

Testimony of Rachel Seelig, Staff Attorney, Disability Law Project, Vermont Legal Aid
Senate Committee on Education
March 31, 2020

Mister Chair and Members of the Committee:

Thank you for inviting me today to discuss the provision of special education services and related services during the COVID-19 Emergency. Vermont Legal Aid continues to operate remotely, and we are available to provide legal advice and assistance during the COVID-19 emergency, including, through the Disability Law Project, legal advice on special education matters.

I make the following recommendations to you:

CARES Act

Commit to Continued Adherence to all IDEA Requirements. To protect against any degradation of the rights of children with disabilities that a potential IDEA/504 waiver would create, require continued compliance with the current provisions of the IDEA, to ensure the rights of students with disabilities, and their parents, are protected.

Ensure CARES Act Funds Support Student Learning First. CARES Act funds for education should be used to promote student equity. This committee should provide direction to the agency. The agency should develop guidance on how the funds should be spent to ensure equitable use for students with disabilities, and other marginalized students. This committee should exercise oversight and require the agency to provide a report to the legislature on how funds are spent. The school shutdown has exacerbated pre-existing inequities in our schools. Funds can be used not only for provision of educational services, but also for a wide variety of other uses, including meeting the internet connectivity and technology needs of students at home, enacting anti-bullying activities to protect against cyber-bullying on school-based and non-school platforms, expanding Extended School Year for many groups of students, and providing compensatory education to students with disabilities who regress, stagnate, or do not make expected progress due to the termination of in-person services.

School-Provided Childcare for Essential Workers

Schools providing child care for essential workers should also be asked to provide care to children with disabilities who fall outside the established scope (enrolled in Kindergarten, or ages 6 through grade 8), if the child cannot be left alone due to his or her disability.

Delay Census Based Funding

All resources of school districts need to be dedicated to providing education remotely for the balance of the school year. This will prevent further preparation by districts and professional development for all categories of staff necessary for successful implementation of Census Based Funding. For this reason, we recommend the legislature further delay the implementation of this fundamental shift in financing and practice by a minimum of one to two years.

Implementing the IDEA in a Remote Learning Environment

Retaining the Integrity of Consensus IEPs. An IEP represents the agreement of the IEP team, describing what the individual child requires to receive a Free and Appropriate Public Education (FAPE). *An IEP team should not change the IEP to provide lesser services* than what all members of the team previously agreed was necessary to achieve FAPE. IEP teams may need to agree to lesser implementation of

services, with compensatory education provided when schools reopen. Some students may need *additional* accommodations to allow the child to access the general education curriculum or specialized instruction and related services in a remote schooling model.

Parent Training Should be Provided Frequently. Parent Training is a related service that is rarely included on IEPs, but one that many IEP teams will need to add in order to adequately support parents in assisting students with disabilities learning in the home.

IEP Team Meetings. IEP teams have always been permitted to meet using remote mechanisms like phone calls or video conferences. This can, and should, continue during the emergency. Communication and team planning are especially important when the informal in person interactions and conversations parents usually rely on with school providers are no longer possible.

Placement Changes. All students who were not already placed in a homebound setting have experienced a significant change in placement. Educational placement incorporates *both* the specific services provided to the child, and the type of placement along the continuum of alternatives (from full integration into the general education classroom to homebound). The AOE should revoke and correct its guidance stating otherwise. Under the IDEA, IEP teams need to make an individualized determination of how the student's IEP will be implemented for the balance of the school year.

Compensatory Education and Extended School Year

Compensatory Education Should be Offered Affirmatively. When schools are able to re-open, IEP teams should be required to hold an IEP meeting for each student, and determine the amount and type of compensatory services that will be offered to students who have either (a) regressed; or (b) stagnated; or (c) made progress, but not the amount of progress that was reasonably anticipated when the student's goals were set. Assessment of need for compensatory education should be made based upon the IEP as it existed before the COVID-19 emergency, not on any reduction of services or lowering of goals implemented because of the COVID-19 emergency. If additional funding is necessary to support compensatory education, it should be allocated as a top priority for use of CARES Act funds.

Extended School Year Eligibility Should be Expanded. Given the termination of in-person services, many more students will need ESY, within the scope of the Special Education Rules, not only to address past regression or likelihood of regression, but also to permit the opportunity to reach reasonably set educational goals. CARES Act funds should be prioritized for creation of individualized, full summer programs for students this summer, or for after school and school break ESY during the 2020-21 school year and 2021 summer if schools cannot reopen this summer.

Child Find, Evaluation Planning, and Eligibility Determinations

Child Find Remains in Effect. LEAs continue to have an ongoing affirmative obligation to identify children who may be eligible for special education and evaluate them for eligibility. This may be more difficult without the face to face interactions of a brick and mortar school, so each LEA should be required to develop a policy explaining how it will carry out Child Find during the school closure.

Evaluations May Be More Difficult, But Services Can Be Provided. Teams should make individualized determinations of what evaluation tools will be used. The IDEA allows for schools to provide written notice of a delay in evaluation under exceptional circumstances. We are in exceptional circumstances. If a team believes a child will be eligible, services should commence.

Re-evaluations are permitted to be completed through record review, or new assessment. Teams should continue to meet, remotely, to decide how re-evaluations will be completed. We recommend that teams that would normally conduct new assessments, but choose to do record review because of the inability to do in person assessment with the student, commit to conducting those assessments for the purpose of gathering current accurate data on the student's present levels of performance, when doing so is possible.