

Special Education Student Services Reopening Frequently Asked Questions (FAQ)

Introduction

The purpose of this Frequently Asked Questions (FAQ) document is to provide updated guidance for school divisions as they reopen schools for instruction during the 2020-2021 academic year. In this unprecedented situation, there are no “general rules,” other than the regulatory requirements, which can be applied to fit all of the individual situations and expectations. Special education has always been meant to address student-specific needs in the provision of a free appropriate public education (FAPE) and, as such, what is being done for a particular student in one local educational agency (LEA) may not be appropriate for a student in another LEA. In fact, the Virginia Department of Education (VDOE) has advised local school divisions to develop a plan that meets its own individual needs, so long as what is put in place conforms to what is regulatorily required. LEAs should prioritize the health and safety of students, staff, and communities. LEAs should identify and acknowledge service delivery limitations, as well as the need to make reasonable efforts to fully implement a student’s Individualized Education Program (IEP). None of the requirements outlined in the *Individuals with Disabilities Education Act* (IDEA 2004) and, for that matter, the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (the Virginia Regulations) can be waived. As such, any requirements for IEP development, review and revision; evaluations and eligibility; the provision of special education and related services; data and reporting; monitoring; and funding are still in place. However, methods to meet these requirements may look different during this time. Engaging families will be essential to successful implementation of virtual/distance learning for all students, but especially students with disabilities. Partnerships with families will be critical as we work together and build collaborative relationships to ensure high-quality learning for all students.

There is no prescribed right way to provide services. As stated in the Office of Special Education and Rehabilitative Services/Office for Civil Rights (OSERS/OCR) guidance, the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction that is provided virtually, online, or telephonically. Many disability-related modifications may be effectively provided online, such as extensions of time for assignments, videos with captioning or embedded sign language interpreting, accessible reading materials, or speech/language services through video conferencing. The VDOE strongly encourages divisions to communicate frequently with families about what is happening and to provide information on an ongoing basis.

Provision of FAPE

1. What options should a school division consider to ensure the provision of FAPE to students with disabilities when a school/school division employs a distance learning or hybrid platform?

School divisions must ensure that students served by special education have access to a learning platform that is comparable to those being provided to their peers. To the greatest extent possible, the school division must provide the student with the services required by the student's Individualized Education Program (IEP). In many cases, instructional accommodations may be met in a virtual environment by providing additional supports, such as an individualized telephone call or video conferencing. IEP Teams should consider how the current services, accommodations, and modifications are provided in a physical classroom setting (i.e., extra time, redirection, small group, among others) and what this would look like in a virtual environment. If there are services, accommodations, and modifications required by the student's IEP that cannot be provided during this time, the student's IEP Team must determine which services it can provide to meet the student's needs and any needed changes in services, accommodations, and modifications can be made through the IEP amendment process.

2. Is a school division required to provide related services when it has decided to use a virtual learning or hybrid platform?

If a student's IEP requires the provision of related services, the school division remains responsible for ensuring that such services are provided through a virtual learning platform as long as the school division can ensure that services are provided effectively and that individual students are able to effectively access them and receive a reasonable educational benefit from such services given the service delivery method.

3. What considerations should be made prior to conducting meetings or offering special education or related services using alternate means (e.g., telephone or teleservices)?

When implementing an alternate means for special education related meetings, it is important for LEAs to consider any requirements from the VDOE and the Virginia Department of Health Professions, if related service providers are participating. When conducting meetings using alternate means such as telephone or videoconferencing, LEAs should ensure that parents are informed of possible privacy considerations and consent to the use of the suggested method for the meeting. This includes documentation of the discussion of how the LEA will share (provide) special education documents with the family. [FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions \(FAQs\) March 2020](#) guides LEAs that in the context of COVID-19, the LEA should continue to protect student privacy and prohibit the "disclosure of personally

identifiable information (PII) from student education records to individuals and entities who may not already have access to that information (p.1).”

The Office for Special Education and Rehabilitative Services March 21, 2020, [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) states that “...in making changes to a child’s IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a child with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child’s current IEP. 34 C.F.R. §300.324(a)(4)(i).”

If the LEA determines they will offer special education and related services prior to implementing an alternate means (e.g., telephone or teleservices) to deliver services, the LEA should ensure that they have considered the latest guidance on FERPA and HIPAA. Professionals may have additional requirements when licensed by the Virginia Department of Health Professions or certified by a national professional association (e.g., American Physical Therapy Association, American Occupational Therapy Association, American Psychological Association, American Speech-Language-Hearing Association).

If the LEA will be implementing alternate means for the provision of special education or related services, it is important for LEAs to consider the requirements for staff licensed by the Virginia Department of Education and those licensed by the Virginia Department of Health Professions. Staff may consider the use of online tools or telephone for the provision of services.

The Office for Special Education and Rehabilitative Services March 21, 2020, [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) states that the provision of services “may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” Virginia’s Department of Medical Assistance Services (DMAS) guidance from March 19, 2020, includes “waiving the requirement that services delivered via telehealth (real-time, two-way communications) must utilize both audio and visual connection. DMAS is allowing the use of audio connections in addition to audio-visual connections.”

When planning for the provision of services, LEAs should consider any additional applicable regulations of licensing agencies (e.g., Virginia Department of Health Professions) and certification entities (e.g., American Physical Therapy Association, American Occupational Therapy Association, American Speech-Language-Hearing Association).

Related service providers are obligated to determine the appropriateness of the means for delivery of services for each individual student. If a visual is required and only telephone services are available, the provider should document that appropriate services cannot be offered. Additionally, providers should consider student safety and the ability of the adult providing supervision at the remote location to implement provider's instructions and support related services activities. If the therapist determines there is not an appropriate or safe way to deliver the related service using an alternate means this should be clearly documented.

While it is still important for LEAs to safeguard students with disabilities' rights to privacy, the Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) provided guidance on March 19, 2020, entitled [Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency](#). This guidance states that it "will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency." Specific examples of tools that may be used and those that should not be used were also provided.

"Under this Notice, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

Under this Notice, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public-facing, and should not be used in the provision of telehealth by covered health care providers."

The LEAs may continue to strive to use HIPAA-compliant platforms to deliver special education services and related services. The VDOE does not endorse or recommend any platform, but the following list includes platforms that represent that they are HIPAA-compliant:

- [Microsoft Teams for Healthcare](#)
- [Updox](#)
- [VSee](#)
- [Zoom for Healthcare](#)
- [Doxy.me](#)
- [Google G Suite Hangouts Meet](#)

- [Spruce](#)
- [Doxy.me](#)
- [Zoom.us](#)
- [Regroupconnect.com](#)
- [Securevideo.com](#)
- [Clocktree.com](#)
- [AmplioSpeech](#)

Before implementing teleservices for special education and related services, LEAs should:

- Consider the use of a [Business Associates Agreement \(BAA\)](#) to assure that the transmission of information from provider to client and client to provider is encrypted. Encryption is necessary to provide the first level of compliance with HIPAA & FERPA laws. Review HHS guidance on enforcement discretion during COVID-19;
- Verify that Virginia licensing regulations for teleservices for various license types is permitted; and
- Verify that staff and the student have necessary equipment and internet speed to engage in teleservices or telephone-based services.

Individual providers should verify that the following conditions are met:

- Use LEA approved tools and document communication with family regarding variances in HIPAA compliance and confidentiality during delivery of services to students. Please review HHS guidance on relaxed enforcement during COVID-19 for temporary allowances;
- Maintain a secure location for providing services that are not interrupted (e.g., having others walk into the room where you are providing service);
- Maintain confidentiality using secure remote access to electronic documentation;
- Verify that someone will be physically present with the student who can support the session activities and maintain confidentiality.
- Maintain documentation of communication to families, services provided, student data, and treatment notes.

Additional Resources:

- [NASP Virtual Service Delivery in Response to COVID-19](#)
- [U. S. Department of Health and Human Services, Health Information Privacy, the HIPPA Privacy Rule](#)
- [Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency](#)

4. How can school divisions ensure the provision of FAPE to students with disabilities who are not good candidates for participation in a virtual distance learning platform?

When proposing to use virtual distance learning, there are several factors that the child's IEP Team needs to consider. Some factors to consider include the complexity of the student's special education and related services needs, the context and environment in which the student interacts, and the support needs of the student and his/her parent(s)/caregiver(s) with using technology.

5. What should IEP Teams consider in regards to progress reporting, monitoring, and data collection?

The areas of progress reporting, progress monitoring, and data collection are vital to providing services to students with disabilities in any circumstance, but they are especially critical in the current situation. School divisions will be called upon to determine what, if any, compensatory or recovery services are necessary once schools reopen. This will require consideration of the student's baseline performance at the time of the school closure, any progress or lack thereof during the time period of school closure and distance learning, and the student's performance after school reopens. What data collection looks like during the time schools are closed will be driven by the nature of the programming provided by the school division. Likewise, the provision of progress reports will be driven by the student's IEP. It is important to remember that students with disabilities must receive progress reports at least as often as students without disabilities.

6. In many places, the public health situation involving COVID-19 remains fluid and shifting, and schools may switch back and forth from 100 percent in-person instruction to 100 percent virtual instruction, and to hybrid instruction. Must the IEP be amended each time a change in the instructional model occurs, particularly with regard to the Least Restrictive Environment?

Given the different circumstances in each local community, the models of delivering instruction at the start of the 2020-2021 school year may look different across the state. It is important to note that while the COVID-19 pandemic has not changed the individual student's right to FAPE, including least restrictive environment (LRE), it has changed how the general education system operates. These operational changes require school systems to define the model for the general education system at any given time. Below are some examples of language for IEP documentation, where "Susan" is a student with an IEP.

In a traditional (In-Person) model students will report to school five times a week with social distancing protocols in place. *Traditional (In-Person) LRE Example:* "Susan will receive her special education services inside her general education classroom and speech-language services outside of the general education classroom once a week."

In a distance learning (virtual) model students will use a virtual/remote platform for educational services. *Distance Learning (Virtual) LRE Example:* "Susan will participate in a virtual learning

model with her general education class. Her special education teacher will host a small group virtual break out session with her and other students in language arts and mathematics after large group instruction or, when co-teaching, will provide services during the large group instruction.”

In a hybrid model, students will follow an alternating schedule to reduce the number of students on campus and in each classroom. Students will report to school two times a week with social distancing procedures in place and will use a virtual platform three times a week. *Hybrid LRE Example:* “While on campus, Susan’s sixth-grade class will be split into two sections. Susan will remain in one classroom all day with her peers, and her teachers will rotate as appropriate. Her special education teacher will provide 60 minutes of support in language arts and mathematics each day while Susan is on campus and follow the distance learning/virtual model the other three days. Susan will participate in a virtual speech session once a week.”

School divisions may elect to revise IEPs to reflect changes in the form of instruction and LRE when they occur. Some school divisions have asked whether they can draft one IEP including each option, with the parent consenting to shift among the models in accordance with the local school board’s changes. The VDOE recommends that school divisions consult with school board counsel with regard to this issue and with regard to its documentation, it may be possible to draft a single IEP that covers each situation. Keep in mind that FAPE can look different for a student because of external factors. For instance, a student who transfers from Texas to Virginia may have a new IEP that does not look like the Texas IEP, yet both the Texas and Virginia IEPs can provide FAPE. This is driven by particular environments in each jurisdiction. Similarly, a program designed for in-person instruction and a program designed for virtual or hybrid instruction may each provide FAPE. In order to draft a compliant IEP containing the ability to shift among options, a school division should: (i) include programs in the IEP that offer FAPE in each alternative, (ii) adequately describe each program and option so that the parent is able to provide informed consent; (iii) include parental consent to shift options as programs change; and (iv) should inform parents of their right to request an IEP meeting at any time to consider amendments to the IEP. Such an IEP should not include any language stating or implying that the parent is waiving any rights under the IDEA, or that the provision of services is conditioned on such a waiver.

Compensatory Education, Recovery Services, and Extended School Year Services

The term compensatory services is generally attached to the provision of additional special education and related services due to the failure of a school division to provide FAPE. The IEP Team should determine what impact the extended school closure due to the COVID-19 situation had on the ability of the school division to provide even comparable services to its students with disabilities and then to determine what, if any, recovery services should be provided based upon

individual student needs. For more information please review the document titled [VDOE Considerations for COVID Recovery Services for Students with Disabilities](#).

7. What if a student with a disability has needs that are so complex that they cannot be reasonably provided in a virtual learning platform?

If services needed to ensure FAPE are so complex and, as such, cannot be reasonably provided through a virtual learning platform or other alternative means that are available to other students, then the child's IEP Team must determine the extent, if any, what compensatory services will be provided once normal school operations resume.

8. If virtual/distance learning is provided in some capacity but does not mirror the offer of FAPE in the IEP, will recovery services be required?

Each child's IEP Team should plan to make an individualized determination regarding whether or not recovery services may be needed for a student. The need for recovery services can be measured by assessing whether or not the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals and/or if any regression occurred during the provision of virtual/distance learning. As stated above, in order to make this determination, teachers should continue to monitor student progress in whatever alternative learning is being provided. The VDOE has created a document that highlights information related to compliance, documentation and progress monitoring, and IEP Team considerations that are necessary in order to make decisions about and address requests for COVID recovery services for students with disabilities [VDOE Considerations for COVID Recovery Services for Students with Disabilities](#).

9. When Should IEP Teams Meet to Discuss COVID Recovery Services?

The VDOE has long recognized that reasonable recoupment rates vary among individuals based upon individual learning styles and rates. Recoupment is the ability to recover a loss of skills in a reasonable time following a normal school break. Most students with disabilities recoup skills within a reasonable time following the school break. Accordingly, some students with disabilities may require more than six to eight weeks to recuperate. It is important to note that the closure of schools due to COVID is not a normal school break and this should be taken into consideration when considering a reasonable time standard for recoupment.

After a period of instruction, IEP Teams should consider individual student data to document recoupment of skills or persisting skill deficits. The LEA should consider the student's progress compared to the progress of all students during the extended school closure. Also, remember that skill loss and recovery of skills may vary by grade and subject matter or be impacted by the educational model adopted by the LEA.

The determination of COVID recovery services is made by the IEP Team after a careful review of student performance and data including pre-COVID closures, student participation and performance during COVID closures, and performance upon return to school. This means that IEP Teams will need a period of time to gather data on the student's performance and assess their skills in relation to pre-COVID closure and their learning rate compared to peers and with consideration of the educational experiences being offered by the LEA. Refer to the "What Data Should IEP Teams Gather and Review?" section of this document (pg. 11) for additional information on data sources.

LEAs are not required to automatically hold IEP meetings for every student with a disability upon return to school unless there is a change in the least restrictive environment, goals, or services that need to be documented. Additionally, school members of the IEP Team should consider initiating an IEP Team meeting when:

- there is a lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- the results of any reevaluation conducted or information about the child shared by the parent that needs to be addressed; or
- if the LEA anticipates that the child may need COVID recovery services.

Additionally, the LEA must remember that when a parent requests COVID recovery services, this is a request for an IEP Team meeting. Thus, the parent should receive a response from the LEA within ten business days from the time the request was made. A Prior Written Notice must be issued if the Team declines such a request and could contain additional information justifying the refusal such as the need for time to assess student progress. If a parent requests a meeting to discuss COVID recovery services, the IEP should communicate clearly the amount and types of data required to address COVID recovery services.

After communicating the data required to make the decision, the IEP Team may either 1) hold the meeting to hear the parent's request and make a plan for when they will reconvene to discuss the data and make a determination, or 2) seek parental agreement to schedule the meeting for a date in the future when the required data for decision making will be available. If the parent agrees to schedule a meeting in the future when sufficient data is available, this should be clearly documented.

Please note that the [VDOE Considerations for COVID Recovery Services for Students with Disabilities](#) document provides extensive information concerning determining and documenting the needs for and provision of recovery services. That document should be consulted before an IEP Team begins to consider a student's need for recovery services.

10. When considering new requests for ESY, recovery, or compensatory services, what information should teams review?

Because special education and related services support a student's involvement and participation in general education, local decisions about the provision of general education will directly impact how compensatory education, recovery services, or extended school year services will be determined. Consideration of any future Executive Orders as well as local decisions about the provision of general education services is important.

The Virginia Department of Education Considerations for COVID Recovery Services for Students with Disabilities indicates that "the determination of COVID recovery services is made by the IEP Team after a careful review of student performance and data including pre-COVID closures, student participation and performance during COVID closures, and performance upon return to school. This means that IEP Teams will need a period of time to gather data on the student's performance and assess their skills in relation to pre-COVID closure and their learning rate compared to peers and with consideration of the educational experiences being offered by the LEA." Information about data-based decision making and considerations for IEP Teams including when to meet, data to consider, and documenting the meeting is included.

If an IEP Team is asked to consider ESY services once schools are reopened and a local decision about general education services is made, it should review information including the services offered and delivered to students in general education and special education and communication with families.

The VDOE guidance, [Extended School Year Services](#) Implementing the Requirements of the Individuals with Disabilities Education Improvement Act, 2004 and Federal Regulations, 2006 states that, "ESY services should not be granted solely on the basis of the student's failure to achieve one or more of the IEP's goals (p.17)." This guidance document also provides information on factors for the IEP Team to consider and examples of the variety of ways ESY services can be implemented. The IEP Team's consideration of compensatory services should be discussed when school reopens. Information about the student's individual performance and data regarding the growth or loss of skills should be considered. The IEP Teams should consider the student's level of functioning with respect to the amount of services provided in general education and compared to peers as well as their individual level of functioning both at the end of in-person instruction compared to when they return to school. It is important to consider how any services will be delivered to ensure they do not impact new learning.

IEP Meetings

11. Given the high number of IEP and/or IEP addendum meetings that may need to be convened in response to the reopening of schools; if a parent chooses not to participate in a virtual meeting to discuss their child's identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE), can the meeting be held without them?

The requirements for conveying special education meetings do not change when a meeting is held by any alternative means. This includes ensuring that the parent is notified of the meeting early enough to ensure that the parent has an opportunity to participate. For meetings to discuss the provision of FAPE and the educational placement of the child, this further requires scheduling the meeting at a mutually agreeable time. (Refer to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (the Virginia Regulations), at 8VAC20-81-170.A.1.b., a(2) and b, 8VAC20-81-170.c(2), and 8VAC20-81-110.E.) A meeting can be conducted without parental participation if the LEA is unable to convince the parent that they should participate and the LEA has a record of its attempts to arrange a mutually agreed upon time. (Refer to the Virginia Regulations at 8VAC20-81-110.E.4.)

12. Is it permissible to make changes to a child's IEP without convening a meeting?

It is permissible under federal and state special education laws and regulations to make changes to a child's IEP after the annual IEP Team meeting for the school year if the parent(s) and the LEA agree not to convene an IEP Team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP. If an amendment to a child's IEP is made without a meeting, the following actions must occur: (i) if changes are made to the child's IEP, the LEA shall ensure that the child's IEP Team is informed of those changes; and (ii) upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated. It is important to note that this meeting is not a substitute for the required annual IEP meeting. It is also important to note that the parent must provide informed consent in writing to any amendments made through this process.

13. As we look at developing annual and initial IEPs for the 2020-2021 school year, what should be reflected in the IEP as the projected date for the beginning of services?

The projected date for the beginning of services outlined in a child's IEP falls to the purview of the child's IEP Team to determine.

Electronic Signatures

14. What about the use of electronic signatures?

The Virginia Regulations (8 VAC 20-81-170.I) permits the use of electronic signatures and references another portion of the *Code of Virginia*, the *Uniform Electronic Transactions Act* (UETA), to spell out the details of what can be an electronic signature. The UETA provides that an electronic signature is a symbol, a sound, or a process logically associated with a record, that is adopted by a person with the intent to sign. Additional consultation and a plan for documentation with counsel or a division's school board attorney is strongly recommended.

Timelines

15. Will the state or federal calendar be adjusted for the required timelines related to special education?

At this time, there is no guidance from the U. S. Department of Education's Office of Special Education Programs (OSEP) regarding the waiver of federal timelines related to special education compliance. OSEP has been clear in the past there is no waiver for natural disasters. However, OCR has provided guidance that "IEP Teams are not required to meet in-person while schools are closed." In addition, OCR stated, "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 reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504." With this in mind, local school divisions should develop a plan to support maintaining timelines and to document clearly if a delay occurs, the nature and extent of the delay, and the plan to move as quickly as possible to prevent any further delay. Local Directors of Special Education should be consulted for local- and school-based guidance.

School divisions should recall that existing regulations already provide for certain types of flexibility with regard to holding meetings and for extending timelines. For instance, if the parent and school division agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained within the 65 business days, the evaluation/eligibility timeline may be extended. In addition, amendments to IEPs may be made without a meeting, and meetings may always be conducted virtually or by phone (refer to 8 VAC 20-81-110.E.3). As always, school divisions should be flexible in allowing parents to attend IEP meetings by alternative means and clearly communicate these options to parents. Additionally, school divisions should carefully document all attempts to arrange meetings with parents, including providing meeting notice that complies with special education regulations.

Additional Resources: [FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions](#)

Equitable Services

16. How will services be provided to parentally-placed students in residential facilities?

School divisions remain responsible for providing the equitable services identified through the private school consultation process. However, in that the private schools across the Commonwealth are also closed for the same duration as public schools, with the exception of private residential schools licensed by the Department of Behavioral Health and Developmental Services (DBHDS), VDOE recommends that school divisions communicate with the private schools in their region to determine whether any equitable services could continue through virtual/distance learning or other alternate methods and to continue providing such services if possible. The VDOE also recommends school divisions communicate with families of students with individual service plans to let them know if services will or will not be provided. Students parentally-placed in residential services, who receive FAPE from public schools, will not be entitled to services while public school is closed.

Early Childhood Education

17. What about children referred from Part C to Part B?

All local early intervention (EI) systems continue to operate at some level. Many local systems are no longer providing in-person services or visits. Where appropriate and feasible, telehealth is being used for eligibility determination, assessment for service planning, initial and annual Individualized Family Service Plan (IFSP) meetings, IFSP reviews, and IFSP services (including service coordination).

Since IFSP meetings and reviews may continue, the transition conference may also be held. Regulations require the LEA to participate in transition planning conferences arranged by the designated local Part C early intervention agency. Temporary policies in place during the COVID-19 public health emergency allow that IFSP meetings may be held via telehealth, by phone or video-conference. In the instance that the local school division representative cannot participate in any of these ways, then the division is to provide written information about early childhood special education services to the family and a contact name and phone number where the family may call with questions about school services. School division representatives should communicate with their local early intervention agency regarding school closures and ability to participate.

As long as local early intervention systems have the means (phone, fax, secure email, U.S. mail) to send notification/referral to the local school division and VDOE, they are expected to do so. If the local early intervention system has no means by which to send notification/referral, then those circumstances must be documented in the child's EI record and the notification/referral sent as soon access to a means of transmitting the notification information is accessible. Therefore, it should be expected that referrals will continue to be sent from Part C to Part B. As noted above, OSEP has not provided a waiver of federal timelines.

Please refer to the [Transition from Early Intervention to Early Childhood Special Education FAQ](#) for more information.

18. What if a referral from Part C to Part B is late?

The Office of Special Education Programs (OSEP) recognizes that there are reasons that a referral may be late due to reasons that are beyond the control of the local Part C early intervention agency and/or LEA. OSEP previously provided the following examples:

- withdrawal of parental consent, the child moved, or any extenuating circumstance;
- the parent failed or refused to make the child available;
- parent refusal to provide consent caused delays in evaluation or initial services (e.g., referred less than 65 business days prior to age of eligibility); or
- child referred to Part C less than 90 days before the third birthday.

During the COVID-19 public health emergency, instances in which the referral is late due to a local early intervention system closing or having no means by which to send the referral are also considered beyond the control of the Infant and Toddler Connection (ITC) and the LEA. Part C has been asked to clearly communicate the reason for all late referrals to Part B. Please refer to the *Indicator 12 Instructions* for specific information related to reporting late referrals or missed timelines due to COVID-19 related factors.

19. Does a referral to a Local Educational Agency require a parent signature?

A referral to an LEA is done by transmitting each child's name, parent's name(s), address, phone number, and birth date to the child's LEA of residence. Sending a referral does not require written consent from the parent. However, a referral or notification will not be completed if a parent disagrees in accordance with the opt-out procedures specified in the Infant & Toddler Connection of Virginia Practice Manual. If a parent does opt-out, the service coordinator is to provide documentation in the child's EI record.

20. What should LEAs provide when a preschool-aged child receives IEP services in a child care or community-based preschool program that is still open? What about Head Start?

Some preschool-aged children (2-5) receive services through their IEP in community-based preschool or child care centers. Community-based preschools and child care centers are also experiencing a phased reopening, with some already open and others delayed or perhaps not reopening. Teams will need to determine if a community-based placement is practicable given health and safety considerations, needs of the child and family, and the reopening plan implemented by the LEA. In the event that the school division is providing in-person instruction and the community-based setting is not open or is no longer an appropriate placement, an alternative regular early childhood program will need to be identified for the child or the Team will need to meet to discuss placement. The educational placement of a student with a disability is a matter of FAPE which is determined by the child's IEP Team. Any changes to services (frequency, duration, or placement) will need to be documented through an IEP amendment. Teams are encouraged to document any changes to the placement in the prior written notice and reasons for the change.

Keep in mind, if a student with an IEP is receiving the same services as students in the general education setting during school building closure (i.e., distance learning), the IEP may not need to be amended with regard to placement or setting.

At this time, the Office of Head Start has not compiled a Head Start Reopening Guidance Plan. All communication received from the Regional Office has stated that Head Start Programs should follow their local school divisions lead, combined with health and safety guidelines shared by the Virginia Department of Health and the CDC. The Office of Head Start has implemented flexibilities to accommodate programmatic decisions made by grantee agencies for providing services to the children and families in their localities. Therefore, the same would hold true for children with IEPs who are to attend a Head Start program.

Training and Technical Assistance Centers

21. How will VDOE's professional development activities and Training and Technical Assistance Centers' (TTAC) services to school divisions be available as schools reopen?

As part of containing the community spread of the COVID-19 virus, VDOE and TTACs are keeping staff travel and group gatherings to a minimum following the Governor's health guidance. The VDOE staff is changing face-to-face gatherings to virtual formats, as communicated through Superintendent's Memos, Superintendent's emails, Assistant Superintendent's emails, as well as through other e-newsletters and various meetings with stakeholders. TTACs are expected to continue providing their services to school divisions. Most

of the future events will be offered using synchronous and asynchronous virtual formats. TTAC staff members are employees of universities and must follow their university policies and procedures, even if that means canceling some or all planned travel during the year.

Assessment and Accountability

22. How do school staff collect evidence for the Virginia Alternate Assessment Program (VAAP) in a virtual school environment when evidence is to be collected by school personnel under testing conditions prescribed by the Virginia Department of Education (VDOE)?

Due to the COVID-19 pandemic, the VDOE will be providing flexibility in collecting evidence for the VAAP for the 2020-2021 school year. Student work samples may be completed at home if students are being instructed in a virtual environment. However, to the extent possible, school divisions should implement procedures to ensure that students complete work samples independently and that they do not have access to hints, clueing, or prompts that would provide answers. Also to the extent possible, student work samples completed in a virtual environment should be collected under the supervision of school personnel.

The online versions of the *2020-2021 Virginia Alternate Assessment Program Administrator's Manual* and the *2020-2021 School Division Personnel Test Security Agreement for the Virginia Alternate Assessment Program* are being revised to reflect this flexibility.

Medicaid in Schools

23. Are schools able to bill Medicaid for IEP services that are delivered via telehealth?

The DMAS encourages the use of telehealth to deliver covered, special education-related services, as authorized by the child's IEP, during this period of Governor-declared emergency. Any of the covered services, as described in the [DMAS Provider Manual for Local Education Agency](#) providers, may be delivered via telehealth at the discretion of the qualified provider working within the scope of their professional services.

General guidance provided by DMAS includes:

1. Use the typical CPT/billing code for these services - the same code that one would use if delivering the service through traditional, in-person methods.
2. It is recommended, but not required, to use the "GT" billing code modifier in the DMAS billing system, and the use of the place or site code of "02" as the site of care. (Particularly for schools that have not billed DMAS for services delivered via telehealth)

before, please know this is optional and not required. DMAS does not want uncertainty with the billing system to interfere with billing for these services.)

3. Document in the student's service record (e.g., progress note) that the minor child's parent or guardian has consented to the use of telehealth to provide the service.
4. Include sufficient detail in the documentation to support that the service was effectively provided via the telecommunications method(s) chosen.
5. The student's home is an acceptable "originating site" for purposes of receiving services via telehealth.

Note that, for the length of the state of emergency, DMAS is relaxing the modalities acceptable for delivery of services via telehealth. School service providers may provide covered services via audio-only telephone contacts, for example, and through non-HIPAA compliant smartphone or computer apps (e.g., FaceTime, Skype). If a non-HIPAA compliant smartphone or internet-based application is used, however, DMAS recommends documenting that the parent or guardian gave informed consent to the use of a non-HIPAA-compliant application. DMAS is also allowing for the student to receive the services from home and is not requiring that an aide be present with the student during the encounter.

Additional Resources:

- [DMAS Provider Flexibilities as a Result of COVID-19](#)
- [DMAS Provider Manual for Local Education Agencies](#)

Dispute Resolution

24. What is the impact of school closures on timelines for special education dispute resolution processes, such as a state special education complaint investigation?

At this time, there is no guidance from OSEP on this issue. However, the federal and state special education regulations, at 34 C.F.R Section 300.152(b)(1)(i) and 8 VAC 20-81-200.D.4.c.2, permit an extension of the 60-day timeline for a state special education complaint investigation if “exceptional circumstances” exist. While OSEP has found that state staff shortages and school vacations and breaks do not constitute “exceptional circumstances,” there is no clear guidance regarding the impact of a declared national emergency on this issue (refer to US ED, Office of Special Education Programs, Questions and Answers on IDEA Part B Dispute Resolution Procedures (July 23, 2013)). Note that the Office of Dispute Resolution has the authority to extend timelines for complaint responses and additional information on a case by case basis. School divisions and parents are encouraged to document any difficulties they may have in responding to a state complaint, such as unavailability of staff or inaccessibility of records, to assist VDOE in making a determination whether exceptional circumstances exist that justify extending the timeline.

25. What is the impact of school closures on timelines for special education dispute resolution processes, such as due process timelines?

At this time, OSEP has not provided clear guidance on the impact of the COVID-19 outbreak on due process timelines. However, [OSEP's November 2012 Letter](#) to Pat Geary and James P. Lorenzo may be instructive. The 2012 Letter makes it clear that OSEP does not believe it has the authority to simply extend IDEA Part B deadlines. However, the 30-day resolution period may be extended in non-expedited cases. 34 CFR 300.510(c). Further, in non-expedited cases, hearing officers may grant extensions beyond the timelines. 34 CFR 300.515(a).

[OSEP's Letter to Fletcher](#) is instructive with regard to calculating deadlines in expedited cases. Although continuances are not permitted in expedited cases, the timeline for hearing and decision are based on school days. The Letter to Fletcher indicates that days that school is not in session are not counted when calculating school days for purposes of expedited timelines. The VDOE encourages hearing officers to consider the various national, state, and local states of emergency that have been declared, as well as the health and well-being of the students, parents, teachers, administrators, staff, witnesses and attorneys in rendering decisions on motions pertaining to continuances, witness appearances, and other relevant motions during this time. Parties who have filed a due process that is currently pending also have the option of advising a hearing officer that they wish to withdraw their due process request so that they may re-file at a later date.

Finally, we note that due process timelines commence when the due process request has been received by VDOE and the LEA (or the parents, if the LEA is the filing party). The date of receipt may be delayed if state or local agencies are closed due to the COVID-19 outbreak.

26. How will the COVID-19 outbreak affect mediation?

During the pandemic, VDOE will offer virtual mediation by conference call. The mediator will make arrangements for the conference call. Parents and school staff must jointly agree to utilize mediation in this format.

Private Schools

27. What actions are required before an LEA agrees to re-enroll students who previously attended a private school for students with disabilities or wishes to place additional students in a private day school program?

Initially, LEAs should review each student's IEP with the IEP Team and obtain agreement that the child can be appropriately served in the private day setting, focusing on whether the private school can implement the IEP as it is written with regards to the special education and related

services at the frequency and duration of those services. Other considerations should include focusing heavily on the student's ability to adhere to the strict social distancing recommendations as outlined in the [CDC Guidance for Schools and the American Academy of Pediatrics](#) (AAP) guidance; especially when the student may require close contact and or intensive 1:1 interaction at all times for their safety and daily care needs, as well as accommodations and services outlined in their IEPs.

It is important to keep in mind with regard to these matters and others, the [Phase Guidance for Virginia Schools](#) document, which is aligned with the CDC guidance for schools, serves as a recommendation for Virginia schools to mitigate risks associated with COVID-19. Schools should make decisions on implementing such guidance, and assuming additional risk, in consultation with local health departments and school attorneys. Public health conditions and practical limitations may inform decisions to deviate from the guidance.

Also, it is imperative that, given the guidance in the [Phase Guidance for Virginia Schools](#), that "Students will only attend such programs if the Individualized Education Program (IEP) Team agrees it is appropriate and the parent consents. Virtual instruction may remain appropriate for certain students who may be challenged with adherence to the strict social distancing and safety guidelines (emphasis added) as determined by the IEP Team and the parents' consent." This guidance clearly suggests that not all students may be appropriate for returning to "in-person" instruction until further mitigation measures are in place. As such, LEAs should collaborate with their private school placements and ascertain how they will adhere to the guidance and ensure that social distancing is maintained.

Additionally, like the public schools, all private schools for students with disabilities must submit a health compliance plan now that we have entered Phase III. This plan must outline the private school's strategies for mitigating public health risk of COVID-19 and complying with CDC guidance and VDH recommendations. While there is no requirement that a private school's health compliance plan be provided to public schools, it has been highly recommended to the private school administrators that they develop their health compliance plan and have it accessible for review by a student's IEP Team or parent during the IEP Team determination and consent process. As such, LEAs should ask private schools for a copy of their health compliance plans before agreeing that a return to "in-person" instruction is appropriate for each student based on the student's unique needs.

28. Are private schools required to provide a copy of their health compliance plans to the public schools who are considering returning students to their programs for "in-person" services?

Private schools for students with disabilities (day and residential) must submit their Phase III health compliance plans to the Virginia Council for Private Education (VCPE), regardless of their affiliation with VCPE before a school can begin "in-person" instruction. There is no

requirement placed on private schools to submit a copy of their plan to their sending LEAs. However, the *Recover, Redesign, Restart 2020* guidance document indicates that the health compliance plan is required to be made “publicly available.” Because the determination of whether a student is “appropriate” for “in-person” instruction falls to the purview of the student's IEP Team and then only with parental consent, the private schools have been advised to share their health compliance plans with the students’ LEA and/or parents to assist in expediting the IEP Team and parental consent processes.

Note that per the Phase Guidance for Virginia Schools document, schools, both public and private, must adhere to the strict social distancing requirements unless they have requested a variance and the variance has been approved. Part of the variance request must include the health compliance plan. Additionally, the above-referenced guidance states, “Students will only attend such programs if the Individualized Education Program (IEP) Team agrees it is appropriate and the parent consents. Virtual instruction may remain appropriate for certain students who may be challenged with adherence to the strict social distancing and safety guidelines as determined by the IEP Team and the parents' consent (emphasis added).”

As such, the VDOE encourages private providers, particularly those serving students with disabilities, and LEA administrators to collaborate in adhering to the guidance and considering the unique needs of each student.

29. Will the VDOE be monitoring private day/residential programs for compliance with the guidance outlined in the Phase Guidance for Virginia Schools document?

The *Regulations Governing the Operation of Private Schools for Students with Disabilities*, at 8VAC20-671-150.2, states that, as part of the monitoring process, “the department shall notify the relevant local government and placing and funding agencies of health and safety or human rights violations.” As such, when conducting a monitoring visit of private schools the private school monitoring specialist will ask to review the health compliance plan outlining the school’s strategies for mitigating public health risk of COVID-19; per Order of Public Health Emergency from the State Health Commissioner. If there are discrepancies noted with the implementation of the plan, the monitoring specialist will advise the private school administrator and work to make the appropriate modifications.

30. If a school division is or will be offering in-person instruction four days a week and the private school where the child is to receive services is unable to have all of its students on campus for four days a week and maintain the required social distancing, how should this be addressed?

Initially, each student's IEP Team is responsible for determining how the student will receive his/her special education and related services. A private school holds a responsibility to implement the IEP of all students enrolled in their program as the IEP is written. Any deviation from what the IEP calls for must be addressed through the IEP Team process and then only with parental consent. Failure to implement the IEP as written could place the private school in

noncompliance with the requirements of the *Regulations Governing the Operation of Private Schools for Students with Disabilities*, at 8VAC20-671-490.C and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, at 8VAC20-81-110.B. For example, if the IEP calls for placement in a private school setting and for in-person instruction four days per week, that is what the private school must provide. The private school cannot unilaterally determine that it will provide "two days in-person and three at home" to satisfy its instructional schedule. If doing so, the private school is in noncompliance with the requirements related to IEP development, review, and revision (refer to 8VAC20-81-110.B.4 and 5) and would give the parents cause for concern that their child is not getting the full complement of services outlined in their child's IEP. Simply put, IEP Teams determine the frequency and duration of special education and related services, as well as the least restrictive environment (LRE) where those services will be provided. As such, if a private school is being asked to enroll a student, they must collaborate with the LEA and ensure that enrollment in their school is appropriate given how the student's IEP is written.

The guidance VDOE has provided permits a private school to exercise the option of submitting a letter of intent to vary from, among other things, the published guidance on social distancing. However, private schools should consult with their attorney and local health department before doing so. However, even with a variance, the private school would need to determine its capacity limitations and adjust its enrollment accordingly. They may not be able to serve the same number of students and ensure the safety of students and staff as would be expected.

31. If the local school board says that all students will be provided services through online learning, does that apply to private placements or is this decision driven by the IEP?

This would be an IEP Team decision as to what constitutes a free appropriate public education (FAPE) for each student with regards to placement and service delivery. If the IEP Team finds that in-person instruction in a private school setting is appropriate then the services would be provided in the private school. If the IEP Team determines that online learning constitutes FAPE for a student, then the LEA would need to determine who will provide the online instruction - will it be provided by LEA staff or through the private school.

32. What is the impact of the extended closure on services provided to students with disabilities served in private school settings?

The impact of the state of emergency and extended closure on contractual arrangements with service providers through the *Children's Services Act* (CSA) remain a matter of local jurisdiction. The VDOE has advised local school divisions to work with their local Community Policy and Management Teams (CPMT), local CSA office, and partnering private schools to discuss this matter. The VDOE has also provided guidance to school divisions to carefully

consider the provision of equitable access, services, and support for a variety of students including students who may be served by private providers. The Office of Children's Services (OCS) has also been clear in communication that funds are able to reimburse localities for services as agreed to by the local CSA program, local school division, and private providers. There is no issued guidance from VDOE or OCS that would serve as a barrier for providing services to students served in private settings.

Local and Regional Jails

33. How should special education services in local and regional jails be treated?

The teachers that serve incarcerated students are employed by the public school divisions and should follow the school divisions' policies and procedures. If a school closure causes educational services for all students to pause within a school or division, then the school/division is generally not required to provide services to the affected students eligible for special education services during that same period of time. The Jails Program teachers should follow COVID-19 containment procedures of the regional and local jails, as well.

General Supervision and Monitoring

34. How will the school closures related to COVID-19 affect my school division's monitoring activities pertaining to program improvement as part of results-driven accountability (RDA) and/or noncompliance as part of RDA, federal Indicators, or overuse of the Virginia Alternate Assessment Program (VAAP)?

At this time, there is no guidance from the United States Department of Education's Office of Special Education Programs (OSEP) regarding the waiver of federal timelines related to special education compliance. Local divisions are encouraged to continue to work with their regional monitors to resolve noncompliance in a timely fashion, not to exceed one year from notification. Transferring files remotely via the Single Sign-on for Web Systems (SSWS) Dropbox or allowing "read-only" access to your special education computerized program is encouraged in lieu of face-to-face meetings. There is more flexibility related to program improvement monitoring activities in that deadlines are not held to the same one year standard as compliance.

School Health

35. How can school divisions address challenges with utilizing health mitigation strategies effectively?

The Centers for Disease Control and Prevention (CDC) recognizes that wearing masks may not be possible in every situation or for some people. In some situations, wearing a mask may

exacerbate a physical or mental health condition, lead to a medical emergency, or introduce significant safety concerns. [Adaptations and alternatives](#) should be considered whenever possible to increase the feasibility of wearing a mask or to reduce the risk of COVID-19 spreading if it is not possible to wear one.

The CDC has also provided [resources](#) that can support individuals with disabilities and those who serve or care for them make decisions, protect their health, and communicate with their communities. Direct Service Providers include personal care attendants, direct support professionals, paraprofessionals, therapists, and others. They provide a wide variety of home, school and community-based, health-related services that support students with disabilities. These staff should follow [everyday prevention actions](#) when working with individuals in any setting. Some providers will require additional safeguards when working in close proximity (less than six feet for more than 15 minutes with students). The CDC provides guidance for these circumstances in [guidance for standard and transmission-based precautions](#) and this information may be useful information for divisions to consider.

36. Will schools be able to administer medications to students at school?

Students may need to take medication while at school. To the degree possible, make every effort to identify ways that medications may be administered at home, instead of during school hours. Prescription medications must be brought in its original container, with correct labeling, and with healthcare providers authorization and parental consent to administer during school hours. Emergency medication for conditions such as asthma, allergies, seizures must follow the same procedures as for prescription medications.

Over-the-Counter medication policies vary across the Commonwealth. Some LEA's require only parental consent while others require both (1) healthcare providers and (2) parental consent.

37. In a virtual learning environment are Section 504 related emergency plans or action plans (Diabetes Medical Management Plan, Asthma Action Plan, Seizure Action Plan, etc.) still required?

Yes, unless affected by a waiver, any documentation required for regular school attendance is also required in a virtual educational setting.

38. How should schools proceed with required student screenings as students return to school for the 2020-2021 school year?

Regulations require all students to be screened in the areas of Vision, Hearing, Speech, language and voice, Fine motor, Gross motor, and scoliosis. The VDOE's guidance document [Resource Document for Local Screening Requirements in Virginia's Public Schools](#) provides information

on the current screening requirements and details around the local requirements for some screening areas.

The Superintendent of Public Instruction has waived the requirement in [8VAC20-250-10](#) that the hearing of pupils in grades K, 3, 7, and 10 *be screened* within 60 administrative working days of the opening of school. However, such schools must still provide hearing screens in the 2020-2021 school year and the scheduling of such hearing screens shall be completed no later than the 60th administrative working day of the school year. Vision screenings shall still be scheduled no later than the 60th working day of the school year and conducted at any time during the school year, per the requirement in [§22.1-273](#).

Special Education Advisory Committee

39. What is the requirement for the meetings of the Special Education Advisory Committee and how might it be impacted by COVID-19?

The Attorney General issued an [advisory opinion](#) on March 20, 2020, outlining the authority of public bodies, including local governments, to conduct meetings and critical public business while meeting social distancing needs and important transparency and accountability obligations. The [opinion](#) says that Virginia law allows public bodies to conduct meetings electronically “to ensure continuity of government during the declared emergency” resulting from the COVID-19 pandemic.

Evaluations

40. Must school divisions continue to engage in child find?

The IDEA requires all states to identify, locate, and evaluate all children with disabilities, regardless of the severity of their disabilities. During the pandemic, school divisions continue to be responsible for developing and implementing methods and activities for identifying children with disabilities who require special education and related services. As part of the child find responsibilities, school divisions must accept new referrals for evaluations and timelines still apply as noted in question 16. It is recommended that the website of the LEA and/or each school in the LEA display the contact details of the person(s) that a parent/guardian should contact to request an evaluation for special education. For referrals from Part C, the LEA is to let the local early intervention system know the name and contact information of the person who receives the notification/referral.

41. Must evaluations be completed during virtual schooling or school closures? May a school division delay the completion of all evaluations until face to face schooling resumes?

As stated previously, some evaluations that cannot be completed without face-to-face activities may need to be gathered using an alternate format or delayed until school reopens. However, there are evaluation components that can and should be completed within the sixty-five business days timeline. Remember, evaluations always begin with a review of existing data, and on the basis of that review and input from the child's parents, the Team may identify any additional data that is required. If the Team determines that existing data is sufficient and no additional data is required, then the team may move forward to discuss and determine eligibility. Teams should consider the sources of existing data available to document each of the eligibility criteria questions, including information about the educational impact and need for specially designed instruction. If any required data is not available or cannot be gathered to answer each of the eligibility criteria questions, the team may need to extend the timeline.

If a Team determines that new data is required, they can decide if any components of the evaluation can be completed remotely and whether quality and comprehensive information will be provided. In this case, the Team will need to:

- Ensure transparency with parents and clearly explain the alternate form of assessment,
- Accept and document a parent's refusal to participate in an alternative assessment or evaluation, and
- Know the required parental consent needed and prior written notice requirements and meet them.

For any new data obtained, teams will need to address reliability and validity issues. It is important to consider that any new assessment data will be gathered during this unprecedented time. Professionals should consider the impact of changes to daily routines and anxiety on students, their families and caregivers, and school personnel. After reflecting on the individual student and family circumstances, professionals may determine it is appropriate to gather data remotely and may gather evaluation components through record review; checklists (mail or online); interviews with teachers, parents, and students; or other activities. Before conducting new assessments using standardized and norm-referenced measures, professionals should consider a number of factors including:

- whether an assessment can be validly and reliably administered virtually,
- norming and standardization of the instrument,
- technology requirements and availability in the home,
- availability of trained auxiliary examiner in the home for manipulatives/materials, and

- any Virginia licensure regulations and standards of practice including ethical obligations (i.e., training of examiner).

For initial eligibility determination, a hearing screening is required. If school staff are unable to complete a hearing screening, the team may ask parents if there are any existing hearing screening data from the child's pediatrician. Prior to conducting hearing screenings using teleservices, professionals should consider the interactive software and other technology requirements, age of the student, training and support required for the facilitator, and other factors. A [study by Lancaster et.al. \(2008\)](#) suggested that school hearing screenings may be provided using telehealth technology.

The health and safety of students, families, and educators should be of primary concern. A careful review of all Virginia Executive Orders should be completed prior to considering the administration of traditional in-person administration of assessments. The VDOE professional development focusing on evaluation during COVID was offered on June 16. The [Recorded Webinar: Eligibility Evaluation Considerations During COVID-19](#) can be accessed online.

42. Does a Physical Therapist need a physician referral to see a student with a temporary learning plan?

The statutes governing the practice of physical therapy (under the Board of Physical Therapy) state that “a licensed physical therapist may provide, without referral or supervision, physical therapy services to... (iii) special education students who, by virtue of their individualized education plans (IEPs), need physical therapy services to fulfill the provisions of their IEPs (§ 54.1-3482.G.iii).” If physical therapy services were included in the last agreed upon IEP that was in effect when schools were closed, then the physical therapist may continue to work as part of the IEP Team and provide services to the student in accordance with the existing IEP, a revised IEP, or a temporary learning plan.

43. May related service providers offer treatment or evaluate students who are sheltering in homes outside of Virginia?

Professionals licensed by the Virginia Department of Health Professions (e.g., SLP, OT, PT, Audiology, Behavior Analysts, Psychologists) are licensed to provide services within Virginia. In order to deliver services or conduct assessments with students who are sheltering out of state, the professional must adhere to the laws and regulations for the state in which the student is located at the time of the services. [Virginia Executive Order #57](#) states that “Health care practitioners with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services.” Prior to evaluating or treating a Virginia student who is sheltering in another state, professionals should contact the

licensing board of that state to determine if they have a similar provision. If no exception exists, services cannot be provided until the provider is licensed in that state.

44. Do OT and PT providers need a separate informed consent form to provide OT and PT services using telepractice?

Informed consent for telepractice is specifically discussed in Virginia Department of Health Profession's guidance documents for Occupational Therapy (85-12) and Physical Therapy (112-21). Both guidance documents suggest that documenting appropriate patient informed consent for the use of telemedicine services must be obtained and maintained, but do not specify the use of a single document. Documentation required for compliance with IDEA may satisfy some of the items listed in Virginia OT and PT guidance on informed consent for teleservices. For example, a special education meeting invitation may be sufficient to document "Identification of the patient, the practitioner, and the practitioner's credentials." Furthermore, the Procedural Safeguards documentation provided to all families includes assurances of confidentiality and the "Requirement for express patient consent to forward patient-identifiable information to a third party." Professionals should discuss with families the "types of activities" that will be completed and if the "condition being treated is appropriate for a telemedicine encounter." This information may be documented in service logs, IEP amendments, or temporary learning plans.

LEA communication to families regarding services during school closures may provide additional documentation for informed consent. Communication regarding the technology platforms used by the LEA may already mention "Details on security measures taken with the use of telemedicine services" and "potential risks to privacy" and information on "technical failures." It is important to note that existing state guidance on security measures for telepractice should be interpreted with consideration of the federal guidance on HIPAA relaxation of enforcement during COVID-19.