



To: Vermont House Education Committee  
From: Traci Sawyers, Executive Director, Vermont Council of Special Education Administrators  
Date: April 10, 2020  
Re: Covid-19 Testimony

I want to begin by stressing that Vermont educators and administrators continue to go above and beyond, doing everything possible to support students and families through these very trying times. They had to completely redesign what schools looked like in a matter of days and in the context of state and federal policies that have created multiple roadblocks. They now need to support all children very differently....most notably in a way that's physically distant. We have never done this kind of education before. The way schools are addressing the myriad of complex issues while supporting families and engaging children in learning is remarkable.

Special education within the context of this new educational paradigm creates issues in particular within the context of the Individuals with Disabilities Education Act (IDEA). The ability to meet the timelines and formal compliance requirements of IDEA is a significant challenge at this time. IDEA was not designed to address the implementation of special education in a protracted crisis and it also does not contemplate what special education looks like when children cannot be in school. As a result and in this specific circumstance, some limited flexibility is critical. Federal guidance from the US Department of Education has emphasized that “the determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency” and the department has offered “guidance, technical assistance, and information on any available flexibility, within the confines of the law.” (March 21, 2020 Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities).

With regard to federal law, VCSEA is working with our national organization, the Council of Administrators of Special Education (CASE), and CASE and the National Association of State Directors of Special Education (NASDSE) have formally asked the US Department of Education for limited flexibilities only in this specific circumstance (COVID - 19). In a letter that I shared with Chair Webb, the request is for three areas of temporary and targeted flexibility related to timelines, procedures, and fiscal management. This is not an attempt to repeal rights but instead, enable flexibility with an emphasis on local education agencies and parents making “good faith” efforts in light of the current circumstances. We also have many families who do not want to have their IEP meetings or try to do evaluations under the circumstances and we don't want the procedural part of IDEA put them in an untenable situation.

In an effort to provide limited flexibility at the state level, the Vermont AOE issued its memo [IDEA Requirements for Placement and IEP Amendments](#) on March 27th, 2020. It states, “A change of educational placement occurs when there is a change to the special education and related services provided to a student and 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.” The document goes on to say that services, not placements, may change in the context of the COVID-19 closures, and provides options for school districts to amend IEP service pages in partnership with families. This was an improvement from earlier guidance that had indicated the IEP teams would need to change the placement for every student on an IEP if school closure lasted longer than 10 days.

This guidance is important and essentially says that **if parents agree**, schools and parents can forgo some of the formalities associated with IDEA. If there is no agreement, those formalities remain in place. Based on VCSEA’s understanding of federal law, this AOE guidance does not weaken IDEA rights, nor does it encourage parents to waive their right to an IEP meeting. All federal protections remain in place including parental rights, due process, compensatory services, and much more. The circumstances of this emergency call for very limited flexibility when agreed to by families. Families retain all of their rights under IDEA to grieve decisions related to the IEP and educational services.

With regard to the Disability Law Project (DLP) letter regarding the CARES Act (dated April 3, 2020), VCSEA believes the DLP’s requests expand the legal rights available to students and families under the IDEA. Expanding the IDEA mandate in this emergency is impossible and inappropriate. We also do not believe that now is the time to redefine compensatory education. Compensatory education services are provided when the actions of a school district lead to a denial of FAPE. They are a legal remedy to a school not doing something which is not this situation here. There is a lot going on that school districts don’t have the ability to control.

VCSEA shares DLP’s concern for ensuring marginalized students – students with disabilities, students experiencing homelessness, students who are minorities or migrants, English Language Learners - have equal access to educational services during the pandemic. However, we believe there is a misunderstanding about what IDEA flexibility is being requested and why, and that dialogue is important during these unprecedented times.

VCSEA remains hopeful that limited and targeted flexilibies related to IDEA at the federal level will be granted. Our request to the legislature is not to block access to this relief for Vermont as it would be in opposition to the best interest of families.

With regard to the Guidance for Approved Independent Schools, Including Residential Facilities, During COVID-19 document, we interpret it to say that LEAs will continue to pay tuition and will be reimbursed. These schools are critical partners and we don't want them to fail. However,

LEAs need clarity about whether the state will continue to reimburse LEAs at the same rate they were being reimbursed prior to the pandemic or if they will be limited to reimbursement for the actual costs of services delivered. If that is the case, then LEAs will be in the position of needing to renegotiate contracts and tuition agreements for special education.

Our understanding is that it is the expectation of the state that LEAs continue to pay tuition to special education-only independent schools, and the independent schools are expected to provide continuity of education services. However, special education schools may or may not be able to continue services, and regardless, the services will not look the same and will be provided for less hours. We also have a concern that the federal government may say we cannot spend IDEA B funds on services that are not delivered. There is no statewide uniform contract and if LEAs do need to reframe contracts and tuition agreements with independent schools, we do not want school districts to be in a position of having to negotiate school by school how much tuition costs will need to be reduced if this happens. If necessary, with money coming from the CARES Act, there could be a policy decision to use non IDEA Special Education Funds to ensure the fiscal viability of these schools, and keep IDEA B funds for compensatory services. Again, these schools are critical partners in meeting the needs of the children we serve and it seems important to pay Vermonters through these contracts to maintain economic stability.