE MEMBERS ON EARNING THIS YEAR'S SAFETY AWARDS.

A STRONG SAFETY PROGRAM BEGINS WITH A SUPPORTIVE LEADERSHIP TEAM AND IS ACTED OUT BY EVERY STAFF MEMBER, EVERY DAY.

KEEP UP THE GOOD WORK!

GAZILLIONS OF GALLONS: PRODUCING HAND SANITIZER FOR SCHOOLS

NEBRASKA ASSOCIATION OF SCHOOL BOARDS

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My name is Jan tenBensel and I am Chairman of the Nebraska Ethanol Board. In addition to that, I have served on the Cambridge Public Schools Board of Education.

While this is simply a brief summary of this project and I fail to mention all of the 100's of people that helped make this happen, I wanted to highlight the work of Dr. Hunter Flodman, Associate Professor of Practice, Department of Chemical & Biomolecular Engineering with UNL's College of Engineering. Without his chemistry know-how this project would have never been able to get off the ground. Dr. Flodman is also a product of public education in Nebraska as a graduate of Lakeview Public Schools!

This journey started in late March with a phone call from Jeff Carver at BASF. We discussed the shortage of hand sanitizer and how to encourage commercial production.

After conferring with Dr. Hunter Flodman, the Technical advisor, and Roger Berry of the Nebraska Ethanol Board we contacted the Governors office to begin figuring out a way to mass produce hand sanitizer as soon as possible, here in the state of Nebraska.

The decision was made to partner with the University of Nebraska at Lincoln at the Food Processing Center on Innovation Campus.

This began a whirlwind of procurement of raw materials, ingredients, processing equipment and containers. I called everyone I could think of who had supplies that could help.

Now, we had some barriers. We realized we could never pass Fire Marshal Code doing a project inside a university building, so we designed a "farmer style" mixing facility to go in a parking lot at campus, where a large tent was set up inside a secure fence.

Within a few days of that very first phone call, we were in production of UNL hand sanitizer.

In the early days, we did public distributions in hot spot communities and counties, such as South Sioux City, Grand Island, Hastings, Kearney, Lexington, among others. The idea was to get sanitizer to front line workers at businesses who had to be in contact with the public. Next, how do we get the sanitizer to the K-12 school systems? After contacting the ESUs we distributed in excess of 75,000 gals to the k-12 schools across Nebraska.

This is just a glimpse. In the end we produced in excess of hundreds of thousands of gallons of high quality hand sanitizer with a retail value of 20-30 million dollars all given away free of charge.

Without the help of my good friend and colleague, Dr. Hunter Flodman, this would have never been possible. There were many others who gave so much and did whatever was asked of them. This was a true effort of Nebraskans coming together to help Nebraska.



L TO R: JAN TENBENSEL & DR. HUNTER FLODMAN



NOTE TO SELF

You matter
 You're capable
 You're seen
 You're loved
 You're brave
 You're worthy
 You're enough
 You've got this

Twitter: wellness_mh

PURPOSE IS AN INCREDIBLE ALARM CLOCK

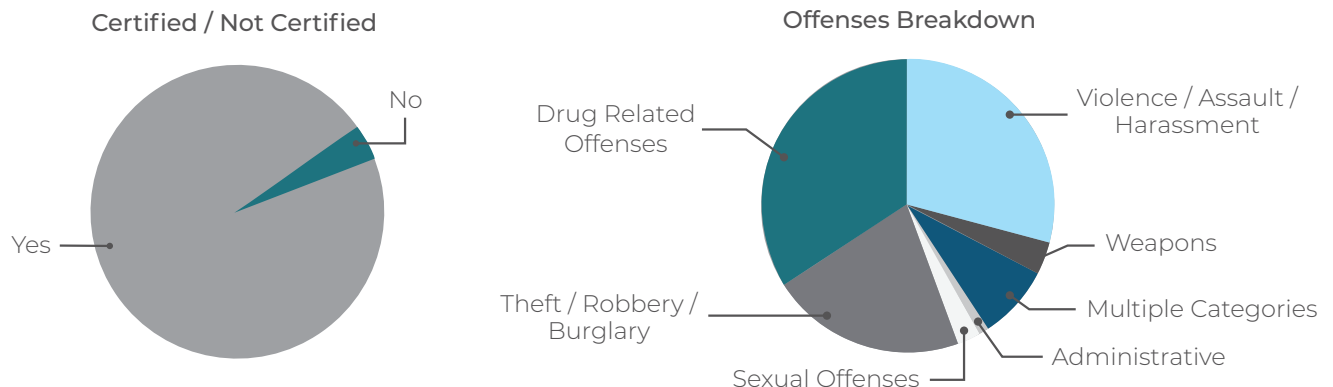
1. Say good morning to yourself first
2. Take five deep breaths first thing
3. Complete a simple task
4. Write down 1-3 things you're looking forward to today
5. Wake up five minutes earlier & stretch

Jen McNally, MA, LIMHP, CCTP-II Twitter: wellness_mh

ONE SOURCE CERTIFIED CONTRACTORS PROGRAM

A FREE program to hold contractors to a higher standard before allowing them access to your schools.

Here is a glance at last quarters One Source Certified Contractors report:



Protect your students, faculty and staff with our OSCC program.



SPARQ DATA
SOLUTIONS



TEACHER/ADMINISTRATOR NEGOTIATIONS MADE EASY

With negotiations in full swing, are you and your Negotiating team confident in your data that you will bring to the bargaining table? With Sparq Negotiations, you will be accessing the largest, most accurate compensation data storage application. Salaries are a top expenditure every year, so make the negotiations process clear and easy!

Our responsive and intuitive software provides the tools necessary to stay competitive, ahead of the game, and achieve successful negotiations. It gives you the resources and knowledge to gain a strategic advantage in all stages of the negotiation process by providing real-time, quick-change calculations comparing districts in your arrays, which saves you tremendous amounts of time in the process! Say goodbye to the days of manual calculation with this user-friendly platform. You will have the ability to run studies of any school in the state and see the comparisons and reports from other districts. This allows you and your board to work from more accurate data to settle negotiations fair and fast!

Contact today!



Darion Miller



800-422-4572



dmiller@sparqdata.com

... ALICAP & INSURANCE

ALICAP's Annual Membership Meeting which usually takes place on Wednesday at 4:00 PM while in Omaha for the State Education Conference, was canceled. However, ALICAP's team will be recording the meeting's presentation and posting it online at www.ALICAP.org by December 1st.

Watch for an email from ALICAP's director, Megan Boldt, for more details.

Thanks, Megan!

... MEMBER ENGAGEMENT

We missed seeing all of you in person at the 2020 State Education Conference! Our team worked hard to quickly shift the Conference from hybrid to 100% virtual. If you didn't have a chance to watch any sessions when they premiered, you can still view the content on demand through December 31. Registration will stay open until December 31 as well.

Looking forward to seeing many of you soon!

Sharon



... POLICY

Policy 402.15 Staff Conduct With Students was recently revised to meet the requirements of LB1080 passed in this year's Legislative session. We first created this policy about 15 years ago when several news making incidents of inappropriate behavior between school staff and students were reported across the nation. These events are traumatic not just to the victims and their families, but to the entire community. Unfortunately, these types of incidents are still going on and the Legislature has gotten more prescriptive about its expectations. A specific definition of grooming was included in the statute and is now in the policy. The new statute also prohibits teachers from engaging in a dating or romantic relationship with a student or former student within one year of the student's graduation or end of enrollment.

Contact Jim to learn more!



Paul Grieger
(800) 528-5145
pgrieger@dadco.com



Cody Wickham
(866) 809-5596
cwickham@dadco.com



Andy Forney
(866) 809-5443
aforney@dadco.com

Building a Better Future with Nebraska's Public Finance Partner

D.A. Davidson & Co. has long been a leader in innovative debt financing for school districts. What we're most proud of are the relationships we've nourished and the strong community improvements that are made as a result.

Our public finance professionals take a personal interest and a hands-on approach, carrying our deals from start to finish. Because you deserve solutions tailored to fit you.

- School Bond Issues
- Tax Anticipation / Construction Notes
- Lease-Purchase Financing
- QCPUF Bonds
- Refinancing Bond Issues



D | A | DAVIDSON

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dadavidson.com | D.A. Davidson & Co. member FINRA and SIPC

... SEARCH, STRENGTHS & AWARDS

EDUCATION LEADERSHIP SEARCH SERVICE

Contact Shari at sbecker@NASBonline.org for a proposal to facilitate a search for your next Superintendent/ESU Administrator. Applicants - contact Anne at asilknitter@NASBonline.org to hear about the new online application process and discuss openings.

Visit www.nasbsuptsearch.org to view current openings:

- Dundy County Stratton
- Humboldt-Table Rock-Steinauer (HTRS)
- Lyons-Decatur Northeast
- Pleasanton
- Ponca
- Wakefield

AWARDS OF ACHIEVEMENT

Contact Lisa at lsteinkuhler@NASBonline.org for questions on points.

GALLUP STRENGTHSFINDER

Gallup has 34 CliftonStrengths Themes. One of those is *Focus*.

Focus describes people who gain energy the closer they get to a task.

When you set goals, discipline yourself to include timelines and measurements. These will provide regular proof that you are indeed making progress. Is this theme in your top 5?

- Shari -

... ENERGY PURCHASING

Energy prices the last few months have been higher than seen previously but are expected to trend downward as we go through the winter months due to the very soft economy. This would be even more dramatic were it not for the huge shift to the use of natural gas in electricity production away from coal in the last few years. Natural gas is now the largest source of electricity generation in the U.S. This trend was predicted by our marketing consultants for NJUMP and CJUMP many years ago, and they are one of the primary reasons that our natural gas consortiums have continued to provide a great money-saving resource year after year for our member schools.

Contact Jim to learn more!

... TECHNOLOGY

Welcome New Sparq Subscribers
Gordon-Rushville Public Schools
City of Valley
Village of Kenesaw

We have exciting updates coming next weekend to Sparq Meetings. Watch for the newsletter for more information!

Darion - dmiller@NASBonline.org
Nicole - nkobus@NASBonline.org
www.sparqdata.com

... ADVOCACY & GOVERNMENT RELATIONS

The 2021 Legislative Session begins Wed, January 6th ... Look for the updated NASB Advocacy Handbook with all items approved by YOU at the Delegate Assembly posted online in the upcoming weeks!

Call Colby & Matt with any questions!
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... BOARD LEADERSHIP

Check out "At the Board Table" on Page 5 to see what the Board Leadership team is up to.

Join us for the New Board Member Workshops, beginning November 30!

- Module I starts November 30
- Module II starts December 7
- Module III starts January 4
- Module IV starts February 1

Marcia, Kori, Melissa & Karla

Board Notes is published on a monthly basis as a member service. Advertising is available in every issue. To advertise or become an Affiliate, please contact Matt Belka for further information. Articles or advertising contained herein do not necessarily represent the views or policies of NASB.

Nebraska Association of School Boards | 1311 Stockwell Street - Lincoln, NE 68502 | Matt Belka, Editor | John Spatz, Publisher

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Join NASB, as we travel the state for various workshops, meetings and events throughout the year.
To learn more, and register, visit the Events tab of www.NASBonline.org

<http://members.nasbonline.org/index.php/events>

To register for an NASB event, click on the 'My Membership' link, then navigate to the 'Events' dropdown and select 'Register'.
If you do not have an email and password to log in or have forgotten it, please contact NASB at 800-422-4572 for assistance.

NOVEMBER & DECEMBER 2020

2020 STATE EDUCATION CONFERENCE | ON DEMAND THROUGH DECEMBER 31

GROWING GREATNESS - REGISTRATION WILL STAY OPEN UNTIL DECEMBER 31.

<http://members.nasbonline.org/index.php/state-education-conference>



NEW BOARD MEMBER WORKSHOPS | MODULES BEGIN NOVEMBER 30 | 5:50 TO 8:30 PM CT

BOARD ROLE AND RESPONSIBILITIES - NOVEMBER 30/DECEMBER 1, 2 & 3

OPEN MEETINGS LAW/ADVOCACY - DECEMBER 7, 8, 9, & 10

AT THE BOARD TABLE - JANUARY 4, 5, 6 & 7, 2021

BOARD LEADERSHIP - FEBRUARY 1, 2, 3 & 4, 2021

<http://members.nasbonline.org/index.php/new-board-member-workshops>

(CHOOSE ONE EVENING FROM EACH MODULE TO ATTEND)

JANUARY 2021

FIRST DAY OF THE 2021 LEGISLATIVE SESSION | WEDNESDAY, JANUARY 6



Board Presidents: Check your inbox each month for the monthly 'NASB Update' to include in your meeting agenda.
Please contact mbelka@NASBonline.org with any questions, or if you are not receiving them.

Access NASB's Covid-19 Resources page at <http://members.nasbonline.org/index.php/news-resources/covid-19-resources>

YOUR NASB BOARD OF DIRECTORS & STAFF



YOUR NASB LEADERSHIP TEAM



Stacie Higgins
President
Nebraska City



Brad Wilkins
President-Elect
Ainsworth



Kim Burry
Vice President
Bayard



Steve Blocher
Past President
West Point

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Neal Kanel
HTRS



Region 2
Sarah Centineo
Bellevue



Regions 3, 6 & 7
Shavonna Holman
Omaha



Regions 3, 6 & 7
Tracy Casady
Omaha



Regions 3, 6 & 7
Nancy Kratky
Omaha



Regions 4 & 5
Bob Rauner
Lincoln



Regions 4 & 5
Kathy Danek
Lincoln



Region 8
Jay Irwin
Ralston



Region 9
Alan Moore
ESU 3



Region 10
Paul Brune
Heartland



Region 11
Jim Vlach
Lyons-Decatur Northeast



Region 12
Lisa Wagner
Central City



Region 13
Marilyn Bohn
Ravenna



Region 14
Sandy Noffsinger
Dundy County Stratton



Region 15
Barb Svoboda
Mullen



Region 16
Patti Gubbels
Norfolk



Region 17
Richard Dohma
Ponca



Region 18
Doug Keener
Mitchell



Region 19
Stacy Jolley
Millard

YOUR NASB STAFF



John Spatz
Executive Director



Makenzie Barry
Events Manager &
Accounting Associate



Craig Caples
Director of Technology



Karla Kruse
Board Leadership/ALICAP
Admin. Assistant



Kori Stanosheck
Board Leadership
Engagement Associate



Shari Becker
Director of Education
Leadership Search Service



Sharon Endorf
Director of
Member Engagement



Jim Luebbe
Director of Policy Services



Lisa Steinkuhler
Executive Admin. Assistant



Matt Belka
Director of Marketing,
Communications & Advocacy



Marcia Herring
Director of Board Leadership



Melissa Lusk
Board Leadership
Development Associate



Sallie Horkey Svatora
Chief Operating Officer



Colby Coash
Associate Executive Director/
Dir. of Government Relations



Megan Boldt
Associate Executive Director/
Director of ALICAP



Rachel Horstman
Business Manager



Anne Silknitter
Education Leadership Search
Service Associate



Vicki Walter-Winters
Legal Admin. Assistant



ACCOUNTING

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(CPA, Accounting)

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* GOLD LEVEL AFFILIATE

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Troy Keilig - keilig.t@cmbaarchitects.com
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* GOLD LEVEL AFFILIATE

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vschutte@dlrgroup.com - dlrgroup.com
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AWARDS & PLAQUES

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tmoravec@awardsunlimited.com
awardsunlimited.com
(Trophies, awards, plaques, etc.)

BUILDING CONTROLS/SERVICES

Control Management Inc.
Nathan Haug - 402-571-9454
nathan@cmiomaha.com - cmiomaha.com
(Building Automation, Security and Energy
Optimization for New and Existing Systems)

BUILDING CONTROLS/SERVICES

Johnson Controls
Jason Peck - 308-708-9479
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(HVAC, Building Automation, Service
Agreements, Security and Fire, among others)
* GOLD LEVEL AFFILIATE

CONSTRUCTION SERVICES

Ayars & Ayars, Inc.
Darl Naumann - 402-435-8600 - 402-570-9214
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(Design-build leader building beneficial
relationships, processes, and projects)
*GOLD LEVEL AFFILIATE

BD Construction
Marsha Wilkerson - 308-234-1836
mwilkerson@bdconstruction.com
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(Construction Mgmt at Risk and as Agent,
Facility Planning, Site Selection, Pre-bond
Community Ed., Stakeholder Engagement)
*GOLD LEVEL AFFILIATE

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Pre-Construction, Facility Evaluation,
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* Silver Level Affiliate

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* GOLD LEVEL AFFILIATE

ENERGY SERVICES

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Renewable Energy Solutions for Buildings)
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Optimized Systems
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* Silver Level Affiliate

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* GOLD LEVEL AFFILIATE

EQUIPMENT AND FURNITURE

Sheppard's Business Interiors
Ken Sigmon - 402-393-8888
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(Furniture, Space Planning, Asset Management)

FINANCIAL SERVICES

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Andy Forney - 402-392-7988
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dadavidson.com
(Bonds/Election Services, Lease Purchase)
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Matt Fisher - 308-380-3831 mfisher@fnni.com
fncapitalmarkets.com
(Public Finance, Election Guidance)
* GOLD LEVEL AFFILIATE

NASB AFFILIATES



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FINANCIAL SERVICES

First Nebraska Credit Union
Michele Byrnes - 402-492-9100
marketing@firstnebraska.org - firstnebraska.org
(Taking care of your financial needs!)

Nebraska Liquid Asset Fund - NLAF
Barry Ballou - 402-705-0350
balloub@pfm.com - NLAFpool.org
(Liquid Asset Fund, financing programs)
* GOLD LEVEL AFFILIATE

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(Lease Purchase, Construction Notes, Voted
Bonds, Refunding Bonds, QCPUF Bonds)
* GOLD LEVEL AFFILIATE

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(Financial Services, Banking)
* Silver Level Affiliate

FOOD SERVICE

Lunchtime Solutions
Deni Winter - 605-235-0939 Ext 106
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lunchtimesolutions.com
(Progressive Food Service Management)
* GOLD LEVEL AFFILIATE

Opaa! Food Management of Nebraska
Greg Frost - 816-210-9359
gfrost@opaafod.com - opaafod.com
(Contract Food Service Management)

INSURANCE SERVICES

Blue Cross Blue Shield of Nebraska
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(Group health insurance)
* GOLD LEVEL AFFILIATE

National Insurance Services
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(Group LTD, Life, Vision, Special Pay Plans, HRA's)

Public Risk Management
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Access Control, Storage)

MENTORING

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Hannah Miller - 319-610-8538
hannah@teammates.org - teammates.org
(Together we transform lives)
* GOLD LEVEL AFFILIATE

PLAYGROUND/SCOREBOARDS/SURFACING

Creative Sites, LLC
Julie Kutilek - 402-614-4606 - 800-266-1250
julie@creativesitesllc.com
(Playground equipment, Site furnishings)
* GOLD LEVEL AFFILIATE

Crouch Recreation
Eric Crouch - 402-496-2669
eric@crouchrec.com - crouchrec.com
(Playgrounds, Shelters, Scoreboards, Safety
Surfacing & Site Amenities Manufacturers Rep)
* GOLD LEVEL AFFILIATE

Fisher Tracks, Inc.
Jordan Fisher - 800-432-3191 - 515-432-3191
jfisher@fishertracks.com - fishertracks.com
(Installation, Refurbishment & Design Build of
All-Weather Running Tracks)

SAFETY & SECURITY SERVICES

One Source
The Background Check Company
Neal Josten - 402-933-9999 Ext 5600
njosten@onesourcebackground.com
onesourcebackground.com
(Employment, Volunteer, Contractor Screening)
* GOLD LEVEL AFFILIATE

TEACHING & LEARNING

Curriculum Leadership Institute
Emily Makelky - 620-794-1431
emily@cliweb.org
Stacey Bruton - 620-794-1431
stacey@cliweb.org - www.cliweb.org
(ALL students deserve the respect of high expectations!)
* GOLD LEVEL AFFILIATE

TECHNOLOGY CONSULTING

PRISM advisors
Jason Richards - 402-593-8911
jprichards@prism-advisors.com
prism-advisors.com
(PEOPLE, PROCESS & SYSTEMS. IT strategic
planning and project management)
* GOLD LEVEL AFFILIATE

TECHNOLOGY/SOFTWARE

Midwest Alarm Services
Mike Wells - 402-331-6111- 402-474-3737
Mike.Wells@mw-as.com
(Life Safety Systems provider)

Sparq Data Solutions
Craig Caples - 402-423-4951
ccaples@sparqdata.com - sparqdata.com
(Paperless Board Meetings, Staff Negotiations,
Public Document Management, Document
Imaging & Scanning)
* GOLD LEVEL AFFILIATE

THERAPY SERVICES

Central Nebraska Rehabilitation Services
Mary Walsh-Sterup
308-675-1853 ext. 3222
mary@cnrehab.com - cnrehab.com
(Providing PT, OT and Speech therapy
in the school system)

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NASB BOARD NOTES

A monthly publication from the Nebraska Association of School Boards



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IN THIS EDITION

GROWING GREATNESS, FROM THE COMFORTS OF HOME ...

THE ANNUAL PASSING OF THE GAVEL?

AT THE BOARD TABLE

ALICAP RECOGNIZES ITS ANNUAL AWARD WINNERS

GAZILLIONS OF GALLONS: PRODUCING HAND SANITIZER FOR SCHOOLS

LOOKING FOR MENTAL WELLNESS RESOURCES?

TEACHER/ADMINISTRATOR NEGOTIATIONS MADE EASY

TRAINING, NETWORKING, ENGAGEMENT & EVENTS

NASB AFFILIATES

... AND MUCH MORE!

AS WELL AS "THIS MONTH IN ..."

... ADVOCACY & GOVERNMENT RELATIONS

... ALICAP & INSURANCE

... BOARD LEADERSHIP

... ENERGY PURCHASING

... MEMBER ENGAGEMENT

... POLICY

... SEARCH, STRENGTHS & AWARDS

... TECHNOLOGY

NOVEMBER 2020

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Student / Staff Count 2020-2021 School Year

Elem. School	Grade																		Total *Student / Staff
	PS		KG		1		2		3		4		5		6				
	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud			
All Student Counts Are Actual SIMS Enrollment Figures																			
BLUM	2	17	2	37	2	39	3	49	2	52	2	51	3	46	2	48	19	322	
KW	2	16	2	32	1.5	17	1.5	29	1.5	25	1.5	36	1.5	25	1.5	30	11	194	
MEAD	2	20	2	34	2	40	2	38	2	43	2	41	2	35	2	45	14	276	
MOCK	1	12	3	59	2	43	3	52	3	50	2	48	2	49	2	43	17	344	
SEY	1	10	2	40	1.5	31	1.5	29	1.5	33	1.5	31	1.5	30	1.5	33	11	227	
WW	2	20	2	44	2	41	2	38	2	32	2	31	2	42	2	47	14	275	
Totals By Gr	10	95	13	246	11	211	13	235	12	235	11	238	12	227	11	246	86	1638	
*Does not include PS																			
Blum. & Sey. SPED staff & KW Hearing Impaired for K-6 is added to staff Total																			
Sec. School	7		8		9		10		11		12		TOTAL						
	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud	Staff	Stud					
RMS		252		244									0	496					
RHS						230		243		245		274	0	992					
Totals	Staff	*Stud	Ratio		*Stud 19-20		Change for 20-21												
BLUM	21	339	16/1		366		-27		*Includes PS										
KW	13	210	16/1		203		7												
MEAD	16	296	19/1		338		-42												
MOCK	18	356	20/1		383		-27												
SEY	12	237	20/1		253		-16												
WW	16	295	18/1		315		-20												
Totals	96	1733	18/1		1858		-125												
RMS	36	496	14/1		467		29												
RHS	70	992	14/1		917		75												
Sec. Total	106	1488	14/1		1384		104		Nov 19 2020										
Dist. Total	202	3221	16/1		3242		-21		11:42 AM										

Professional Boundaries and Appropriate Relationships Between Employees and Students

School district employees and student teachers or interns (“employees”) are responsible for conducting themselves professionally and for teaching and modeling high standards of behavior and civic values, both at and away from school. Employees are required to establish and maintain professional boundaries with students and must have appropriate relationships with students. They may be friendly with students, but they are the students’ teachers, not their friends, and they must take care to see that this line does not become blurred. This applies to employees’ conduct and interactions with students and to material they post on personal web sites and other social networking sites including, but not limited to, Instagram, Facebook, and Twitter. The posting or publication of messages or pictures or other images that diminish an employee’s professionalism or ability to maintain the respect of students and parents may impair his or her their ability to be an effective employee. Employees are expected to behave at all times in a manner supportive of the best interests of students.

Sexual Relationships Prohibited. Employees are prohibited from engaging in any relationship that involves sexual contact or sexual penetration with a student while the student is a current student and for a minimum of one year after the date of the student’s graduation or the date the student otherwise ceases enrollment. Sexual contact has the same meaning as in section 28-318, and sexual penetration has the same meaning as in section 28-318.

Grooming Prohibited. Employees are prohibited from engaging in grooming with students. Grooming means building trust with a student and individuals close to the student in an effort to gain access to and time alone with the student, with the ultimate goal of engaging in sexual contact or sexual penetration with the student, regardless of when in the student’s life the sexual contact or sexual penetration would take place.

Unless an employee can clearly and convincingly demonstrate has a legitimate educational purpose, grooming the following behaviors and related conduct that are is a violation of the professional boundaries that employees are expected to maintain with students. The following list is intended to illustrate inappropriate behavior involving students but not to describe every kind of prohibited behavior. this policy include, but are not limited to:

- Communicating about sex when the discussion is not required by a specific aspect of the curriculum.
- Joking about matters involving sex, using double entendre or making suggestive remarks of a sexual nature.

- Displaying sexually inappropriate material or objects.
- Making any sexual advance, whether written, verbal, or physical or engaging in any activity of a sexual or romantic nature.
- Kissing of any kind.
- Dating a student or a former student within one year of the student graduating or otherwise leaving the district.
- Intruding on a student's personal space (e.g. by touching unnecessarily, moving too close, staring at a portion of the student's body, or engaging in other behavior that makes the student uncomfortable).
- Initiating unwanted physical contact with a student.
- Communicating electronically (e.g. by e-mail, text messaging, through social media or instant messaging) on a matter that does not pertain to a school matter. ~~Electronic communications with students generally are to be sent simultaneously to multiple recipients and not just to one student except when the communication is clearly school related and inappropriate for persons other than the individual student to receive (i.e. grades). In these cases the students' parents should be included in the communications when possible.~~
- Playing favorites or permitting a specific student to engage in conduct that is not tolerated from other students.
- Discussing the employee's personal issues or problems that should normally be discussed with adults.
- Giving a student a gift of a personal nature.
- Giving a student a ride in the employee's vehicle without first obtaining the express permission of the student's parents or a school administrator.
- Taking a student on an outing without first obtaining the express permission of the student's parents or a school administrator.
- Inviting a student to the employee's residence without first obtaining the express permission of the student's parents and a school administrator.
- Going to a student's home when the student's parent or a proper chaperone is not present.
- Repeatedly seeking to be alone with a student.
- Being alone in a room with an individual student at school with the door closed.
- Any after-school hours activity with only one student.
- Any other behavior which exploits the special position of trust and authority between an employee and student.

This list is not exhaustive. Any behavior which exploits a student is unacceptable. If in doubt, ask yourself, "Would I be doing this if my family or colleagues were standing next to me?"

Communication Between Employees and Students. The preferred methods for employees to communicate with students are: in person, the use of district provided email and social media accounts, SeeSaw, and Google Suite. Employees may use the following personal communication systems to communicate with students: district provided email and social media accounts, SeeSaw, Google Suite, Remind, Blackboard, and other approved personal communication systems. A personal communication system is a device or software that provides for communication between two or more parties and is capable of receiving, displaying, or transmitting communication. Personal communication system includes, but is not limited to, a mobile or cellular telephone, an email service, or a social media platform.

Employee communications with students through a communication system generally are to be sent simultaneously to multiple recipients and not just to one student. The burden to demonstrate the appropriateness of a communication with a student only shall rest with the employee.

Reporting a Policy Violation. Anyone may report suspected grooming, other unacceptable employee conduct, or any violation of this policy as follows:

School District. Reports may be made to a principal, the superintendent, or the Title IX Coordinator in person, by mail, by telephone, or email.

Nebraska Department of Education. Reports may be made at: Nebraska Department of Education, Attn: Certification Investigations' Office, P.O. Box 94933, Lincoln NE 68509 or Nde.investigations@nebraska.gov.

Nebraska Department of Health and Human Services. Reports may be made by calling the Child Abuse and Neglect Hotline at (800) 652-1999.

Law Enforcement. Reports may be made to the local police department by calling (402) 331-1786, the county sheriff at (402) 444 - 6641, or the Nebraska State Patrol at (402) 331-3333.

An employee is required to make a report to a principal or the ~~their direct supervisor and/or~~ superintendent if the employee reasonably believes that another employee has violated or may have violated this policy. **Minor concerns or violations shall be reported with 24 hours.** Major concerns or violations shall be reported immediately. Violations committed by or concerns about the superintendent shall be reported to the President of the Ralston School Board.

A student who feels ~~his or her~~ **their** boundaries have been violated should **directly** inform the offender that the conduct or communication is offensive and must stop. If the student does not wish to communicate directly with the offender, or if direct

communication has been ineffective, the student should immediately report the conduct or communication to a teacher, administrator, counselor, the Title IX coordinator, or other school employee with whom she or he the student feels comfortable.

All reports made under this policy will remain confidential to the extent allowed by law.

Retaliation Prohibited. Retaliation for good faith reports or complaints made as a result of this policy is prohibited. Individuals who knowingly and intentionally make a false report shall be subject to discipline as provided by district policy and state law.

Policy Violations. Any A violation of this policy will form the basis for employee discipline up to and including termination or cancellation of employment, filing a report with Health and Human Services, filing a report with law enforcement officials, and filing a report with the Commissioner of Education. by an employee may result in disciplinary action up to and including dismissal from employment and/or referral to the Nebraska Department of Education, which may result in the suspension or revocation of the employee's certificate. Any violation involving sexual or other abuse will result in referral to the Nebraska Department of Health and Human Services, law enforcement, or both.

Policy Verification. Employees shall verify that they have received, reviewed, and understood this policy by signing an acknowledgment document indicating the same.

No Limits on Reports to NDE. Nothing in this policy shall be construed to limit any certificated employee's duty to report any known violation of the standards of professional practices (Title 92, Nebraska Administrative Code, Chapter 27, commonly known as Rule 27) adopted by the Nebraska Board of Education.

4043
Professional Boundaries and Appropriate Relationships
Between Employees and Students

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3001 Budget

The board of education shall adopt a budget each year to support the school district's programs and services for the ensuing fiscal year. The superintendent of schools, or their designee, shall be responsible for developing the budget subject to the direction and decisions of the board. The budget document shall be under continuous development, based upon the requirements of the adopted educational program.

Proposed Budget. The superintendent or their designee shall prepare the proposed budget in accordance with board policies and goals, state statutes, and regulations. As the district's spending plan, the budget will be based on up-to-date revenue estimates, and will reflect the assessed needs and programs approved by the board.

Budget Hearing Notice. Notice of place and time of the hearing, together with a summary of the proposed budget statement, must be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the school district. The four calendar days shall include the day of publication but not the day of hearing.

Budget Hearing. The board must conduct a hearing prior to adopting the budget. The hearing must be held separately from any regularly scheduled meeting and may not be limited by time. The board must make a presentation outlining key provisions of the proposed budget statement, including, but not limited to, a comparison with the prior year's budget. Any member of the public desiring to speak on the proposed budget statement shall be allowed to address the board at the hearing and must be given a reasonable amount of time to do so. Five minutes shall generally be considered a reasonable amount of time.

Budget Hearing Documents. The board must make at least three copies of the proposed budget statement and at least one copy of all other reproducible written material to be discussed at the hearing available to the public at the hearing.

Budget Adoption. After the budget hearing, the proposed budget statement shall be adopted or amended and adopted as amended. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of the changes (including

the items changed and the reasons for such changes) must be published in a newspaper of general circulation within the school district within twenty calendar days after its adoption without further hearing.

Certification and Filing. The amount to be received from personal and real property taxation shall be certified to the appropriate levying board as provided by law. The budget shall also be filed with the state auditor.

Purchase Authorization. Except for bids required under the section "Bid Letting and Contracts," the board's adoption of the budget shall authorize the purchases without further board action.

Monthly Report. At each monthly board meeting, the superintendent or their designee will provide a report on the current status of the major sections of the budget.

Adopted on: _____
Revised on: _____
Reviewed on: _____

3004.1

Fiscal Management for Purchasing and Procurement Using Federal Funds

I. Applicability of Policy

This policy applies only to non-construction related purchases undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control.

All other non-construction purchases will be governed by the Board's general purchasing policy, which can be found earlier in this subsection. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

This procurement policy shall govern all purchasing activities that relate to any aspect of the National School Lunch and Breakfast Programs. The district's goal is to fully implement all required procurement rules, regulations and policies set forth in 2 CFR 200, 7 CFR parts 210, 3016 and 3019, and by the Nebraska Department of Education.

II. Procurement System

The District maintains the following purchasing procedures.

A. Responsibility for Purchasing

The authority to make purchases shall be governed by the District's purchasing policy, which can be found elsewhere in this section. Except as otherwise provided in the District's purchasing policy, the acquisition of services, equipment, and supplies shall be centralized in the administration office under the supervision of the superintendent of schools, who shall be responsible for developing and administering the purchasing program of the school district. Purchases or commitments of district funds that are not authorized by this policy will be the responsibility of the person making the commitment.

B. Methods of Purchasing

The type of purchase procedures required depends on the cost of the item(s) being purchased.

1. Purchases up to \$10,000 (Micro-Purchases)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$10,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent district staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, the District distributes micro-purchases equitably among qualified suppliers. The District will follow its standard policy on purchasing, which can be found earlier in this subsection.

2. Purchases between \$10,000 and \$250,000 (Small Purchase Procedures)

Small purchases are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in the district's standard policies on purchasing and on bid letting and contracts, which can be found earlier in this subsection.

3. Purchases Over \$250,000

a) Sealed Bids (Formal Advertising)

For purchases over \$250,000, the district will generally follow the bidding process outlined in the board's policy on Bidding for Construction, Remodeling, Repair or Site Improvement.

b) Contract/Price Analysis

The District performs a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. The district will make an independent estimate of costs prior to receiving bids or proposals.

4. Noncompetitive Proposals (Sole Sourcing)

- a) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - 1) The item is available only from a single source;
 - 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
 - 4) After solicitation of a number of sources, competition is determined inadequate.
- b) Noncompetitive proposals may only be solicited with the approval of the superintendent or the board. Sufficient and appropriate documentation that justifies the sole sourcing decision must be maintained by the superintendent or designee.
- c) A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$250,000.

C. Use of Purchase (Debit & Credit) Cards

District use of purchase cards is subject to the policy on purchase cards which can be found elsewhere in this subsection.

D. Federal Procurement System Standards

The district's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

The District will maintain and follow general procurement standards consistent with 2 C.F.R. §200.318.

E. Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the District verifies that the vendor with whom the District intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

The District will verify debarment or suspension by revising the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The Superintendent or his/her designee shall be responsible for such verification.

F. Settlements of Issues Arising Out of Procurements

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

III. Conflict of Interest and Code of Conduct

A. Board and staff member conflicts of interest are governed by the district's conflict of interest policies.

B. Purchases covered by this policy are subject to the following additional provisions.

- 1.** Employees, officers, and agents engaged in the selection, award, and/or administration of district contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.

2. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

C. Favors and Gifts

The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except that this provision does not prohibit the receipt of unsolicited items of nominal value. For purposes of this policy, "nominal value" means a fair market value of \$25 or less.

D. Enforcement

Disciplinary Actions including, but not limited to, counseling, oral reprimand, written reprimand, suspensions without pay, or termination of employment, will be applied for violations of such standards by officers, employees, or agents of the District.

IV. Property Management Systems

A. Property Classifications

1. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the District for financial statement purposes, or \$5,000.
2. Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the District for financial statement purposes or \$5,000, regardless of the length of its useful life. 2 C.F.R. §200.94.

3. Computing Devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. 2 C.F.R. §200.20.
4. Capital Assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
 - b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). 2 C.F.R. §200.12.

B. Inventory Procedure

Newly purchased property shall be received and inspected by the staff member who ordered it to ensure that that it matches the purchase order, invoice, or contract and that it is in acceptable condition.

Equipment, Computing Devices, and Capital Assets must be tagged with an identification number, manufacturer, model, name of individual who tagged the item, and date tagged).

C. Inventory Records

For equipment, computing devices, and capital assets purchased with federal funds, the following information is maintained in the property management system:

1. Serial number;
2. District identification number;
3. Manufacturer;
4. Model;
5. Date tagged and individual who tagged it;
6. Source of funding for the property;
7. Who holds title;

8. Acquisition date and cost of the property;
9. Percentage of federal participation in the project costs for the federal award under which the property was acquired;
10. Location, use and condition of the property; and
11. Any ultimate disposition data including the date of disposal and sale price of the property.

The inventory list shall be adjusted by the superintendent of schools or his/her designee for property that is sold, lost, stolen, cannot be repaired, or that cannot be located.

D. Physical Inventory

1. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
2. The Superintendent or his/her designee will ensure that the physical inventory is performed. The physical inventory will generally occur during the months of June or July, but may be conducted during other time periods with the approval of the superintendent.

E. Maintenance

In accordance with 2 C.F.R. 313(d)(4), the District maintains adequate maintenance procedures to ensure that property is kept in good condition.

F. Lost or Stolen Items

The District maintains a control system that ensures adequate safeguards are in place to prevent loss, damage, or theft of the property.

G. Use of Equipment

Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the federal award, and the District will not encumber the property for any non-federal program use without prior approval of the federal awarding agency and the pass-through entity.

H. Disposal of Equipment

When it is determined that original or replacement equipment acquired

under a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Superintendent or his/her designee will contact the awarding agency (or pass-through for a state-administered grant) for disposition instructions.

If the item has a current FMV of \$5,000 or less, it may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.

V. Other Contract Matters.

A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

B. Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, the District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

C. Record Keeping

1. Record Retention

- a) The District maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The District also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These

records and accounts must be retained and made available for programmatic or financial audit.

- b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 10 (Local School Districts) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the District to maintain records regarding federal awards for a minimum of six (6) years. Consequently, the District shall retain records for a minimum of six (6) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.
- c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.

2. Maintenance of Procurement Records

- a) The District must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.
- b) Retention of procurement records shall be in accordance with applicable law and Board policy.

D. Privacy

The District has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

Adopted on: _____

Revised on: _____

Reviewed on: _____

Bill Review Schedule for 2020

January 13

Jay
Mary

February 10

Heather
Linda

March 9

Robin
Liz

April 13

Mary
Heather

May 11

Linda
Liz

June 8

Robin
Jay

July 13

Mary
Heather

August 10

Jay
Liz

September 14

Heather
Linda

October 12

Robin
Liz

November 9

Mary
Jay

December 14

Robin
Linda