

FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES DURING SCHOOL CLOSURE CALLED FOR IN GOVERNOR SCOTT'S ORDER

AOE Continuity of Education Plan Guidance 2

Updated: March 17, 2020

Issued by the Vermont Agency of Education pursuant to the Governor's Directive of March 15, 2020



Background

This guidance is issued pursuant to Governor Scott's directive to Vermont's public supervisory unions and school districts (SU/SDs) and independent schools. This directive requires Vermont schools to dismiss by end of day on March 17, 2020 will last through April 6, 2020 -- but may very well be extended for a longer period.

Governor Scott's directive will task local districts with three key components to support the State response:

- Food and special needs services for children;
- Collaborating with the state to provide childcare options for healthcare workers and others essential to the response; and
- Systems for ensuring maintenance of education during the initial dismissal; and a continuing education plan if schools are dismissed for an extended period.

To prepare for the potential for an extended dismissal, each district must have a Continuity of Education Plan that includes:

- Meal service for those who need it;
- Services for children with disabilities and special needs;
- Working with the state to provide district-based options that meet the childcare needs of healthcare workers and other Vermonters essential to the response (EMS, Fire, LEO, National Guard personnel, etc.);

Under the Governor's directive, schools will remain operational for administrators, teachers and staff to sustain essential services and to plan and implement continuity of education. The Vermont Department of Health has provided "social distancing" guidance that districts should use to ensure a healthy workplace.

Impacts of Governor Scott's Order for School Closure Period, March 18 – April 6

During this period of school closure ordered by the Governor, students are not to report to school and school employees are directed to report to work. Staff members may be required to report to work or to work remotely, depending on the needs of the district and the guidance of public health officials. During this closure period, regular educational services do not continue, and students are not expected to make educational progress. Other services, such as child care for essential public safety and healthcare workers, will be supported by the district's staff.

If it becomes necessary to extend this closure period beyond April 6, districts may also be asked to provide more formal educational services to students. All educational services, to the extent possible, would then be offered to all students through various remote and virtual means.

In order to support Local Education Agencies (LEAs) in their requirements to provide a Free Appropriate Public Education (FAPE) during the closure period, this document will clarify the potential impact of school dismissal or closure on Vermont's students with disabilities.

As of March 16, 2020, the Office of Special Education Programs of the U.S. Department of Education (OSEP) is working on guidance related to flexibility in timelines and funding allowability questions. The Agency of Education (AOE) will respond to these questions as soon as OSEP provides this guidance to state directors. This document is initial guidance and does not answer the full range of questions that special education directors will have about topics such as evaluations, annual IEP meetings and service delivery. The Agency will issue a frequently asked questions document later this week that will address these questions in detail.

What considerations apply to the provision of a free appropriate public education (FAPE) to students with disabilities in the school closure period from March 18 until April 6?

During the closure period, because schools are closed and there are no academic or extracurricular services offered to general education students, then there are no services required for students with disabilities. Once school resumes, each LEA must provide FAPE to students with disabilities in accordance with each student's IEP. The IEP team will be required to make an individualized determination as to whether compensatory services are needed.

During the closure period, a district may supply parents and students with supplemental enrichment materials to prevent learning loss and to support parents in keeping students engaged. However, any such materials must be made accessible for students with disabilities (e.g., the district must not utilize online-only learning if all students do not have internet connections, translated materials must be provided, accommodations should be made for students who are vision or hearing impaired). These enrichment materials should remain optional for parents to use. The district should not assess students or input grades based on the optional materials.

How can an LEA provide a free appropriate public education (FAPE) to students with disabilities if remote education is provided to students?

If a district moves to remote education in which it continues to provide educational opportunities to the general student population, the LEA must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP. The LEA must also maintain its obligation to provide students with disabilities with equal access to the same opportunities as their peers without disabilities. There is no defined or correct delivery method that will equitably meet the needs of all students. LEAs need to be flexible and consider employing a variety of delivery options. Services, as always, must be individualized. IEP Teams need to decide what, how and when services and supports are provided. Decisions must be made on a case-by-case basis.

When educational services are offered, LEAs must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's Individualized Education Program (IEP) developed under the

Individuals with Disabilities Education Act (IDEA). A student's current IEP accommodations and modifications must be considered. For example – if everyone gets paper packets (general education and special education) then the LEA must ensure that students with disabilities have the necessary accommodations and modifications to access the information contained in those packets. This includes scenarios such as: a student requires assistive technology, a scribe, adult support, graphic organizers and modified content.

As the OSERS (OSEP) guidance the Agency shared last week outlined, services can be provided online, virtually, through instructional telephone calls, and other curriculum-base instructional activities.

Once schools reopen, the IEP team is required to make an individualized determination as to whether compensatory services are needed. Further guidance will be forthcoming on this topic.

What flexibilities or alternate measures might be afforded to LEAs in light of the COVID-19 outbreak?

The Agency of Education does not have authority to grant waivers from federal special education requirements. Only the U.S. Department of Education may loosen or change requirements under IDEA.

Last week the Director of OSEP, Laurie VanderPloeg participated in a [Joint NASDE/CASE/CCSSO Webinar on COVID-19 Guidance for Students with Disabilities](#) which is available online. While we await guidance from OSEP, it is useful to review the Director's comments that seem most relevant to the questions the Agency has been receiving:

- *"What we're really hoping that you guys do is look at some really good alternative ways of meeting the needs in that FAPE offer in order to reduce the need for the compensatory services and that we can ensure [students'] needs are being met at this point in time..."*
- *"...what we'd like to advise you to consider is when school resumes ... take into consideration if there was a significant loss of services to the student during that period of time and whether or not, on an individual basis, the compensatory services need to be considered."*

Further, the Director stated that OSEP is considering the "potential unintended consequences of disruptions to timelines, funding implications, and the potential flexibilities around reporting requirements." As always, the Agency will keep you posted if and when we receive the anticipated guidance from OSEP.

Additional Resources

For the most up to date information related to COVID-19 in Vermont please refer to the [Vermont Department of Health Website](#).

For current OSEP guidance please see "[Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#)".