



February 2025

TO: BOCES District Superintendents
School District Superintendents
Superintendents of Special Act School Districts
Superintendents of State-Operated Schools
Superintendents of State-Supported Schools
Public School Administrators
Non-Public School Administrators
Charter School Leaders
Special Education Directors
Chairpersons of Committees on Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents, and Individuals Interested in Special Education

FROM: Elisa Alvarez, Associate Commissioner, Office of Bilingual Education and World Languages
Dr. Santosha Oliver, Assistant Commissioner, Office of Standards and Instructional Programs
Christopher Suriano, Associate Commissioner, Office of Special Education
Dr. Giovanni Virgilio, Executive Coordinator, Office of Religious and Independent School Support

SUBJECT: Option to Provide Virtual Instruction

Per [§100.2\(u\) of the Regulations of the Commissioner of Education](#), school districts, Boards of Cooperative Educational Services (BOCES), registered nonpublic schools, charter schools, and educational programs operated by a state-operated, state supported, or approved private school for the education of students with disabilities, or administered or supervised by a state agency, are allowed, but not required, to leverage virtual instruction to provide uninterrupted learning opportunities to individual students who may be unable or averse to attending school, including during times of political uncertainty. This may include English Language Learners, immigrant and migrant students, as well as others who may be affected and reluctant to attend school in person due to concerns about their personal safety and security.

Any school exercising this flexibility must ensure that virtual instruction is inclusive, equitable, and reflective of students' diverse needs, while adhering to the parameters set forth by the Commissioner of Education. As defined in [Section 100.1\(y\) of the Regulations of the Commissioner of Education](#),

virtual instruction consists of synchronous or a combination of synchronous and asynchronous instruction provided by a teacher, designed for delivery in a virtual learning environment with regular and substantive interaction between the student and teacher. Fully asynchronous instruction is not allowed. “Office hours” do not constitute “regular and substantive interaction,” as student attendance is not required. Additionally, a virtual learning environment, as described in [Section 100.1\(aa\) of the Regulations of the Commissioner of Education](#), refers to an instructional setting facilitated through digital video-based technology and/or a combination of an online learning management system and videoconferencing technology, where interactions between teacher and student, student-to-student, and student-to-content occur solely through internet-connected technology.

Further requirements for virtual learning, outlined in [Section 100.2\(u\) of the Regulations of the Commissioner of Education](#), state that parents or legal guardians must opt into virtual instruction, as students cannot be placed into a virtual setting without parental consent. Schools must ensure that all students participating in virtual instruction have access to an appropriate device and sufficient internet service to fully engage in learning, including participation in synchronous instruction through a video communication platform. Instruction must also align with applicable New York State Learning Standards, be provided in accordance with students’ Individualized Education Programs (IEPs), and include mechanisms for documenting student mastery of learning outcomes.

[Section 100.2\(u\)\(4\)](#) also outlines teacher requirements for virtual instruction. Instruction must be delivered by an appropriately certified teacher, which may include a teacher from the student’s home school district, a teacher from a Board of Cooperative Educational Services (BOCES) contracted with the district, a teacher from another district under a shared service agreement, or a teacher from a registered nonpublic school, charter school, a state agency-administered educational program, or an approved private school for school-age students with disabilities, state-supported, or state-operated school. Vendors are not allowed to supply virtual learning teachers but can supplement virtual instruction through the provision of digital curricular materials.

Schools must also consider the diverse needs of all learners, including English Language Learners and students with disabilities, when planning virtual instruction. This includes required units of study of English as a New Language and Bilingual Education; schools and districts that need support providing this instruction should contact the Office of Bilingual Education and World Languages ([OBEWL](#)) or their local Regional Bilingual Education Resource Network [RBERN](#). Resources and information should be accessible in multiple languages and formats where necessary.

For students with disabilities, the committee on special education (CSE) must ensure that all the services and supports necessary for the student to continue to receive a free appropriate public education (FAPE) can be provided through virtual instruction. The school district must ensure that special education services, specific accommodations, program modifications and supports are provided consistent with the student’s Individualized Education Programs (IEP). Based on the unique needs of the student, the CSE may need to review the services, accommodations, program

modifications and supports specified in the IEP to determine whether they are appropriate to the virtual instruction environment. In accordance with [section 200.4\(e\)\(3\)](#) of the Regulations of the Commissioner of Education, the teacher providing virtual instruction must be provided a copy of the student's IEP and informed, prior to the implementation of the IEP, of their responsibility to implement the recommendations on the student's IEP, including the responsibility to provide specific services, accommodations, program modifications, and/or supports for the student in accordance with the IEP.

Additionally, schools must take measures to safeguard student data and maintain confidentiality, particularly in situations that may involve sensitive information. As per NYSED's Field Memo, [Changes to the Reporting and Collection of Immigrant Student and Vaccination Data in New York State](#), districts may not collect and report to NYSED "data about students' dates of entry into the United States" and "data about students' countries of origin." Open communication with families, staff, and community partners will be essential to ensuring that students continue to have access to high-quality instruction during challenging circumstances.

For more information on virtual instruction, please refer to [FAQ guidance on the implementation of virtual learning](#) in New York schools. Questions on the implementation of virtual learning can be directed to the Office of Educational Design and Technology at edtech@nysed.gov or (518) 474-5461.

Questions on instruction for English Language Learners, immigrant, and newcomer students can be directed to the Office of Bilingual Education and World Languages at (518) 474-8755 or OBEWL@nysed.gov.

Questions on instruction for students with disabilities can be directed to the Office of Special Education at (518) 473-2878 or specced@nysed.gov.

Questions on instruction for religious and independent schools can be directed to the Office of Religious and Independent School Support (ORISS) at oriss@nysed.gov or (518) 473-8202.