

Good morning. My name is Kate Larose. I am a former AOE employee, have a child who is high risk for COVID complications, and recently had to move from Canaan, VT to a new school district in order to ensure access to learning for my child. In offering public comment today I bring with me an understanding of what my child needs, what the law requires, and what the obligation of the AOE ought to be.

Yesterday the CDC revised their COVID-19 guidelines. Part of the rationale cited in doing so is that 95% of Americans (16 and older) have acquired some form of immunity. Yet even within their revisions they underscored the need for schools to protect in-person instruction for high risk students, citing the federal requirements for schools to abide by civil rights law.

I am here today to implore that the State Board of Education not neglect its duty to the other 5%- students who are immune compromised and desperately need access to safe, in-person instruction.

Listed among the State Board of Education's responsibilities in Title 16, Chapter 3 of the Vermont Statutes, is the duty to ensure "equal access for *all* Vermont students to a quality education".

In the world of special education and civil rights law—which *is* education law— all means all.

Over the past two years of weekly field memos, special education pearls, and AOE COVID webpage guidance—including the joint memo that went out from Secretary French and Commissioner Levine on August 10th to school nurses—not once has there even been so much as a footnote indicating that state COVID guidance does not supersede federal civil rights when it comes to ensuring that students with IEPs and 504s be provided with a Free, Appropriate Public Education, regardless of the severity of their disability.

The consistent silence from Vermont's public health and education agencies has moved beyond benign neglect and into the territory of intentional discrimination against an entire class of children who are at high risk of harm from COVID-19 during an ongoing pandemic.

During the few times that messaging from Secretary French did go out to local education agencies, the guidance was often counter to federal law, stating or leaving LEAs with the impression that mask requirements are preempted.

As a result, hundreds—if not thousands—of Vermont students have been denied FAPE, pushed out of public education, and have experienced disproportionate harm on the basis of their disability.

The messaging from the feds has been consistent. In a [March 24th letter](#) to educators and parents, Secretary Cardona wrote, "As we enter this next phase of pandemic response, we urge schools to lead with equity and inclusion to ensure all students have access to in-person learning alongside their peers."

The letter goes on to state that children who are at high risk of complications from COVID may need additional protections to ensure they can remain safe in the classroom, and specifically cites masking of staff and peers as a reasonable classroom modification to ensure compliance with federal law. The letter highlights IEP and 504 processes as a means to protect access to in-person learning for such students.

Emails to Secretary French and Commissioner Levine begging that this message be amplified to nurses, educators, and families in Vermont went unanswered. [Messaging](#) from [DOE](#), [OCR](#), and [CDC](#) about protecting the right to safe in-person instruction for high risk students was never shared, nor were the processes families have available as recourse.

I request that the State Board of Education direct the AOE to take the following corrective actions before the start of the school year:

- 1) Provide the board with a briefing on the implications of not meeting FAPE for immune compromised and high-risk students from Special Education Director Dr. Kelleher.
- 2) Ensure that school nurses, administrators, and any staff who serve on 504 and IEP teams receive messaging that statewide COVID guidance does not supersede their requirements to provide students with their civil rights under federal law
- 3) Offer training and technical assistance to school teams charged with creating plans to preserve in-person learning for immune compromised students during one of the most dangerous phases of the pandemic to-date for high-risk individuals
- 4) Amplify to the field the consistent federal messaging that reasonable classroom modifications for such students may include masking, regardless of statewide guidance

Throughout the pandemic, our child was denied FAPE. This spanned no or limited access to instruction, time spent in seclusion away from peers, having to drive four hours a day to access a school that would provide safe, in-person instruction, and-ultimately- moving. No other child or family should have to experience this.

We were told by our previous district that “but for” the messaging from AOE and subsequent clarifying conversations with Secretary French, our child would have been provided with access to safe in-person instruction at their school.

Later in the agenda you will hear from Sec. French on agenda item I regarding school safety and COVID19 variants. On the website no plan is presented in compliance with public meeting laws so we cannot know what his presentation will include. But as you listen today you will have the opportunity to ask Dr. French questions, and I offer the following questions for your consideration:

- Where does his proposed guidance align with- and where does it stray from- federal CDC, DOE, and OCR guidance, as well as messaging from VSBIT regarding provision of FAPE and civil rights issues for immune compromised students?
- How does his plan accomplish the rules you just passed for special education pertaining to program options and special education services?
- Ask Dr. French to share with you the reasons why the US DOE determined in [June 2021](#) that Vermont AOE needs intervention in meeting the needs of students with disabilities under section 616 of IDEA. And also ask why the required postings for the federal review of special education have still not been posted to the website for the public (which should have happened within 120 days).

By taking these steps and asking these questions you can help ensure that disproportionate harm to students with disabilities does not continue, and that school teams will have the support they need to provide FAPE to medically vulnerable students.

Please don't shirk your responsibility in ensuring that all Vermont students have equal access to a quality education.

Because all means all.

**2360.2.11? 2360.2.11 Program Options (34 C.F.R. § 300.110) Each LEA shall ensure that children receiving special education have available to them the variety of educational programs and services available to nondisabled children in the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.*

**2360.2.12 Special Education Services (34 C.F.R. § 300.39) (a) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the State that apply to all children.*