



## NEW JERSEY STATE BAR ASSOCIATION

DOMENICK CARMAGNOLA, PRESIDENT  
Carmagnola & Ritardi, LLC  
60 Washington Street, Suite 300  
Morristown, NJ 07960-6859  
973-267-4445 • FAX: 973-267-4456  
dcarmagnola@cr-law.net

January 4, 2022

Dr. Angelica Allen-McMillan, Acting Commissioner  
New Jersey Department of Education  
P.O. Box 500  
Trenton, New Jersey 08625-0500

**Re: Request from New Jersey State Bar Association Regarding Clarification of Remote Instruction on an Individualized Student Basis**

Dear Commissioner Allen-McMillan:

I write on behalf of the members of the New Jersey State Bar Association and, in particular, its School Law Special Committee (Committee).

NJSBA members who represent both boards of education and parents/students have conveyed concerns regarding Governor Murphy's rescission of Executive Order 175, thereby ending virtual/remote learning as an educational program option. Chief among those concerns is that this development is being interpreted inconsistently, particularly regarding students who may require a reasonable accommodation under the Americans with Disabilities Act/Section 504. Because of that, the NJSBA urges the Department of Education (DOE) to issue a clarification or guidance with respect to the use of virtual/remote instruction by school districts for certain individual students while schools remain open for in-person instruction.

As you are aware, the guidance document issued by the DOE and the Department of Health, "The Road Forward," specifically provides that in cases where a local education agency (LEA) is required to exclude students as a result of exposure, quarantine, or experience of symptoms, "the LEA should be prepared to offer virtual or remote instruction to those students in a manner commensurate with in-person instruction to the extent possible." The Road Forward, at 13. A footnote in the section clarifies that "students with underlying health conditions that may make them more susceptible to or exacerbate the symptoms of COVID-19 may be eligible for home instruction per the process outlined at N.J.A.C. 6A:16-10.1 or as required by the student's IEP or 504 plan." Id., n. 2.

While some school districts are providing virtual/remote instruction to both students who are required to be excluded due to the aforementioned reasons, as well as students in need of an accommodation, other school districts are not. Those districts not providing the virtual/remote instruction option: (i) are claiming that DOE is prohibiting all forms of virtual/remote instruction; (ii) are providing virtual/remote instruction to excluded students but not as an accommodation; or (iii) are providing an observation/audit type of virtual/remote instruction and not allowing the remote student to participate. As such, the NJSBA is requesting guidance and clarification on these issues and circumstances from your office to ensure the students of our state are not only best served but treated properly under the law.

Thank you for your consideration of the above.

Respectfully submitted,

A handwritten signature in cursive script, reading "Domenick Carmagnola".

Domenick Carmagnola  
NJSBA President

cc: Jeralyn L. Lawrence, Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director