

MEMORANDUM

TO: State Board of Education
FROM: Chris Case, Director, Student Support Services
Jacqui Kelleher, State Director of Special Education
SUBJECT: Response to Concerns Raised by Kate LaRose
DATE: September 1, 2022

At the last meeting of the State Board of Education, Kate LaRose, a Vermont community member, raised some concerns during the Public Comment item of the agenda. This memo was crafted to respond to those concerns and to clarify some of the inaccuracies of the claims made during the meeting.

There were some concerns raised about the legality of Agency of Education (AOE) actions during the pandemic, in terms of how our actions squared with federal guidance. The AOE's pandemic guidance was driven by language that was provided by the federal Department of Education and Office of Special Education Programs (OSEP), and often specifically referred to federal language when discussing what that would mean for the state. We also frequently worked with our federal partners as a part of developing guidance for the field. Additionally, in 2022, OSEP created a checklist of documents that they asked each state to provide as a part of assessing state performance during SY20-21 and into the Fall of 2022. Based on this checklist, we shared our state guidance documents with the federal government as required. We have not yet received feedback on our submission but are confident that our COVID-related guidance reflects a baseline of federal expectations.

We also repeatedly reflected federal requirements when communicating with the field. Dr. Jacqui Kelleher, our State Director of Special Education, regularly referred to OSEP guidance in her bi-weekly informal technical assistance calls with special education directors. In our formal and informal communications, one point that we made repeatedly was that Local Education Agencies' (LEAs') Free Appropriate Public Education (FAPE) obligation did not go away or get put on hold during the pandemic. Any LEA denying a student FAPE due a lack of resources would have been acting against state and federal regulations and would not have been supported in those actions by the AOE.

Heading into SY22-23, we are about to launch a targeted round of monitoring that will review all LEAs' performance against AOE and federal requirements regarding the provision of FAPE during SY20-22. We expect to identify and address instances of individual and systemic non-compliance as a part of this review process, and to use it as another opportunity to drive the point that pausing or stopping LEAs' FAPE obligation at any time is not allowable. If any child was denied FAPE during the pandemic, this may be one way for us to identify and address the student specific or systemic issues involved.

For students who are severely immunocompromised and who are also on Individual Education Programs (IEPs) or 504 plans, we would expect that those plans would describe, and drive supports, in concert with the health plans for those students that were designed by school health staff. We also expect that health plans would be in place for severely immunocompromised students who were not on IEPs or 504 plans. And our understanding from the special education perspective is that if a parent or another member of the IEP (or section 504 plan, if appropriate) team believes that prevention strategies are needed to provide FAPE to the student, the IEP and/or 504 team must consider whether, and to what extent, such measures are necessary, based on student-specific information, which may include medical or health records, diagnostic or other information. This may also involve a health plan working with the school nurse. Ultimately, these decisions would need to be made by and written into an IEP or 504 Plan if the team deems this precaution necessary. For families who have questions about masking and immunocompromised students, our guidance would be to call an IEP meeting and present documentation that the child's condition necessitates an accommodation/modification such as wearing a mask, and the extent to which the condition requires others around the student to mask as well. We would also encourage parents to contact the Special Education Technical Assistance line to discuss the specifics of their situations in more detail.

Related to the issue of masking: US ED Secretary Cardona issued [a letter in March 2022](#) that addresses this topic. The AOE shared the letter with the field when it was issued and reinforced the federal messaging in subsequent AOE communications.

Finally, there were some inaccuracies that were represented about Vermont's federal special education determinations and determinations status that we want to respond to. Vermont's letter and supporting materials from OSEP were posted on July 27, 2022, within the 120-day requirement, in contrast to what was represented to the State Board. Vermont's determinations status was also misrepresented as being in Needs Intervention; for the past two determinations cycles, we have been in [Needs Assistance status](#) (which represents an improvement over Needs Intervention).