

# Town Hall

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## Back to School for K-12 Students in Vermont with Disabilities or Special Health Needs

September 18, 2020



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# Presenters

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- Vermont Family Network: Karen Price, Co-Director Family Support-Education
- Education (Vermont Agency of Education): Dr. Jacqueline Kelleher, State Director for Special Education; Tracy Harris, Coordinator for Behavioral Supports; Katy Langevin, Coordinator of Instructional Strategies; and Ernie Wheeler, Education Consultant, Ed Surrogate
- Health: Monica Ogelby, Children with Special Health Needs Director, Maternal and Child Health Division, Vermont Department of Health and Dr. Jill Rinehart, Pediatrician and Director of the Pediatric Residency Program at UVMHC
- Disability Law: Rachel Seelig, Staff Attorney, Disability Law Project, Vermont Legal Aid

# Housekeeping

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- Webinar being recorded
- Recording will be saved on [VFN website](#)  
[VFN YouTube channel](#) VCDR website



# Asking Questions

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- Use **Chat** to type your question
- If you want to ask your question out loud, use **Raise Hand** to be unmuted
- Functions at bottom of your screen





# Vermont Family Network

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# Affiliations

- Federally-designated [Parent Training and Information Center](#)
- Federally-designated [Family-to-Family Health Information Center](#)
- Vermont chapter of [Family Voices](#)
- Vermont chapter of [Parent-to-Parent USA](#)





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# Six Principles of IDEA

1. Free Appropriate Public Education (FAPE)
2. Least Restrictive Environment (LRE)
3. Evaluation at public expense
4. Parent & student participation in decision making
5. Individualized Education Program (IEP)
6. Procedural Safeguards (Parent's Rights)





# Effective Partnerships

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# Before IEP Meeting Tips

- Check Notice of Meeting
- Review evaluations, reports, work samples, other data
- Gather documentation from doctors, therapists, etc.
- Invite a friend/support
- Develop and prioritize questions and ideas
- Make a written list!



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## During IEP Meeting Tips

- Listen and be an active participant
- Take notes, tape meeting if necessary
- Ask for copies of minutes and documents
- Ask for or schedule follow-up meetings
- Summarize results, tasks, etc.



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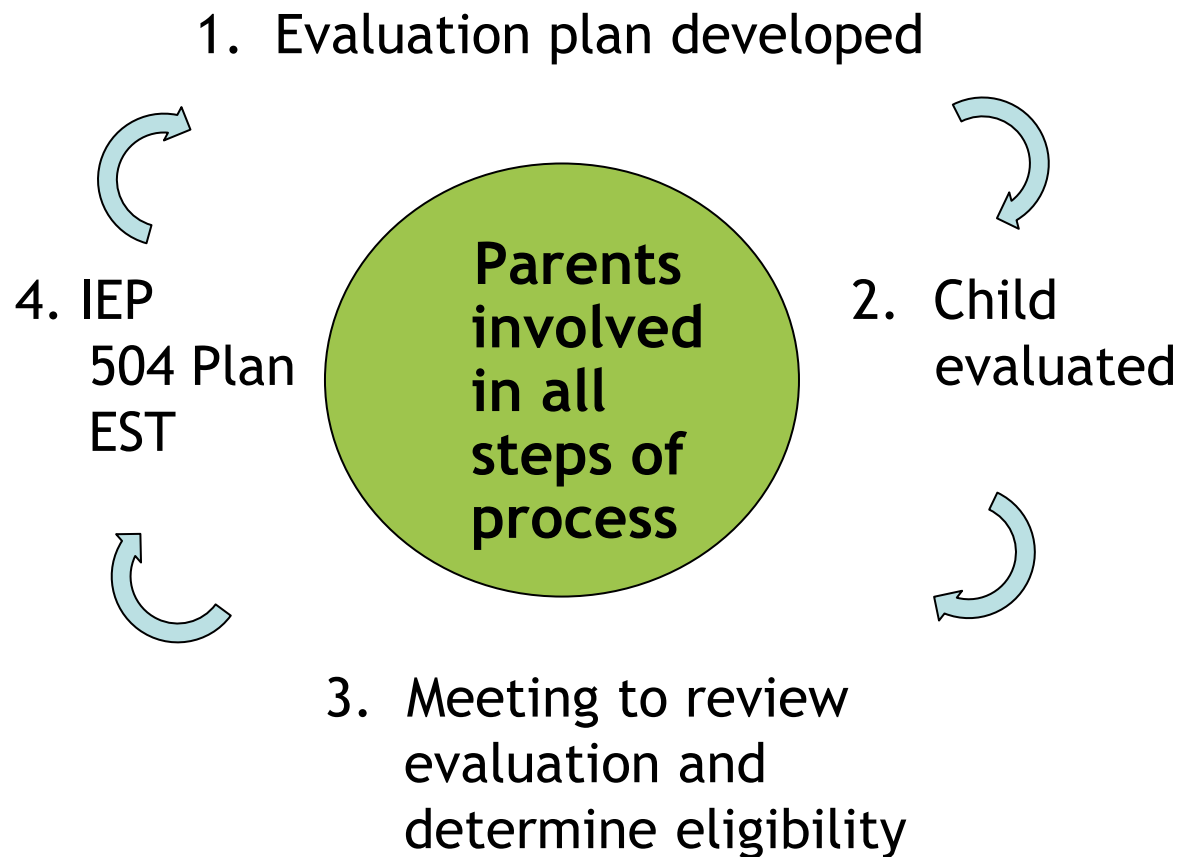
# IEP Meeting Minutes

- Documents what was discussed during meeting
- Keep meeting minutes with your other educational records for child



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# Evaluation Process



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# Assessments

- School should be assessing extent of regression that may have occurred during school closure and Continuity of Learning period
- Compensatory or COVID-19 recovery services may be applicable



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## Related Services Include ...

- Medical services for diagnostic and evaluation only
- Parent training and counseling
- Counseling services, including rehabilitation counseling
- School health services, including nursing services
- Assistive technology and training



# Educational Options Under IEP

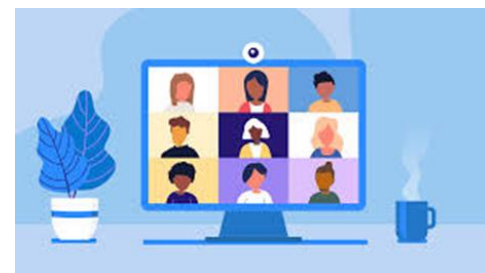
- Home Schooling/Study does not entitle a child to an IEP/FAPE
- IEP Team decides on a child's education placement, which can include the home
- Remote/hybrid school instruction: IEP remains in effect with no change in placement
- Special provision for homebound and hospitalized students



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## Act 264/Coordinated Services Plan (CSP)

- Provides an entitlement to coordination of services for families and a Parent Support Representative
- Allows multiple providers (health and mental health providers, school teams, therapists, etc.) involved in a child's care plan to be at the same meeting to collaborate on what is working, and to identify needs, and gaps in care or communication.
- Can be used proactively, not **just** a crisis response and is the starting process to access higher levels of care like: Residential placement and comprehensive wrap around supports.



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# Special Education Resources

- [Vermont Family Network](#)
- [Wrights Law](#)
- [Center for Appropriate Dispute Resolution in Education](#)
- [Center for Parent Information and Resources](#)
- [Office of Special Education Programs \(OSEP\)](#)



# Back to School

For Vermont's K-12 Students with  
Disabilities or Special Health Needs

A Town Hall Panel of Representatives from  
Vermont's Agency of Education

# Our Purpose

- **Agenda**

We would like to highlight some points from recent AOE guidance that has been developed and shared over the past month. We would like to share some questions that have come into the Agency.

- **Agency of Education Special Education Vision**

*Our team, together with all stakeholders, ensures access, opportunity, and equity by providing solution-based oversight, leadership and support to build capacity and improve student outcomes.*

# Roles and Responsibilities

- State Director of Special Education: [Jacqueline Kelleher, MA, Ph.D.](#)
- Special Education Programs Manager: [Chris Kane](#)
- Coordinator for Behavioral Supports: [Tracy Harris](#)
- Inclusive Systems Coordinator: [Betty Roy](#)
- Inclusion and Accessibility Coordinator: [Ana Kolbach](#)
- Coordinator of Instructional Strategies, [Katy Langevin](#)
- Post-Secondary Transition Coordinator: [John Spinney](#)
- Special Education Technical Assistance Provider: [Ernie Wheeler](#)
- Special Ed Monitoring Program Manager: [Tonya Rutkowski](#)
- Special Ed Monitoring Coordinator, [Simona Kragh](#)
- Special Ed Monitoring Program Technician: [Rebecca Gile](#)
- Early Childhood Special Ed/IDEA 619 Coordinator: [Katie McCarthy](#)
- IDEA Part B Data Managers: [Cassidy Canzani](#) and [Brandon Dall](#)
- For questions on Legal, please contact [Clare O'Shaughnessy](#)
- For Finance questions, [Brad James](#) or [Jennifer Perry](#)

# Technical Assistance

- 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 24-48 hours.
- Please contact our team at (802) 828-1256 or at [AOE.SpecialEd@vermont.gov](mailto:AOE.SpecialEd@vermont.gov).
- Special Ed Team revised website: <https://education.vermont.gov/student-support/vermont-special-education>
- AOE COVID Guidance: <https://education.vermont.gov/news/covid-19-guidance-vermont-schools>



# Assessing COVID-19 Impact

- Sept. 9, 2020: This document clarifies prior AOE guidance issued on July 28, 2020, entitled “Determining COVID-19 Recovery/Compensatory Education Services”. The July 28, 2020 guidance was interpreted to create a new entitlement for eligible students with disabilities under IDEA, which was not the intention of the Agency of Education
- <https://education.vermont.gov/sites/aoe/files/documents/edu-assessing-covid19-impact-for-eligible-students-with-disabilities.pdf>

# Assessing COVID-19 Impact

- Highlights
  - While loss of skills may have occurred through no fault of the LEA, the obligation to provide a student with a FAPE remains, and the student may need remediation, an increase in services or services of an entirely different nature. The entitlement to FAPE already contemplates – and remains - a review and revision of an IEP (as appropriate) to determine need based on the child's current educational circumstances.

# Assessing COVID-19 Impact

- Highlights

- SBE Rule 2363.6 (Development, Review and Revision of IEP), which states: (c) Each LEA shall ensure that the IEP team: (1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (2) **Revises the IEP as appropriate to address: (i) A 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.**

# Assessing COVID-19 Impact

- Highlights

- Vermont LEAs may need up to 12 weeks – or a complete grading period - to collect the necessary, reliable data to make determinations around regression of skills, including engaging in related IEP Team discussions. This timeframe may well need to be expanded in light of the pandemic.
- It is generally hoped that the LEA could seek to address COVID-19 impacts within the next 12 months, but this timeframe may well need to be altered given ongoing, unfolding circumstances related to the pandemic (such as ongoing limitations in service provision due to safety measures)

# Assessing COVID-19 Impact

- Highlights

- As with all team decisions, LEAs should use the same documentation processes they have traditionally employed to capture determinations related to student progress and objectives (including Form 7, where consensus is not achievable). However, it will be especially important to document that the parent or caregiver, and those responsible for implementing the relevant and related parts of the IEP, are meaningfully informed of the basis for these determinations.
- Steps for Determining Needs/Comp Ed Considerations

# Behavioral Interventions and the Use of Restraint and Seclusion

- **Transitional Period of Adjustment**
  - New and old expectations
  - Focus on social, emotional, mental health
- **Health and Safety are Paramount**
  - Facial coverings and maintaining physical distance
  - Difficulties addressed with care, creativity, and educational opportunities
- **Tiered Systems of Support**
  - For continued difficulties and/or intentional refusals
- **A Word (or two) about Restraints and Seclusions**
  - In emergency situations, when students pose an imminent risk of substantial physical harm to themselves or others

# Evaluations

## Highlights:

- Psychological evaluations are rigorously tested in order to be validated. If the test is to be considered valid and reliable under circumstances other than originally intended, more rigorous testing under the new condition must be performed. If the test has not been validated for a virtual platform, the results of the evaluation may not be accurate.
- If doing an evaluation virtually, many things will need to be taken into consideration such as privacy, connectivity, availability of an adult, and stress on the student.
- In person evaluations will need special considerations as well such as the effects of PPE on the evaluation process and student, and health risks to the student and evaluator.
- [Considerations for Special Education Evaluations in a Remote or Hybrid Learning Environment](#) (7/28)



# Hygiene and Toileting

## Highlights:

- Hygiene document outlines strategies and considerations for both teachers and parents in working with students with disabilities who struggle to follow the COVID-Specific hygienic procedures such as masking, handwashing, social distancing disinfecting and temperature/wellness checks.
- Toileting document includes procedures and strategies for teachers engaging in both toileting and diapering routines with students with disabilities in grades K-12.
- [Hygienic and Social Distancing Considerations Regarding COVID-19 for Students with Disabilities Returning to In-Person Education](#) (8/27)

# Ernie: Sample Questions/Answers Coming into AOE

- If a parent chooses to home school their child, what can they do to obtain special education services.
- A parent may apply for a services plan with their school district but services are only available if the district has the proportional share of funds to provide the service. Home study students do not have a guaranteed right to special education services.

# Another Question

If a parent chooses full remote learning, can they ask for services at home?

Currently, schools are not required to offer in-person services at home. Services may be provided remotely, if appropriate.

# One More

If a parent wants more in-person service days than are being offered, what should they do?

Parents should contact their director of special education or request a meeting of the IEP Team to discuss additional in-person days for students.

# Health in School for CYSHN

Jill Rinehart, MD, FAAP  
Pediatric Residency Program Director  
University of Vermont Children's Hospital  
Associate Professor of Pediatrics  
Robert J Larner School of Medicine at the University of Vermont

Monica Ogelby, MSN, RN  
Children with Special Health Needs Director  
Vermont Department of Health

# Guiding Principles: Educating Children and Youth with Special Healthcare Needs (CYSHN)

- **Collaboration** and **communication** amongst the multidisciplinary team, from decision-making through implementation, is paramount to addressing and responding to the unique needs of each student. Families and students are respected and valuable team contributors and team members. CYSHN will likely require contingency planning during this pandemic. Contingency planning should be based on research, evidence and grounded in universal design for learning.
- Students will have **access** to and participate in specialized instruction to the fullest extent possible given the individualized supports necessary. **Resources** will be maximized to ensure safe access to their education.
- CYSHN will be offered **equitable** educational opportunities comparable to their same aged peers.
- Schools will be **flexible** in their educational approach, recognizing that their current educational model, practices, and/or policies may not provide equitable access or adequate safety for CYSHN.

# Mask Exemptions in Children and Adolescents

- Decision made by the team including student, family, medical home, school nurse and/or subspecialty team if you are uncertain.
- Additional documentation from the Medical Home is not necessary given CYSHN will usually already have an IEP/504 in place
- The physical, developmental and behavioral conditions that may make wearing a mask unsafe for children are very rare. They include the following:
  - Developmental delays
  - Limited physical mobility
  - Severe autism
  - Structural abnormalities of the head or neck, however, some of these children may be able to wear bandanna-style coverings.
- A child who is unable to wear a mask safely for medical reasons should not attend school in person.



# Challenges in Accessing Education

- Schools telling families with students on IEPs to choose their education plan option
- Regression is real—families are not doing well
- PT/OT/Speech/ABA are not effective remotely for many students
- Medical Complexity
- CYSHN vulnerability
- Masks-and exemptions
- Fear over facts

# Opportunities

- Schools having IEP meetings now
- Telemedicine/tele-education: works for some things better than in person
- Care Conferences-easier to get the team together
- Some children where academic success/ access is actually improved with remote access
- Liaisons with school nurses, educators, community supports and Medical Home



#### Medical

Does your student have a medical condition that puts them at higher risk of complications related to Covid-19?



#### Transportation

How will your student get to and from school?



#### Communication

Will wearing a cloth facial covering inhibit communication?  
Will staff wearing cloth facial coverings impair comprehension?



#### Social-Emotional-Behavioral

How can we best support your student's unique needs through school re-start and transitions?



#### Developmental

Are there certain circumstances under which the recommended guidelines will not be appropriate for your student (i.e. sensory issues, lip reading, etc.)?



#### Physical

Do modifications to school procedures allow for physical accessibility to school along with their peers?



#### Academic

Are amendments to the IEP/504 necessary? If education will be accessed in-home all or part-time, what preparations are necessary?



# Suggestions

- Make a plan with your school team – include the school nurse, Medical Home/Pediatrician, specialists if needed, educators and administrators
- Think outside of the box
  - Paraeducators going in to the home
  - Face shields or alternative PPE options
- Re-visit the plan after X number of weeks
- Be nimble and flexible – the plan can and should change
- Consider possibility that you may start remote and go in person later – or vice versa

# Resources

- Guidance on Mask Exemptions in Children and Adolescents  
<https://www.healthvermont.gov/sites/default/files/VT-Mask-Exemptions-in-Children-and-Adolescents.pdf>
- Wear a Face Mask to Keep COVID-19 from Spreading  
<https://www.healthvermont.gov/sites/default/files/documents/pdf/COVID-19-VDH-mask-guidance.pdf>



# Everything Has Changed and Nothing Has Changed

Special Education During the Pandemic

Rachel Seelig, Esq.  
Staff Attorney  
Disability Law Project

September 18, 2020

# Congress Has Not Changed Special Education Law

- U.S. Dep't of Education decided NOT to ask for waivers of law providing for Free Appropriate Public Education under IDEA and 504
- U.S. DOE guidance advises:
  - When schools reopen, districts are obligated to make *every* effort to **fully implement** the IEP or 504 plan
  - All IEP and 504 teams meet to decide whether a student needs compensatory education following any school closure.
- *Endrew F.* and *Rowley* standards for what constitutes FAPE still apply.
- Key Elements of IDEA:
  - Free Appropriate Public Education
  - Individualized Education Program
  - Least Restrictive Environment
  - Appropriate Evaluation
  - Parent and Student Participation
  - Procedural Safeguards
  - Confidentiality

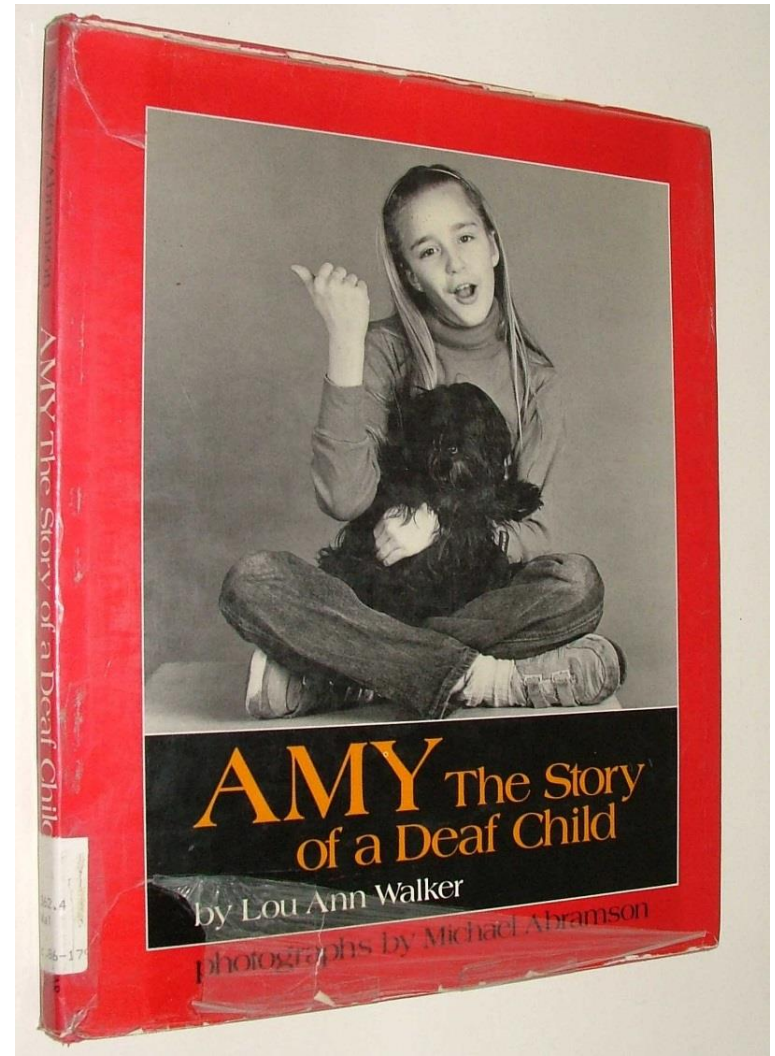
# What is FAPE?

- Special Education and related services
  - At public expense
  - Meet the standards of the SEA
  - In conformity with an IEP and Part B requirements
- Special education: specially designed instruction to meet the unique needs of the child
  - Adapting content, methodology, or delivery of instruction to ensure access to general curriculum so the child can *meet* the state/local education standards for all children
- Related Services: transportation and supportive, corrective and developmental services, that enable a child to benefit from special education



# Rowley

- Specialized instruction and supportive services confer **some educational benefit** for the child.
- Should be **reasonably calculated to enable advancement** with passing grades **when** student is **in a regular classroom**,
- At public expense,
- Meeting state's educational standards, approximating grade levels of regular education
- Consistent with IEP



# Endrew F.

- “Any” educational benefit is not enough.
- School must offer an IEP “reasonably calculated to enable a child to make progress appropriate in light of the *child’s* circumstances.”
  - Fact-intensive exercise that must include parents, not just teachers
  - Set out a plan to pursue academic and functional advancement
- IEP must be reasonable. No requirement that IEP be ideal.



## Andrew F. (continued)

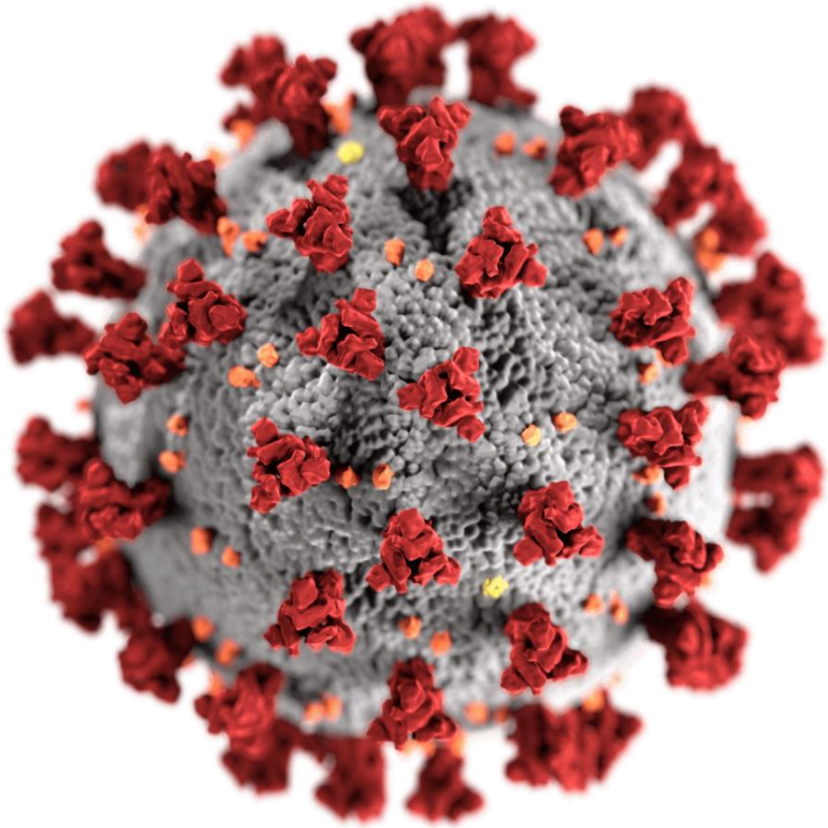
- “If that [integration into the regular classroom] is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”

# Recent Court and Administrative Decisions

- **New York:** A child with autism needs in-person supports despite social distancing restrictions, and the DOE needs to implement this.
- **California:** High school senior with autism was entitled to 40 hours of compensated and transition counseling after receiving less than half of the specialized instruction provided for on her IEP during COVID-19 related school closures, which prevented her from making meaningful progress in vocational, social, communication, behavior, and transition skills.
- **Colorado:** Inability to make progress toward annual goals for student who received homebound and virtual instruction during the pandemic established his placement was inappropriate, he was denied FAPE, and entitled to compensatory instruction. (In this case student did not receive psychological services when transitioned to virtual services due to the pandemic).
- **Indiana:** Checking in on a student receiving virtual instruction did not excuse failure to provide academic support services outlined in the student's IEP.



# Current Access and FAPE Issues



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- IEP services only on in person days
- Refusal to add in-person days as accommodation
- Delaying evaluations solely “because of COVID.”
- Refusal to provide in-person homebound instruction due to COVID.
- IEP changes without team meetings (seeking consent only)
- Contingency plans with service reduction if remote only.

# Recommendations – Know Your Rights!

- To disagree with changes.
- To have an IEP meeting at your request, in a reasonable time.
- To request additional services and supports, including assistive technology.
- To have *all* IEP team members present.
- To Prior Written Notice.
- To an *Individualized* Education Program – decisions cannot be made based on blanket policies.
- If you disagree with an LEA decision – say so, and make sure it is recorded in the minutes.
- Dispute resolution options are available to you:
  - Mediation
  - Due Process
  - Administrative Complaint



# Recommendations

## ■ Check IEP:

- Are present levels of performance *accurate*?
- Are goals measured *objectively*?
- Are goals *challenging* and relevant?
- Are types of service, amount, duration, and provider consistent with prior IEPs?



## ■ Monitor:

- Services delivered as provided in IEP
- Student progress (and request records school uses to track progress).
- Request compensatory education for services not delivered, or not delivered accessibly.

# Contact Vermont Legal Aid!

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Looking for advice about you child's specific situation and rights?

Vermont Legal Aid

800-889-2047

[www.vtlawhelp.org](http://www.vtlawhelp.org)





# Questions & Answers

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- Questions submitted in advance
- Use **Chat** to type your question or **Raise Hand** to be unmuted



# Upcoming Virtual Events

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Parent Focus Groups hosted by VFN  
for VT Developmental Disabilities  
Council's 5-Year State Plan



**1-800-800-4005**  
**INFO@VTFN.ORG**

**ONLINE LEARNING SERIES:**  
**PERSEVERING**  
**IN THE PANDEMIC**

