



YOUNG, MINNEY & CORR, LLP

LEGAL ALERT

Court Has Stayed Order Requiring Mandatory Notices to Parents Regarding Virtual Instruction

March 9, 2022

You may have received information regarding a court order, in the case of *E.E. v. State of California*, issued by a federal court, which required Local Educational Agencies (“LEAs”) to send a notice to specified students regarding the provision of independent study or virtual learning for students with IEPs. This court order has been **temporarily stayed** by the court. As such, at this time, no action is required by charter schools until further court order. However, the court is considering whether to make the stay permanent pending an appeal later this week.

What did the Preliminary Injunction Require?

On February 28, 2022, the federal court ordered the California Department of Education (“CDE”) to provide guidance regarding LEAs’ obligations to comply with federal laws prohibiting discrimination on the basis of disability and obligations related to the provision of virtual instruction when a parent determines that their disabled child’s health would be put at risk by in-person instruction unless such virtual participation would be a fundamental alteration of their educational program.

The guidance would also require LEAs to provide specific notices to all students with IEPs who have requested or are currently participating in independent study or home hospital instruction, or who have been absent for more than 14 days since the beginning of the 2021-2022 school year. The mandatory notice provides information to these students regarding their right to participate in a remote educational program when determined by the parent that the student’s health would be put at risk by in-person instruction and to set aside any agreement to waive their right to accommodations and services in their IEPs and request a virtual program.

The CDE guidance and LEA notices would be required to include specific language, which is outlined in the Order, [linked here](#).

At this time, both the CDE guidance and the LEA notices are not currently required at least until March 17, 2022, while the preliminary injunction is stayed.

If the District Court denies the continued stay of the motion pending appeal, these requirements

will take effect on March 17, 2022. However, even if it does take effect, it is important to note that there are arguments to be made that the terms of the preliminary injunction do not apply to charter schools. Namely, the District Court's discussion and the origin of the lawsuit are based on provisions of the Education Code which are only applicable to school districts. If the temporary stay is lifted, we will carefully review the CDE guidance to consider its interpretation of the applicability to charter schools. We plan to follow up with a subsequent Legal Alert following the court's ruling on March 14, 2022.

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Please contact **Lisa Corr** at lcorr@mycharterlaw.com or **Kendra Tovey** at ktovey@mycharterlaw.com to discuss the status of this preliminary injunction, additional developments in this matter, and to determine the specific application of the potential notice requirements to your School.