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New Distance Learning Laws Apply to General and Special Education Students

On June 29, 2020, Governor Gavin Newsom signed Senate Bill 98 (SB 98) that sets forth extensive, new distance learning requirements applicable to both general and special education students for the 2020-21 school year. SB 98 supersedes prior guidance issued by the California Department of Education regarding distance learning. General and special education administrators must plan distance learning programs in compliance with SB 98 so that local educational agencies (LEAs) do not risk a loss of funding. (Educ. Code § 43504(i).)

Prior to SB 98, the law did not expressly address distance learning. Instead, guidance issued by federal and state agencies interpreting federal and state laws; recommendations from federal, state, and local public health officers; and orders from Governor Newsom established an often-confusing set of expectations that in essence required LEAs to offer some form of meaningful distance learning instruction, including the implementation of IEPs to the greatest extent feasible in light of the health and safety constraints caused by the COVID-19 pandemic.

By contrast, SB 98 adds Education Code sections 43500-43511 that impose new distance learning obligations on LEAs applicable to all students under the umbrella of a new “learning continuity and attendance plan” to be adopted by governing boards.

SB 98 makes clear that during pandemic conditions, LEAs must offer in-person instruction to the greatest extent possible, and may offer distance learning to general and special education students:

- As the result of an order or guidance from a state or local public health officer; and
- For students who are medically fragile, whose parents/guardians assert would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19. (Educ. Code § 43503(a)(2).)

“Distance learning” occurs when students and teachers are in different locations, and students are under the general supervision of a certificated employee, and may include:

- Interaction, instruction, and check-ins between teachers and students through the use of a computer or communications technology;
- Video or audio instruction in which the primary mode of communication is online interaction, instructional television, video, telecourses, or similar technology; and
- The use of print materials incorporating assignments that are the subject of written or oral feedback. (Educ. Code § 43500.)

Regardless of whether an LEA offers only a distance learning program or a hybrid program consisting of distance and in-person learning, distance learning programs for all students must include the following:

- Access to connectivity and devices to participate in the program and complete assignments;
- Content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction;
- Academic and other supports designed to address the needs of students not performing at grade level, English learners, students with disabilities, students in foster care or who are homeless, and students needing mental health support;
- Special education, related services, and any other services in a student’s IEP with accommodations necessary to ensure that the IEP can be executed through distance learning;
- Designated and integrated instruction in English language development, including assessment of proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and support for dual language learning; and
- Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness. If daily live interaction is not feasible, the LEA must develop, with parent and stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness. (Educ. Code § 43503(b).)

General and special education administrators planning educational programming for the 2020-21 school year should be aware that SB 98 also contains new provisions governing:

- Instructional minutes and days, including no required minimum P.E. minutes;
- Documentation of attendance and maintenance of “weekly engagement records” that document daily distance learning instruction, participation, and assignments for each student;
- Chronic absenteeism;
- Written tiered reengagement strategies for students who are absent from distance learning for more than three schooldays or 60% of the instructional days in a school week; and
- Communication with parents/guardians. (Educ. Code §§ 43501, 43502, 43504.)

SB 98 prohibits the State Board of Education from waiving any of the foregoing provisions, which become inoperative June 30, 2021, and are repealed January 1, 2022. (Educ. Code § 43511.) LEAs can be reimbursed for mandated costs except that LCFF funding shall be used to offset those costs. (Educ. Code § 43510.)

In light of SB 98, LEAs should consider taking the following steps when planning instructional programming for the 2020-21 school year:

- Train general and special education staff on the new distance learning requirements;
- Revise distance learning programs to ensure compliance with SB 98 and consistency with the LEA’s learning continuity and attendance plan;
- Communicate with parents of students with IEPs in making individualized determinations regarding how IEPs may be implemented during distance learning;
- Revise attendance policies to comply with SB 98;
- Develop forms for weekly engagement and tiered reengagement documentation; and
- Develop instructional programming that prioritizes health and safety as guided or directed by public health officials.

If you have any questions about the requirements and implications of SB 98, or other related questions, please contact one of our six offices.

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