

Implementing IEP and 504 Plans in Early Childhood Special Education During In-Person, Hybrid and Remote Learning

Purpose

This document articulates the AOE's expectations for the continued implementation of IEPs, under IDEA, and 504 plans, under the Americans with Disabilities Act (ADA), for children with disabilities who are 3 to 6 years old, during in-person, hybrid, and remote learning.

Requirements for Implementing IEP and 504 Plans

Preschool-aged students—students who are 3, 4 and 5 years of age-- with special health and educational needs will likely experience challenges during COVID-19 to a greater extent than their non-disabled peers. Under the federal [Individuals with Disabilities Act \(IDEA\)](#) and [Vermont State Special Education Regulations](#), students with disabilities are entitled to special education and related services, such as accommodations and modifications to instruction, speech-language services, occupational therapy (OT), physical therapy (PT) and counseling. Considerations of flexibility in environment, education and service delivery are paramount in providing a free and appropriate public education (FAPE).

Preschool-aged students eligible for ECSE and those with special health and educational needs are general education students first. Guidance and policies related to COVID-19 contingency plans apply to all students, including students with special needs who qualify for individual education programs under the IDEA, and accommodation plans for eligible students under [Section 504 of the Rehabilitation Act](#). If students with disabilities are unable to access their education as designed, then the SU/SD [must ensure individualized and/or alternative means of delivering instruction](#) and related services based upon student need, present levels of functioning, developmental levels and student/family input.

Alternative means may include in-person, hybrid and/or remote learning instruction. SU/SDs 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 family, and be made on a case-by-case basis.

Alternate Service Delivery and Teleintervention During Remote and Hybrid Learning

As SU/SDs respond to evolving conditions related to COVID-19 implications, they should be mindful of federal and state requirements to ensure that all students are able to study and learn in an environment that is safe and free from discrimination. Ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act

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(Section 504), and Title II of the Americans with Disabilities Act by not preventing any SU/SD from offering educational programs through distance instruction is paramount.

During a period of hybrid or remote learning, some educators may feel reluctant to provide any distance instruction or teleintervention) because they believe that federal disability law presents insurmountable barriers to remote education. The Office of Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) have clarified this “serious misunderstanding” as “simply not true.” Schools should not opt to close or decline to provide distance instruction or services, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make informed local decisions that take into consideration the health, safety, and well-being of all their students and staff. ([United States Department of Education, March 21, 2020](#))

In order for SU/SDs to ensure FAPE for each and every student, they must consider alternative service delivery for students with disabilities that meet and address each and every student’s individual needs. The US Department of Education’s [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) (03/21/20; Spanish version also available) addresses this as follows:

The Department does not want to stand in the way of good faith efforts to educate students on-line... To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction. School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, Office of Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically. The Department understands that, during this national emergency schools may not be able to provide all services in the same manner they are typically provided.

Consistent with guidance from the United States Department of Education, SU/SDs must continue to meet their obligations to students with disabilities to the greatest extent possible. Programming decisions should be based on student needs and not simply based on a student’s disability category. However, the nature and/or severity of a student’s needs may require unique considerations. Protocols should consider the student’s developmental level and skills. SU/SD staff should demonstrate flexibility within these guidelines to implement early childhood special education services, while following federal and state rules as well as [Vermont Department of Health](#) public health guidance including hand washing, physical distancing, cleaning/sanitizing, and masks when developmentally appropriate. The curated resources and

useful references below may support problem solving and decision making in the provision of early childhood special education services for each and every child.

Resources for Specialized Instruction and Provision of Services

- Council of Chief State School Officers (CCSSO)
 - [Restart & Recovery: Considerations for Teaching & Learning resource aims to help districts make decisions about operations, instruction, and social-emotional learning while delivering on their promise to ensure an excellent, equitable education for all students.](#)
- Early Childhood Technical Assistance Center (ECTA)
 - [Remote Service Delivery and Distance Learning](#) (Updated Sept. 14, 2020) is a compilation of information for state's early intervention Part C and early childhood special education IDEA Part B Section 619 programs– including technology and privacy, reimbursement, provider and educator use of technology, family resources, state guidance and resources, and research.
- Harvard University: Center on the Developing Child
 - [A Guide to COVID-19 and Early Childhood Development](#) pulls together information on COVID-19, what it means for child development, and easy-to-share resources that can help parents and caregivers, as well as child care providers, pediatricians, and others who work with families.
- National Center for Deaf Blindness
 - [Resources for Providing Technical Assistance During the COVID-19 Pandemic – Distance Learning for Proficient Communicators](#) page contains resources on how to provide instruction to students with deaf-blindness during the pandemic. It specifically focuses on students who are proficient communicators.
- U.S. Department of Education
 - [Q&A on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 20, 2020) outlines states' responsibilities to infants, toddlers, and children with disabilities and their families, and to the staff serving these children.
 - [Letter to Education Leaders on Preventing and Addressing Potential Discrimination Associated With COVID-19](#), (March 4, 2020) discusses the importance of Educational institutions taking special care to ensure that all students are able to study and learn in an environment that is healthy, safe, and free from bias or discrimination. Discrimination can take many forms, ranging from verbal abuse to physical attacks based on race, ancestry, or misunderstandings about cultural traditions. As education leaders working within our respective communities, we must ensure that harassment based on race or ethnicity is not tolerated.
 - [Providing Services to English Learners During the COVID-19 Outbreak](#), (May 18, 2020) fact sheet outlines States' responsibilities to English learners (ELs) and their parents during the extended school closures and, in some cases, the move to remote learning due to the national emergency caused by the novel Coronavirus disease 2019 (COVID-19).

- [FERPA & Virtual Learning During Covid-19](#) (March 30, 2020) webinar gives a detailed overview of FERPA and learning virtually during a health crisis.
- Vermont Agency of Education
 - [Assessing COVID-19 Impact for Eligible Students with Disabilities as a Requirement of FAPE](#) (Revised Sept. 9, 2020) guidance clarifies differences in supports for students with disabilities due to extended periods of remote learning resulting from Vermont’s response to COVID-19. This document is an update to guidance originally issued on July 28, 2020; it has been revised for clarity, and to incorporate new information developed in response to questions from Vermont educators.
 - [Special Education FAQ: Clarification of Assessing COVID-19 Impact Guidance](#): Clarification of the Sept. 9, 2020, COVID-19 Impact guidance provided above. Includes information of the use of IEPs versus Distance Learning Plans (DLPs), and recommended family engagement strategies.