# Superintendent’s Memo 112-20


**COMMONWEALTH of VIRGINIA
Department of Education**

DATE: May 1, 2020

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

## SUBJECT: Additional Guidance from the U.S. Department of Education Regarding Waivers for the *Individuals with Disabilities Education Act*

The U. S. Department of Education released guidance on April 27, 2020, related to Congress’ request to examine certain federal education laws and regulations to determine what, if any, flexibility could be given to state and local educational agencies during this unprecedented time. Secretary DeVos declined to seek any waivers for the *Individuals with Disabilities Education Act* (IDEA). Additional details are available in the [CARES Waiver Report](https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf). The information from the U. S. Department of Education highlighted the following;

* Schools can, and must, provide education to all students, including children with disabilities;
* The health and safety of children, students, educators, and service providers must be the first consideration;
* The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
* Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
* Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

This update aligns closely with information, resources and support provided by the Virginia Department of Education (VDOE) which has focused on providing equitable access and support for a variety of students. School divisions must ensure that students served through special education programs and related services 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) and ensure that the student is provided with a free appropriate public education (FAPE) in the least restrictive environment. In many cases, the use of a virtual platform may be appropriate to provide the student with any necessary instructional accommodations, modifications, or other supports. Additional information is available on the [VDOE website](http://www.doe.virginia.gov/support/health_medical/office/covid-19.shtml).

Once school resumes, the school division must return to providing special education and related services to students with disabilities in accordance with the student’s IEP that was in effect before the school closure began, unless the parent or adult student consents to any changes as proposed by the student’s IEP Team. For students entitled to FAPE under Section 504 of the *Rehabilitation Act*, the services provided must be consistent with any plan developed to meet the requirements of Section 504. Additionally, after an extended closure, school divisions are responsible for reviewing the impact, if any, the school closure may have had on the student’s receipt of special education and related services through the IEP and 504 meeting process.

If you have additional questions regarding this guidance, please contact the Department of Special Education and Student Services, at specialed.assistantsuperintendent.memo@doe.virginia.gov.

JFL/SMH