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COVID-19 Advisory



Impact of COVID-19 on School Closures

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Interpreting and Implementing CDE and Emergency Legislation Impacts on School Closures and Educational Programming

In accordance with Governor Newsom's Executive Order N-26-20, on March 17, 2020, the California Department of Education (CDE) and Health and Human Services Agency (HHS) released guidance to support Local Educational Agencies (LEAs) in designing and implementing "distance learning," providing school meals, and addressing child care and student supervision issues. This guidance is available at www.cde.ca.gov/ls/he/hn/guidance.asp and will be updated as necessary in light of the evolving circumstances. CDE held a webinar on March 18, 2020 to review the guidance on these topics.

School Closures

At the outset, we recommend that LEAs communicate clearly about when schools and/or LEA offices are closed entirely (essential personnel would still be allowed if closed) and, if the LEA is intending to provide educational programming for students whether at school or through distance learning. School closures can impact state and federal timelines and obligations. Also, the provision of educational programming for students requires that the school ensure that students with disabilities have equal access to the same opportunities as all students, which would include the provision of FAPE. Guidance from the Office of Civil Rights is also available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

State Testing Suspended

Subsequent to the discussion on CDE's webinar, on March 19, 2020, Governor Newsom issued Executive Order N-30-20 waiving, pending federal approval, the Education Code's state-wide testing requirement for the 2019-2020 school year. In making this Order, Governor Newsom cited to "the impact of the COVID-19 pandemic on students and school communities throughout California," and noted this "time is stressful enough for students, families and educators without the additional burden of annual testing."

Tolled Timelines

Emergency legislation Senate Bill No. 117 (SB 117) extends certain timelines in light of the COVID-19 pandemic. For timelines that are dependent upon school days (and not calendar days), if an LEA is closed, the timeline will be extended, making clear that identifying the date of school closures is critical.

Per SB 117, Uniform Complaint timelines are extended by the length of time a school is closed due to COVID-19 pandemic. Certain special education timelines have also been extended due to school closures. The 15-day timeline for developing and proposing an assessment plan and the 15-day timeline for referral for assessment are extended during the time in which the school is closed. The timeline for parents' opportunity to examine school records, and the timeline for the district to send special education records to a new LEA are also extended during school closure. The legislation provides, however, that LEAs are encouraged to "respond as expeditiously as possible to requests from parents or guardians received during the period of time a school is closed due to COVID-19." Note, however, that no federal requirements imposed under the federal Individual with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.) were waived under SB 117, so annual and triennial IEP timelines are still intact at this time. Continue to monitor required timelines should it be necessary to seek future waiver(s). If it is not feasible to hold an IEP meeting due to impacts of school closures, we recommend sending prior written notice to the family explaining the reasons convening is not currently possible and indicating that an IEP meeting will be held or completed as soon as it is feasible to do so.

Distance Learning Guidance

The CDE/HHS guidance includes general considerations when designing and implementing distance learning for all students. For purposes of the guidance, distance learning is described as:

“[I]nstruction in which the student and instructor are in different locations. This may include interacting through the use of computer and communications technology, as well as delivering instruction and check-in time with their teacher. Distance learning may include video or audio instruction in which the primary mode of communication between the student and instructor is on-line interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology. It may also include the use of print materials incorporating assignments that are the subject of written or oral feedback.”

CDE’s guidance includes varied delivery strategies, such as pure on-line learning with teacher/student interaction, online curriculum for home use, online curriculum in a school setting, learning packets for home use, and in-person instruction. However, in designing distance learning, schools must consider students’ access to the internet, unique learning needs (such as English Learners and students with disabilities), and what schools can feasibly implement in a short period of time while planning for longer school closures, if necessary. There are also examples of other opportunities that can assist schools with distance learning. Schools may partner with other agencies for distance learning. There are examples of schools that have already begun work with a company to provide cell phones to students that can be used as hot spots, and another district that has partnered with a local PBS channel for distance learning opportunities. CDE will be convening a distance learning workgroup comprised of education stakeholders, with the goal of providing further guidance on this topic.

Provision of School Meals

The state’s intent is that LEAs continue to provide nutrition and meals to qualifying students. LEAs that are approved to operate the Summer Food Service Program or the Seamless Summer Option may serve non-congregate meals by submitting a request to SNPINFO@cde.ca.gov. CDE recommends implementing processes that follow social distancing guidelines while ensuring that meals reach most/all of the students who are eligible. This may include having multiple sites available for grab and go, providing delivery of food through school buses, offering different meal time windows, etc.

LEAs may not require an application or fee for the meals. In LEAs where 50% or more of students are eligible for free or reduced-price meals, meals can be served to all children 18 years and younger. In LEAs where less than 50% of students are eligible, the meal distribution must focus on children who are eligible for free or reduced-priced meals. Meals can be distributed at a school site or at an alternate location convenient to the community so long as it is an area easily accessible to children eligible for free or reduced-priced meals. Children must be present to receive the meals. LEAs can request approval to offer multiple days’ worth of shelf-stable meals. LEAs are encouraged to communicate information about the availability of meals to their communities as widely as possible and in multiple languages.

Child Care and Student Supervision

CDE recommends that schools should “to the extent practicable” arrange for the supervision of children during ordinary school hours. LEAs may collaborate with local partners for this supervision. LEAs are encouraged to develop a plan for ensuring students are supervised during school hours. Plans should reflect the needs of the LEA’s particular community. LEAs should also partner with their local resource and referral agency to connect families in need of childcare, and should provide families with a list of known local programs.

In addition, LEAs should consider using their school sites as “pop-up” childcare centers for working families and, in particular, for parents who are healthcare workers, emergency response personnel, key governmental staff, and childcare workers. LEAs that do so will need to collaborate with state and local health authorities, as well as the appropriate regional office of the Department of Social Services’ Community Care Licensing Division. LEAs that are establishing temporary childcare facilities for the children of employees are covered by an emergency waiver issued by the Department of Support Services.

Recommendations for Implementing CDE’s Guidance

We recognize that this situation is novel, constantly evolving, and LEAs have been given the benefit of local control such that LEA resources, student and employee populations, and implementation of instruction will vary greatly across LEAs.

While there are still many unanswered questions, CDE has promised to provide guidance in the future regarding several pressing issues, including the following:

- (1) models for effectively serving students with disabilities in a distance learning environment, including promising practices and specific strategies that LEAs are implementing in California and around the country;
- (2) which LEA employees are considered disaster service workers (“DSW”) and who has the authority to decide; and
- (3) what criteria will be utilized to determine essential services and essential personnel for LEAs during this time.

Recognizing the extent of the emergency and needs are still evolving and, while further information and guidance are forthcoming, we recommend the following:

- CDE has strongly encouraged LEAs to continue to provide educational services for students through distance learning options. Moreover, CDE expects LEAs to continue to provide nutrition and meal services for eligible students, and to provide child care and supervision for students whose families are unable to provide such child care during normal school hours. This means that LEAs need sufficient personnel to perform these duties under evolving and fluid working conditions. Because of this uncertainty, we recommend continuing to provide notice and keep open lines of communication with the unions whenever possible. If practicable, time permitting, and not otherwise excused by law, federal and/or state authority, meet and negotiate with unions (virtually) to discuss and agree on any changes to working conditions. However, DWK cautions LEAs from entering into MOUs with provisions that are long-term or address areas that are evolving and fluid, e.g., the scope and delivery of services to be provided through the end of this school year, paid leave provisions during school closure, extra compensation for services provided during school closure, etc. We recommend that if MOUs are entered into with unions, they address specific and finite issues, and for a short duration.
- LEAs have the managerial prerogative to assign employees to perform their job duties. Regardless of whether employees are considered disaster service workers or essential employees, employees who are not otherwise excused from work are required to perform their job duties when assigned. LEAs should ensure that working conditions are safe and aligned with guidance provided by local public health officials and/or federal and state authorities.
- Continue to follow the applicable CBA provisions and/or Board policies when dealing with employee issues re: absence notification procedures, sick leave, and other leave provisions.
- Use the time currently planned for closure to prevent and contain the spread of COVID-19 to develop plans for distance learning in your LEA. Develop a multi-step approach for your LEA with the considerations listed in CDE’s guidance including surveying for internet and device access and/or learning opportunities that are not device-dependent. Consider and be prepared for your LEA to articulate what is “feasible” and “possible” in serving your student population throughout this time.
- Consider how long term instruction and learning may occur in light of student safety and equity for all students, including English Language Learners, foster and homeless students, and students with disabilities. Communicating with students and their families regarding expectations for learning and completing work is paramount, understanding that this critical time of national emergency means the rigor of instruction and expectations for learning for all students will be impacted.
- Consider options for your LEA if convening Individualized Education Program (IEP) or other required meetings is necessary and in consideration of “shelter in place” or other orders from local and state officials, social distancing guidelines, and any bargaining unit contracts and MOUs in place.
- Gather information, communicate, and collaborate with your community, school district, special education local plan area (SELPA), and agency partners on options and planning for distance learning for all students and the personnel necessary for implementation.

- Track school days for which school would otherwise be in session but for COVID 19 closure for future planning in the event additional onsite instruction may be necessary when schools resume. Ensure any re-opening or provision of distance learning also accounts for whether attendance is required and a “school day” is held.
- Review individual contracts before responding to nonpublic agency and/or nonpublic school inquiries and seek clarity regarding any services to be provided for payment in the absence of student attendance and/or in conjunction with distance learning plans.
- Gather information from and communicate clearly and regularly with families with information known to date, including direction from Federal and State agencies and any finalized plans for educational programming and opportunities. Include notice to parents of students with disabilities of their rights, including section 504 and Individuals with Disabilities Education Act (IDEA) procedural safeguards as well as a number to contact for questions.
- Review and stay updated on available state and federal guidance regarding COVID 19 impacts including the promising practices and specific strategies that LEAs are implementing in California and around the country.

We are here to support LEAs in all of the above during these evolving and fluid times, including communicating with unions, personnel, and parents; developing and implementing distance learning accessible to all students; and, addressing changes to employees’ working conditions in accordance with federal and state guidance.

We hope this guidance is helpful in this time of uncertainty. DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district’s operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.