

FAQ: Addressing the Needs of Students with Disabilities During School Closure due to a Novel Coronavirus Outbreak

Revised: June 5, 2020

Purpose

This FAQ document answers recent questions from Local Education Agencies (LEAs) with respect to the COVID-19 pandemic. 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.

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 to support 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 Build Community](#)

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Contact Information:

If you have questions about this document or would like additional information, please contact: Jacqui Kelleher, AOE Special Education Team, Division of Student Support Services, Jacqui.kelleher@vermont.gov.

Delivery of FAPE During Remote Learning

The Vermont Agency of Education (AOE) Special Education Team aims to provide periodic updates to questions from the field. The below list of questions and answers reflects responses to inquiries received from weekly Special Education Director calls and inquiries made of AOE staff during Regional meetings. This is non-regulatory guidance for meeting the needs of students with disabilities as of June 5, 2020.

Amendments to IEPs

Question: Will we be expected to hold annual meetings during this time?

Answer: 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. Communicate via telephone or other communication methods that do not require an in-person meeting. If a parent requests a formal IEP team meeting, then the LEA will need to comply (this can be a virtual or telephone meeting). 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.

Question: How should we handle IEP meeting date requirements and evaluations?

Answer: During Continuity of Learning, schools are providing educational services and IEP and evaluation meeting date requirements continue as normal. 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).

Question: In lieu of a formal IEP amendment, can teams choose to reflect the services/supports/accommodations in a Distance Learning 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, and for convenience, this written documentation can be included in a Distance Learning Plan, outlining the changes to the IEP, including but not limited to educational placement, mode of delivery of services, frequency, duration and service provider. There is no particular format for documenting changes to the IEP only that the agreement be documented in writing with proof of parental consent. 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 COVID-19](#) dated March 27, 2020.

Question: How will services be provided during this time? Will there be exceptions for students with the most significant needs? Some students (especially those with intense specialized needs) need individualized assistance. They have 1:1 paraprofessionals or behavior interventionists assigned to them at school. Parents/childcare providers can't be expected to provide everything those students need. Parents are dealing with a lot of competing pressures right now.

Answer: The Vermont Agency of Education (AOE) is sensitive to the economic and emotional stress this pandemic is having on families. To alleviate some of those stressors, the AOE has been working collaboratively with the Department of Mental Health and others to ensure that mental health supports to students and families remain in place. All Vermont schools are acting in accordance with Governor Scott's [directive to remain dismissed](#) for in-person instruction for the remainder of the 2019-2020 school year unless otherwise ordered. As such, Local Education Agencies and families have made amendments to students' IEPs to adjust to home as the new (and temporary) educational environment. Schools have also developed Continuity of Learning plans that include a wide array of creative strategies to meet the needs of students in this context. This plan includes elements relating to communication, structures for student success, instruction and feedback, and ensuring accessibility (including the provision of FAPE).

Once the school year is over, in-person instruction and services are allowed in summer programming as long as they conform to public health guidance. This also applies to independent schools.

Question: Should all IEP service pages be revised to reflect what is actually happening with remote learning, along with Form 5b? I've heard the Distance Learning Plan and Form 5b is the only thing that needs to be completed and given to parents, is this correct?

Answer: In accordance with 34 C.F.R. §300.324(a)(4), the LEA and the parent may agree not to hold an IEP Team meeting for the purpose of making changes to an IEP and may instead develop a written document to amend or modify the child's current IEP. See Answer above. Further, 34 C.F.R. §300.324(a)(6) provides changes to an IEP may be made by amending the IEP rather than by redrafting the entire IEP. AOE interprets these two regulatory provisions to mean that 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. Please see additional guidance in [Memo: IDEA Requirements for Educational Placement and Amendments to IEPs in the Context of COVID-19.](#)

Question: Are schools going to be held accountable for compensatory education when the services written into students' IEPs can't all be delivered as originally written? Doesn't Form 5b and the student's Distance Learning Plan indicate the parent's agreement as to what can and will be delivered amid this unexpected health crisis? Compensatory education is typically awarded when a student fails to gain educational benefit because there is a denial of FAPE. This is a global pandemic, which is no one's fault. And *all* students are likely to not make the educational gains that they would have otherwise.

Answer: Previous guidance regarding compensatory services was issued on pages 9 and 10 in [Special Education During School Closure Due to a Novel Coronavirus Outbreak.](#) We are still looking to the Office of Special Education Programs for further guidance on this pressing issue. In the meantime, it is in your best interest to maintain careful documentation of each student's levels of functioning prior to school closure and since then. It will also be important to document all of the services offered and/or declined during the Continuity of Learning phase. We do not expect that students will be making the same gains they would have without the situation with which we are currently faced. This will likely be true for students with and without disabilities. What is expected from schools now is to act with good faith in providing the agreed-upon services to the greatest extent possible. See: [Memo: Initial Considerations for Compensatory Education and Extended School Year Services](#), released on May 8, 2020.

Question: I am concerned my students with hearing loss will not be getting services. Who do I contact?

Answer: Nine East Network is providing services to students who are deaf and hard of hearing. In order to begin this process, please reach out to your school, who will coordinate with Nine East Network. If there are still concerns after reaching out to Nine East Network, please contact [Katy Langevin](#) at the AOE.

Question: Special Education Administrators have been advising staff to hold the annual meeting and discuss goals and services as schools are in session, then they write a new DLP to reflect what is happening during virtual learning along with a Form 5b. The Medicaid guidance indicates that we should write the service page of IEPs to reflect what is happening right now. Then we would either need to write a new IEP or amend the IEP when we are back in session.

Answer: IEP's need to be written for services actually being provided – not as if 'schools were in session'. And the updated Annual IEP would trump the need for a DLP. Annual IEP meetings should document what the students need looking forward for one year, should include DLP for current needs, and other student needs based on prior levels of support/service that would be necessary for in-person instruction. Update goals and data that include both or it will have to be amended later.

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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 that change is unrelated to the specific site or location of the educational placement. The educational placement 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 COVID-19](#) dated March 27, 2020.

Question: During remote learning, are we required to consider FAPE in the context of remote learning through IEP meetings for every student?

Answer: The AOE recommends staying focused on what is best for students. This will include exploring possibilities of distance learning based on individual circumstances. 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 as distance learning is implemented for all students. Further guidance is anticipated.

Question: 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?

Answer: If a service can be provided virtually, it should be. All services delivered during distance learning should:

- be monitored for progress;
- include monitoring of the impact of the change in environment on progress, which will inform the need for compensatory services once school resumes; and
- include analysis of current services regarding 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.

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Educational Surrogates

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

Answer: Submit a request for this information by contacting our Educational Surrogate Coordinator at 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](#).

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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 limited or 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](#).

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Essential Worker Child Care

Question: A parent wanted to know if we (meaning the governor or anyone that advises him) had given any consideration to essential workers who have high school children with developmental delays or autism who should not be left alone at home when the parent has to attend work. Seems her school is not willing to offer anything beyond the current required level.

Answer: Regular childcare centers can opt to reopen on June 1, 2020. However, this is not essential worker-related and is likely not something that would be available for a high school student. The AOE has been made aware of the concerns.

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Finance and Allowable Costs

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

Please see [Education Medicaid Billing Affected by Continuity of Learning FAQ](#) for further guidance.

Please see [School-Based Health Services and Education Medicaid Telemedicine during Continuity of Learning Frequently Asked Questions](#) for further guidance.

Question: If I have a fiscal-related question, how should I contact the Finance Team?

Answer: Please check with your Business Manager first. Business Managers: For normal business questions that are not COVID-19-related, please contact the Finance Team via email - to [John Leu](#) if grants/amendments/ reimbursements, [Bob Coathup](#) if fiscal monitoring, or [Sean Cousino](#) if uniform chart of accounts.

Question: Allocation of Special Education Funding: Can we expect delays?

Answer: 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.

Question: Will our BI packages be reimbursed? These are contracted related service providers, but they provide wrap around behavioral and mental health supports.

Answer: Please see "[Payment of Special Education Personnel and Contracted Services During School Closure due to COVID-19.](#)"

Question: Is AOE checking with Medicaid to allow for Google "chat" - aka texts - to be eligible for billing? Some students are responding better to text than video or calls.

Answer: At this time, this is on AOE's radar and more research is being done. Currently, chat or text messaging with providers is non-reimbursable (billable) by Medicaid. A concern of the School-Based Health Services (Medicaid) team is that chat or text features have no way to verify the identity of the person receiving services. If a 'chat' or 'text' is happening, there is no verification (voice or facial recognition) of the person responding to the provider. Only real time audio or real time audio-video communication is reimbursable to Medicaid at this time.

Question: Is the AOE working with DocuSped and Goalview to adjust the DLP template to include the service page information for Medicaid Billing? If so, when will this be ready to use?

Answer: SU's can make this request directly to their IEP software vendor, but the AOE does not and cannot comment on Special Education form/document creation or use. Goalview and DocuSped are independent vendors and showcases that we don't have a statewide IEP software system. LEAs can make request directly to vendors.

Question: Why is packet development not a billable service for students with significant equity issues (i.e., connectivity, etc.)?

Answer: There is a possibility that if a packet is created by a case manager for a single student and case management is written into the IEP/DLP – then that time would be billable under case management. However, if that student is not receiving any direct real time audio or direct real time audio-video services from an SU provider, case management cannot be the only service billed. The AOE recommends that the SU reach out to their Education Medicaid Specialist or [Jessica Robinson](#) to discuss further. Only medically necessary direct services are reimbursable by Medicaid.

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Initial and Re-Evaluations

Question: Will COVID-19 be an acceptable reason for an INITIAL evaluation delay?

Answer: Yes. However, "COVID-19" is not an acceptable reason without also 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.

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.

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 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.

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.

"COVID-19" is not an acceptable reason without also 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.

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; (b) revised, as appropriate, to address the results of any re-evaluation 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-evaluation comes due and category is changed at that point. The team may determine to conduct a record review in lieu of a 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 Distance 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 during this Continuity of Learning period. 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 during Continuity of Learning, so long as a student's parent or legal guardian consents. For re-evaluations, the IEP team can agree to either use existing data (record review) and determine that the student will continue to be eligible, or the team can 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 conduct a re-

evaluation) outlining a plan for re-evaluation when school resumes. For additional information, please see the following guidance documents: [USDOE - OCR Fact Sheet](#) issued March 16, 2020, and [USDOE Supplemental Fact Sheet](#) issued March 21, 2020.

Question: How do districts make referral decisions when educators and students are in separate locations?

Answer: Districts should have in place consistent data collection and service log procedures for use across the district while school buildings are closed -- and teachers should be collecting data and logging services for each child. Many students, whether they are children with disabilities or not, will likely regress or show signs of academic and behavioral difficulty during this time of remote learning. Collecting data and tracking the provision of services will help educators determine whether a particular child is experiencing significantly more challenges than their peers.

Question: Can we conduct evaluation/screening measures remotely when feasible?

Answer: It may be possible to conduct some evaluation and screening measures virtually, but in other cases, conducting a remote evaluation or screening would be inappropriate. For instance, for a student who is receiving a general education intervention to determine whether the child may need special education services for behavioral difficulties, not being in the regular school environment would render these data unreliable. However, districts can still have parents complete questionnaires and review existing data. Under Child Find, it's critical that districts track their efforts to identify, refer and evaluate students. The district should document:

- What decisions the district is making and why they are making them.
- What Child Find activities the district is able to complete.
- What Child Find activities the district needs to postpone until they can complete them in-person.
- What information the district has communicated to parents, dates and times of communications, and methods of communication.

This documentation will help the district keep up with what needs to be done once school resumes.

Child Find duties remain in effect and educators should be on the lookout for red flags that a child learning remotely may need to be referred for special education services. Some signals educators should look for and document are when:

- A student fails to log in or complete assignments.
- A parent expresses concerns or requests accommodations to make materials accessible.
- A student begins falling behind or slowing in their progress.

- A teacher notices that a student doesn't understand assignments.

LEAs still need to disseminate Child Find notices and communicate with teachers and parents to make referrals. Districts should also consider revising their procedures for accepting and processing referrals in light of the current distance learning environment.

Question: Regarding evaluations in person, I recently read an [article on VTDigger](#) and am wondering if this would mean we could conduct in-person evaluations as long as the student and staff are 6ft away from one another. If so, would evaluations be permitted to occur in schools, our central office building or outside only? Since in-person instruction is not permitted, I am curious of your interpretation of this and the potential impact it has for evaluations.

Answer: As it applies to the current state of evaluations, school buildings are closed through the end of the 2019-2020 school year per Governor Scott's emergency directive. The article referenced is for recreational purposes only per the Governor's press conference on May 6, 2020. The actual order says members of one household may socialize with another trusted household, meaning family, friends and neighbors. Convening an evaluation team would necessarily include multiple households. This order is for fitness, recreation and socializing, and not school-related work.

Question: As we enter into the fall, I know we are going to be getting lots of requests for initial evaluation. I would like some detailed guidance/procedures for determining the difference between an actual disability and a gap due to lack of instruction. It is an area that has always been gray but think it will be more important than ever to have this guidance for our evaluators.

Answer: Guidance is forthcoming for the next school year regarding initial evaluations. Eligibility should be based on student performance after high quality instruction. Please refer to Evaluation Rules and Requirements Rule 2362.2 and consider:

- Do they have a disability?
- Can a 504 plan be implemented to get the process started and then look at baseline data?
- Do they meet the standard deviation criteria for [adverse effect](#)?

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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. Key aspects of this ongoing collaboration are included within AOE's regular guidance and updates to the field.

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 and 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. School Nurses (SN) can be ideal COVID-19 experts, identifying and collaborating with the school team to meet the socio-emotional and physical health needs of those most at risk. Care coordination for those with health needs is a priority. Additional guidance for Vermont's school nurses is forthcoming. SNs should continue practicing self-health care, social distancing and everyday wash and cover hygiene measures (see information from [Sharonlee Trefry](#)).

Question: **What is the LEA's 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. We anticipate developing further guidance as to how districts may use their ESTs to support students who experience challenges.

Please see [Leveraging Educational Supports to Support Continuity of Learning](#) for further guidance.

Question: **Can you review what districts are documenting during this period of remote learning regarding efforts to implement special education and related services?**

Answer: Yes – some recommendations include:

- Dates and times special education and related services were provided.
- Minutes of special education and related services provided (versus amount required by IEP).
- Names of staff members who provided instruction and services.

- Any changes (e.g. delivery method) in the provision of special education and related services.
- How the student responded to such changes.
- Any negative or positive effects on the student resulting from such changes.
- Accommodations and modifications provided to the student.
- Delays in providing services, convening IEP meetings, completing evaluations/reevaluations
- Factors (e.g. infrastructure, safety) that affected the provision of related services to the student
- Reasons for changing or not providing specific services or instruction required by the IEP.
- Communications with parents concerning IEP implementation and changes/DLP agreements and changes.

In the case of Medicaid criteria, it is important that you have documented:

- Special Education Services
- Initial Date
- End Date
- Frequency
- Time:
- Mode of Delivery
- Provider
- Group Size

Question: Can we have more options for special education allowable distance learning programs beyond the Virtual High School program (ones with special education supports available)?

Answer: State rules require that instructors must be Vermont licensed/certified teachers providing the specially designed instruction; current statutes/state board rules on virtual learning platforms must be also be considered. These structures are in place so the state can better ensure program quality. Nonetheless, the COVID-19 crisis does give us an opportunity to re-examine our current education models. We agree that we need to rethink how education is delivered in Vermont. For instance, some kids work well or even thrive in remote learning situations, whereas others are struggling. More options could be an important tool in the toolbox as we move forward with return to school planning. –

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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 [online](#).

Online group instruction is not a violation of FERPA. The 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 on the [FERPA and Virtual Learning website](#).

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 Department of Health](#) and the CDC recommendations. This applies to all related services. LEAs should be aware that federal CARES Act funds come with an obligation to “continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the [LEA].” (Section 18006, Division B, CARES Act). The AOE interprets this provision to mean that an LEA should continue to use and pay for those contracted services that were in place prior to the onset of the emergency, where feasible and where necessary to serve students. However, some services covered by existing contracts either cannot be delivered at all in the remote learning context or cannot be delivered with the same frequency or duration. In these cases, unless a specific term in the contract provides otherwise, LEAs should refrain from paying for any services that the LEA knows were not delivered.

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: Additional guidance on transition services is forthcoming. For initial information, please consult [Implementing Transition Services During Remote Learning](#).

Question: I had a speech pathologist asking for guidance on what to do if children/students are not fully dressed during a video lesson. Siblings are running around without pants on. How should providers handle this?

Answer: You raise a sensitive and important question. Thank you for asking. By teaching remotely, we are granted access into family's homes and while that is a privilege, it also raises delicate issues regarding boundaries and safety. Our thoughts on the matter are outlined below:

- When a staff member is delivering 1:1 services with a child, it is reasonable and acceptable to ask that a parent/guardian or responsible adult be nearby for assistance as needed. If this is not possible then, at the very least, the parent/guardian should be notified in writing and reminded of when those sessions will occur. If a parent/guardian or responsible adult is not able to be present when the service is occurring, then it would be wise to have a second staff member from school also logged in to the session. This addresses the issue through a liability lens, as having another "witness" would be exercising an abundance of caution to protect the staff member from being accused of any wrongdoing.
- Secondly, it is recommended that the staff member (or you) speak directly with the parent/guardian to share your concern. In a respectful and objective manner, simply let the parent know that seeing siblings partially dressed makes you feel uncomfortable and ask that the parent take action to prevent it from happening in the future.
- If the situation arises again, the staff member should end the session by telling the student that it seems like there are too many disruptions and that you will reschedule. Make sure to notify the parent/guardian, document the time missed and the reason why.
- From a pragmatic language/social cognition/learning perspective, the staff member is encouraged to turn the situation into a learning opportunity by talking with the student and parent about social norms and expected behaviors.
- An additional prevention strategy might be to ask the student and parent/guardian to have the student seated with their back against a wall and the device directly in front of them. This can minimize, if not prevent, distracting background visual input.

Question: What is the process and standard for determining compensatory services after students return?

Answer: The determination to provide compensatory educational services as a result of the state ordered school-building closure needs to be made on an individual, case by-case basis. IEP teams should review student data to determine if critical skills will be or have been lost during Continuity of Learning. Please see [Initial Considerations for Compensatory Education and Extended School Year \(ESY\) Services](#) and [Memo: Extended School Year Services Summer 2020](#).

Question: How do we document parental requests for pausing IEP services?

Answer: Prior written notice is the best way for IDEA protection. Please include dates of start/end of the period of the pause and that parents can restart at any time. The parent will notify case manager by (phone, email or postal service) when services will restart; and at the resumption of school. Please be aware that this is making a change to the IEP. Taking these steps is an acceptable way to indicate a pause in service.

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Social/Emotional Health and Wellbeing

Question: What about the students whose only safe place is school? Especially those who live in a dysfunctional home. How are we going to ensure that these students are receiving their education while coping with tremendous stress and even trauma?

Answer: [Memo: Continuity of Mental Health Services](#) from the Agency of Education and the Department of Mental Health states:

“Designated Mental Health Agencies (DAs) are continuing to provide essential mental health services, including through Success Beyond Six (SB6) school mental health services, during this COVID-19 emergency period (DMH Essential Services). To support students who currently receive mental health services, supervisory districts/unions and schools must work with school staff, their DAs, and other contracted providers to maintain mental health supports for students, without a break in services, whenever possible. There is no need to pause such services while awaiting possible adjustments to IEPs or 504 plans. Additionally, in their Continuity of Learning Plans (CLP), LEAs are asked to explain how their plans address students’ and families’ needs, including their mental health needs.”

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Staffing Concerns

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

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

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Timelines During and After School Closure

Question: 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.

Answer: All services delivered during remote learning should be monitored for progress and the impact of the change in environment on progress should also be monitored, which will inform the need for compensatory services once school resumes. Please see [Initial Considerations for Compensatory Education and Extended School Year \(ESY\) Services](#) for further guidance.

Question: **Dispute Resolution Options – Have these changed?**

Answer: 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 or Clare.OShaughnessy@vermont.gov in an effort to maintain the social distancing protocols established by the CDC and Vermont Department of Health.