

## FAQ: Clarification of Assessing COVID-19 Impact Guidance

On Sept. 9, 2020, the Agency of Education (AOE) issued guidance titled [Assessing COVID-19 Impact for Eligible Students With Disabilities](#). This document focused on expectations and approaches for assessing the impact of COVID-19 on students who are eligible for IEP supports, as a part of ensuring the continued provision of FAPE during SY 2020-21 and beyond.

Subsequent to that document's release, the AOE received numerous questions from Vermont educators, parents and families, and other stakeholders about how to interpret and apply the guidance, along with additional questions about COVID-19 impact that the AOE hadn't yet addressed.

This FAQ is designed to be a companion to the September 9 guidance, and aims to answer some of the questions that that document did not address, or which reflect a need for additional clarification.

### Frequently Asked Questions

#### **Q1: Who can families reach out to for questions and support requests, as IEPs are being reviewed for possible revision?**

The AOE and local school systems are entering the IEP review and revision process knowing that it will be complicated, that it may take time to navigate, and that it may lead to questions from parents and families. Parents and families with questions about their child's IEP review and revisions should begin by communicating with their point of contact within their child's school-level IEP team. If they have additional questions or concerns about the IEP review process, they should contact their supervisory union or district's Special Education Director. If their Special Education Director is unable to answer or address their concern, parents and families are encouraged to contact the Agency of Education's Special Education TA Line at (802) 828-1256, or [AOE.SpecialEd@vermont.gov](mailto:AOE.SpecialEd@vermont.gov).

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#### **Q2. How do schools and IEP teams assess the impact of COVID-19, in light of the Supreme Court's decision in *Andrew F. v. Douglas County School District*?**

The AOE has received many questions about the factors that should contribute to a decision about the impact of COVID-19 on a student and resulting supports. More specifically, many educators and families have raised concerns that a lack of progress towards annual goals, or a lack of expected progress in the general curriculum, may be the only factors considered in determining the need for a revised IEP.

### Contact Information:

If you have questions about this document or would like additional information please contact: Jacqui Kelleher, State Director of Special Education, Student Support Services Division, at [jacqui.kelleher@vermont.gov](mailto:jacqui.kelleher@vermont.gov)

The answer to this needs to be framed, in part, by the Supreme Court's March 22, 2017 decision in [Andrew F. v. Douglas County School District](#). In its decision, the Supreme Court emphasized the importance of taking an individualized approach to making a determination about each student's IEP content:

A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*[i]ndividualized* education program." §§ 1401(29), (14) (emphasis added). An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and *potential for growth*. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv). (*Emphasis in original.*)

While it is true that COVID-19 impacted all schools and all students, experiences varied widely from student to student. For students with disabilities, IEP teams must do what they have always done and consider the unique needs of the child on an individual basis. The IEP "*requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.*" ([Andrew F.](#)) The student's experience during the Continuity of Learning phase is only one circumstance of many to be considered by the IEP team. That full list of circumstances should include:

- (i) Progress or lack of progress toward the annual goals;
- (ii) A lack of expected progress in the general curriculum, if appropriate;
- (iii) The results of any re-evaluation;
- (iv) Information about the child provided to or by the parents;
- (v) The child's anticipated needs; or
- (vi) Other matters, which should include any locally-identified data relevant to making a determination about a child's IEP reviews and revisions.

It is important to emphasize that considerations involved in a review process should not be limited to the first two circumstances on the list above. It is also important to emphasize, as the decision in [Andrew F.](#) did, the individualized nature of making determinations about student need, and the importance of the sixth circumstance—locally-identified "other matters"—in taking a comprehensive and well-rounded approach to these conversations.

As conditions continue to change throughout the country, some of the special education and related services included in a child's IEP may need to be provided in a different manner; however, all children with disabilities must continue to receive FAPE and must have "the chance to meet challenging objectives." Therefore, IEP Teams should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.

**Q3. How can a student’s special education program be expected to make-up for the reduction in instructional time and service provision during the SY19-20 Continuity of Learning period?**

The federal Office of Special Education Programs (OSEP) has reminded State Education Agencies (SEAs) and Local Education Agencies (LEAs) that no matter what primary instructional delivery approach is chosen, SEAs, LEAs and IEP Teams remain responsible for ensuring that FAPE is provided to all children with disabilities. If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

Some of the AOE’s most frequently received requests for clarification are around how schools and families should approach conversations about the loss of instructional time and the loss of service delivery in SY19-20 as they approach SY20-21. In the AOE’s Sept. 9, 2020, [COVID-19 impact guidance](#), we state that the provision of remote learning for a student receiving IEP services does not automatically equate to a loss of FAPE. Conversely, if a student received no specialized remote services reflecting IEP-designated accommodations and modifications, it is likely that the student did not receive FAPE in that time.

Special education’s purpose is to provide access to the general education curriculum. A student may not have made progress towards annual IEP goals due to insufficient quantity or quality of core academic instruction. So, when an IEP is being reviewed, a remedy does not necessarily equate to “making up” a 1:1 amount of lost instructional time in the general curriculum, or lost service delivery; if a student missed a month of service delivery during the Continuity of Learning period, they are not automatically entitled to a month of additional in-person services.

Instead, a school should meet the student where they are in terms of skill development, and determine appropriately ambitious, individualized, annual goals for the student in the context of the general education environment of the school as it currently exists. As a part of helping a student to meet their goals, schools should ensure meaningful and appropriate access to structures outside of special education through supports, accommodations and modifications to the student’s educational program. Teams will consider all of a student’s unique circumstances when determining an appropriate educational program. Teams are encouraged to be creative in their program-planning and decision-making, with the ultimate goal of meeting the student’s needs and documenting changes to services and supports within an IEP to ensure the provision of FAPE.

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**Q4. How long should educators wait to revise an IEP, and to begin to work towards closing the gaps caused by COVID-19 impact, when the student’s regression seems obvious to all involved?**

In the AOE’s Sept. 9, 2020, [COVID-19 impact guidance](#), the AOE stated that schools may need time to adequately assess COVID-19 impact, and it might take schools up to a year to collect the

data necessary to make an adequate determination as to if an IEP needs to be revised and what those revisions should look like.

At the same time, there is no reason for a school to take an entire year to begin that work when regression is measurable early on. The AOE's guidance was meant to frame the issue around identification of needs (individually) and subsequent IEP revisions, not to place every student's review process on a one-year timeline. Some teams will require more additional data and some teams will require less additional data for decision-making. Teams should ultimately make determinations about student needs when the data to inform them is available, whenever that falls within the 20-21 school year or following summer.

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#### **Q5. How should schools and LEAs be engaging parents in the review and revision of their child's IEP?**

Shared decision-making and parent membership on the IEP team are two of the original guiding principles of IDEA. Parents are entitled to be members of the team that develops, reviews, and revises the individualized education program (IEP) for their child. §300.321(a)(1)

If neither parent can attend the IEP meeting, the school must use other methods to ensure their participation, including individual or conference calls. §300.322(c)

Effective parental engagement needs to be a part of a collaborative partnership between parents and the school system and allows the IEP team to operate as a cohesive unit. When having a conversation about COVID-19 impact, the AOE is recommending that a collaborative model include:

- **Prior parent consultation:** In the case of assessing learning loss and regression, it is critical for the family to weigh in on what occurred at home during school closure and Continuity of Learning. Schools should ask for parents' ideas directly, rather than simply telling them to feel free to contribute.
- **Transparency in documentation and communication:** An IEP Meeting Agenda should forecast what will be discussed about the student, and meeting notes should capture what was discussed and information on student progress. As always, IEP teams should discuss which goals and objectives have been mastered and which goals need to be revised, but now these discussions should also include the context of the disruption in educational programming and service delivery. Student progress must be documented quarterly on the IEP, and must be based on the criteria indicated in the IEP's learning goals.
- **Parental involvement in problem-solving:** The IEP Team should collaborate with parents on how to address and consider creative approaches to address a child's individual and unique needs. Parents have an important perspective to bring to the discussion and can inform solutions to questions ranging from the appropriateness of summer and afterschool supports, to placement decisions, to the identification of modifications and accommodations. Parents should have access to materials and information in advance so they can better contribute to the decision-making process.

- **Quality and not quantity of involvement:** The IEP Team should work with the parents to set realistic parent participation goals. Parents are not teachers; the parent engagement goal for LEAs should be quality and not quantity of involvement. Effective documentation and school-to-parent communication can help facilitate parent understanding and engagement outside of meetings, and can both reduce and maximize the time that parents spend on direct participation.

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#### **Q6. Can schools use Distance Learning Plans (DLPs) as Individualized Education Programs (IEPs) this year?**

The AOE recognizes that districts developed Distance Learning Plans (DLPs) during school closure and positioned themselves for implementation during Maintenance of Learning and then Continuity of Learning phases. These were plans that described strategies for ensuring supports, accommodations, consultation and services so that students could access academic materials and make continued progress with IEP Goals/Objectives from a distance.

During the Continuity of Learning phase, the AOE allowed districts to 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 was not required to redraft the entire IEP. While the AOE did not specify the DLP as the document to satisfy these requirements, through technical assistance, districts were told the DLP is a type of document which would suffice, as long as it met specifications listed in the [March 27, 2020 memo](#) describing requirements for IEP amendment, including parent consent. In this phase, the IEP served as the primary document; the DLP satisfied the amendment requirement and was only considered to be a temporary solution towards reducing the paperwork burden. It was never intended to replace the legally binding IEP.

There should be no confusion between the IEP and a DLP. The DLP was a planning tool that varied in design across districts and served a purpose during Continuity of Learning. Entering into SY20-21, the focus became directed toward the re-entry of schools, and the AOE requested that districts discontinue the use of DLPs, ensure that IEPs are in place with amendments, and complete a Form 5 for Fall 2020.

While districts can utilize DLPs for planning purposes and should archive these documents if used in place of redrafting the entire IEP, it is no longer best practice to have a separate document outside of the IEP for IEP changes, and, now that schools have opened, the DLP may not be used in this manner. Rather than continuing with a separate document (i.e. DLP), districts must incorporate contingency plans within their IEPs for changes to delivery methodologies (remote, hybrid, in-person). IEP revisions must be based on a student-specific determination that is made by that student's IEP team, based on reliable data, which may take a full marking period or up to 12 weeks to ascertain.