To: Elizabeth Becker  
From: Brown-Smith Attorneys at Law  
Re: COVID-19 Updates  
Date: March 21, 2020

This situation is constantly evolving, and new information is being made available each day. We are in communication with the Department of Elementary and Secondary Education (DESE), Department of Early Education and Care (EEC), Executive Office of Health and Human Services (EOHHS) and the Operational Services Division (OSD) and will make any new information we receive available to you as we receive it.

1. Reopening of Private Special Education Schools

We have been informed that a Private Special Education School may reopen the school at any time but must follow the guidelines for reopening which include calling the local board of health prior to the opening. Should a school decide to reopen, please consider the following before opening:

- If the Governor decides to order a shelter in place requirement, you may have opened only to close the school again.
- The Residential Education students and staff are more at risk for exposure when students that live in the community are attending school and in close proximity to the residential students and staff.
- Social distancing guidelines require maintaining a safe separation of at least 6 feet from others which may not be possible in your program.
- Governor Baker issued an order limiting gatherings to 25 people.
- President Trump issued an order of limiting gatherings to 10 people.

While we understand the importance and pressures that exists to reopen your programs, please strongly consider the implications.

2. School Day Requirement

On March 10th, Commissioner Riley announced that no schools will be required to be in session after June 30th. The longest that any Private Special Education School will be required to go is the date indicated on the school calendar as the last day of school plus the 5 snow days or the date indicated as the last day if it included the 5 snow days.

3. MCAS
DESE is exploring all options and is working with the Governor’s office to file legislation that would allow flexibility around this year’s testing requirements. To date, DESE has postponed both the Grade 10 ELA assessment scheduled for March 24-25 and the opening of the grades 3-8 ELA assessment window scheduled for March 30th. DESE will keep us informed on decisions related to the spring 2020 assessment schedule and the competency determination in the coming days.

MCAS-Alt portfolios do not need to be submitted by April 3rd, nor is it necessary to obtain a parent’s signature that they have reviewed the portfolio prior to submission. DESE will contact schools at a later date regarding a new submission deadline.

4. Tuition Payments for Out-of-District Programs and Circuit Breaker Reimbursement

We have requested that DESE and OSD release a joint advisory regarding tuition payments during the closure of Private Special Education programs due to COVID-19. DESE and OSD continue to work on the advisory with other state agencies. DESE and OSD were both informed that our intent is to submit their advisory with the March billing to ensure timely payments. Additionally, both DESE and OSD understand the importance of releasing this advisory in a timely manner as it relates to ensuring our programs remain viable. DESE released the following to the public-school districts:

Generally, “circuit breaker” provisions authorize reimbursement for IEP program costs during the period of a student’s temporary absence, provided the absence does not exceed 20 consecutive school days. See 603 CMR 10.07(5)-(11). In an effort to provide continuity for students and support to approved private or public day or residential special education schools during this time, DESE will consider and process requests for “circuit breaker” reimbursement for school districts for placements at residential and day special education schools for up to 20 days, even if the special education school is closed during that time.

Massachusetts General Law also allows local education agencies to pre-pay tuition from approved special education programs and tuition and services from educational collaboratives for up to three (3) months. These forms of pre-payment are also eligible for circuit breaker reimbursement. The Department is continuing to assess our guidance on this as the situation evolves.

We will provide you with any additional information we receive relating to the release of this advisory or any other tuition payment information.

5. Alternative remote Enrichment Activities

Although schools are suspending in-person educational operations, staff should be reaching out to students and families by phone, email and other means of communication. For example, counselors, special education teachers and related services providers may provide needed support to students remotely during the period of the extended school closure. DESE encourages schools to provide alternative remote enrichment activities for students during the period of school closure, where possible. When school resumes, the IEP team should review how the closure impacted the delivery of special education and related services to individual students and convene IEP team meetings as necessary in order to make an individualized determination as to whether a student needs “additional” services.
At this time, there is nothing approved for providing online learning to students. In the coming days, more information about this issue is likely to be released. We will update you with the information as we receive it.

6. IEP Team Meetings

While IEP teams are not required to meet in person while schools are closed, if possible, school districts could convene IEP Team meetings virtually using technologies such as Zoom or phone conferences. Districts must consider whether all IEP team members have access to necessary technology and accommodations to allow remote participation during the closure.

We understand that holding this meeting through virtual means may not be the most secure as it relates to confidentiality. However, it was suggested by DESE that members can openly address this issue and agree that this forum is acceptable to all parties and no one is participating who should not be. (IDK HOW TO ADDRESS THIS)

7. Alteration in Approved Ratios

Given the potential of an emergency situation resulting from COVID-19, we know that schools/residential programs may be in situations that require an alteration of their approved staffing ratios. Should this situation arise, there are important recommendations by state agencies provided below.

- If you are a Day Program and you are approved by DESE, they request that you make a school-based decision based on the safety of your students. It was requested that the program keep documentation of their decision-making process onsite, but that nothing needs to be submitted to DESE at this time. Included in the documentation should be information such as the dates of any meetings, staff involved, agenda topics, how, why and what decisions were made.

- We have been in discussions with EEC and expect there will be upcoming guidance on this issue. All changes to EEC ratios or other changes affecting programmatic operations that impacts licensing and EEC regulations should be put in writing immediately or as soon as practicable. We recommend that in your email you should explain your situation and how you are effectively managing the health and safety of your students or residents while not in your approved ratio. Your licensor may provide guidance as to your plan and work collaboratively with you to ensure the health and safety of your students/residents.

8. Contact at DPH for the State Epidemiologist for Technical Support

If you have a positive case, and/or are in a quarantine situation, the state has provided a few resources.

- There is a 24/7 Department of Public Health hotline: 2-1-1
- You can also reach 2-1-1 through a live chat option: www.mass211.org
- maaps has been provided the contact information for a DPH Epidemiologist that we can put you in touch with if you have a positive case. Contact Elizabeth Becker at ebecker@maaps.org