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LEGAL GUIDANCE FOR ADDRESSING SPECIAL EDUCATION ISSUES WHEN RESUMING OPERATIONS DURING THE PANDEMIC

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1

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- Partners have over 100 years of collective experience working with charter schools.
- 33 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent most of California's charter schools.
- Conduct workshops for charter schools in all areas of legal compliance.

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2

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- This webinar cannot substitute for personalized legal advice.
- Our advice can change tomorrow. Or an hour from now.
- With so many participants and so little time “live” questions are impossible, but we’ve designed this with your questions in mind.
- Follow up webinars are likely. Feel free to email with suggested follow up topics.
- Sign up for our legal alerts on our website: www.mycharterlaw.com.
- My (sometimes poor) attempt at humor is not intended to minimize the gravity of the situation. Any curse words utilized in this presentation are a manifestation of a geographic disability based upon my state of origin (N.J.)


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Getting Us All on the Same Page




- Most schools were closed but providing some sort of educational opportunities since 3/12/20.
- No true waivers of IDEA obligations have been provided; the original guidance was to provide FAPE "to the greatest extent possible".
- SB 117 (3/17/20) tolls assessment plan timelines while schools are closed and until the school reopens and the regular school session reconvenes.
- SB 98 (6/29/20) – shall offer in-person instruction and may offer distance learning under certain conditions and minimum requirements, which includes special education and related services and accommodations for distance learning. Future IEPs must provide for emergency conditions.
- 7/17/20 – CDPH Order - Schools must conduct only distance learning until their county is off the monitoring list for at least 14 days.



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Let's Do It

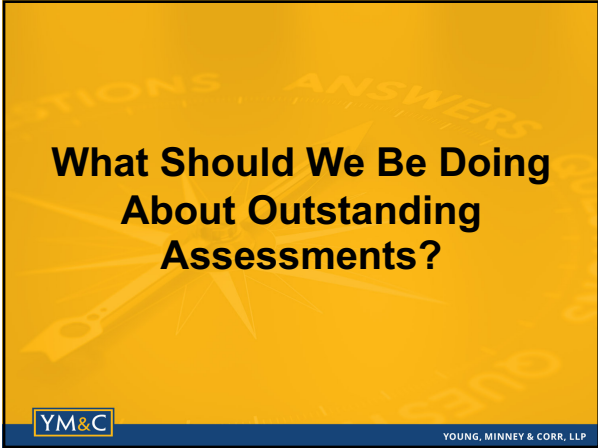



- Playing Catch Up on Assessments
- Virtual IEP Meetings and Updated IEP Content
- Considering Requests for Compensatory Education
- Responding to IEE Requests
- Preventing Complaints
- Preparing the Learning Continuity and Accountability Plan Content Regarding Special Education


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What Should We Be Doing About Outstanding Assessments?




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Outstanding Assessments



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Outstanding Assessments

- **SB 117 Tolling of New Assessment Plans – Still Applicable?**
we think yes until in-person instruction resumes
- **Can we just do a records review for triennials?**
yes if eligibility is not in question, parents are notified of the right to seek assessment
- **Can we reach agreement to delay assessment?**
yes

8

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Outstanding Assessments


- **Should we conduct virtual assessments?**
 - Not absolutely prohibited.
 - California School Psychologist Association Position Paper recommends no distance standardized testing.
 - Rely on judgment of the assessor.
 - Classroom observations – is distance learning observation reliable?
 - Reports should describe each assessment done remotely, what platform was used, the setting (in detail), any limitations posed by the virtual assessment, and what results should be considered with caution.
 - Make plan for follow up to complete missing assignments and support pending follow up.

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Outstanding Assessments



- **What is the priority for assessments once in-person assessment can resume?**
 - Finish any with signed assessment plans.
 - Start initial assessments where teachers/staff are reporting urgent needs.
 - Assessments for students who appear to be improperly placed upon return.
 - Triennials from oldest past due to most recently due.
 - Offer assessment plans that had been tolled.
- **If our county is on the monitoring list, can we bring students on site just for assessment?**
 - April 2020 guidance arguably supports it in exceptional situations.
 - Seek input from local health department.

**Are we exposed to liability if a student on campus or an assessor becomes ill?*


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Should We Keep Holding Virtual IEP Meetings?


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IEP Meetings










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Tips for Successful Pandemic Virtual IEP Meetings



Before the Meeting

- Clearly identify the meeting as virtual/telephonic on IEP invite.
- Create an agenda and send to team members prior to the meeting for input.
- Ensure technology is working.
- Send parent(s)/guardian(s) drafts (clearly marked as DRAFT) of documents prior to the meeting.
- If parent is unresponsive or refuses to meet virtually – consider options:
 - Parent agreement for delay
 - Offer three dates/times, make at least three attempts at reaching parent using different methods, meet without parent as last resort


During the Meeting

- Set ground rules at the beginning of the meeting.
- Maintain privacy.
- Show the IEP/document on the screen.
- Actively facilitate team input, especially parents.
- Do not allow team members to interrupt parents. But do not allow parent to prevent the input from team members.
- Discuss new student needs (i.e. social emotional goals) resulting from closure.
- Take breaks during long meetings.
- Document the discussion, including any requests or agreements, in the IEP notes. Check for agreement frequently.
- Confirm the method (mail, e-mail) for delivering a copy of the student's completed IEP and prior written notice.

After the Meeting

- Send the final IEP to parent(s)/guardian(s) for review/signature as soon as possible.
- Utilize PWNs to address requests and offers.


13



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Should We Be Updating All IEPs?




Maybe....

(ugh, I know. Please don't shoot the messenger)

- Duration of distance learning and overarching changes to education delivery may warrant changes to IEP's*
- Consider written amendments with parent agreements (rather than full meetings)*
- The more individualized the response to the circumstance, the more defensible the offer of FAPE*
- Safety considerations are all individualized as well*


14



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New Required IEP Content




SB 98 Requires Emergency Condition Description

- A description of the means by which the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days.
- The description shall take into account public health orders and include all of the following:
 - (i) Special education and related services.
 - (ii) Supplementary aids and services.
 - (iii) Transition services
 - (iv) Extended school year services

*Will likely be incorporated into IEP forms (i.e. SEIS) – use notes section until then.

15



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Personal Protective Equipment & Social Distancing

WEAR MASK YOU WILL



SO CLOSE TO ME DON'T STAND

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Personal Protective Equipment & Social Distancing

- Consider the differing requirements of personal protective equipment for the differing populations of students with disabilities (i.e. for those requiring medical procedures, toileting, lifting and mobility assistance).
- Consider how the LEA will address students with disabilities who are exempt from the mask requirement (i.e. consider face shield).
- Determine any special or unique needs for students with disabilities related to planned schoolwide procedures and protocols related to daily health screening and temperature checks.
- Re: physical distancing: establish any necessary flexibilities for specific students with disabilities, i.e. students with extensive support needs, behavioral challenges, etc.
- Address potential issues from physical distancing rules that could result in unintended segregation of students on campuses away from peers without disabilities.
- Distance learning for medically fragile or put at risk by in-person instruction or who are quarantining because of exposure to COVID-19.

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LA Schools You May Wish to Sit For This...



DEEP CLEANSING BREATHS


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**LA County Health Dept.
Order 7/14/20**



- **Individualized Education Plans (IEPs) and 504 Plans of students with special needs have been modified** to ensure that education can continue without undue risk to the student. Plans may involve remote learning, school attendance in a separate area with few students, or a hybrid approach combining in-class and remote learning.
- An **individualized health and safety plan** must be created for each enrolled student with special needs.
 - information derived from consultation with parents and students concerning any physical, medical, cognitive and/or social/emotional challenges that may affect the student's safety needs at school in the context of COVID-19.
 - Contingency plans in case the student screens positive for symptoms of COVID-19 or is identified as a close contact of someone who is symptomatic or has screened positive for COVID-19.
 - Contingency plans in case a cluster of COVID-19 cases requires full or partial school shut-down.

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**Should We Just Offer a
Blanket Amount of
Compensatory Education?**



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**Considerations for Individual
Determination of Comp Ed Claims**




- Were services during closure individualized in response to the circumstances?
- Were comparable services provided during closure?
- Did parents meaningfully participate in student's program during closure?
- Was peer interaction facilitated?
- Were services missed? Was there documented attempt to make up missed services.
- Did student regress or fail to make progress? More so than all other students without a disability?
- Is student able to recoup naturally?
- Did parents prevent FAPE by failing to access distance learning or virtual instruction?

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CTIONS ANSWERS


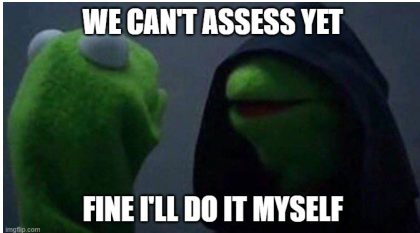
Can We Just Say, “No” to Requests for Independent Educational Evaluations?



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IEE Requests



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IEE Requests

Parent entitled to one IEE at public expense if they disagree with an evaluation conducted by the school or if an assessment is missing.

Must without undue delay:

- 1) Provide the IEE at public expense; OR
- 2) Request a due process hearing to show that its evaluation of the child was appropriate.



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QUESTIONS ANSWERS


Do we need to double our legal budget for special education claims?

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Don Your Armor!



1. Individualize IEPs as much as possible – use information from distance learning in the Spring to inform the plan for the Fall.
2. Consider new assessment needs.
2. Check your documentation – are all services documented and progress reported toward goals?
3. Prepare for implementation.
 - Has the IEP been circulated?
 - Does everyone know their role?
 - Do employees know what steps to take if student is struggling in distance learning?
4. Facilitate peer interaction.
5. Nurture the parent/school relationship.
6. When student misses services, document attempts to make up missed services and discuss in an IEP team meeting.

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Preparing the Learning Continuity and Accountability Plan Content Regarding Special Education

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Learning Continuity and Accountability Plan (as to special education)



- Due by September 30, 2020.
- CDE will release a template by August 1, 2020.
- Required content described in SB 98.
- Specific actions and expenditures of the charter school to address the impacts of COVID-19:
 - What additional supports for pupils with exceptional needs will be provided.
 - Actions and strategies to address learning loss and accelerate learning progress for pupils with exceptional needs.
 - Monitoring and supporting mental health and social and emotional well-being of pupils (and staff).



28

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Thank you for attending this webinar.

Thank you for providing outstanding choices in public education for all California students!

More questions?
Please don't hesitate to shoot us an email or give us a call!

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30

