

## Question and Answers on Addressing the Needs of Students with Disabilities During School Closure due to a Novel Coronavirus Outbreak

### Purpose

The Vermont Agency of Education (AOE) responded to some initial inquiries raised by members of the Vermont Council of Special Education Administrators (VCSEA) and developed this document as a step in supporting Supervisory Unions and Districts in addressing the needs of students with disabilities during school closures caused by COVID-19.

Additionally, we recommend that school system administrators review the following resources:

- USDoE: [Department releases COVID-19, IDEA-related Q-and-A](#) (3/12/20)
- OSEP: [Recorded ZOOM call with Laurie Vanderploeg, Director of OSEP](#) (3/13/20)
- CASE: [Considerations for Special Education Administrators](#) (3/13/20)
- AOE: [COVID-19 Guidance for Vermont Schools](#)
- USDoE: [U.S. Department of Education Releases Webinar, Fact Sheet for Protecting Students' Civil Rights During COVID-19 Response](#)

### Framing Statement: Delivery of FAPE in School Closure

When a district or school is closed and *not* in session *and* educational services are *not* provided to *any* student, school districts *are not obligated* to provide free appropriate public education (FAPE) through specially designed instruction and related services to students with disabilities ages 3 through 21. During the period of March 18 - April 6, 2020, schools are in an initial period of closure. This is subject to change if districts are providing remote educational services after April 6, 2020.

If a school provides educational opportunities to the general student population through remote educational services after April 6, 2020, then 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 service delivery options. Services, as always, must be individualized. IEP Teams need to decide what, how often, when and where services and supports are provided. Decisions must be individualized per student's educational need, involve the student's parent or guardian and made on a case-by-case basis.

For additional guidance on the provision of FAPE during a school dismissal, please consult the AOE guidance document: [Initial Guidance: Free Appropriate Public Education for Students with Disabilities During School Dismissal due to a Novel Coronavirus Outbreak](#)

## Questions from the Field

1. We know that if we are unexpectedly out of school, timelines for special education continue to move forward. We are also aware we are awaiting further direction from OSEP on this topic.

a. How will we be handling IEP meeting date requirements and evaluations?

- i. If schools are providing educational services, then IEP and evaluation meeting date requirements continue as normal. This may become necessary if it is necessary to keep schools either closed or dismissed beyond April 6, so LEAs should begin planning for these needs now. For meetings, LEAs must be able to accommodate both staff and families when choosing other means – phone conferences, zoom meetings, etc. Part of accommodating families is recognizing that not all families will have the ability to participate remotely. In the event that specific team members cannot participate, the family may sign the waiver of team member participation (Form 5a).

b. Will COVID-19 be an acceptable reason for an INITIAL evaluation delay?

- a. Yes. However, “COVID-19” is not an acceptable reason without detailing the specifics of the situation – it must be an individualized determination. LEAs must complete the evaluation delay form stating the specific reason for not being able to complete the evaluation. Examples: social distancing required by staff health, student availability, vulnerability of a family member, or school closure.
- b. For REEVALUATIONS – the team can agree to either use existing data (record review) and determine that the student will continue to be eligible; or the team will utilize virtual and electronic formats to complete the reevaluation. Should this not be possible, the team should consider using a Form 8 (Agreement between parents and districts to not hold an evaluation meeting) outlining a plan for re-evaluation when school resumes.
- c. Please refer to Evaluation Rules and Requirements Rule 2362.2.1(d) and 34 CFR 300.301 Initial Evaluations – Each public agency must conduct a full and individual initial evaluation, in accordance with before the initial provision of special education and related services to a child with a disability under this part.; 34 CFR 300.303-311: Re-Evaluations: A public

agency must ensure that a reevaluation of a child with a disability is conducted.

**c. Will we be expected to hold annual meetings during this time?**

- a. Yes. To the greatest extent possible. Case managers and special education directors should communicate with parents as soon as possible if they are willing to amend IEPs to respond to the current educational changes via telephone, or other communication methods that do not require an in-person meeting. If a parent insists on a formal IEP team meeting, then the LEA will need to comply (this can be a virtual or telephone meeting).
- b. If it is not feasible to hold an annual meeting, in an alternative format, the LEA must provide Prior Written Notice (Form 7) of its plan to hold the meeting as soon as possible when school resumes.

**2. Many school districts around the nation are instituting online learning environments.**

**a. If there is online learning, would we be required to reconsider FAPE in the context of online learning through IEP meetings for every student?**

- i. The AOE recommends staying focused on what is best for students. This will include exploring possibilities of distance learning based on individual circumstances as outlined under question 2. If a child or a family cannot access distance learning to make progress on IEP goals, it is likely that an analysis of the regression post-pandemic will be necessary to determine what compensatory services need to be delivered to address the lack of access available while in social isolation. All services delivered during distance learning should be monitored for progress and the impact of the change in environment on progress should be monitored. If a student loses skills that cannot be recouped in a reasonable amount of time after the pandemic, compensatory services may be necessary. OSEP has been clear that FAPE requirements continue to exist if distance learning is implemented for all students.

**b. What if education from a distance cannot take place or is an inappropriate method for very young children with disabilities?**

- a. If a student is not able to access/receive, or an LEA is not able to provide, an educational program (via virtual or electronic means) then the LEA must provide an alternative means of delivery. This may mean a student

receives an adapted paper packet of intervention/instructional materials and activities. Intervention/instructional materials and activities must be modified appropriate to meet each student's individual educational needs. The LEA must ensure that each student with disabilities has the necessary accommodations and modifications to access the materials and activities in their intervention/instructional packet. This may include, but is not limited to, a student requiring assistive technology, visual supports/organizers and modified content. If accommodations, modifications and lack of internet access lead to the student being unable to access any learning opportunity the IEP team is required to make an individualized determination as to whether compensatory services and extended ESY services are needed.

- c. How does the AOE recommend we consider deciding services in that new environment for special education? Are there specific considerations we should be thinking about?**
- a. If a service can be provided virtually, it should be provided virtually.
  - b. All services delivered during distance learning, should
    1. be monitored for progress;
    2. the impact of the change in environment on progress should also be monitored – which will inform the need for compensatory services once school resumes; and
    3. current services should be analyzed for what is provided in the IEP for a student to access the school building, the classrooms, and non-academic activities (i.e., paraeducator or behavior interventionist supports.) The team should determine whether those levels of support continue to be required when accessing instructional materials including e-learning environments or other methods of delivery for instruction to students, particularly those with intensive needs or requiring behavioral, therapeutic, and personal care supports.
- d. Will we be subject to special education rules under IDEA when changing the location or timing of services under these emergency types of circumstances? Is school closure a change in placement?**
- i. Yes. The changing of location and timing of services must be documented in an amendment to the IEP. This amendment can be done with the

agreement of the parent without a formal IEP meeting using Form 5B. If an agreement is not reached with the parents then the team conduct an IEP team meeting (via phone or virtual means).

- ii. Regarding change in placement decisions-- if the exclusion is a temporary emergency measure (generally 10 consecutive school days or fewer), the provision of services such as instructional telephone calls, homework packets, internet-based lessons and other available distance-based learning approaches is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term exclusions, an LEA must consider placement decisions under the IDEA's procedural protections of 34 CFR §§ 300.115 – 300.116 regarding the continuum of alternative placements and the determination of placements. Under 34 CFR § 300.116, a change in placement must be made by a group of persons, including the parents and others knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR § 300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520
- iii. If a student with a disability is diagnosed with COVID-19 and is absent for an extended period of time (longer than 10 days), the LEA would need to provide a prior written notice of the LEA decision, for change of placement. This is covered under state and federal regulations for homebound instruction due to a medical condition.

**3. For students who require services to access materials provided from the general education teachers, what if materials are optional for families?**

- a. This is a matter of nondiscrimination. If a school district only provides access to worksheets and websites and are not requiring children to access them, special educators must complete a review of those activities and worksheets, determine what accommodations and modifications are necessary for students with disabilities. Special educators will offer those accommodations and modifications to families related to what has been offered by the district to all children.

- b. LEAs must ensure to the greatest extent possible, that each student with a disability can be provided the special education and related services identified in the student's IEP developed under 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, graphic organizers, and modified content.
- 4. Upon return to the general educational program/reopening of schools, should we be measuring regression to consider services needed to resolve regression that is challenging to recoup similar to the way we might consider ESY with summer breaks? If so, clear guidelines would be helpful.**
- a. All services delivered during distance learning, should
    - i. be monitored for progress; and
    - ii. the impact of the change in environment on progress should also be monitored – which will inform the need for compensatory services once school resumes.
- 5. If we have outside contractors who are willing to continue serving students if the schools close, should we do that? Some contracted providers are offering and some are not.**
- a. It depends. If the service can be provided using social distancing recommendations, then it should be provided (virtual or phone).
  - b. Any in-person service is subject to the Vermont Dept of Health and the CDC recommendations.
  - c. This also applies to ALL related services.
- 6. What ways would it be appropriate to engage parents as providers of supports and services with support from special educators to address the needs of their children at home? Would that be an appropriate service model to meet the needs during an online learning timeframe?**
- a. Parents are not legally responsible or required to educate their child unless they are enrolled in a home study program.
  - b. If a parent wants to/requests to support their child during a school closure/dismissal situation, they are free to do so.

- 7. How should we think about evaluation requests under Child Find if we are closed? Specific recommendations would be helpful. This may also require OSEP guidance.**
- a. Proceed with the request as you normally would, acknowledging to the parent that the evaluation process may be extended due to the unavailability of the evaluators and/or the child. Any assessment that can reasonably be conducted virtually should be.
  - b. Any delays in the assessment or evaluation should be documented on and provide details specifics to the situation – it must be an individualized determination. LEAs must complete the evaluation delay form 4 stating the specific reason for not being able to complete the evaluation. Examples: social distancing required by staff health, student availability, vulnerability of a family member, or school closure.
- 8. What is the process and standard for determining compensatory services after students return?**
- a. The determination to provide compensatory educational services as a result of the ordered school-building closure needs to be made on an individual or case-by-case basis after the ordered school-building closure ends. IEP teams should review student data to determine if critical skills will be or have been lost during the period in which the district has been closed.

See forthcoming COMPENSATORY SERVICE REVIEW Guidance document from AOE Special Education TA/PD Team. Districts will be notified when it is finalized.

- 9. If an independent school closes for a different amount of time than their sending public schools, will the AOE suspend any rules that would impact reimbursement for continuing to pay for unused days, beyond 10 days?**
- a. Per Governor's order, independent schools must close from March 18 - April 6, 2020.
- 10. Online Learning: Can direct instruction be moved from in-person learning environments to an e-learning environments, using tools like Zoom, google hangouts and google classroom?**
- a. Any changes to the service delivery must be communicated to the parents on Form 5b if parent consents to changes. In the absence of parental agreement, the LEA must provide Prior Written Notice (Form 7) of its plan to change any service

delivery, including behavior supports and e-learning environments, but you do not have to change the service page of the actual IEP at this time.

OSEP has recommended LEAs and parents agree to add “contingency plans” to a student’s IEP in the event the school closure is extended. (Example: “We will provide Student with specialized education at home using Google Classroom, Zoom, telephone instruction, or other means. Student’s progress will be monitored during this time and when school resumes, we will provide compensatory services as required and determined by the IEP team.”

**11. Allocation of Special Education Funding: Can we expect delays?**

- a. The AOE does not anticipate any process delays with budget amendments for the current school year nor do we anticipate any delays in the allocation funding for next school year. We will notify districts as soon as possible should circumstances change.

**12. Dispute Resolution Options – Have these changed?**

- a. Parents and LEAs will continue to have access to dispute resolution options for Vermont students including Mediation, Administrative Complaint, and Due Process Hearings. These should be submitted via email to [AOE.MediationDPInfo@vermont.gov](mailto:AOE.MediationDPInfo@vermont.gov) or [Clare.Oshaughnessy@vermont.gov](mailto:Clare.Oshaughnessy@vermont.gov) in an effort to maintain the social distancing protocols established by the CDC and Vermont Department of Health.

The AOE is working on supporting documentation, guidance, and tools to support districts during this time and beyond. Please watch for communication in the near future, and do not hesitate to reach out to Jacqui Kelleher with questions and ongoing concerns by emailing [Jacqui.kelleher@vermont.gov](mailto:Jacqui.kelleher@vermont.gov).