

Questions and Answers on Addressing the Needs of Students with Disabilities During School Closure due to a Novel Coronavirus Outbreak Volume 2

Purpose

This guidance provides responses to questions from Local Education Agencies (LEAs) with respect to the COVID19 pandemic. The AOE Special Education Team aims to provide weekly updates to Frequently Asked Questions from the field. Special Education Technical Assistance is available 24 hours/day through the general email and voicemail system. These methods of communication are monitored regularly during business hours and a response is generally provided within 1-2 business days: AOE.SpecialEd@vermont.gov or (802) 828-1256.

Amendments to IEPs

Question: In lieu of a formal IEP amendment, can teams choose to reflect the services/supports/accommodations in a Continuation of Learning for Special Education Plan and attach that plan to the IEP, rather than amend the service page?

Answer: The LEA, with parental agreement, may amend an IEP by creating a separate written document outlining the changes to the IEP, including but not limited to educational placement, mode of delivery of services, frequency, duration and service provider. The LEA is not required to redraft the entire IEP. However, upon the request of a parent, the LEA will be required to incorporate the amendments into a revised IEP. For more information, please refer to [Memo IDEA Requirements for Educational Placement and Amendments to IEPs in the Context of COVID19](#) dated March 27, 2020.

Changes to Educational Placement

Question: When reviewing IEPs, how will we address change of placement and educational environment?

Answer: A change of educational placement occurs when there is a change to the special education and related services provided to a student and is unrelated to the specific site or location of the educational placement. The educational placement

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refers to what kinds of special education and related services an LEA is providing to a student as opposed to where the LEA is providing those services. For more information, please refer to [Memo IDEA Requirements for Educational Placement and Amendments to IEPs in the Context of COVID19](#) dated March 27, 2020.

Timelines During and After School Closure

Question: Are we in a school closure or dismissal situation?

Answer: As stated in AOE Continuity of Education Plan-Guidance 2 of March 17, 2020, we are currently in a period of **closure**, during which “regular educational services do not continue, and students are not expected to make educational progress”. Furthermore, pursuant to [Addendum 6](#) to the Gubernatorial Directive, issued on March 24, 2020, additional time has been provided for districts to make the switch from closure to remote learning. School districts must begin providing remote learning on or before April 13, 2020. Beginning April 13, 2020 all Vermont schools will be transitioned to remote learning for the remainder of the 2019-2020 school year as specified in [Transition to Continuity of Learning](#). Please see the description of timelines for the amendments located here and review the guidance on Continuity of Learning.

Question: Does school closure and maintenance of learning packets sent home effect total number of school days?

Answer: The Agency has issued guidance regarding school calendar [requirements](#). The days between the initial March 18, 2020, closure and the first day of remote learning may be exempted from the 175-day requirement by the Secretary. A decision will be made later in the school year when more information about the spread of COVID-19 is known.

Question: What is the timeline for districts to get IEP amendments and other paperwork completed?

Answer: If general education is being provided for longer than ten (10) days, an IEP amendment will need to take place to reflect change in placement for students with disabilities (see Amendments to IEPs section on page 1). The [Guidance on the Governor’s Directive to Prepare for Transition to Continuity of Learning](#) issued on 03/27/2020 states: Continuity of Learning (COL) means districts will be required to provide education services and related supports to all of their students remotely so that student learning and academic progress is achieved as if schools had remained open. Districts are required to make the transition to COL on or before Monday, April 13, 2020. What this means for students with disabilities is that *to ensure FAPE all paperwork must be completed within ten (10) days of the district implementation of continuity of learning but not later than April 23, 2020.*

Initial and Re-Evaluations

Question: What should districts do about delayed initial evaluations and new eligibility determinations?

Answer: According to 34 C.F.R. § 300.301(c), an initial evaluation must be conducted within 60 days of receiving parental consent under IDEA, or within the state-established timeline. SBE Rule 2362.2.1(c)(2) discusses using a review of existing data as the sole basis for the initial evaluation and if this data exists, a record review could be used to make an eligibility determination. In addition, SBE Rule 2362.2.1(d) states if the completion of the initial evaluation will be delayed for a period exceeding 60 days, the parent shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to a parent before the expiration of the 60-day period. Examples of language that can be used in the event an initial evaluation delay needs to be documented can be found in a previous Q&A [document](#) issued by AOE on March 20, 2020.

Question: What should districts do about initial IEPs?

Answer: Once the evaluation is completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)). SBE Rule 2363.1 states that an IEP shall be (a) developed within thirty (30) days of an initial determination that the child is eligible for special education and related services; (c) in effect before special education and related services are provided to the child; (d) in effect at the beginning of each school year, unless the child has been determined to be eligible within 30 days prior to the first day of school; and (e) implemented as soon as possible following the IEP meeting. If an initial IEP is developed during the remainder of the 2019-2020 school year, the requirements for services, accommodations, and modifications should be what is needed in the current Continuity of Learning environment. The IEP should then be reviewed and revised once school resumes for school year 2020-2021.

Question: What do we do for re-evaluation of a 6-year old previously eligible for special education services under the category of developmental delay?

Answer: Students can be considered eligible for special education services under the category of developmental delay if they are ages 3 through 9 (34 CFR 300.8(b)). VT has chosen to define DD criteria for children birth up to age 6. However, if a child's IEP category is DD when they turn 6 that remains in place until their re-eval comes due and category is changes at that point. The team may determine to conduct a record review in lieu of new evaluation and keep the same eligibility criteria as long as the student is evaluated based upon age appropriate criteria as soon as reasonably possible upon return to a normal school learning environment. Documentation of the team's decision, and a schedule for the evaluation under

school age criteria, should be included in the student's continuity of learning plan and/or documented on Form 8.

Question: What do we do for re-evaluation during the remainder of the 2019-2020 school year?

Answer: Teams are not required to meet in person while schools are closed. If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents. For additional information, please see the following guidance documents: [USDOE - OCR Fact Sheet](#) issued 03/16/2020 and [USDOE Supplemental Fact Sheet](#) issued March 21, 2020, and in a previous Q&A [document](#) issued by AOE on March 19, 2020.

Electronic Signatures

Question: How do we get parent signatures on required forms?

Answer: Parents may use any e-signature software, or documentation of their agreement may be an email attached to the paperwork. You can also send documents to a parent via email and have them sign and use cell phone to take a picture and send back to LEA via email. In the case of no internet service, document date/time and who provided verbal agreement in the telephone conversation in which parent agreement was obtained. Follow up the conversation with a memorandum for record or a Form 7 (prior written notice) to the parent by regular U.S. mail.

Question: How do we provide signatures for IDEA Grant Amendments?

Answer: In order to facilitate the execution of 'paper' amendments, LEAs will be allowed to sign, scan, and email the signature page of the amendment to AOE.SDE@vermont.gov. The LEA will still need to mail the original copy to the AOE finance department, but the AOE will accept the email as executed so the LEA can start to obligate the funds. Please see [Agency of Education COVID-19-Related Financial Guidance](#) issued March 30, 2020.

Service Delivery

Question: Would provision of online small group instruction be a violation of FERPA/HIPPA rules?

Answer: The Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) announced, effective immediately, that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations

against health care providers that serve patients through everyday communications technologies, like FaceTime and Skype, during the COVID-19 nationwide public health emergency. The Notification of Enforcement Discretion on telehealth and remote communications may be found at: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergencypreparedness/index.html>.

Online group instruction is not a violation of FERPA. U.S. Department of Education March 2020 - Student Privacy Policy Office [Webinar](#) on FERPA and Virtual Learning during the COVID-19 Emergency addresses FERPA concerns regarding online learning. The Webinar can be found at <https://studentprivacy.ed.gov/>.

Question: How do we provide services to students with the most significant disabilities?

Answer: Service delivery information has been provided previously in the following AOE documents: [Special Education During School Closure – AOE Continuity of Education Plan Guidance 2.1](#) issued March 21, 2020, and [Free and Appropriate Public Education for Students with Disabilities During School Closure – AOE Continuity of Education Plan Guidance 2](#) issued March 17, 2020.

Question: If we have outside contractors who are willing to continue serving students should we do that?

Answer: If the service can be provided using social distancing recommendations, then it should be provided (virtual or phone). Any in-person service is subject to the Vermont Dept of Health and the CDC recommendations. This applies to all related services.

Question: If a student is nearing 22 years of age and is unable to receive transition services in the IEP, will they be able to stay in school beyond their 22nd birthday to receive compensatory services?

Answer: Guidance on transition services is forthcoming.

Finance and Allowable Costs

For all special education finance questions please see [Agency of Education COVID-19-Related Financial Guidance](#) issued March 30, 2020. You may also contact Brad James directly at Brad.James@vermont.gov for additional questions related to special education reimbursement of either state or federal funds.

Staffing Concerns

Question: How can we use paraprofessionals?

Answer: Considerations on Utilizing Paraprofessionals during Distant Learning from the AOE is forthcoming.

Question: Are contracted mental health BIs allowed in homes to work with students?

Answer: The Department of Mental Health, in coordination with the Department of Vermont Health (DMH) Access ((DVHA) recently changed some of their restrictions on service delivery. The changes in place during the COVID-19 school closure period include:

- Behavioral Interventionist Program services may be provided through telehealth or phone with the student and/or family for service planning and coordination and community supports.
- School-based Clinician services may be provided through telehealth or phone with the student and/or family for service planning and coordination, community supports, and individual and family therapy.

Employees of designated mental health agencies are among those identified as Essential Persons, but their home-based services prioritize the delivery of “essential” services, defined as services that assure the health and safety of a person. Programs have been advised to suspend all non-essential home-based services if alternative remote delivery methods such as the ones listed above are not available.

Question: What are our responsibilities concerning childcare?

Answer: Additional guidance is forthcoming. Please refer to the Child Care for Essential Persons Information section on the AOE [COVID-19 Guidance for Vermont Schools](#) website for the latest.

Educational Surrogates

Question: How do districts and EI providers get an educational surrogate assigned, or get contact information for and educational surrogate?

Answer: A request for this information may be submitted by contacting our Educational Surrogate Coordinator by email AOE.SpecialEd@vermont.gov or by leaving a voicemail message at (802) 828-1256. These are both monitored regularly during business hours and a response is generally provided within one (1) business day. Intake forms and additional information can be found on the [Educational Surrogate Parent Program](#) website.

Partnerships and Resources

Question: Is the AOE working with other states and organizations in providing special educators with support and guidance?

Answer: The AOE is fully aware of great resources and webinars being produced by other states and national technical assistance centers. The State Director of Special Education is in communication with CASE President, Erin Maguire and other national organizations including OSEP, NASDSE, NCSI, CADRE, CIFR, IDC and ECTA. Additionally, school system administrators can review resources included in a previous Q&A [document](#) issued by AOE on March 20, 2020.

Question: I am a school nurse and I am curious about the required hearing and vision tests to be done annually for students in schools? I have started and completed some, not all. I am concerned now with lack of time to finish all required screenings. Not sure if this has been discussed at all?

Answer: Thank you for wanting to comply with typical school requirements. Schools are providing education through distance learning, care coordination, social emotional support and food security through digital communications and other means by school nurses, teachers, guidance, and support personnel. The focus during the COVID-19 pandemic is on saving lives of the vulnerable and the healthcare workers. We are in this for the long term. SNs make the ideal COVID-19 expert, identifying and collaborating with the school team to meet the social emotional and physical health needs of those most at risk. Care coordination for those with health needs is a priority. Stay tuned for more guidance for VTs school nurses and continue practicing self-health care, social distancing and everyday wash and cover hygiene measures. From Sharonlee Trefry sharonlee.trefry@vermont.gov

Question: What is our responsibility for EST supports?

Answer: Unlike special education and section 504, there is no entitlement to supports or services through the Educational Support Team (16 V.S.A. § s2902(d)). For students who currently have EST plans, it is recommended but not required that schools attempt to continue supports. It is anticipated that there will be further guidance as to how districts may use their ESTs to support students who experience challenges.

Question: Is there going to be a common form for Continuity of Learning Plans?

Answer: Yes. Please see [Continuity of Learning Plan Template](#) to be completed by district administration teams.