



April 1, 2020

The Honorable Gavin Newsom
Governor, State of California

The Honorable Tony Thurmond
State Superintendent of Public Instruction

Via Email

RE: Special Education Recommendations During COVID-19 Crisis

Dear Governor Newsom and Superintendent Thurmond:

On behalf of the local educational agencies (LEAs) and the statewide education associations represented in this letter, we are writing to collectively express our views on current needs for special education during the COVID-19 crisis. We welcome and greatly appreciate guidance from the Governor's Office and California Department of Education (CDE) related to educational operations during the pandemic, as well as the fiscal hold harmless and other provisions enacted by the Governor and the Legislature in SB 117.

Recommended Education Code Waivers

We recommend that the following provisions of the California Education Code and the California Code of Regulations (CCR) be suspended for the duration of the COVID-19 emergency response period. Our rationale is included for each area.

1. California Education Code Section 56362 (c) and 5 CCR 3100, establishing caseloads for resource specialists at 28 pupils. **Teachers may not be available as the virus spreads as a result of their illness, needs to care for family members who**

may be ill, or due to the lack of childcare. In addition, there is a significant shortage of special education teachers that already created unprecedented challenges in meeting the needs of students.

2. California Education Code 56363.3, establishing caseload averages for speech language pathologists (SLPs) at 55 pupils. ***SLPs may not be available as the virus spreads as a result of their illness, needs to care for family members who may be ill, or due to the lack of childcare. In addition, there is a significant shortage of speech therapists that already created unprecedented challenges in meeting the needs of students.***

3. Title 15 Minimum Standards for Juvenile Facilities Article 6 § 1370, education program for Juvenile Facilities. ***Waive requirement for how instruction can be provided to allow for maintaining the social distancing requirements.***

Other Recommendations

We believe the following measures will also greatly alleviate the challenges being faced in the provision of special education supports and services at this time and lead to a smoother recovery post the COVID-19 outbreak.

1. **California education laws regarding privacy (California equivalent of the Family Educational Rights and Privacy Act) should be suspended** only as they relate to distance platforms. However, measures to protect students and staff on various platforms should be identified. Interactions will not be recorded unless there is mutual consent of the district and the parents.

2. **Compliance Investigations Post Distance Learning.** CDE should only pursue compliance complaint investigations for situations involving bad faith in IEP implementation that rise to the level of being deliberately indifferent to providing services, taking into account the services provided to general education students and the individual capacities of that school district, including staffing availability and shelter-in-place implications.

3. **Executive Order to address Due Process Hearings as a result of COVID-19.** Indicate that any compensatory education analyses, to the extent compensatory education is owed at all due to issues arising from the COVID-19 crisis, must take into account the limited education that was provided to all students.

4. **Maintenance of Effort.** There needs to be an awareness that coding additional costs for compensatory education, if any is owed, and other costs, if they are attributed to special education, could possibly unnecessarily increase maintenance of effort which would have a lasting impact for LEAs. We request that CDE apply for a waiver to the United States Department of Education for relief.

5. **Department of Consumer Affairs.** Allow credentialed Speech and Language Pathologists (SLPs) to provide reimbursable teletherapy speech services, ***just as is allowed for Licensed Educational Psychologists (LEPs), school psychologists,***

and Counselors (MFTs, LCSW, LPCC). This would temporarily waive portions of Business & Professions Code Section 2532.

We look forward to working with the Administration and Department on this very important matter, and also stand prepared to engage further on ways we can support the state's COVID-19 response and support for all students during this critical time.

Sincerely,

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