

New Rules for Offering On Campus In-Person Supports; SB 820 Proposes to End Tolling of Assessment Plan and Student Record Timelines; and CDE Offers a Weekly Engagement Record Template

August 27, 2020

On Campus Supports

On August 25, 2020, the California Department of Public Health (“CDPH”) issued [guidance](#) for creating small, no more than 14 students with 2 supervising adults, cohorts to provide targeted services and support for students while schools are otherwise closed for in-person instruction. The Governor’s Office followed with further clarification and an [FAQ](#).

Briefly, the CDPH and Governor’s Office Guidance allows local educational agencies to establish small cohorts, which do not interact with one another, for providing specialized and targeted support services. The Governor's FAQ leaves it to the LEA to establish which students can be served by cohorts but recommends prioritizing students with disabilities, English learners, students at higher risk of learning loss or not participating in distance learning, students at risk of abuse or neglect, and foster and homeless youth. The Guidance also establishes limitations for the cohorts and the interactions of students between cohorts and makes it clear that applicable local county health department orders must be followed. Accordingly, it is important to review any county department of health orders and guidance prior to beginning any cohorts.

The Governor’s FAQ importantly notes that students may receive one-on-one services and supports from qualified adults, such as speech, occupational therapy, or intensive tutoring as long as state and local health department orders are followed while doing so (e.g., wearing masks).

SB 820 Proposes to End Tolling of Assessment Plan and Student Record Timelines

SB 117 was approved on March 17, 2020. SB 117 included many provisions designed to ensure continued funding for LEAs during the COVID closures. SB 117 also waived LEA compliance with two provisions of state special education law that do not appear in federal law: (1) Education Code Section 56321(a) which requires that if an assessment is to be done, an assessment plan must be provided to the parent within 15 days of a referral; and (2) Education Code Section 56504, which requires an LEA to provide a student's school records within five business days of a parent request. SB 117 tolled those timelines while schools remained closed due to COVID-19.

On August 24, 2020, SB 820 was amended to make SB 117 inoperative. The effect of this legislation, *if passed*, would be to end the tolling for assessment plan and record request timelines, thus triggering the timelines for all LEAs on the operative date of the legislation.

The California Department of Education ("CDE") in an Official Message from the State Director of Special Education on August 26, 2020, stated,

"As LEAs have had time to plan for the 2020–21 school year, and as subsequent requirements around distance learning have been put in place, the purposes for the SB 117 Section 8 waivers may no longer remain, thus prompting inquiries about the ongoing applicability of those provisions. As such, the CDE has been having ongoing conversations with the Legislature and the Administration to elevate issues from the field and need for clarity. The Legislature and the Administration expressed their intent to address these issues with August Budget Actions."

CDE Template for Weekly Engagement Record and Attendance and Instructional Time FAQ

The CDE updated its [FAQ](#) on August 21, 2020 regarding attendance accounting and instructional time. The FAQ reiterates the requirements of SB 98 for attendance accounting and the calculation of minimum instructional minutes for all LEAs *other than charter schools operating as nonclassroom based charter schools in the 2019-2020 school year*. **Importantly, the FAQ reminds LEAs that the fiscal penalties for failure to comply with the documentation requirements of SB 98 begin on Tuesday, September 1, 2020.** Thus classroom-based charter schools should be prepared to ensure it maintains all the documentation required by SB 98 to avoid audit penalties. The documentation required by SB 98 for attendance is as follows:

1) LEAs must document daily participation for each student on each instructional day, in whole or in part, for which distance learning is provided. Daily participation is used to track attendance, and may include, but is not limited to any of the following:

- evidence of participation in online activities;
- completion of regular assignments;
- completion of assessments; or
- contacts between employees of the LEA and the student or parents/guardians.

2) LEAs must complete a weekly engagement record for each pupil documenting the following:

- Synchronous or asynchronous instruction for each whole or partial day of distance learning;
- Verifying daily participation; and
- Tracking assignments.

As a reminder, SB 98 also requires a minimum school day for an LEA per grade level (180 minutes for K, 230 minutes for grade 1 to 3, 240 minutes for grades 4-12, and 180 minutes for certain students also enrolled in college courses for academic credit). These minutes are determined through in-person instruction or while in distance learning based on the time value of assignments as determined and certified by a certificated employee.

In the FAQ the CDE also provided a [template](#) for a combined daily participation and weekly engagement record. This is not a required template, and the CDE has been clear that each LEA can determine the method that works best for their school to remain in compliance with the requirements of SB 98.

As each charter school utilizes unique student information systems which document some, if not all, of the required SB 98 items, it is possible that those existing systems can be utilized to ensure SB 98 compliance. YMC would recommend that charter schools seek legal counsel and auditor review of their plan for SB 98 documentation.