

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN CHARTER SELPA STEERING and FINANCE COMMITTEE MEETING
September 9, 2020 – 1:00 p.m. Virtual Via Teleconference
Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

AGENDA

NOTICE: This meeting will be held virtually only. If members of the public wish to participate in the meeting and/or make public comment, please follow the instructions below to participate telephonically:

PARTICIPATE BY PHONE:

Dial Access Number: 1-415-655-0003

When prompted - enter Access Code: 133 828 9177

Follow directions as a Participant; an Attendee I.D. is not required to participate.

If you wish to make a public comment at this meeting, prior to the meeting please submit a request to address the Steering and Finance Committee to the recording secretary via fax at 1-760-242-5363 or email jamie.adkins@cahelp.org. Please include your name, contact information and which item you want to address.

Reasonable Accommodation: if you wish to request reasonable accommodation to participate in the meeting telephonically, please contact the recording secretary (via contact information noted above) at least 48 hours prior to the meeting.

1.0 CALL TO ORDER

2.0 ROLL CALL

3.0 PUBLIC PARTICIPATION

The public is encouraged to participate in the deliberation of the Desert/Mountain Charter SELPA Steering Committee. Several opportunities are available during the meeting for the Council to receive oral communication regarding the presentations of any items listed on the agenda. Please ask for recognition either before a presentation or after the presentation has been completed. Please complete and submit a “Registration Card to Address the Desert/Mountain Charter SELPA Steering Committee” to the Recording Secretary and adhere to the provisions described therein.

4.0 ADOPTION OF THE AGENDA

4.1 **BE IT RESOLVED** that the September 9, 2020 Desert/Mountain Charter SELPA Steering and Finance Committee Meeting Agenda be approved as presented.

5.0 INFORMATION/ACTION

5.1 Desert/Mountain Charter SELPA Emergency Circumstances Consideration Form (**ACTION**)

Forms used in the operations of special education programs within the Desert/Mountain Charter SELPA are developed, reviewed and revised throughout the year upon the recommendation of the Program Team. Forms are modified as necessary in order to support the operations of special education programs in an efficient, effective and legally compliant manner. Suggested revisions

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to SELPA Forms are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.

- 5.1.1 **BE IT RESOLVED** that Desert/Mountain Charter SELPA Emergency Circumstances Consideration Form be approved as presented.

6.0 CONSENT ITEMS

It is recommended that the Charter Steering Committee consider approving several Agenda items as a Consent list. Consent Items are routine in nature and can be enacted in one motion without further discussion. Consent items may be called up by any Committee Member at the meeting for clarification, discussion, or change.

- 6.1 **BE IT RESOLVED** that the following Consent Items be approved as presented:

- 6.1.1 Approve the August 20, 2020 Desert/Mountain Charter SELPA Steering and Finance Committee Meeting Minutes.

7.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

- 7.1 Legislative Updates

Jenae Holtz will present the latest in State and Federal law related to students with disabilities and school law.

- 7.2 DocuSign Implementation and Demonstration

Jenae Holtz will provide an update on DocuSign implementation as well as a DocuSign demonstration.

- 7.3 Desert/Mountain Children's Center Client Services Reports

Linda Llamas will present the Desert/Mountain Children's Center Client Services monthly reports.

- 7.4 Assembly Bill 1767 Pupil Suicide Prevention Policies Requirements

Linda Llamas will provide information on Assembly Bill 1767: Pupil Suicide Prevention Policies requirements.

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7.5 Professional Learning Summary

Heidi Chavez will present the D/M Charter SELPA’s Professional Learning Summary.

7.6 Resolution Support Services Summary and Updates

Kathleen Peters will present the D/M Charter SELPA’s Resolution Support Services Summary and updates.

7.7 Office of Administrative Hearings COVID-19 Decisions

Kathleen Peters will review Office of Administrative Hearings (OAH) COVID-19 decisions.

7.8 Prevention and Intervention Updates

Kami Murphy will present Prevention and Intervention Updates.

7.9 Compliance Update

Peggy Dunn will present an update on compliance items from the California Department of Education (CDE) including supports for the disproportionate review.

7.10 Crisis Prevention Institute Training

Danielle Cote will present information pertaining to Crisis Prevention Institute (CPI) training.

8.0 FINANCE COMMITTEE REPORTS

9.0 INFORMATION ITEMS

9.1 Monthly Occupational & Physical Therapy Services Reports

9.2 Upcoming Professional Learning Opportunities

10.0 STEERING COMMITTEE MEMBERS COMMENTS / REPORTS

11.0 CEO COMMENTS

12.0 MATTERS BROUGHT BY THE PUBLIC

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This is the time during the agenda when the Desert/Mountain Charter SELPA Steering Committee is again prepared to receive the comments of the public regarding items on this agenda or any school related special education issue.

When coming to the podium, speakers are requested to give their name and limit their remarks to three minutes.

Persons wishing to make complaints against Desert/Mountain Charter SELPA Steering Committee personnel must have filed an appropriate complaint form prior to the meeting.

When the Desert/Mountain Charter SELPA Steering Committee goes into Closed Session, there will be no further opportunity for citizens to address the Council on items under consideration.

13.0 ADJOURNMENT

The next regular meeting of the Desert/Mountain Charter SELPA Steering Committee will be held on Thursday, October 15, 2020, at 1:00 p.m., at the Desert Mountain Educational Service Center, Aster/Cactus Room, 17800 Highway 18, Apple Valley, CA 92307.

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.

DRAFT

Emergency Circumstances Consideration

The IEP team must consider how the student’s individual needs might impact the provision of services in emergency circumstances. In the event that instruction or services, or both, cannot be provided either at the school or in person for more than 10 school days due to a qualifying state of emergency (caused by fire, flood, impassable roads, epidemic, earthquake, imminent major safety hazard as determined by local law enforcement, a transportation services strike by non-school entity, or other official order issued to meet a state of emergency or war), the IEP will be provided by alternate means, depending on emergency conditions and relevant public health orders/directives: CA Ed Code (Ed. Code § 56345(a)(9)). The IEP team should determine how the student’s services would be provided in the event of emergency circumstances.

MEANS OF DELIVERY: FOR EACH CATEGORY, MARK ALL THAT COULD APPLY FOR THE STUDENT WITHIN EMERGENCY CIRCUMSTANCES.

Special Education and related services:

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Supplementary Aids and Services:

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Transition Services:

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Extended Year Services:

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Other Services:

- | | | |
|---|--|--|
| <input type="checkbox"/> _____ | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Behavior Intervention Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Comments/exceptions/recommendations: _____ | | |

How will behavior support be provided?

Following the determination that instruction or services, or both, cannot be provided either at the school or in person for more than 10 days due to a qualifying state of emergency, the parent(s)/guardian(s)/adult student will be notified as soon as practicable through a **Distance Learning or an Emergency Services Plan** of the specific alternate means by which the student's IEP will be provided in light of the emergency conditions present at that time. Public health orders shall be considered in determining how services can be provided. Emergency service options will not be implemented if they are inconsistent with a public health order or directive, are inconsistent with the school’s emergency preparedness procedures, and/or would interfere with the health and safety of students or staff during emergency conditions. This **Distance Learning Plan or Emergency Services Plan** does not constitute a change to the District’s offer of FAPE. Because the nature of an emergency cannot be known in advance, the specific means by which the IEP will be provided under emergency conditions will be determined at the time, in light of the emergency conditions. The IEP will be provided by alternative means as necessary during the period of emergency conditions only.

DESERT/MOUNTAIN CHARTER SELPA STEERING and FINANCE COMMITTEE MEETING

August 20, 2020 – 1:00 p.m. Virtual Via Teleconference

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D/M CHARTER SELPA MEMBERS PRESENT:

Allegiance STEAM – Sebastian Cогnetta, Aveson Global – Kelly Jung, Keith Simmons, Kristie Yen, Ballington Academy – Doreen Mulz, Gisella Wong, Desert Trails Preparatory Academy (DTPA) – Debra Tarver, Elite Academic Academy – Susana Waisman, Julia Lee Performing Arts – Victoria Echeverria, LaVerne Elementary Prep (LEPA) – Debra Tarver, Leonardo da Vinci – Antonio Hernandez, Josh Stepner, Odyssey Charter – Chasityflame Price, Katrina Franklin, Pasadena Rosebud Academy – Shawn Brumfield, and Taylion High Desert – Kathleen Bui.

CAHELP, SELPA, & DMCC STAFF PRESENT:

Jamie Adkins, Guille Burgos, Heidi Chavez, Peggy Dunn, Adrien Faamausili, Bonnie Garcia, Colette Garland, Derek Hale, Jenae Holtz, Linda Llamas, Maurica Manibusan, Lisa Nash, Sheila Parisian, Kathleen Peters, Karina Quezada, Daria Raines, Jennifer Rountree, Natalie Sedano, Adrienne Shepherd-Myles, and Athena Vernon.

1.0 CALL TO ORDER

The regular meeting of the California Association of Health and Education Linked Professions Joint Powers Authority (CAHELP JPA) Desert/Mountain Charter SELPA Steering and Finance Committee Meeting was called to order by Chairperson Jenae Holtz, at 1:00 p.m., at the Desert/Mountain Educational Service Center, Apple Valley.

2.0 ROLL CALL

3.0 PUBLIC PARTICIPATION

None.

4.0 ADOPTION OF THE AGENDA

4.1 **BE IT RESOLVED** that a motion was made by Debra Tarver, seconded by Kelly Jung, that the August 20, 2020 Desert/Mountain Charter SELPA Steering and Finance Committee Meeting Agenda be approved as presented. A vote was taken and the following carried 11:0: Ayes: Brumfield, Bui, Cогnetta, Echeverria, Jung, Mulz, Price, Stepner, Tarver (DTPA), Tarver (LEPA), Waisman. Nays: None, Abstentions: None.

5.0 CONSENT ITEMS

It is recommended that the Charter Steering Committee consider approving several Agenda items as a Consent list. Consent Items are routine in nature and can be enacted in one motion without further discussion. Consent items may be called up by any Committee Member at the meeting for clarification, discussion, or change.

5.1 **BE IT RESOLVED** that a motion was made by Debra Tarver, seconded by Susana Waisman, to

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approve the following Consent Items as presented. A vote was taken and the following carried 11:0: Ayes: Brumfield, Bui, Cognetta, Echeverria, Jung, Mulz, Price, Stepner, Tarver (DTPA), Tarver (LEPA), Waisman. Nays: None, Abstentions: None

- 5.1.1 Approve the June 18, 2020 Desert/Mountain Charter SELPA Steering and Finance Committee Meeting Minutes.

6.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

6.1 Legislative Updates

Jenae Holtz reported that there are no new legislative updates as they pertain mostly to school reopening plans and the elementary waiver which have been discussed previously.

6.2 California Department of Education (CDE) Guidance on Assessments

Jenae Holtz shared the California Department of Education (CDE) Suggested Guidelines for Physically Distancing Test Administration. Jenae stated the recommendation of the D/M Charter SELPA is to perform assessments in person using plexiglass where needed and with the students and teachers wearing face shields. The shields allow the students to see the facial expressions of the staff. She highlighted that parents are not allowed in the testing area and are to sit in a waiting room or in their vehicle but are not permitted to leave the premises. Jenae reminded the committee to be conscientious about sanitizing equipment and any tools before and after each use. She stated the document provides guidelines, not state mandates and the information does not supersede any regulations or rules in place by the Center for Disease Control. Jenae reviewed the desk set-up for assessments including speech and language, special education assessments, occupational therapy, physical therapy. Jenae said that records reviews are appropriate for triennial IEPs but they are not the only consideration. She continued that the IEP team must look at the whole situation and what has been happening with the child, look at the progress and the need for an assessment whether the parent says it is needed or not.

6.3 CAHELP Assignment and Contact Information Lists

Jenae Holtz presented the CAHELP Program Specialist District Contact List and Administrative Offices Contact Information List. Jenae reported that all staff are currently working remotely and are available via Zoom for trainings.

6.4 Desert/Mountain Children's Center Updates

Linda Llamas presented the Desert/Mountain Children's Center updates. She reported that the client rosters will be available soon. She said a team of staff have been entering school information for each client into the new electronic health record.

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Linda shared that due to the economic impact to the state and San Bernardino County, the Department of Behavioral Health decided to end for all agencies the Children's Intensive Services program. She continued that this program was chosen because the children who are at high risk can be served by other programs within the Desert/Mountain Children's Center (DMCC) or in collaboration with DMCC. Children who were in that program will be transferred to school age programs with a range of services on campus and in the children's homes and with services being virtual, the children will not see a change in their services. Linda reported if there is a higher need above the School Age Treatment Services (SATS) program, DMCC will collaborate with other agencies to meet the needs of the child. Linda stressed that the agencies did nothing wrong to lose the funding but it was based solely on the state budget. She shared that staff will also be transferred to other programs within DMCC with the transition happening on September 30, 2020. Linda stated DMCC will continue to accept mental health referrals for students and are continuing to provide assessments and treatment. Linda concluded that she can be contacted with any questions.

6.5 Professional Learning Summary and Updates

Heidi Chavez presented the D/M Charter SELPA's Professional Learning Summary and updates. She shared for 2019-20, there were a total of 337 participants for the entire year with 223 for onsite trainings and 114 for regional trainings. Heidi continued that trainings are still being provided as on-sites though many trainings are being transitioned to online and virtual settings.

Heidi reported that this year's Directors' Trainings will be held on October 16, February 19, and April 16. She also stated the Community Advisory Committee (CAC) meetings will be held on October 15, December 17, February 18, and May 20.

Heidi continued that there is an upcoming Orton-Gillingham training with a flyer available soon. The training will be provided by Nancy Redding and the audience will be kindergarten through twelfth grade general and special education teachers with the cost of \$300. The virtual trainings will be on September 29-30, October 1, 7, and 8 and there will be pre-recorded webinars that will need to be watched prior to the training dates. Heidi asked to be contacted with any questions.

6.6 Resolution Support Services Summary and Updates

Kathleen Peters presented D/M Charter SELPA's Resolution Support Services Summary and updates. She reported that there were five cases in 2019-20 and no cases filed for 2020-21. Kathleen shared there is a potential case with a parent requesting reimbursement for the private school decision.

Kathleen referred to a Special Ed Connection article addressing exiting students during COVID-19. She said it is not a good time to exit students from Special Education unless the student is graduating or ages out of special education. Kathleen said there are additional considerations to be taken to ensure compliance and the best interest of the child. Kathleen said if the IEP team is

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using good data gathered before school closures and the child has continued documented progress, the IEP team could consider exiting the child. It is best practice for exiting a student, to complete an evaluation in all areas of suspected disability and it is the opinion of legal counsel to not do that during this time. Kathleen reminded the committee that a parent stating that they do not want their child participating in services is not a revocation of special education services.

Kathleen shared another article from Special Ed Connection of Do's and Dont's for conducting evaluations as school begins. She said the article dated August 19, 2020 most closely reflects the D/M Charter SELPA position on how to address assessments. Kathleen said LEAs will need to think outside of the box when it comes to determining student eligibility and timelines have not stopped. LEAs cannot delay testing until the student returns to school but instead must begin collecting a variety of data that show progress before and during school closure. Kathleen continued LEAs will have to look in a different direction than just reviewing formal assessments but also look at the student's academic performance and other levels of functioning, including participation and performance during remote learning. She said to also look at results of any in-person or one on one interviews as well as observations of the student as education code requires classroom environment observation for assessment. If a parent refuses an assessment, the IEP team has the responsibility to continue to follow up with the parents and try to problem solve with the parent. Kathleen stated to document if a parent did not make their child available for assessments. She continued that in-person assessments are encouraged when possible but all protective measures are to be followed. Assessment notes must also document the conditions in which the test was administered.

Kathleen shared that some parents have requested compensatory services for their child's time out of school due to COVID-19. She clarified the term compensatory education means an award to make up for some loss due to wrong doing on the part of the school and is awarded during filings and due process however the term is now being used pertaining to services being made up. At this time, LEAs should focus on reviewing data collected in March as well as during the school closure, looking at how the child responded to the closure and virtual learning. Kathleen continued that the gap assessment will show what regression has occurred and the IEP team can determine what additional services need to be provided not as an offer of FAPE but as a way of bringing the child back to the place where they were when the school closure occurred. Currently LEAs should not be changing offers of FAPE to address compensatory education requests but instead letting parents know what the process is and that they will be contacted.

Kathleen presented the Temporary Emergency Educational Plan & IEP Form for feedback. The document was created by Lozano and Smith and will be customized based on feedback received from the LEAs. Kathleen said the document will be part of the IEP until the law changes. She said this will be used during an IEP to notify the parents how services can be provided in case of an emergency. It is a general document and not child specific so there will not be an offer of FAPE. Kathleen said the document will be before the Notes in Web IEP and it is intended for discussion with the parents.

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Kathleen then presented the District Emergency Services Plan. She said it is a distance learning plan specific to a child and does not have to be agreed to by the parent or signed by the parent. This allows services to continue and not be interrupted. Kathleen continued that it will not be in the IEP but will be on file for reference if we have another situation stopping face-to-face instruction. This document is used during a discussion with the parent during a closure and works to meet the needs of a child around compromises of what can be provided. Kathleen stated each LEA must decide on a process of how to handle distance learning plans that are missing important information.

Kathleen concluded that once the forms are finalized, samples will be provided to the LEAs.

6.7 Prevention and Intervention Updates

Athena Vernon present Prevention and Intervention Updates. She shared the schedule of upcoming School Mental Health and Social Emotional Learning trainings. She also shared Evidence-Based Classroom Practices: Considerations to Support COVID-19 Distance Learning. Athena concluded that trainings will continue to be virtual and onsite trainings can be requested as well.

6.8 Compliance Update

Peggy Dunn presented an update on compliance items from the California Department of Education (CDE). She shared that Julia Lee Performing Arts Academy received their charter renewal from Riverside County Office of Education. Peggy shared that D/M Charter SELPA has two new Focused Monitoring and Technical Assistance (FMTA) consultants. Once the names are confirmed, they will be shared with the committee.

Peggy reported there is one member of D/M Charter SELPA in disproportionality for 2019-20. The director has been notified and was referred to emails with further information.

Colette Garland shared that Personnel Data Reports were emailed on August 18, 2020 and included the memo with instructions. She also included last year's spreadsheet as a sample. The completed documents are due back to Colette by August 26, 2020.

Colette stated that she has been asked why she and Terri Nelson need access to the LEAs CALPADS database. She shared that access allows them to submit jobs and look for errors.

Colette reported that DocuSign is almost ready. She has a meeting on August 25, 2020 to finalize implementation. Colette has sent users an email so they can create usernames and passwords. She said that due to Pupil Count the date did have to be pushed back. Colette thanked the committee members for their patience.

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Colette continued stating Web IEP trainings are being done virtually and that training videos will be launching soon. Training participants will watch the videos before attending trainings so questions can be answered after exposure to the system.

6.9 Alternative Dispute Resolution (ADR) Resources

Karina Quezada provided Alternative Dispute Resolution (ADR) resources. She shared Participating in Virtual Meetings document from U.S Department of Education, Office of Special Education Programs. She said the form is parent friendly and is available in English and Spanish.

Karina reported the Alternative Dispute Resolutions (ADR) Conference was originally scheduled for March but due to COVID-19, was rescheduled for September and rescheduled again for March 11-12, 2021. Karina stated those already registered for March and September will be registered for March 2021 with registration fees being rolled over. She encouraged those not registered to do so because there is room available. Karina did state that the format of the March 2020 conference will depend on the health situation at that time.

Karina shared the ADR Committee will be offering virtual trainings. Making Virtual Meetings & Relationships with Parents Work will be presented August 27, 2020, 2:00pm-3:00pm at no cost. Setting the Stage for Collaboration: The Cornerstone of IEP Meetings will be presented September 22, 2020, 2:00pm-3:00pm also at no cost.

6.10 California Assessment of Student Performance and Progress (CAASPP) and English Language Proficiency Assessments for California (ELPAC) Updates

Karina Quezada provided California Assessment of Student Performance and Progress (CAASPP) and English Language Proficiency Assessments for California (ELPAC) updates. She stated at this time, CDE has not provided guidance on administration of testing so LEAs should function under the assumption that testing will be administered as in previous years. This includes staff training and preparing for test administration. The California Alternative Assessments (CAA) for Science is accessible September 8, 2020 which will allow for teachers to begin the mandatory training. Karina reminded the committee that the assessment versions change annually. If CDE makes an announcement or provides guidance, we will share.

Karina reported CDE is developing test administration options for 2020-21 and there may be three testing scenarios: in person/co-located, remote administration for online assessments, and remote administrations for paper-pencil assessments. If testing is available remotely, a secure browser will be required.

Karina continued that high school students are required to participate in state science testing. Students enrolled in grade twelve during the 2019-20 school year met the science testing requirement regardless if they submitted a science test, started a science test, or did not attempt the

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science test. In additions, students repeating grade twelve during the 2020-21 school year are not eligible to take the science assessments.

Karina said the state does not have an adopted alternate English Language Proficiency Assessments for California (ELPAC) for children with the most severe cognitive delays. Ventura County Comprehensive Alternate Language Proficiency Survey (VCCALPS) is an option until January 11, 2021 and training is available upon request.

Karina stated that English Language Learner (ELL) students that have IEPs that are being considered for reclassification must meet the four reclassification criteria. Parents and IEP teams do not have the authority to exit a student from ELL without the criteria being met, it is against federal guidelines.

Kathleen Peters shared there was a recent compliance complaint at the state about a student not receiving services during the initial closing of schools due to COVID-19. The parents had been sent prior written notice (PWN) notifying the parents of the closure and that because of the closure, no services would be provided to any students. That was found to be compliant because the closure memo followed about a month later. The LEA sent another PWN stating how services would be provided once the school opened again after the summer.

7.0 FINANCE COMMITTEE REPORTS

None.

8.0 INFORMATION ITEMS

8.1 Monthly Occupational & Physical Therapy Services Reports

8.2 Upcoming Professional Learning Opportunities

Heidi Chavez shared that Crisis Prevention Institute (CPI) training will consist of flex-blended learning with Day 1 being virtual. She said that Day 2 is expected to be in person once some of the in-person restrictions are lifted and will be scheduled for a later date. Heidi stated the virtual portion is to be completed before September 2, 2020 as there will be a Question and Answer session at 2:30pm-4:00pm to be successful. Heidi concluded that this training is open to everyone and not just administrators.

9.0 STEERING COMMITTEE MEMBERS COMMENTS / REPORTS

Debra Tarver thanked D/M Charter SELPA for the information provided during the meetings. She said that this will be a school year that the LEAs and the SELPA truly rely on each other. With returning to school in the distance learning model, it is important to get the students back on track and deal with each of their needs.

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10.0 CEO COMMENTS

11.0 MATTERS BROUGHT BY THE PUBLIC

None.

12.0 ADJOURNMENT

Having no further business to discuss, a motion was made by Debra Tarver, seconded by Kelly Jung, to adjourn the meeting. A vote was taken and the following carried 11:0: Ayes: Brumfield, Bui, Cognetta, Echeverria, Jung, Mulz, Price, Stepner, Tarver (DTPA), Tarver (LEPA), Waisman. Nays: None, Abstentions: None.

The next regular meeting of the Desert/Mountain Charter SELPA Steering Committee will be held on Wednesday, September 9, at 1:00 p.m., at the Desert Mountain Educational Service Center, Aster/Cactus Room, 17800 Highway 18, Apple Valley, CA 92307.

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.

From: [Jenae Holtz](#)
To: [Jamie Adkins](#)
Subject: FW: SB 820 Changes Two Special Education Provisions
Date: Tuesday, September 1, 2020 5:03:58 PM

From: Kelly Satterfield <kellys@sscal.com>
Sent: Tuesday, September 1, 2020 4:53 PM
To: Kelly Satterfield <kellys@sscal.com>
Cc: Michelle McKay Underwood <michelleu@sscal.com>; Kyle Hyland <kyleh@sscal.com>
Subject: SB 820 Changes Two Special Education Provisions

CAUTION: This email originated from outside of the organization. Please do not click links or open attachments unless you recognize the sender and know the content is safe.

September 1, 2020

To: Members, Coalition for Adequate Funding for Special Education
From: Michelle McKay Underwood, School Services of California Inc.
Re: SB 820 Changes Two Special Education Provisions

Late on August 31, 2020, the Legislature approved the 2020–21 State Budget education clean-up bill—Senate Bill (SB) 820. For special education, a few changes were made.

SB 820 makes inoperative, as of July 1, 2020, the provision of SB 117 that allows the California Department of Education to consider the days following a school’s closure due to COVID-19 as days between a pupils’ regular school session, until the school reopens and regular session convenes when determining compliance with special education timelines and service provision; this provision did not waive any federal timelines.

Note: This retroactive change could be problematic for districts that relied on this flexibility since July 1, 2020. CAFSE is working with other special education advocates to address this issue. Please let us know if this is affecting any of your districts, especially those that may have begun the regular school year early.

The bill also clarifies that educationally related mental health services funds may be used for all mental health-related services *for pupils with or without an Individualized Education Program*. As a reminder from the main education budget trailer bill, SB 98, Education Code Section 56836.07 was amended to include the following uses for educationally related mental health services funds:

- Out-of-home residential services for emotionally disturbed pupils
- Counseling and guidance services, including counseling, personal counseling, and parental counseling and training

- Psychological services
- Social work services
- Behavioral interventions
- Any other mental health-related service not necessarily required by the federal Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.)

Estimates for this funding were sent to members on July 31 (included within the August 5 CAFSE meeting packet).



SELPA Administrators Legislative Update

Alice Kessler, Lighthouse Public Affairs

Erin Evans, Lighthouse Public Affairs

Year-end Recap

- State Legislature adjourned its two-year session on August 31st
 - Senate issues related to COVID-19
- September 30th is the last day for the Governor to sign or veto bills passed by the Legislature before September 1st
 - Any bills passed before August 20th must be acted on by the Governor within 12 days
- Bills enacted on or before October 1st will take effect on January 1, 2021 unless they have an emergency clause
- November 3rd General Election
- New members sworn in on December 7, 2020 – typically may introduce one bill

Budget

- **SB 820 (Committee on Budget and Fiscal Review)**

- Education finance budget trailer bill, making modifications to various educational programs adopted as part of the Budget Act of 2020
 - Learning Loss: Changes the deadline to spend the \$4.439 million in federal Coronavirus Relief Funding to Sept 20, 2022 and changes the deadline to spend \$5.39 million state GF to June 30, 2021.
 - Funding can be used to support Childcare and Pre-K
 - Funds can be used for health-related items (e.g., COVID-19 testing of staff, PPE, cleaning...)
 - CA Dyslexia Initiative: Budget appropriated \$4 million GF. This bill changes the appropriation to \$2 million GF plus \$2 million Federal Trust Fund and requires CDE and the CCEE to contract with a county office of education by Nov 15, 2020.

Budget

- **SB 820 cont'd.**

- Includes technical amendments related to the new formula for special education funding adopted in the final budget act
- Makes state waivers granted under SB 117 (assessment plans within 15 days of a referral and school records within 5 days of a request) inoperative on July 1, 2020
 - Compliance issues with this date

Budget

- **SB 98 (Committee on Budget and Fiscal Review) – Education Omnibus Trailer Bill Chaptered 6/29/20**
 - Legislative, Executive, and Forms Committees got together to draft a common form to comply with Emergency Conditions language in SB 98. This was sent to CDE. We have since learned CDE and many attorney firms representing districts cannot come to common agreement regarding the form. Executive Committee is working on this with CDE planning. Some already have forms approved within their SELPAs.

Legislation

- **AB 1384 (O'Donnell) – Liability Protection for School Districts**
 - Would have provided limited liability protection for K-12 schools as they prepare to reopen
 - Introduced in response to school districts' concerns that they could face COVID-19 related lawsuits
 - The liability protections afforded under the proposed law would have applied to any claims for injury or damages alleged to have been sustained throughout the COVID-19 pandemic or within twelve months following the end of the declaration of a State of Emergency, whichever is later
 - Bill failed to meet policy committee deadlines in the Senate and died
 - SELPA signed on to letters with other education management organizations requesting liability protection

Legislation

- **SB 614 (Rubio) – Teacher Credentialing: Reading Instruction**
 - Goal was to remove the Reading Instruction Competence Assessment (RICA) as a barrier to addressing the teacher shortage (priority bill for CTA)
 - Dyslexia advocates opposed the bill, as they felt eliminating RICA would be a disservice to students who struggle with reading
 - SELPA worked with CTA, ACSA and CSSESA on amendments, which were adopted on August 10th, to ensure evidence-based reading instruction methods would be in place
 - Bill died on the Assembly Appropriations suspense file

Legislation

- **AB 1203 (Bonta) – Home-to-School Transportation: Transportation Network Companies**
 - Would have prohibited a school district, county office of education, or charter school from contracting with a transportation networking company for home-to-school transportation
 - Driven by Teamsters Union, which represents bus drivers
 - Bill was never set for a hearing in Senate Education Committee and died

Legislation

- **AB 3097 (Frazier) – Special Education, Nonpublic Schools**
- Would have clarified that an LEA contracting with an NPS may conduct a single visit to monitor multiple placed students at an NPS, rather than conducting multiple visits for each student
- Also would have eliminated the requirement for an NPS to report to the CDE within one day of any student-involved incident in which law enforcement was contacted
- SELPA raised concerns about unintended consequences of a single visit related to precursor bill, AB 1172 (Frazier)
- The bill was never heard in the Senate Education Committee and died. However, the author stated he would try to work on issues raised next year.

Other Issues

- Continued inquiries from FASD work group
- Cohort Rules: moderate/severe classrooms
- Finishing legislative platform
- Starting to think about legislative needs for next year

Questions?

7.2 DocuSign Implementation and Demonstration

Verbal report, no materials



Desert / Mountain Children's Center
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-946-0819
W www.dmchildrenscenter.org

MEMORANDUM

DATE: September 8, 2020
TO: Special Education Directors
FROM: Linda Llamas, Director

SUBJECT: Desert/Mountain Children's Center Client Reports

Attached are the opened and closed cases for the following services:

- Screening, Assessment, Referral and Treatment (SART)
- Early Identification Intervention Services (EIIS)
- School-Age Treatment Services (SATS)
- Therapeutic Behavioral Services (TBS)
- Student Assistance Program (SAP)
- Children's Intensive Services (CIS)
- Speech and occupational therapy

If you should have any questions, please contact me at (760) 955-3606 or by email at linda.llamas@cahelp.org

[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)**AB-1767 Pupil suicide prevention policies.** (2019-2020)

SHARE THIS:



Date Published: 10/10/2019 09:00 PM

Assembly Bill No. 1767

CHAPTER 694

An act to amend Section 215 of the Education Code, relating to pupil health.

[Approved by Governor October 09, 2019. Filed with Secretary of State
October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, Ramos. Pupil suicide prevention policies.

Existing law requires the governing board or body of a local educational agency that serves pupils in grades 7 to 12, inclusive, to adopt a policy on pupil suicide prevention that specifically addresses the needs of high-risk groups.

This bill would require the governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 6, inclusive, to, before the beginning of the 2020-21 school year, adopt, and update as prescribed, a policy on pupil suicide prevention that specifically addresses the needs of high-risk groups. The bill would require this policy to be age appropriate and delivered and discussed in a manner that is sensitive to the needs of young pupils. The bill would also require this policy to be written to ensure proper coordination and consultation with the county mental health plan for a referral for mental health or related services made on behalf of a pupil who is a Medi-Cal beneficiary. The bill would require the policy to address any training on suicide awareness and prevention to be provided to teachers of pupils in all of the grades served by the local educational agency. By imposing additional duties on local educational agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 215 of the Education Code is amended to read:

215. (a) (1) The governing board or body of a local educational agency that serves pupils in grades 7 to 12, inclusive, shall, before the beginning of the 2017-18 school year, adopt, at a regularly scheduled meeting, a policy on pupil suicide prevention in grades 7 to 12, inclusive. The policy shall be developed in consultation with

school and community stakeholders, school-employed mental health professionals, and suicide prevention experts and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention.

(2) (A) The governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 6, inclusive, shall, before the beginning of the 2020–21 school year, adopt, at a regularly scheduled meeting, a policy on pupil suicide prevention in kindergarten and grades 1 to 6, inclusive. The policy shall be developed in consultation with school and community stakeholders, the county mental health plan, school-employed mental health professionals, and suicide prevention experts and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention.

(B) The policy for pupils in kindergarten and grades 1 to 6, inclusive, shall be age appropriate and shall be delivered and discussed in a manner that is sensitive to the needs of young pupils.

(C) The policy for pupils in kindergarten and grades 1 to 6, inclusive, shall be written to ensure proper coordination and consultation with the county mental health plan if a referral is made for mental health or related services on behalf of a pupil who is a Medi-Cal beneficiary.

(3) The policy shall specifically address the needs of high-risk groups, including, but not limited to, all of the following:

(A) Youth bereaved by suicide.

(B) Youth with disabilities, mental illness, or substance use disorders.

(C) Youth experiencing homelessness or in out-of-home settings, such as foster care.

(D) Lesbian, gay, bisexual, transgender, or questioning youth.

(4) (A) The policy shall also address any training on suicide awareness and prevention to be provided to teachers of pupils in all of the grades served by the local educational agency.

(B) Materials approved by a local educational agency for training shall include how to identify appropriate mental health services, both at the schoolsite and within the larger community, and when and how to refer youth and their families to those services.

(C) Materials approved for training may also include programs that can be completed through self-review of suitable suicide prevention materials.

(5) The policy shall be written to ensure that a school employee acts only within the authorization and scope of the employee's credential or license. Nothing in this section shall be construed as authorizing or encouraging a school employee to diagnose or treat mental illness unless the employee is specifically licensed and employed to do so.

(6) To assist local educational agencies in developing policies for pupil suicide prevention, the department shall develop and maintain a model policy in accordance with this section to serve as a guide for local educational agencies.

(b) The governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 12, inclusive, shall review, at minimum every fifth year, its policy on pupil suicide prevention and, if necessary, update its policy.

(c) Nothing in this section shall prevent the governing board or body of a local educational agency from reviewing or updating its policy on pupil suicide prevention more frequently than every fifth year.

(d) For purposes of this section, "local educational agency" means a county office of education, school district, state special school, or charter school.

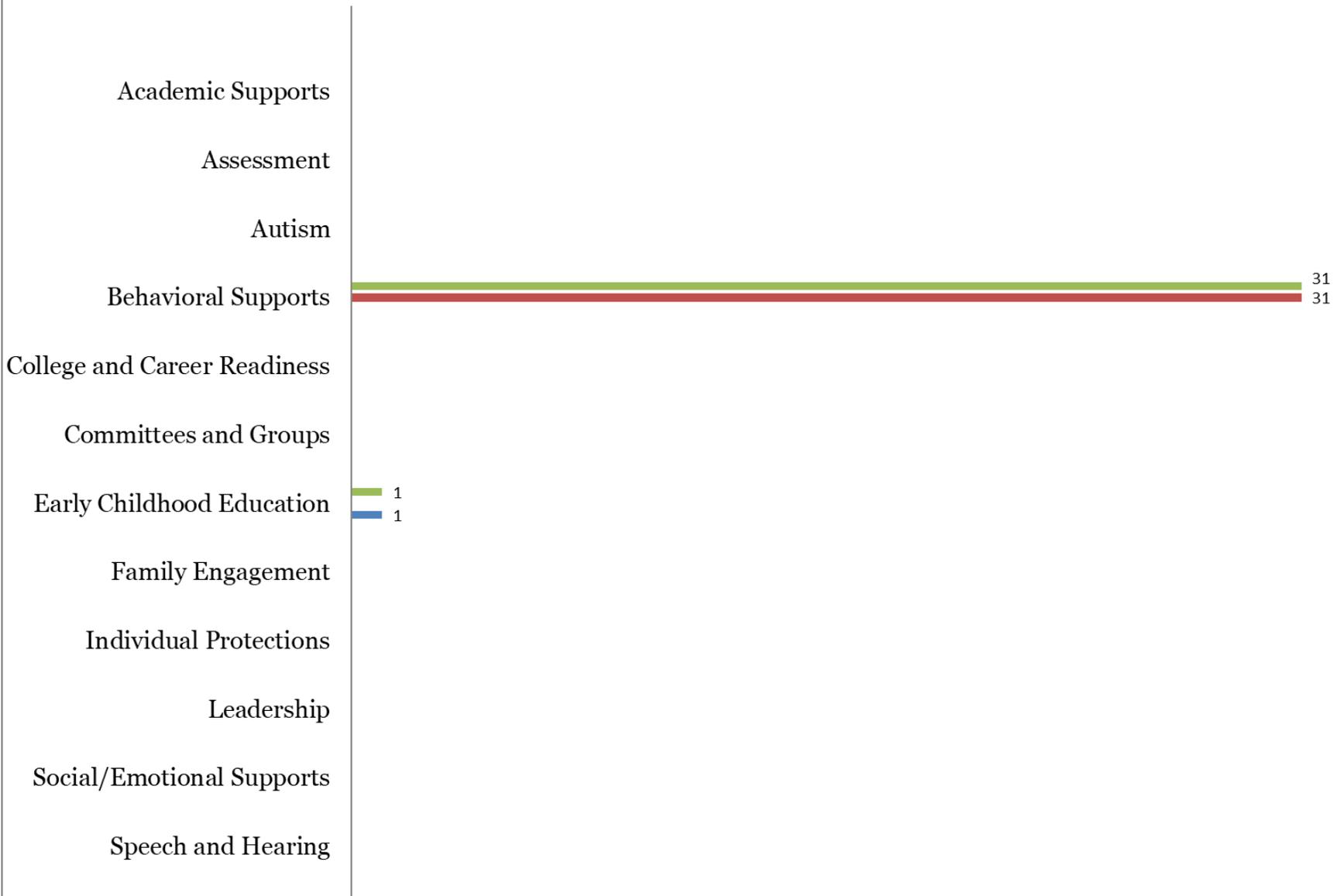
SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

D/M CHARTER SELPA PROFESSIONAL LEARNING PARTICIPATION SUMMARY

JULY & AUGUST 2020 - 32 PARTICIPANTS

32 YEAR-TO-DATE-PARTICIPANTS

■ Total Participants YTD by Content Area ■ On-Site Trainings ■ Regional Trainings



**Desert/Mountain Charter SELPA
Due Process Summary
July 1, 2019 - September 9, 2020**

D = Complaint Dismissed W = Complaint Withdrawn

DISTRICT										CASE ACTIVITY FOR CURRENT YEAR					
	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	Total	D/W	Resolution	Mediation	Settled	Hearing	
Allegiance STEAM Acad - Thrive	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
Aveson Global Leadership Acad	N/A	N/A	2	1	5	1.5	0	0	9.5		0	0	0	0	0
Aveson School of Leaders	N/A	N/A	0	3	1	1.5	0	0	5.5		0	0	0	0	0
Ballington Acad for Arts & Sci	N/A	N/A	N/A	N/A	0	2	0	0	0		0	0	0	0	0
Desert Trails Prep Academy	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Encore Junior/Senior High School	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Encore High School, Riverside	N/A	N/A	0	0	0	1	1	0	2		0	0	0	0	0
Julia Lee Performing Arts Acad	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
LaVerne Elem Preparatory	0	0	0	0	0	0.5	0	0	0.5		0	0	0	0	0
Leonardo da Vinci Health Sci	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Odyssey Charter School	N/A	N/A	0	0	0	0	0	0	0		0	0	0	0	0
Odyssey Charter School - South	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
Pasadena Rosebud Academy	N/A	N/A	N/A	N/A	N/A	1	0	0	1		0	0	0	0	0
Pathways to College	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Taylison High Desert Academy	0	0	0	0	0	0	0	0	0		0	0	0	0	0
5															
SELPA-WIDE TOTALS	0	0	2	4	6	7.5	1	0	18.5		0	0	0	0	0

**Desert/Mountain Charter SELPA
Due Process Activity Summary
July 1, 2020 – September 9, 2020**

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
1. LEA Case No. 2020							
2. Case No. 2020							
3. Case No. 2020							
4. Case No. 2020							

Desert /Mountain Charter SELPA
Legal Expense Summary
As of September 9, 2020

2000-2001	0.00
2001-2002	0.00
2002-2003	0.00
2003-2004	0.00
2004-2005	0.00
2005-2006	0.00
2006-2007	0.00
2007-2008	0.00
2008-2009	0.00
2009-2010	0.00
2010-2011	0.00
2011-2012	0.00
2012-2013	0.00
2013-2014	0.00
2014-2015	0.00
2015-2016	7,378.00
2016-2017	33,886.61
2017-2018	70,994.67
2018-2019	113,834.81
2019-2020	58,033.90
2020-2021	1,852.50

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT AND
CONTRA COSTA COUNTY OFFICE OF EDUCATION
OAH CASE NUMBER 2020070970

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 24, 2020

On August 15, 2020, Student filed a motion for stay put. Student acknowledges that school campuses are closed due to statewide public health orders related to COVID-19. Student requests a stay put order only with respect to essential related services in Student's Individualized Education Program, referred to as an IEP. Student's motion is supported by documentary exhibits and sworn declarations.

On August 19, 2020, Pleasanton Unified School District filed an opposition on the ground that school campuses are closed under statewide public health orders, and argues that Pleasanton is not permitted to provide in-person instruction. Pleasanton's

opposition is supported by documentary exhibits. Pleasanton requests that OAH find Student's distance learning plan to be Student's stay put placement.

On August 20, 2020, Contra Costa County Office of Education joined Pleasanton's opposition to Student's motion for stay put. On August 20, 2020, Student filed a reply to Pleasanton's opposition, with additional supporting exhibits and a sworn declaration. On August 21, 2020, Pleasanton filed a reply in support of its opposition. On August 24, 2020, Student filed a supplemental response to Pleasanton's reply, with additional sworn declarations and documentary exhibits.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) For example, when a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing*, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.) A school closure for budgetary reasons

requires a “comparable program” in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

On March 4, 2020, Governor Newsom declared a state of emergency in California due to COVID-19. On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which directs school district operations during public health related school closures. Executive Order N-26-20 directed the California Department of Education and the Health and Human Services Agency to jointly develop guidance ensuring that student with disabilities receive a free and appropriate public education consistent with their individualized education program under the Individuals with Disabilities Education Act, referred to as the IDEA.

On April 9, 2020, the California Department of Education implemented Executive Order N-26-20 by issuing Special Education Guidance for COVID-19. The guidance does not address the stay put provision under the IDEA. However, the guidance does address whether school districts may provide in-person special education services while schools are closed due to COVID-19:

“Is an LEA precluded from providing services to students with disabilities in-person or in the home for the purpose of supporting the student in accessing the alternative options for learning being offered?”

No. In some exceptional situations, LEAs may need to provide certain supports and services to individual students in-person in order to maintain students' mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g. distance learning). With that said, alternative service delivery options should seek to comply with federal, state, and local health official's guidance related to physical distancing, with the goal of keeping students, teachers and service providers safe and healthy as the primary consideration."

The California Department of Education also clarified that some service providers are deemed essential workers under Executive Order N-33-20, including nurses and assistants, physical and occupational therapists and assistants, social workers, and speech pathologists. The guidance states:

"Therefore, if an individualized determination is made that a student needs services or supports in-person to maintain their mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g. distance learning), an LEA is not necessarily precluded from providing that service by Governor Newsom's stay at home order."

On July 17, 2020, the California Department of Public Health issued a five-page document with a "framework to support school communities as they decide when and how to implement in-person instruction for the 2020-2021 school year." The July 17, 2020, document includes some directives for schools, including:

“Schools and school districts may reopen for in-person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days. If the LHJ has been on the monitoring list within the last 14 days, the school must conduct distance learning only, until their LHJ has been off the monitoring list for at least 14 days.”

The July 17, 2020, framework allows an exception for elementary schools to apply for waivers. The framework does not reference special education.

DISCUSSION

Student is an eleven-year old girl born with Wolf-Hirschhorn chromosomal syndrome, which significantly impacts all areas of her development. Student is orthopedically, cognitively, and visually impaired. She is nonverbal. As part of her educational program, Student requires speech therapy, occupational therapy, physical therapy, adapted physical education, and specialized vision services. Student also requires a Health Care Plan and a full time Licensed Vocational Nurse as her one-on-one aide.

Student has seizures and is fed primarily through a tube. Pursuant to her IEP, her full-time Licensed Vocational Nurse is tasked with implementing a checklist of 34 items each school day, including administering medication and tube feeding, monitoring her for seizures and providing a medical response, and repositioning and ambulating her body.

All parties agree that Student’s IEP of August 27, 2019, is her last agreed upon and implemented IEP. Additionally, on November 8, 2019, in OAH Case

No. 2019100433, OAH determined that Student's IEP of August 27, 2019 was her stay put placement. The parties have not agreed upon an IEP since August 27, 2019.

The parties also agree that the distance-learning plan for Student does not offer her a FAPE, as shown by the exhibits attached to Student's motion and related filings. Parents do consent to Student's distance learning plan. However, Pleasanton and Contra Costa contend that the distance learning plan is a reasonable and feasible plan under extraordinary circumstances. They argue that they are not permitted to deliver in-person services to Student due to the July 17, 2020, framework, and request that OAH order Student's distance learning plan to be her stay put placement.

Pleasanton and Contra Costa's arguments that they are prohibited from providing in-person services to Student is contradicted by the fact that Pleasanton has been providing in-person physical therapy to Student since July of 2020, under an order from the California Department of Education compliance unit. These compensatory education services result from the decision in OAH Case No. 2019100433. The documentary exhibits attached to Student's motions and filing show that, after being ordered to deliver in-person services, Pleasanton established a detailed protocol to deliver the compensatory physical education services in Student's home, which has been successful.

The California Department of Education guidelines, under Governor Newsom's Executive Order, establish that schools are not precluded from providing in-person educational services. Contra Costa Health Services, the public health authority in which Pleasanton is located, takes the position that they are allowing in-person educational services for any activities that cannot be done remotely and are required for students to be able to obtain their education. Finally, Pleasanton and Contra Costa have not

provided any legal authority to support a finding that the COVID-19 pandemic creates an exception to the stay put requirement.

When a stay put placement cannot be implemented exactly as written on the IEP document, school districts must attempt to replicate the placement that existed at the time the dispute arose as closely as possible, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing*, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.) The stay put placement must be a comparable program for that child.

Student has shown that the distance learning plan is not a comparable program stay put placement for her, given her need for intensive services to access her education. Accordingly, Student's motion for stay put with respect to essential services in her August 27, 2019, IEP is granted.

ORDER

1. Student's motion for stay put is granted.
2. Within 15 days of this Order, Pleasanton and Contra Costa shall provide in-person services to Student, in the duration and intensity described in her IEP of August 27, 2019, in the following areas:
 - a. 1:1 Licensed Vocational Nurse;
 - b. Speech therapy;
 - c. Physical therapy; and
 - d. Vision services.
3. Pleasanton and Contra Costa may implement Student's stay put services with qualified staff from a non-public agency if they so choose. Services

may be implemented in Student's home. Nothing in this Order requires Pleasanton and Contra Costa to provide services on school sites, or with school staff.

IT IS SO ORDERED.

DocuSigned by:
Cararea Lucier
761F5E42057B4A1...
Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020050465

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

DECISION

AUGUST 24, 2020

On May 18, 2020, the Office of Administrative Hearings, referred to as OAH, received a due process hearing request from Student, naming Los Angeles Unified School District, referred to as LAUSD. Administrative Law Judge Robert G. Martin heard this matter on July 7, 8, 14 and 15, 2020. The hearing was conducted by videoconference.

Parent represented Student, and attended all hearing days. Attorney Patrick Balucan represented LAUSD. Due Process Specialist Genetha Hicks-Cleveland attended all hearing days on LAUSD's behalf.

At the parties' request the matter was continued to August 3, 2020 for written closing briefs. The record was closed, and the matter was submitted on August 3, 2020.

ISSUES

1. Did LAUSD deny Student a free appropriate public education, called a FAPE, from March 16, 2020, through the filing of the complaint, by changing Student's educational program to a distance learning program that did not adequately implement Student's operative May 23, 2019 individualized education program, referred to as an IEP?
2. Did LAUSD deny Student a FAPE from March 16, 2020, through the filing of the complaint, by failing to assist Student's search for an adult day program, and ensure Student's transition to such a program?

At the beginning of the hearing, the issues were clarified consistent with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to

meet their unique needs and prepare them for further education, employment, and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student requested the hearing in this matter, and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing, Student was 22 years old. Student was in 12th grade at The Help Group's Bridgeport Vocational West school, a nonpublic school referred to as Bridgeport. Student and Parent resided within LAUSD's geographic boundaries at all relevant times. Parent held Student's educational rights.

ISSUE 1: DID LAUSD DENY STUDENT A FAPE FROM MARCH 16, 2020 THROUGH THE FILING OF THE COMPLAINT, BY CHANGING STUDENT'S EDUCATIONAL PROGRAM TO A DISTANCE LEARNING PROGRAM THAT DID NOT ADEQUATELY IMPLEMENT STUDENT'S MAY 23, 2019 IEP?

Student contends the distance learning program implemented by LAUSD through Student's nonpublic school beginning March 16, 2020 in response to the novel coronavirus COVID-19 pandemic was inadequate to implement Student's IEP and provide Student a FAPE. Student contends the virtual instruction time provided was far less than Student's previous in-class instruction. Student was not able to meaningfully benefit from virtual, as opposed to in-class, instruction, and Student was unable to participate in community-based instruction critical to developing the life skills and vocational training necessary for her transition to life post-high school.

LAUSD contends the distance learning program provided to Student complied with state and county guidelines for educating children with disabilities during the COVID-19 pandemic, appropriately implemented Student's IEP, and provided Student educational benefit and a FAPE.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

To provide a student a FAPE, a school district must deliver special education and related services "in conformity with" the student's IEP. (20 U.S.C. § 1401(9)(D).) "IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute – not to decide on its own no longer to implement part or all of the IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 821 (*Van Duyn*) (citing 20 U.S.C. §§ 1414(d)(3)(F), 1415(b)(3)).) A school district that fails to implement an IEP exactly does not violate IDEA "unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Van Duyn*, 502 F.3d at p. 815.)

In *Van Duyn*, the court found the district's failure to provide five hours of math tutoring per week out of the 10 hours specified in the student's IEP was a material failure to implement the IEP. (502 F.3d at p. 823.) The court rejected the student's argument that the district's failure to implement the student's IEP as specified was a procedural violation amounting to re-writing the IEP without parental participation. (*Id.* at p. 819.) The court also rejected the district's argument that the student was required to prove the district's failure to implement his IEP caused him to lose educational benefits. "Because the parties debate whether Van Duyn's skills and behavior improved

or deteriorated during the 2001–02 school year, we clarify that the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail.” (502 F.3d at p. 822.) However, the court also noted that a child's educational progress, or lack of it, might be one indicator of whether a discrepancy in services was material. (*Ibid.*) Presenting the example of a child not provided the reading instruction called for in their IEP, the court noted, “a shortfall in the child's reading achievement . . . would certainly tend to show that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material.” (*Ibid.*)

In *N.D. v. Hawaii Dept. of Education* (9th Cir. 2010) 600 F.3d 1104, where the court held that a one day per week shutdown of public schools statewide to address a fiscal crisis did not constitute a change of placement for special education students, it suggested in dicta that the student's claim was “more properly characterized as a 'material failure to implement the IEP.'” (*Id.* at p. 1117, citing *Van Duyn, supra*, 502 F.3d at p. 822.) The court explained, “A school district's failure to provide the number of minutes and type of instruction guaranteed in an IEP could support a claim of material failure to implement an IEP.” (*Ibid.*)

FEDERAL AND STATE GUIDANCE ON PROVIDING SPECIAL EDUCATION DURING THE COVID-19 PANDEMIC

The Centers for Disease Control and Prevention, referred to as CDE, publicly confirmed the first case of COVID-19 in the United States on January 21, 2020. (Press Release, First Travel-Related Case of 2019 Novel Coronavirus Detected in United States (January 21, 2020.)) On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On March 12, 2020, the United States Department of Education Office of Special Education

and Rehabilitative Services, also called OSERS, published guidance to states for educating children with disabilities during the COVID-19 outbreak. (OSERS, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 12, 2020) (OSERS Q & A).) OSERS advised it was providing informal guidance that did "not create or confer any rights on any person" and was "not intended as a replacement for careful study" of the IDEA. (OSERS Q & A at p.1.)

OSERS noted the IDEA did not specifically address the possibility of school closures for an extended period of time due to exceptional circumstances, such as a disease outbreak. (OSERS Q & A, Question A-1.) It advised local educational agencies they would not violate the equal access provisions of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), or the Americans with Disabilities Act (Title 42 U.S.C. §§ 1201, et seq.) if they closed schools to slow or stop the spread of COVID-19 and provided no special education, as long as they did not provide any educational services to the general student population during the same period. (OSERS Q & A Question A-1.)

If a local educational agency continued to provide educational opportunities to the general student population during a school closure, OSERS stated the local agency "must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP." (OSERS Q & A, Question A-1.) If school resumed after a closure, the local educational agency was to "make every effort to provide special education and related services to the child in accordance with the child's IEP." (*Ibid.*)

Significantly, OSERS did not state that a school district could satisfy the IDEA's requirements for providing a FAPE by "mak[ing] every effort" to provide special education and related services, or by providing them "to the greatest extent possible." No such safe harbor, or other waiver or relaxation of pre-COVID-19 IDEA requirements was suggested. Instead, OSERS acknowledged that local educational agencies might not be able to provide FAPE to some students through educational programs developed in response to COVID-19, and would need to evaluate whether those students needed compensatory education as a result. "There may be exceptional circumstances that could affect how a particular service is provided. . . . "[A]n IEP team . . . would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements." (OSERS Q & A, Question A-1.)

In subsequent guidance, OSERS addressed educator concerns that federal disability law presented insurmountable barriers to providing special education through remote education. Recognizing that "educational institutions are straining to address the challenges of this national emergency," OSERS assured school districts "the U.S. Department of Education . . . does not want to stand in the way of good faith efforts to educate students on-line." (OSERS, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, (March 21, 2020) at p. 1) (OSERS Supplemental Fact Sheet).) "To be clear: ensuring compliance with [the IDEA] . . . should not prevent any school from offering educational programs through distance instruction." (*Ibid.*) "[T]he provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically." (*Id.* at pp. 1-2.)

OSERS recognized "these exceptional circumstances may affect how all educational and related services and supports are provided," and indicated the Department [of Education] "will offer flexibility where possible." However, as in its prior guidance, OSERS did not suggest any waiver or relaxation of existing law governing the provision of FAPE to disabled Students. OSERS reiterated its March 12, 2020 guidance on compensatory education, stating, "Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services . . . IEP teams . . . must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations. (*Id.* at p. 2.)

On March 13, 2020, California Governor Gavin Newsom issued Executive Order N-26-20. This Order provided that local educational agencies that closed their schools to address COVID-19 would continue to receive state funding. It directed the California Department of Education, also called CDE, to issue guidance on how to ensure that students with disabilities received a FAPE consistent with their IEP and how to meet other procedural requirements under the IDEA and California law. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, directing all Californians to stay home except to go to an essential job or to shop for essential needs, and to practice social distancing from others.

On March 20, 2020, CDE published guidance on school closures and the provision of special education during the COVID-19 pandemic. (CDE, Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities (March 20, 2020) (CDE March 20, 2020 Guidance).) Noting the federal government had not waived any existing IDEA requirements, CDE advised local educational agencies to "do their best in adhering to IDEA requirements . . . to the

maximum extent possible," "[u]ntil and unless [the U.S. Department of Education] ultimately provides flexibilities under federal law." CDE encouraged local educational agencies to "consider ways to use distance technology to meet these obligations." (*Ibid.*)

CDE specifically addressed the question, "If an LEA offers distance learning for instructional delivery in lieu of regular classroom instruction during a school site closure for students, what is the obligation to implement the IEP for students with disabilities?" (CDE March 20, 2020 Guidance, Frequently Asked Question 1.) CDE advised local educational agencies, "[i]f the local educational agency can continue providing special education and related services as outlined in the IEP, or an agreed upon amendment to the existing IEP, through a distance learning model, they should do so." (*Ibid.*) CDE encouraged local educational agencies to work with nonpublic schools to ensure continuity of services, including moving to virtual platforms for service delivery as feasible and appropriate, and advised that "[t]eachers and specialists should work collaboratively to ensure instruction is accessible for the student based on the student's individualized needs." (*Ibid.*)

Like OSERS, CDE did not indicate that there was any waiver or relaxation of existing IDEA or Education Code requirements for providing FAPE to students with disabilities. CDE acknowledged that the unprecedented situation created by the threat of COVID-19 might lead to learning being provided that did not mirror the offer of FAPE in a student's IEP. (CDE March 20, 2020 Guidance, Frequently Asked Question 3.) In such a situation, CDE counseled, "[O]nce the regular school session resumes," [districts] should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory services may be needed for a student." (*Ibid.*)

STUDENT'S CLASSROOM-BASED EDUCATION PROGRAM PRIOR TO THE IMPLEMENTATION OF DISTANCE LEARNING

Student's last agreed upon IEP was her three-year review dated May 23, 2019, for which LAUSD assessors and Student's special education teacher at Bridgeport conducted assessments in the areas of psychoeducation, speech and language, health, and transition. Student's IEP team determined she continued to be eligible for special education under the category of autism. In addition, Student's education was adversely impacted by intellectual disability, with Student functioning well below average cognitively, and with deficits in speech and language and social-emotional functioning. Student also had deficits in adaptive behaviors necessary for living independently and functioning in daily life with respect to communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics, and work.

Student was kind, respectful and compliant. She showed little, if any, interest in interacting with her peers, engaged in self-stimulatory behaviors, did not volunteer during lessons, had difficulty remaining focused on a task or activity, and only asked for help with preferred tasks. Student communicated verbally, typically using single-word utterances, which she could expand to three-to-five words given prompts and cues from adults. Student did not ask questions, elaborate on her answers, or make follow-up comments or questions, and required direct cues to take turns in conversation. Student required frequent prompting to maintain attention or appropriate eye contact, and to keep from giggling and making distracting sucking sounds. Student had difficulty understanding other people's thoughts and feelings, and anticipating what others would say or do in social and vocational situations.

Student enjoyed community-based activities with her class. She showed some awareness of her surroundings, such as alerting the class when the pedestrian sign showed it was safe to walk, and turning her head left and right before stepping off the curb into the crosswalk. However, Student could not tell time on a clock with hands, seek help for someone who needed help, or understand she should avoid someone who might take advantage of her.

With redirection, reminders, and constant prompting, Student could make change from \$20, and engage in hands-on work activities for a classroom-based food business, including wrapping cutlery in napkins, labeling food containers with the names of customers, and following through on designated steps of a recipe. Interning at a pet store and restaurant, Student swept, dusted shelves, restocked items, folded and made pizza boxes, and labeled cookie bags with instructions and assistance.

Student's IEP team developed nine goals for Student in the areas of expressive language, pragmatic language, behavior, functional reading, functional writing, functional math, vocational skills, social skills, and community skills. All Student's goals were directed towards preparing Student to live independently and function in daily life after high school. The IEP team also developed a behavior intervention plan to address Student's off-task behavior of giggling and making distracting sucking sounds, and an individual transition plan to assist Student towards her post-high school education, vocational, and independent living goals.

The IEP team determined Student required a small, structured, therapeutic learning environment with immediate response to her behavior, communication, and academic needs to make progress on her goals. Student also required hands-on vocational training and community-based instruction to develop her vocational, social, and community living skills. Student's IEP team offered continued placement at

Bridgeport, studying an alternative curriculum focused on developing vocational and independent living skills. The team concluded Bridgeport was the least restrictive environment appropriate for Student because it offered an academic curriculum with hands-on life skills training and vocational services for students with cognitive delays and autism-related challenges in the areas of social communication and language development.

The IEP provided Student would receive 1,570 minutes per week, or approximately 314 minutes per day, of special education in a special day class at Bridgeport, during the regular school year. This included 60 minutes per week of in-class small group speech and language services. Student received no other special education related services during the regular school year. Because Student demonstrated significant regression and limited recoupment of reading, writing and math skills after breaks in her instruction, the IEP team also offered Student her instruction and speech and language services during the extended school year.

Student raised no objection to the May 23, 2019 IEP, or its implementation, from May 23, 2019 through March 13, 2020. During that time, LAUSD implemented Student's May 23, 2019 IEP as follows: Student attended a special day class at Bridgeport taught by Jacqueline Prince. Student arrived at school each day at 9:30 A.M. and went home at 3:15 P.M. During the 1,950 minutes Student attended school each week, she received approximately 1,545 minutes per week of special education instruction, plus 60 minutes of small-group speech and language services. Non-instructional minutes were devoted to morning check-in, lunch, recreation, and breaks between some activities. Forty percent of Student's weekly schedule – 630 minutes – was devoted to community based instruction. This included a major shopping trip on Mondays from 9:30 A.M. to 1:45 P.M., in which the class traveled on foot and by bus, shopped in various mall stores,

and ordered and ate lunch in the community. On Tuesdays through Fridays, the class took shorter 120 minute, 75 minute, and 30-minute walking trips to nearby stores. Student's weekly schedule also included 240 minutes per week of hands-on vocational skills training, working at the school snack cart, coffee shop, clerical service, or library on Tuesdays, and selling hot food on campus on Fridays. Student received the required 60 minutes of group speech and language services on Wednesdays from 2:00 P.M. to 3:00 P.M., from speech and language provider Lyuba Rozenbaum. This was delivered in class, or during community-based instruction, during which Student interacted with members of the community to help develop her expressive and pragmatic language skills.

STUDENT'S DISTANCE LEARNING PROGRAM DEVELOPED IN RESPONSE TO COVID-19

On March 13, 2020, LAUSD announced it would be closing all LAUSD public schools starting March 16, 2020, while it evaluated how to respond to the health threat posed by COVID-19. Following LAUSD's announcement, Bridgeport announced it, too, would be closed starting March 16, 2020. LAUSD and Bridgeport provided general education and special education students a lesson plan and materials to work on at home, but did not provide instruction or services to general education or special education students from March 16 through 18, 2020. During that time, Prince created a virtual classroom for her Students using Google Classroom, to provide her students a distance learning platform they could access from home with the help of their parents. On March 19, 2020, Student's instruction resumed using distance learning. Prince posted links to a video for her students to watch, and to several short assignments to be completed and submitted electronically. Prince emailed parents to let them know of the

assignments, and made herself available by telephone. Students and parents could also post questions for Prince using Google Classroom.

For the first six school days of distance learning, Prince's virtual classroom did not include videoconferencing technology and Student received no interactive instruction. Instead, Student and Parent together watched the videos posted by Prince, and completed the assignments, a process that generally took approximately 30 minutes each day. Beginning March 27, 2020, Prince introduced videoconferencing capability to her teaching tools using ZOOM software. This made it possible for Prince to meet virtually online with her class and their parents. Rozenbaum did not provide speech and language services on March 18, 2020. This missed day was never made up, but Rozenbaum began providing virtual speech and language services using ZOOM on April 25, 2020.

In the week of March 30 through April 3, 2020, Prince began implementing a new distance learning schedule for Student's class. Following LAUSD's spring break from April 3 through 10, 2020, this new schedule remained in place through the filing of the complaint. The schedule identified activities for the class each day from 10:30 A.M. to 3:00 P.M., with 30 minute breaks at 11:45 A.M. and 1:00 P.M. The students began their day from 10:30 A.M. to 11:15 A.M. by watching and working out with a body movement video, and reviewing the calendar for the day. From 11:15 A.M. to 11:45 A.M., the students completed a non-interactive online activity and assignment posted in the Google Classroom, in the areas of functional reading, writing and math, independent living, career development, and virtual community-based instruction. The virtual community-based instruction involved watching videos of visits to interesting places like Denmark, or the International Space Station. Parent and Student typically were able to complete the activities scheduled for 10:30 A.M. to 11:45 A.M. in 30 minutes.

From 12:15 P.M. to 1:00 P.M. each day except Wednesday, the class met virtually with Prince and/or another instructor, for job club, personal fitness, career development, and music. On Wednesdays, there was no virtual class meeting or other activity at that time. Instead, Rozenbaum provided 60 minutes of group speech services to each of two groups of students, who met virtually with Rozenbaum at either 1:00 P.M. or 2:00 P.M. Student met with Rozenbaum on Wednesdays from 2:00 P.M. to 3:00 P.M.

From 1:30 P.M. until 2:30 P.M., except Wednesdays, Prince met virtually with her class to review the day's assignments. From 2:30 P.M. to 3:00 P.M. each day, except Wednesdays, Prince met virtually with two students and their parents, to provide individualized attention and address issues and concerns. This meeting took place on Tuesdays for Student and Parent.

Student made some progress on her functional academic goals and in speech and language, but minimal progress on her vocational, social skills, or community skills goals. In those areas, Student's educational progress depended heavily on in-person participation in job training, or personal interaction with peers and others in her community, neither of which were possible under Student's distance learning program. Student was also unable to engage in community volunteer and work training activities, as called for in her IEP to support her transitional goals. Student made only minimal progress in her behavioral goal of reducing her off-task behavior of giggling and making distracting sucking sounds, because Prince was no longer with Student five hours each day to monitor and redirect her. Prince and Rozenbaum each agreed that Student would have made more progress towards her goals under a classroom-based learning model with in-person instruction.

On April 28, 2020, Student's IEP team held a virtual final IEP team meeting to prepare for Student aging out of special education at the conclusion of the 2020 extended school year on July 31, 2020. Team members discussed Student's course of study, course credits, progress towards a certificate of completion, and a summary of her academic and functional performance. The IEP team made no changes to Student's existing program or services as described in Student's existing IEP. The IEP stated Student "will continue to receive educational services by participating in distance learning until July 31, 2020." Prior written notice sent district-wide by LAUSD on May 1, 2020 to parents of children with IEP's, including Parent, stated distance learning was "not an amendment or alteration of your child's current IEP. Rather, it is a means to implement that IEP while your child is 'Safer at Home.'"

Parent did not object to Student's distance learning program at Student's April 28, 2020 IEP team meeting, but did not consent to the IEP. Parent disagreed in writing to the entirety of the IEP on May 14, 2020. Parent acknowledged "District's best efforts," but objected "stay-at-home learning is inadequate to fulfill the mandate of providing a FAPE . . . to special needs students." Parent asked LAUSD to allow Student to continue in school with her existing placement and services after the end of the 2020 extended school year through the fall/winter semester of the 2020-2021 regular school year. LAUSD did not respond to Parent before the filing of the complaint. LAUSD continued to teach through distance learning through Student's last day of school on July 31, 2020, and did not resume regular school sessions. LAUSD did not make any individualized determination whether Student needed any compensatory services to make up for differences between the offer of FAPE in Student's May 23, 2019 IEP, and the educational program provided to Student through distance learning.

The guidance OSERS and CDE gave local educational agencies regarding the provision of special education and related services during the COVID-19 pandemic expressly made no change to existing law regarding requirements and standards for providing students a FAPE. The relevant inquiry in this case remains whether LAUSD and Bridgeport adequately implemented Student's IEP and provided Student a FAPE under the pre-COVID-19 standards set forth in *Van Duyn* (*supra*, 502 F.3d at p. 815) and *N.D. v. Hawaii Dept. of Education* (*supra*, 600 F.3d at p. 1117.) Guidance to districts that they should do "their best in adhering to IDEA requirements to the maximum extent possible," and insure "to the greatest extent possible," that students with disabilities were provided the special education and related services identified their IEP were goals, but there was no suggestion that complying with them was sufficient to establish that a student received a FAPE. Indeed, the guidance from OSERS and CDE clearly contemplated that, even if it did its best, a district might be unable to provide a student a FAPE under IDEA and Education Code requirements. In instances where this occurred, OSERS and CDE instructed that, once the regular school session resumed, districts would need to make individualized decisions regarding whether an affected student required compensatory services.

In this case, applying the standards of *Van Duyn* and *N.D. v. Hawaii Dept. of Education*, the distance learning program delivered to Student from March 16, 2020 to May 18, 2020 fell materially short of adequately implementing Student's IEP by providing Student the number of minutes of instruction required by Student's May 23, 2019 IEP, and the type of instruction required for Student to make meaningful progress on her vocational, social skills, community skills, behavioral, and transition goals. Prior to distance learning, Student received 1,545 minutes per week of instruction and 60 minutes per week of group speech and language services, delivered in class, or through community-based instruction. This was slightly more than the 1,570 minutes

called for in Student's IEP, and all of it was delivered in person. By contrast, under distance learning, Student received, at most, 450 minutes of interactive instruction and 60 minutes of speech and language services per week, delivered in virtual meetings with Prince, Rozenbaum, and other instructors beginning in April 2020. Theoretically, Student was to devote another 375 minutes per week to individual online learning from 10:30 to 11:45 A.M. each day, reviewing videos and completing assignments posted by Prince, but Student and Parent were able to complete this work in only 150 minutes per week, meaning Student actually received, at most, 600 minutes of instruction per week, plus 60 minutes of speech and language services, or approximately 42 percent of the total weekly instruction and services called for in her IEP. From March 16, 2020, to the first week of April, Student received less than 10 percent of her IEP-specified instructional minutes. Student received no instruction for three days, and her online learning from March 19, 2020 until the end the first week of April 2020 was limited to the 150 minutes per week she and Parent needed to review videos and complete assignments. Student also missed one group speech and language session, which was not made up.

In addition to the materially-reduced amount of instruction Student received under distance learning, the type of instruction provided did not allow her to make meaningful progress on her goals. In particular, Student's weekly participation in in-person community-based instruction and vocational training fell from a total of 870 minutes – more than half of her total instruction, to zero. Instead of spending 630 minutes each week navigating her community and interacting with the businesses and people in it, Student received 30 minutes of non-interactive virtual community instruction, visiting interesting places online. Student's total minutes of vocational training fell less drastically – from 240 minutes to 120 per week – but Student received none of the hands-on job training that had allowed her to make progress prior to

distance learning. As indicated by the amount of community-based instruction and vocational training Student received before distance learning, her acquisition of life skills and vocational skills was especially critical for her to live independently and function in daily life after high school. Similarly, although Student continued to receive her IEP-specified 60 minutes per week of speech and language services, except for one missed session, Student had no opportunity to develop her expressive and pragmatic language in community-based instruction, and her speech and language provider acknowledged this reduced the progress Student made towards her language goals.

Here, Bridgeport's distance learning program from March 16, 2020 to May 18, 2020, the date the complaint was filed, provided Student less than half the number of instructional minutes required by her May 23, 2019 IEP, and none of the in person, hands-on community life skills and vocational instruction necessary for Student to make meaningful progress towards her goals necessary for her transition to post-high school life. This was a material failure to implement Student's May 23, 2019 IEP, and denied Student a FAPE. (*Van Duyn, supra*, 502 F.3d at p. 815; *N.D. v. Hawaii Dept. of Education, supra*, 600 F.3d at p. 1117.)

ISSUE 2: DID LAUSD DENY STUDENT A FAPE FROM MARCH 16, 2020 THROUGH THE FILING OF THE COMPLAINT, BY FAILING TO ASSIST OR ENSURE STUDENT'S TRANSITION TO AN ADULT DAY PROGRAM?

Student contends LAUSD denied her a FAPE beginning March 16, 2020 by failing to invite outside agencies involved her post-high school transition to her April 28, 2020 IEP team meeting, and by failing to identify specific adult programs suitable for Student in the summary of performance Bridgeport prepared for Student. Student's closing brief also argued new issues regarding Student's transition goals which were not asserted in

Student's complaint or litigated at hearing. Accordingly, this Decision does not address these claims raised for the first time in Student's closing brief. (See, e.g., *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.])

LAUSD contends it did not invite any outside agencies to the IEP team meetings based on its determination there were no LAUSD agencies currently or prospectively paying for transition services for Student. It also asserts that it provided Student appropriate information regarding adult programs that might be available for her.

FAILURE TO INVITE OUTSIDE AGENCY REPRESENTATIVES

Beginning at age 16, a student's IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) It must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A); *Board of Education of Township High School Dist. No. 211 v. Ross, et al.* (7th Cir. May 11, 2007) 47 IDELR 241, 107 LRP 26543.)

Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include instruction, related

services community experiences, the development of employment and other post school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

If a purpose of an IEP team meeting is to consider postsecondary goals for the student and the transition services needed to assist the child in reaching those goals, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services, with the consent of the parents or a child who has reached the age of majority. (34 C.F.R. § 300.321(b).) A failure to invite such a representative is a procedural violation of the IDEA. (*Carrie I. ex rel. Greg I. v. Dept. of Education, Hawaii* (D.Hawaii 2012) 869 F.Supp.2d 1225, 1246.)

A procedural violation of the IDEA only results in the denial of a FAPE if the procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) With respect to a member of a student's IEP team whose actual attendance at the student's IEP team meeting is specifically required by the IDEA and Education Code, such as the parent or student's special education teacher, (see, 34 C.F.R. § 300.321(a)(1)–(7); Ed. Code, § 56341, subd. (b)(1)–(7)), the failure to have such a person present at the IEP is likely to significantly impede the parents' participation or deprive student of educational benefits, and thus result in a denial of FAPE. (See, e.g., *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634,642.) However, because an outside agency representative is not a member of a student's IEP team whose attendance at an IEP team meeting is mandatory, the failure of a district to invite an agency representative will only result in a denial of FAPE if it is demonstrated

that the representative, if invited, would have provided information to the IEP team necessary for parent to meaningfully participate in the decision-making process, or that would have led to the student receiving educational benefits not received due to the lack of an invitation.

At all relevant times, Student was a client of the Westside Regional Center. Parent began looking for a post-high school adult program for Student in 2018, and obtained a list of adult day programs from Student's service coordinator at Westside Regional Center. In February 2020, Parent visited two adult day programs he thought might be suitable for Student, and discussed funding possibilities for one of them with Student's service coordinator. Parent decided in February 2020 that he wanted to observe some other adult programs before moving forward with the paperwork necessary to explore funding options. He decided to wait until summer 2020 to further pursue those options.

When LAUSD contacted Parent to schedule Student's April 28, 2020 IEP team meeting to prepare for Student aging out of special education at the conclusion of the 2020 extended school year, parent asked LAUSD to invite Student's Westside Regional Center service coordinator to the meeting. Parent also directly asked the service coordinator to attend the IEP team meeting. Additionally, in both Student's May 23, 2019 and April 28, 2020 IEP's, LAUSD identified Regional Center and the California Department of Rehabilitation as agencies currently or prospectively providing or paying for transition services, and obtained Parent's permission to invite them to "the next IEP in which transition services will be reviewed." For reasons not explained at hearing, despite Parent's request that LAUSD invite Student's existing Regional Center service coordinator, and after having obtained Parent's permission to invite the Regional Center and Department of Rehabilitation to Student's IEP team meeting, LAUSD in both

IEP's also responded "no" to the question "Are there agencies currently or prospectively providing or paying for transition services?" In its closing briefs, LAUSD contended for the first time that this response reflected its determination that there were no LAUSD agencies currently or prospectively providing or paying for transition services, but LAUSD did not argue that such a determination would justify its failure to invite outside agencies such as Regional Center and Department of Rehabilitation to Student's IEP. In any event, LAUSD did not invite either Westside Regional Center or the California Department of Rehabilitation to attend Student's April 28, 2020 IEP team meeting. No outside agencies attended the meeting. At the meeting, Student's IEP team confirmed she would be finishing her education with LAUSD on July 31, 2020. Team members discussed Student's course of study, course credits, progress towards a certificate of completion, and a summary of her academic and functional performance. The team stated Student's existing goals and transition plan would remain in effect until July 31, 2020.

LAUSD committed a procedural violation of the IDEA by failing to invite Student's Regional Center service coordinator, or a representative of the California Department of Rehabilitation, to her April 28, 2020 IEP team meeting. That IEP team meeting was Student's final IEP meeting before Student's transition from high school to postsecondary life, and the IEP team's last opportunity to review Student's postsecondary goals, and the transition services needed to assist her, with the outside agencies working with Student during and after her transition.

As to whether LAUSD's procedural violation denied Student a FAPE, the potential benefits of outside agency participation in Student's IEP were clear. Representatives from the Regional Center and Department of Rehabilitation might have been able to provide Student's IEP team information, for example, about postsecondary adult

programs still available for Student during the COVID-19 pandemic, ways for Student and Parent to evaluate such programs, and suggestions for modifying Student's IEP and individual transition plan with changed goals, or vocational or life skills training, such as training in the use of masks or social distancing, to better prepare her over her last three months of high school for her transition into available adult programs. However, no evidence was presented that a representative from either of these agencies would have participated in Student's IEP, or otherwise provide input to Parent and the rest of Student's IEP team regarding Student's postsecondary goals or transition services, if LAUSD had extended invitations to the agencies. To the contrary, Parent invited Student's Regional Center service coordinator to attend the April 28, 2020 IEP, but the coordinator did not attend. The evidence therefore did not prove that LAUSD's failure to invite the outside agencies actually deprived Student's IEP team of important information, or by doing so significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or deprived Student of educational benefits. LAUSD did not deny Student a FAPE by failing to invite outside agency representatives to Student's April 28, 2020 IEP team meeting.

FAILURE TO IDENTIFY SPECIFIC ADULT PROGRAMS APPROPRIATE FOR STUDENT

For a child whose eligibility terminates due to exceeding the age eligibility for a FAPE under state law, a public agency must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. (34 C.F.R. § 300.305(e)(3); Ed. Code, § 56381 subd. (i)(2).) The IDEA does not specify the information that must be included in the summary, and state and local officials have flexibility to determine the appropriate content to be included in a child's summary of

performance, based on the child's individual needs and postsecondary goals. (Questions and Answers on Secondary Transition, 57 IDELR 231 (OSERS 2011); Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,645 (2006).) "The purpose of the [summary of performance] is to provide the child with a summary of the child's academic achievement and functional performance in order to assist the child to transition beyond high school." (Questions and Answers, *supra*, 57 IDELR 231.)

Approximately a week after Student's April 28, 2020 IEP, LAUSD gave Parent a Summary of Performance for Student dated April 28, 2020, for Student to present to agencies and programs that might provide Student postsecondary services. It included a summary of Student's academic achievement and functional performance, and recommendations on assisting Student in meeting her postsecondary goals in the areas of learning, work, living, play, travel, and community. It recommended Parent "collaborate with Regional Center service coordinator for program options" to achieve Student's goals for education and training, employment, and independent living. The summary of performance also identified the California Department of Rehabilitation, and the California State Council on Developmental Disabilities as agencies that might assist in Student's transition to postsecondary life. It did not list specific postsecondary adult programs appropriate for Student.

Parent did not provide Student's summary of performance to any agencies or programs, because he believed it was futile to search for an adult program for Student while COVID-19 stay-at-home and social distancing orders were in effect. Parent's May 14, 2020 written notice to LAUSD that he did not agree to any components of Student's April 28, 2020 IEP stated it was untenable for Student to exit LAUSD during the disruption of education and transition services caused by the COVID-19 pandemic.

LAUSD did not deny Student a FAPE by failing to identify specific postsecondary adult programs appropriate for Student. LAUSD was not required to provide such information under the IDEA or Education Code, either in the statement of needed transition services that must be included in a transitioning student's IEP (Ed. Code, § 56043, subd. (h)), or in summary of performance provided to students aging out of special education. (20 U.S.C. § 1414(c); 34 C.F.R. § 300.305 (e)(3); Ed. Code, § 56381 subd. (i)(2).)

Even if LAUSD had been required to identify specific adult service programs appropriate for Student, there is no evidence that its failure to do so during the time period at issue impeded Student's right to a FAPE, deprived her of educational benefits, or significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE. After Parent identified several programs he thought might be appropriate for Student, Parent decided in February 2020 to suspend the search for an adult program for Student until summer 2020. Although he was aware of several adult programs that might be suitable for Student, Parent subsequently concluded it was futile to search for an adult program for Student so long as orders to stay-at-home and social distance were in effect due to the COVID-19 pandemic. No evidence was presented that Parent would have pursued other adult programs identified by LAUSD, or that LAUSD was aware of adult programs unaffected by the COVID-19 pandemic that it could failed to recommend to Student.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

1. LAUSD denied Student a FAPE from March 16, 2020 to the filing of the complaint by changing Student's educational program to a distance learning program that did not adequately implement Student's operative May 23, 2019 IEP. Student prevailed on Issue 1.
2. LAUSD did not deny Student a FAPE from March 16, 2020 to the filing of the complaint by failing to assist Student's search for an adult day program, and ensure Student's transition to such a program. LAUSD prevailed on Issue 2.

REMEDIES

Student prevailed on Issue 1, that LAUSD denied Student a FAPE by failing to implement her May 23, 2029 IEP from March 16, 2020 to the filing of the complaint on May 18, 2020. As a remedy, Student requested the proposed remedy of returning to her class at Bridgeport for a semester when in-class instruction resumes.

Administrative Law Judges have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. (*School Committee of Burlington, Mass. v. Dept. of Education* (1985) 471 U.S. 359, 370 (*Burlington*); *Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). The broad authority to grant relief extends to the administrative law judges and hearing officers who preside at administrative special education due process proceedings. (*Forest Grove School Dist. v. T.A.* (2009) 129 S.Ct. 2484, 2494, fn. 11; 174 L.Ed.2d 168.)

To remedy a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) The purpose of the IDEA is to provide students with disabilities a FAPE which emphasizes special education and related services to meet their unique needs. (*Burlington, supra*, 471 U.S. 359, 374.) Appropriate relief means relief designed to

ensure that the student is appropriately educated within the meaning of the IDEA. (*Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

A school district may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) An award of compensatory education need not provide a day-for-day compensation. (*Puyallup, supra*, 31 F.3d at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

Compensatory education is clearly an appropriate remedy in this case for LAUSD's being unable to implement Student's May 23, 2019 IEP by providing Student through distance learning the in person vocational and community skills training Student required to make progress towards her transitional goals. Compensatory education was, in fact the remedy suggested by OSERS and CDE in their guidance that IEP teams should be prepared to address shortfalls in the implementation of student IEPs by making individualized determinations regarding whether compensatory education and services might be needed for a student, after schools resumed regular school sessions.

The particular remedy of having Student's IEP team consider her needs for compensatory education, as suggested by OSERS and CDE, was not, and is not, available

to Student. LAUSD did not resume regular operations during the 2019-2020 school year or 2020 extended school year, and Student's IEP team did not consider whether she might need compensatory education. Even if LAUSD were to resume regular school sessions in the 2020-2021 school year, Student would not be entitled to an IEP team meeting to determine her need for compensatory education, because she aged out of eligibility for special education at the close of LAUSD's extended school year on July 31, 2020, based on her having turned 22 in March 2020. (Ed. Code, § 56026, subd. (c)(4)(A).) Student's right to the protections and benefits of the IDEA, including the right to any IEP team meeting or educational program provided by LAUSD, ended at that time. (See, *Honig v. Doe* (1988) 484 U.S. 305, 318; Ed. Code, § 56026 subd. (c)(4)(D) ("No local educational agency may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.").) Student's proposed remedy of an additional semester at Bridgeport nonpublic school when in-class instruction resumes is similarly not available because Student no longer has the right to any educational program provided by LAUSD.

For the eight school weeks from March 16, 2020 to May 18, 2020, Student demonstrated a loss of approximately 116 hours of hands-on community-based instruction and vocational training necessary for Student to make meaningful progress towards her vocational, social skills, community skills, behavioral, and transition goals, critical to her postsecondary life. In a typical week prior to distance learning, Student received approximately 870 minutes, or 14.5 hours, of such instruction, compared to no such instruction in her distance learning program.

Ordinarily, an award of compensatory education would involve ordering some amount of the hands-on instruction she missed. However, the COVID-19 pandemic is still present, LAUSD and other districts are continuing distance learning in the 2020-2021 school year, and there is no evidence that in-person vocational and community skills training is available from any nonpublic agencies or private providers, or that it would be safe for Student at this time if it were available. It would not make sense to try to compensate Student by providing her the same sort of virtual vocational and community skills training that was insufficient to benefit Student in the first place.

It is likely that at some point in-person instruction and transition services of the type needed by Student will resume. However, it would not be appropriate to order a remedy of hands-on vocational and community-based training, and making it available to Student over a long period of time in the expectation that such training will become safe and available. There is no evidence when such hands-on training will again become available, and Student has demonstrated a need for an immediate remedy. Student has completed her high school education as of July 31, 2020, and in the past has shown significant regression in her skills after breaks in her instruction.

To avoid regression of her vocational skills and community skills and begin an effective transition to postsecondary life, Student has an immediate need for assistance in locating an adult day program and/or employment in which she can continue to develop her vocational and community living skills. Such assistance in developing employment and other post-school adult activities is one type of transition service. Unlike other transition services such as the vocational instruction, related services community experiences, and acquisition of daily living skills that Student's distance learning program did not adequately provide, assistance in locating adult programs and

employment can be effectively provided to Student by providers who do not need to meet in person with Parent or Student.

Based on the unique circumstances presented here, it is appropriate to provide Student available transition services in the form of transition counseling that will immediately assist Student in reaching her postsecondary goals, rather than providing Student virtual vocational and community skills training transition services that do not benefit her, or delaying the provision of services until they can be provided hands-on. Given the nature of such counseling, which would primarily involve assisting Parent in coordinating with agencies and locating appropriate adult programs for Student, rather than training Student herself, it would not be appropriate to replace the 116 hours of vocational and community skills training with an equal amount of counseling. However, providing Student five hours per week of transition counseling for each of the eight weeks in which she did not receive hands-on vocational and community skills training is an appropriate remedy reasonably calculated to allow Student to make progress towards her postsecondary goals. Accordingly, as a remedy for its failure to fully implement Student's May 2020 IEP between March 16, 2020 and May 18, 2020, by failing to provide her with approximately 116 hours of hands-on community-based instruction and vocational training, LAUSD shall fund a total of 40 hours of postsecondary transition counseling by an appropriately-credentialed counselor of Parent's choice, to assist Student with coordinating with Westside Regional Center, the California Department of Rehabilitation, and other agencies and programs, as appropriate, to locate such a program and/or employment. Additionally, as compensatory education for Student's missed group speech and language session on March 18, 2020, LAUSD shall fund one hour of group speech and language focused on expressive and pragmatic language, by a provider of Student's choice. The cost for each of these services shall not to exceed the average hourly rate for such services in the

community, and Student shall have until July 31, 2021, to use the hours awarded. Any time not used by that date shall be forfeited.

ORDER

1. LAUSD shall fund a total of 40 hours of postsecondary transition counseling by an appropriately-credentialed counselor of Parent's choice, to assist Parent with coordinating with Westside Regional Center, the California Department of Rehabilitation, and other agencies and programs, as appropriate, to locate such a program and/or employment for Student.
2. LAUSD shall fund one hour of group speech and language services for Student, focused on expressive and pragmatic language, by a provider of Student's choice.
3. The cost for each of the above services shall not exceed the average hourly rate for such services in the community. Student shall have until July 31, 2021, to use the hours awarded. Any time not used by that date shall be forfeited.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DocuSigned by:

Robert Martin

Robert G. Martin

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Administrative Law Judge

Office of Administrative Hearings



SpEdTalk Webinar
Rise Up! Edition
August 28, 2020

with
Jay Shinnfield,
Kristin Myers,
Carlos Gonzalez,
Deb Ettinger,
E.B. Bell,
Danielle Gigli &
Reagan Headrick, Executive Director of Special Education
of Ocean View School District
Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego



Agenda

- August 25 CDPH Cohorting Guidance
- Stay-put order
- Distance learning decision
- Catching up with Reagan Headrick!
- Your questions we didn't get to about:
 - Assessments (new information from CASP)
 - Service and SB 98 issues
- We get even more questions



**August 25, 2020
CDPH Guidance**

aa/rr

August 25, 2020 CDPH Guidance for Small Cohorts/Groups of Children and Youth

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/small-groups-child-youth.aspx>

- The guidance applies to groups of children and youth in controlled, supervised, and indoor environments operated by local education agencies.
- **“Guidance and directives related to schools, child care, day camps, youth sports, and institutions of higher education are not superseded by this document and still apply to those specified settings.”**

August 25, 2020 CDPH Guidance for Small Cohorts/Groups of Children and Youth (cont'd)

- **Cohort:** stable group of 14 or less children and 2 or less supervising adults “in a supervised environment” where adults and children stay together for *all* activities (including meals, recreation, etc.) and “avoid contact with people outside their group in the setting.”
- **Supervising Adult:** adult assigned to 1 cohort who does not physically interact with any other cohorts.
- **Supervised Care Environment:** an environment with multiple children from multiple families or households who are being supervised simultaneously by an adult. Includes “where some educational services are being offered to a subgroup of students as identified by the LEA on a school campus.”

August 25, 2020 CDPH Guidance for Small Cohorts/Groups of Children and Youth (cont'd)

- A maximum cohort size of 14 children applies, even when all children are not participating at the same time.
 - E.g., a cohort consisting of 6 children attending full-time, 6 attending M/W/F and 6 attending Tues/Thurs would be too large — 18 total children, even though no more than 12 attending on any given day.
- No interaction between cohorts, including staff assigned to different cohorts
 - Exception: 1-to-1 “specialized services” (e.g., OT, speech, behavior services) can be provided by a staff member not part of the child’s cohort.

August 25, 2020 CDPH Guidance for Small Cohorts/Groups of Children and Youth (cont'd)

- Substitute providers are allowed, but must work with only one cohort of children per day.
- Meetings among staff from different cohorts must be conducted remotely, outdoors, or in large room in which all providers wear cloth face coverings and maintain six-foot distance from other providers.
- Physical distancing between adults must be maintained as much as possible.
 - “Physical distancing between young children in the same cohort should be balanced with developmental and socio-emotional needs of this age group.”

August 25, 2020 Cohorting FAQs

- The FAQ (guidancefiles.covid19.ca.gov) clarifies the Cohorting Guidance applies to schools that cannot reopen for in-person instruction pursuant to the CDPH’s July 17 Guidance, “including elementary schools in [LHJs] that have not received an elementary school waiver through the local public health office.”
- The FAQ suggests that LEAs collaborate with their local public health office in designing cohort plans, but does not require express approval from local DPH to reopen for cohort purposes.

August 25, 2020 Cohorting FAQs (cont'd)

Is the intent to allow for in-person instruction for all students?

“No. The purpose of this guidance is to establish minimum parameters for providing specialized services, targeted services and support for students while schools are otherwise closed for in-person instruction in ways that maintain the focus on health and safety to minimize transmission.”

August 25, 2020 Cohorting FAQs (cont'd)

Does the Cohorting Guidance require schools to provide small-group, in-person services if they are otherwise prohibited to reopen under the July 17 Guidance?

“No. It clarifies the conditions that must be met to offer in-person services for small groups of students if a school is otherwise unable to reopen under state public health directives.”

August 25, 2020 Cohorting FAQs (cont'd)

Which students can be served in cohorts during school closures?

“Students with disabilities should be prioritized, along with English learners, students at higher risk of further learning loss or not participating in distance learning, students at risk of abuse or neglect, foster youth and students experiencing homelessness may also be prioritized.”

August 25, 2020 Cohorting FAQs (cont'd)

Can students receive additional specialized services or targeted support and services if they are not part of a cohort or outside of their cohort from a different supervising adult(s)?

- Yes, if done in a one-on-one setting with proper PPE.
- Schools should limit interaction of staff who are not supervising adults (e.g., nurse, counselor, administrator) with any cohort “unless necessary to respond to an exigent health or safety issue.”
- This likely supports the permissibility of 1:1 assessments

August 25, 2020 Cohorting FAQs (cont'd)

How many cohorts can be at a single school site?

“The number of cohorts will depend on the school’s enrollment size and available building capacity. Local school officials – in collaboration with local health departments and school-based staff – should determine the number of cohorts that can be safely established to avoid interactions between cohorts. In general, given the need for physical distancing and separation of cohorts, the number of students on a given school site should generally not exceed 25% of the school’s enrollment size or available building capacity.”



Stay-Put Order

Student v. Pleasanton Unified School District (2020)

OAH Case No. 2020070970, “Order Granting Motion for Stay Put”

- Student is an 11 year old who was born with Wolf-Hirschhorn chromosomal syndrome, which significantly impacted all areas of her development.
- Student’s last agreed upon and implemented individualized education program included related services including, speech therapy, occupational therapy, physical therapy, adapted physical education, and specialized vision services.
- Student’s IEP also included a health care plan and provided for a full-time Licensed Vocational Nurse.

Student v. Pleasanton Unified School District (cont’d)

- Student sought a stay-put order with respect to what she deemed “essential related services” in her IEP.
- The stay-put doctrine provides that a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code § 56505(d).)
- Additionally, a school closure for budgetary reasons requires a “comparable program” in another location for stay put. (E.g., *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

Student v. Pleasanton Unified School District (cont'd)

- The Office of Administrative Hearings granted Student's Motion for Stay Put, reasoning that the guidelines issued by the California Department of Education under EO N-26-20 did not preclude districts from providing in-person educational services, and the local public health authority in which the District is located took the position that they are "allowing in-person educational services for any activities that cannot be done remotely and are required for students to be able to obtain their education."
- The OAH also noted that the district and county office of education failed to provide any legal authority to support a finding that the COVID-19 pandemic creates an exception to the stay-put requirement.

Student v. Pleasanton Unified School District (cont'd)

- The OAH ordered the district and county office of education to provide in-person services to Student, in the duration and intensity described in her IEP, including her LVN, speech therapy, physical therapy, and vision services.
- The order did provide that the district and county office of education could use qualified staff from a non-public agency to provide the services, that the services could be provided in Student's home, and that they were not required to provide the services on school sites or with school staff.

STAY COOL



Distance Learning Decision

aa/r/r

Student v. Los Angeles Unified School District (2020) OAH Case No. 2020050465

- Student (who turned 22 years old in March 2020) was eligible under the category of autism.
 - In addition, Student's education was adversely impacted by intellectual disability, with Student functioning well below average cognitively, and with deficits in speech and language and social-emotional functioning.
- Student alleged that the distance learning program (implemented through Student's nonpublic school) was inadequate to implement Student's individualized education program and provide Student a free appropriate public education.

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Student v. Los Angeles Unified School District (cont'd)

- Student argued that the amount of virtual instructional time provided was far less than Student's previous in-class instruction, and that as a result:
 - Student was not able to meaningfully benefit from virtual, as opposed to in-class, instruction, and
 - Student was unable to participate in community-based instruction.

Student v. Los Angeles Unified School District (cont'd)

The OAH held that:

- LAUSD denied Student a FAPE by changing Student's educational program to a distance learning program that did not adequately implement Student's operative IEP.
- LAUSD did not deny Student a FAPE by failing to assist Student's search for an adult day program, and ensure Student's transition to such a program.

Student v. Los Angeles Unified School District (cont'd)

The OAH ordered the following remedy:

1. LAUSD shall fund a total of 40 hours of postsecondary transition counseling by an appropriately-credentialed counselor of Parent's choice, to assist Parent with coordinating with Westside Regional Center, the California Department of Rehabilitation, and other agencies and programs, as appropriate, to locate such a program and/or employment for Student.
2. LAUSD shall fund one hour of group speech and language services for Student, focused on expressive and pragmatic language, by a provider of Student's choice.



**Challenges for 2020-21:
Catching Up With Reagan!**

What are the challenges with beginning the school year?

- What are the biggest challenges with serving students with disabilities?
- What are the biggest challenges with assessing students?



Assessment Plans During the Pa

When filling out an assessment plan, do we fill it out the same way we would as if we were conducting all assessments in-person?

- Yes, you should continue to prepare assessment plans in the same manner you would ordinarily prepare them.

In addition...

Assessment Plans During the Pandemic (cont'd)

- If your LEA will conduct in-person testing, we recommend that you provide parents:
 - A notice of health risks;
 - A health inventory (e.g., are you coughing? got a temperature?) for submission to the LEA immediately before testing begins; and
 - A step-by-step explanation of the assessment process, and the family's roles to keep themselves, and others, safe.

How to Provide a Notice of Risk?

Should that notice of risk be included on the assessment plan or a separate document?

- From a legal perspective (i.e., to defend against claims of negligence for failure to warn of risks), it does not matter as long as the notice is clear and obvious.
 - Your LEA might ask parents to return the notice with a signed acknowledgement of having received it.
- What is most important is the communication with the parents. Are they comfortable with in-person testing? Do they understand that your LEA has procedures in place to protect their child?

Assessment During the Pandemic

Some assessment procedures I have seen seem to suggest that if a student or family has a risk factor (e.g. health condition or person in the home over 65) that the district will not be moving forward with the assessment. Any thoughts on the defensibility of this? Or is it better to have families sign a waiver saying they are willingly participating in assessment knowing they have risk factors?

Assessment During the Pandemic (cont'd)

- An LEA should establish risk criteria to determine whether in-person assessment is appropriate. It makes sense that one criterion to consider is the safety of high-risk populations.
- This situation might be one in which a waiver is efficient and enforceable.

Cognitive Assessment Without Direct Testing?

Our district is proceeding with remote modified triennials and in some instances remote modified initials. If we are conducting rating scales that have subsets of cognitive measures (i.e., developmental rating scales DP4) and or processing assessments (i.e., attention rating scales), can we check that we assessed in those areas?

Furthermore, we are conducting a records review of all previous processing and cognitive assessments. We are checking academics as an area to be assessed on the assessment plan because the teacher will provide curriculum based assessments, criterion based, or teacher made assessments.

Cognitive Assessment Without Direct Testing? (cont'd)

- New Guidance released from the California Association of School Psychologists noted that “evaluation and assessment are possible practices even if testing cannot and should not occur.”
- For triennials, CASP asks practitioners to consider the follow questions: “Do you have enough data through qualitative data means (review of records, interviews, etc.) to document continued presence of a disability and the need for special academic services to access the core curriculum,” and “[a]re there any new concerns that have been brought up and need to addressed?”

Cognitive Assessment Without Direct Testing? (cont'd)

- For initial assessments, CASP recommends that “data collection should encompass all available data sources... not just from tests in order to draw the defensible conclusions about student strengths and potential disabilities.”
 - Make sure you are clearly documenting in the testing section how all assessments were completed, including a validity statement if you believe any results and/or interpretation of the results were impacted by the virtual assessment.

<https://casponline.org/pdfs/publications/covid/CASP%20Online%20Assessment%20Resource%20Paper.pdf>

Cognitive Assessment Without Direct Testing? (cont'd)

- What do the data mean?
 - Will the testing lead to an accurate measurement of functioning?
 - Will the testing facilitate the accurate measurement of functioning?
 - If you can answer either question “yes,” do you believe — based on community standards, and your training and experience — that you are “assessing” that area of functioning?
 - If the answer is “yes,” certainly you should check that assessment area box on the plan. But the bigger question is whether you feel your assessment will gather sufficient data to measure the student’s functioning, right? The task is not merely to administer testing in the area of functioning, but to measure functioning.
- Can you explain to the parents what the data mean, and why the assessment is an accurate and appropriate representation of the student’s functioning?

If We Assess, but In-Person Instruction is Closed, Does SB 117 Tolling Stay in Place?

If we bring students back for in-person 1:1 assessments will the timeline open back up for ALL students, including those initial requests?

Are We No Longer “Closed”? (cont'd)

- Recently amended, but not-yet-enacted, SB 820 will retroactively end SB 117’s minimal special education timeline tolling, going back to July 1, 2020.
 - SB 117 Section 8 tolls, for purpose of compliance monitoring, timelines for assessment plans (Education Code sections 56043(a) and 56321(a)) as well as making pupil records available and transmitting a pupil file by a former LEA (Education Code sections 56043(n) and (o), and 5 C.C.R. § 3024).
- It appears the rationale for the retroactive sunset of the tolling contemplates that timelines will remain inert during summertime anyway, and that those timelines will resume with the new school year.



SERVICE & SB 98 ISSUES

Asynchronous Activities

I'm hoping you will go over the possibility of utilizing asynchronous activities in order to fulfill IEP service minutes (e.g. speech). Our district is struggling to meet the minutes via teletherapy because groups are smaller and prep takes longer. Additionally, because the academic day is shorter we are getting more pushback from teachers about pulling during direct instructional time. It seems that if direct instruction needs are scaled back to a percentage, DIS services should also be scaled back proportionately?

Asynchronous Activities (cont'd)

- Generally, related services refers to “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.” (30 C.F.R. § 300.34(a).)
- “DIS means ‘related services’.” (Ed. Code § 56363.)
- Specially designed instruction means “adapting, as appropriate the needs of an eligible child...the content, methodology, or delivery of instruction (i) to address the unique needs of the child that results from the child’s disability; and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” (34 C.F.R. § 300.39(b)(3).)

Education Code section 43501

(a) “Distance learning” means instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certificated employee of the local educational agency. Distance learning may include, but is not limited to, all of the following:

- (1) Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology.
- (2) Video or audio instruction in which the primary mode of communication between the pupil and certificated employee is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.
- (3) The use of print materials incorporating assignments that are the subject of written or oral feedback.

Education Code section 43502

(e) For the 2020–21 school year, instructional minutes shall be determined as follows:

- (1) For in-person instruction, instructional minutes shall be based on time scheduled under the immediate physical supervision and control of an employee of the local educational agency who possesses a valid certification document, registered as required by law.
- (2) For distance learning, instructional time shall be based on the time value of assignments as determined, and certified to, by an employee of the local educational agency who possesses a valid certification document, registered as required by law.

IA Support = SAI?

Can the minutes of instructional support provided by a special education instructional assistant in a breakout zoom room be counted toward IEP minutes?

IA Support = SAI? (cont'd)

- An instructional aide shall perform only such duties as, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher. (Ed. Code § 45344(a).)
- An instructional aide **need not perform such duties in the physical presence of the teacher** but the teacher shall retain his responsibility for the instruction and supervision of the pupils in his charge. (*Ibid.*)
- “Distance learning” means instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certificated employee of the local educational agency. ((Ed. Code § 43500(a).)

IA Support = SAI? (cont'd)

- We believe IA-facilitated activities time counts towards SAI minutes in the student's IEP, *if*:
 - the activity or instruction occurring in that breakout room is one the certificated teacher believes can be done permissibly by an IA per 45344(a); and
 - It is done under the general supervision (i.e., consult) of the certificated teacher.
- Example: A teacher and IA discuss a student's sight word goal and come up with an activity to practice the target sight words, which the IA completes with the student in a zoom breakout room. The IA records the student's results, and consults with the teacher regarding the activity after it is completed. Properly counted as both DL and SAI?

Is Daily Live Interaction Required Monday to Friday?

Does Daily Live Interaction mean Monday thru Friday? Our union negotiated "Fun Fridays" for special education teachers to case manage while general education students will have live instruction on Fridays.

Is Daily Live Interaction Required Monday to Friday?

(cont'd)

Yes, we read “daily” to mean Monday to Friday.

Education Code section 43503(b) states: “Distance learning shall include all of the following:

* * *

“(6) Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness. This interaction may take the form of internet or telephonic communication, or by other means permissible under public health orders. ...”

- More information to come regarding alternative plans...

Must Daily Live Interaction Include a Certificated Employee *and* Peers?

So does 1:1 instruction not count as daily live interaction since there are no peers?

Must Daily Live Interaction Include a Certificated Employee *and* Peers? (cont'd)

We believe interaction between peers during a breakout session facilitated by an instructional aide meets the requirement of section 53503(b)(6).

- We believe that “[d]aily live interaction with certificated employees and peers” does not require a certificated employee’s direct facilitation of interaction between peers.
- Again, the purpose of this requirement is to promote school connectedness. If peers interact with each other under the general supervision of a certificated employee (during aide-facilitated activities), and later interact directly and solely with the certificated employee (but the peers do not interact with each other), the spirit and letter of the law are met.

Daily Live Interaction v. Service Minutes

- What if the child is working with a paraeducator in a breakout room under the supervision of a credentialed teacher? Would that count as daily live interaction?
- If aides are facilitating a breakout room in a Zoom lesson why wouldn’t that count toward DLI minutes?
- If a student in the resource specialist program works with the general education teacher for their daily live instruction/interaction, but then has a break out room with the RSP aide, for the time written in the IEP, does that count for SAI minutes?

Daily Live Interaction v. Service Minutes (cont'd)

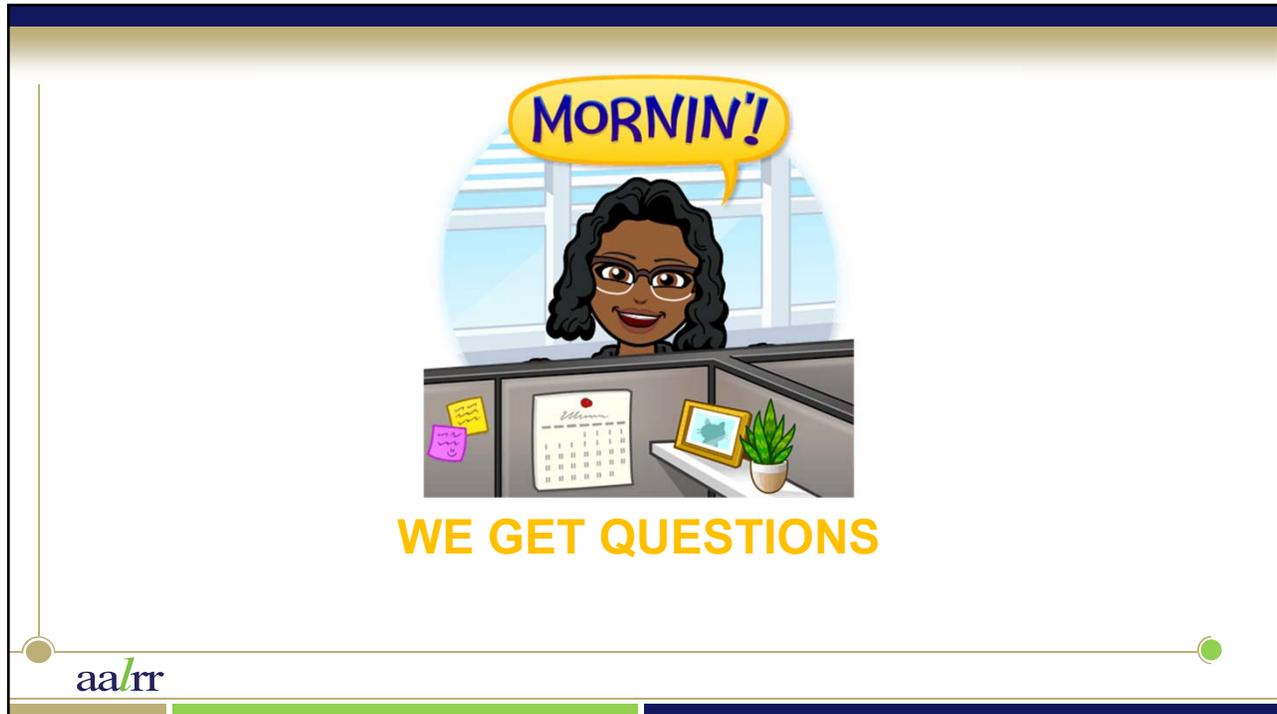
These are great questions that remind us of distinct, but intersecting legal requirements.

- Daily live interaction requires interaction between a certificated employee and a student. (Ed. Code § 43503(b)(6).)
 - Bear in mind: There is no minimum length of time for purposes of daily live interaction. If a certificated employee interacts with students before a breakout session, the requirement is met.
- As discussed earlier, we believe that under certain conditions SAI minutes could be met by an aide under the supervision of a credentialed special educator.

Alternative Plan

Also when discussing the alternative plan — what does this look like and where does this need to go?

- The bare guidance available is provided by section 43503(b)(6). We recommend Board approval of the alternative plan, with stakeholder input regarding — in particular — the needs of students with disabilities.



We'll see you at the next SpEdTalk!

And now for your moment of zen...

Thank You

aa/rr
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation



SEPTEMBER 2020

NO. 20-09

SB 820 (Education Finance Bill) Passes CA Legislature

What You Need to Know Now

On August 31, 2020, education finance budget trailer bill SB 820 was passed by the California Legislature. Consistent with the standard State Budget process, SB 820 serves to adjust and clarify certain aspects of the original Budget Bill (SB 98) but it also includes a few notable new provisions with relevance to and potential impacts on local school agency operations within the State. Those new or amended provisions of the law are summarized below along with information regarding their educational impacts and important considerations for school agencies as we move forward into the 2020-2021 school year.

Video and Recordings – Live Distance Learning

The bill clarifies whether Education Code section 51512 requirements for recording synchronous (live) instruction during distance learning. Teacher and principal consent is **not** required for the district to require either synchronous (live) instruction or asynchronous video recording for purposes of distance learning; however, the bill does confirm that any recording of a teacher's live instruction by any other person for any other reason is still prohibited absent the prior consent of both the teacher and the school principal.

Impacts & Considerations

- Districts wishing to record distance learning should notify their union of their intent to do so based on SB 820. Districts should also carefully examine existing labor agreements and any recent MOUs for potential limitations or barriers to districts proceeding with recording distance learning without prior consent of teachers or principals.
- Districts should review their notices to parents and students regarding distance learning, including all acceptable use of technology policies and agreements, to ensure that such notices inform both parents and students that it is illegal for them to independently make any audio, video, or digital recording of distance learning activities without the prior consent of the teacher and principal of the school, and potential consequences for violation.

Sale or Lease of Surplus Property

SB 820 eliminates the requirement that districts appoint a facilities advisory or "7-11" committee prior to selling or leasing property not previously built or operated as an early childhood education facility or elementary or secondary school.

Districts are now permitted to make all required statutory offers to other government entities and eligible nonprofit organizations simultaneously.

SB 820 also clarifies that whether or not the sale or lease is completed by June 30, 2024, the proceeds from a transaction begun prior to such date may be eligible for one-time general fund purposes consistent with the requirements of Education Code 17463.7, as originally detailed in SB 98.

Impacts & Considerations

- Local educational agencies looking to address fiscal issues using revenue from real property are now potentially able to streamline the process and accelerate the timeline by which those transactions can be completed and the proceeds can be received and used.
- Districts should carefully consider community sentiment and explore other options for receipt of stakeholder feedback, along with gauging public concerns regarding budget development and spending transparency when moving away from formal local citizen engagement in these processes.
- Staff should be identifying and preparing plans for use of proceeds for eligible one-time uses and carefully consider areas of maximum impact in connection with the District's long-term financial needs and goals.

ADA Credit for Increased Enrollment in 2020-2021

Districts experiencing an actual increase in enrollment in 2020-2021 are now eligible to receive apportionment based on that growth.

Impacts & Considerations

- Local educational agency budgets developed using 2019-2020 enrollment and ADA revenues should be reviewed and revised accordingly, consistent with regular financial reporting calendar (e.g. first interim and second interim budget reports).
- This action does not eliminate the hold harmless provisions set forth in SB 98 for local educational agencies experiencing declining enrollment.

Use of State Lottery Funds to Purchase Technology-Based Materials

Restricted lottery funds for purchase of instructional materials may now be used to buy laptop computers and devices that provide internet access for use by pupils, teachers, and faculty as learning resources.

Impacts & Considerations

- To the extent that other available funds had to be used to purchase equipment and devices necessary for distance learning, budgets should be carefully reviewed and adjusted to ensure that all eligible expenditures are allocated to these otherwise restricted funds to the fullest degree possible.

Time Periods Extended for Spending Learning Loss Mitigation Funds

Funds allocated for learning loss mitigation have been extended for use, including the Federal Trust Fund until September 30, 2022, and state General Fund to June 30, 2021, respectively. Allowable expenses also expanded to COVID-19 testing, Personal Protective Equipment (PPE), sanitation supplies and other related needs.

Impacts & Considerations

- Again, allocation of current and planned future expenditures to funding sources should be reviewed to ensure that the full benefit of all learning loss mitigation funds and any available relief to General Fund monies can be realized.

Other Developments of Note

LCFF Template

The deadline for the State Superintendent of Public Instruction (SPI) to issue the new LCFF template and instructions for the LCFF budget overview for parents is September 15, 2020, reflecting alignment with the new Learning Continuity and Attendance Plan required by SB 98.

Student Attendance and Engagement Recording

Although not part of SB 820, the California Department of Education (CDE) recently released guidance on attendance accounting and reporting, and instructional time for distance learning, along with a related template for recording daily and weekly engagement. Use of the CDE template is not required, however, daily student attendance and weekly engagement must be recorded.

Local educational agencies should accordingly ensure that any labor agreements do not unduly complicate or otherwise create a barrier for ensuring compliance with mandatory student attendance and weekly engagement reporting and jeopardize receipt of state funding.

If you have questions regarding SB 820 and how it affects your agency, please contact one of our six offices.

F3 NewsFlash® Written by:

Elizabeth Mori, partner; Sarah Polito, associate; and Matthew Vance, associate

FRESNO | INLAND EMPIRE | LOS ANGELES | OAKLAND | SACRAMENTO | SAN DIEGO

www.f3law.com

This F3 NewsFlash® is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this legal development may apply to your specific facts and circumstances.

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School Mental Health and Social Emotional Learning to Support the Safe Reopening of Schools Trainings 2020-21

Cost offset per SB 82 Triage grant.

For further training information as well as additional trainings provided, please visit www.cahelp.org.

Utilizing Restorative Practices in the Virtual Classroom

This overview will provide educators with an introduction to the continuum of Restorative Practices. Participants will increase their knowledge of social emotional practices through classroom rituals and utilize specific questions to prompt discussions for healthy social emotional interaction using a virtual platform.

Date: August 19, 2020

Time: 2:30-4:00 p.m.

Register Online at: <https://sbcss.k12oms.org/52-188847>

It's All About Relationships! Tips in Creating a Nurturing and Responsive Environment for All

Identify quick and easy practical tips that you could use tomorrow to increase effective interactions with children and families utilizing the tiered approach.

Date: August 26, 2020

Time: 10:30-11:45 a.m.

Register Online at: <https://sbcss.k12oms.org/52-188838>

Online Learning Strategies to Use During Distant Learning and in the Classroom for When Children Physically Return to School

Learn strategies to use during distant learning and in the classroom for when children physically return to school.

Date: August 28, 2020

Date: September 11, 2020

Time: 2:00-3:00 p.m.

Register Online at: <https://sbcss.k12oms.org/52-189227>

Effective Classroom Strategies for Students with Mental Health Disorders

This workshop will focus on providing participants with strategies for effectively working with students with mental health and common mental health disorders. The workshop will also provide strategies for application in the classroom, including virtual considerations.

Date: September 10, 2020

Time: 1:00-2:30 p.m.

Register Online at: <https://sbcss.k12oms.org/52-188839>

Interconnecting Systems with School Based Mental Health Supports and PBIS Overview

This overview will describe how school teams can work to develop a multi-tiered system of prevention, intervention, and triage supports; which include: early identification, crisis intervention and resource connections for children and families. The purpose of an integrated system is to create a school culture that promotes wellness of the whole child.

Date: September 16, 2020

Time: 2:00-3:30 p.m.

Register Online at: <https://sbcss.k12oms.org/52-188836>

Raising Awareness to Youth Mental Health

This workshop series is designed to provide participants with a basic understanding of youth mental health and will address the emotional/mental health impact of the current pandemic.

Date: September 18, 2020 &

Date: September 23, 2020

Time: 2:00-3:00 p.m.

Register Online at: <https://sbcss.k12oms.org/52-189228>

Regaining School Muscle Memory: The Fundamentals of Behavior Overview

Are you anticipating the return to school post the COVID-19 pandemic? Do you feel concerned about the possible behaviors that may occur once you and your students return to school? In this presentation, participants will obtain knowledge on how to proactively address behaviors in the classroom. Topics will include a basic review of behavioral concepts, the impact of unexpected school closures on students, replacement behaviors, and environmental arrangement. Different ways to disseminate the information school-wide will be discussed.

Date: September 22, 2020

Time: 1:30-3:30 p.m.

Register Online at: <https://sbcss.k12oms.org/52-188829>

Self-Harming Versus Suicide: Understanding the Differences

This course will outline the major differences between self-harming behaviors and suicide. Participants will learn how to identify warning signs of both and how to effectively respond. Discussion regarding how suicide and self-harm are portrayed in the media will also be covered. Participants will learn what questions to ask someone who is self-harming and/or showing signs of suicidal behavior.

Date: October 21, 2020

Time: 1:00-2:30 p.m.

Register Online at: <https://sbcss.k12oms.org/52-188828>

Bullying Prevention Overview

This course provides simple and clear strategies to prevent and intervene with bullying problems on school campuses, including modern day challenges associated with social media.

Date: October 27, 2020

Time: 2:00 - 3:30 pm

Register Online at: <https://sbcss.k12oms.org/52-183714>

Social Emotional Learning (SEL): Do I Have It Already? Why Do I Need It? How Do I Get More of It?

This presentation will discuss the why, what, and how of social emotional learning (SEL). Participants will walk away with three practices to create the climate for SEL as well as how to integrate with other initiatives into a multi-tier system of support (MTSS). A strong focus will be on how to implement more SEL as district leaders, with staff, and in classrooms. Practical SEL resources will be provided to participants.

Date: October 28, 2020

Time: 12:30-2:30 p.m.

Register Online at: <https://sbcss.k12oms.org/52-183722>

Family Fun Days

The Outreach Team offers Family Fun Days during the school year to promote family engagement and connection. Our team will offer a fun family environment with family games, crafts, and a story. We will have topics that focus on self-care, social emotional learning, feelings, kindness, and family connection. Families will also have the opportunity to connect with other families in our community. Join our Outreach Team for a few hours of family fun

Date: October 30, 2020

Register Online at: <https://sbcss.k12oms.org/52-187861>

Date: November 23, 2020

Register Online at: <https://sbcss.k12oms.org/52-188274>

Date: December 21, 2020

Register Online at: <https://sbcss.k12oms.org/52-188275>

Time: 1:00-3:00 p.m.

Universal Screener Overview

This overview will guide participants with the benefits of universal screening for behavior and will explore example universal screeners. Similar to data from academic screening tools, data from universal screening tools can be used in tiered systems of support to (a) detect students for whom Tier 1 efforts may be insufficient, (b) inform teacher-delivered, low intensity supports, and (c) connect students with evidenced-based Tier 2 (for some) and Tier 3 (for a few) strategies, practices, and programs.

Date: February 16, 2021

Time: 1:00 pm - 2:30 pm

Register Online at: <https://sbcss.k12oms.org/52-183710>

Supporting and Understanding Children from Adverse Backgrounds (i.e. foster care, parental incarceration, and poverty)

This course examines the impact of adverse backgrounds on children's behavior, relationships, learning, and future success in the classroom. The presentation will encourage understanding, nurture empathy, and assist educators in supporting children who are struggling with life circumstances such as foster care, parental incarceration, and poverty. Participants will gain a better understanding of the behaviors students from adverse backgrounds may exhibit in the school setting and increase the repertoire of ways to respond and support these students in order to bolster self-esteem for students from adverse backgrounds.

Date: March 11, 2021

Time: 8:30 am - 3:30 pm

Register Online at: <https://sbcss.k12oms.org/52-188840>

***If there are additional needs please contact preventionandintervention@cahelp.org**

7.9 Compliance Update

Verbal report, no materials



Crisis Prevention Institute (CPI) Flex-Blended Learning

Presented By
CPI Team Members

Date
Part 1: Complete the on-line CPI module prior to the October 15, 2020 Q & A virtual session from 2:30 to 4:00 p.m.

Part 2: In Person Training-
To be Determined

Cost
\$40 Per Attendee

Description

The Non-Violent Crisis Prevention Institute (CPI) is a two-part course focusing on crisis prevention and intervention. With a core philosophy of care, welfare, safety, and security and aligned with positive behavioral supports principles, it gives educators the skills to safely and effectively prevent, disengage, and physically withhold (as a last resort) dangerous situations.

Part 1: The self-paced on-line modules will take 2 - 4 hours, once completed the participants must print their certificate and bring it to the in-person training.

Part 2: The in-person training, participants should dress safely and must attend the entire course. Upon successfully demonstrating competency of disengagement skills, physical interventions, and passing of a written exam, they will receive CPI certification. The date for this training to be made available based on state and county guidelines.

Audience

Special education teachers, general education teachers, paraprofessionals, school psychologists, and administrators.

Special Accommodation

Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

This training may be recorded.

Registration

<https://sbcss.k12oms.org/52-191655>



CAHELP
17800 Highway 18 Apple
Valley, CA 92307



Jennifer Holbrook
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<https://sbcss.k12oms.org>



Desert/Mountain Special Education Local Plan Area
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-242-5363
W www.dmselpa.org

MEMORANDUM

Date September 11, 2020
To: Directors of Special Education
From: Peggy Dunn, Program Manager

Subject: **Occupational and Physical Therapy Reports**

Attached are the occupational and physical therapy Referral Status, and Current Students Direct Services reports by district.

If you have any questions concerning either report, please contact me at (760) 955-3568 at peggy.dunn@cahelp.org

California Association of Health and Education Linked Professions

Upcoming Trainings

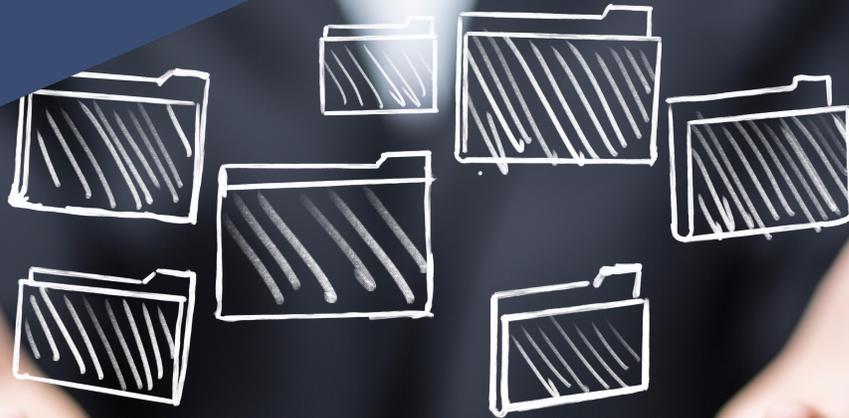
Date/Time	Event	Location
9/16/2020 3:00 PM - 4:30 PM	Forms and Facts 101	
9/16/2020 2:00 PM - 3:30 PM	INTERCONNECTING SYSTEMS WITH SCHOOL BASED MENTAL HEALTH SUPPORTS AND PBIS OVERVIEW	VIRTUAL
9/17/2020 2:00 PM - 3:00 PM	USING ASSISTIVE TECHNOLOGY (AT) TO SUPPORT CHILDREN WITH DYSLEXIA AND OTHER READING CHALLENGES & ELL STUDENTS DURING DISTANCE	WEBINAR
9/18/2020 2:00 PM - 3:00 PM	RAISING AWARENESS TO YOUTH MENTAL HEALTH	VIRTUAL
9/22/2020 1:30 PM - 3:30 PM	REGAINING SCHOOL MUSCLE MEMORY: THE FUNDAMENTALS OF BEHAVIOR OVERVIEW	VIRTUAL
9/22/2020 1:00 PM - 3:00 PM	Student Discipline: Manifestation Determination Process	Online
9/28/2020 2:00 PM - 3:00 PM	CONDUCTING READING ASSESSMENTS IN A VIRTUAL CLASSROOM	VIRTUAL TRAINING
9/29/2020 1:00 PM - 4:30 PM	ORTON-GILLINGHAM APPROACH	WEBINAR
9/30/2020 3:00 PM - 4:30 PM	Legally Compliant IEP Present Levels of Performance (PLOPs), Goals, and Educational Benefit	
10/1/2020 1:00 PM - 2:15 PM	Classroom Structure and Management	Online

For more information, visit the CAHELP Staff Development calendar ([url: www.cahelp.org/calendar](http://www.cahelp.org/calendar))
17800 Highway 18, Apple Valley, California 92307
(760) 552-6700 Office * (760) 242-5363 Fax

Upcoming Trainings

Date/Time	Event	Location
10/6/2020 8:30 AM - 2:30 PM	PBIS TK-12 COACH AND ADMINISTRATOR TRAINING	DMESC
10/6/2020 2:00 PM - 3:30 PM	SUPPORTING ENGLISH LANGUAGE LEARNERS WITH SPECIAL NEEDS DURING DISTANCE LEARNING	WEBINAR
10/8/2020 1:00 PM - 2:30 PM	TRAUMA-INVESTED TEACHING FROM A DISTANCE WITH CONSCIOUS DISCIPLINE PRACTICES	VIRTUAL
10/14/2020 3:30 PM - 4:30 PM	ARTS INTEGRATION: LEAVERAGING THE ART OF LEARNING	Online Webinar

For more information, visit the CAHELP Staff Development calendar ([url: www.cahelp.org/calendar](http://www.cahelp.org/calendar))
17800 Highway 18, Apple Valley, California 92307
(760) 552-6700 Office * (760) 242-5363 Fax



Save the Date

Steering Committee Meeting Special Education Directors' Trainings

Special education directors will participate in trainings focusing on the needs or interests in the area of special education research, programs, or legal compliance. All meetings will be held virtually, a link will be sent to each participant after registering. **This training may be recorded.**

October 16, 2020-Legal Guidance for Difficult IEP's during COVID

Presented by: Jack Clarke, Esq. Partner with the law firm of Best, Best, & Krieger

February 19, 2021-Social Emotional Mental Health

Presented by: DMCC Team

April 16, 2021 - Enhancing Equity Through Data, Systems, and Practices

Presented by: Athena Vernon, Prevention and Intervention Lead Specialist

Pamela Strigglers, Prevention and Intervention Lead Specialist

Contact Us:

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