

CLIENT NEWS BRIEF

Special Considerations for Students with Exceptional Needs Related to School Closures Due to COVID-19

Frequently Asked Questions – Part 3

April 2020
Number 23

Background

The following information expands on the Frequently Asked Questions (FAQ) issued on March 12, 2020 and March 25, 2020, which provided general guidance for K-12 school districts in responding to the needs of students with disabilities during the COVID-19 pandemic. On April 9, 2020, the California Department of Education (CDE) released new guidance titled “COVID-19 School Closures and Services to Students with Disabilities” to address additional questions CDE received following its March 20, 2020 guidance. As a means of providing general guidance to LEAs, this information is current through April 9, 2020, but is subject to change in light of this rapidly evolving situation.

We recommend consulting with a Lozano Smith special education attorney or your legal counsel before taking action based on these FAQs.

1. **Q: Must all Individualized Education Programs (IEPs) be amended to reflect the change to distance learning?**

A: Generally, no. However, this does not constitute an exemption from developing IEP amendments entirely.

In its April 9, 2020 guidance, the CDE states that an IEP amendment is not necessary for every student with an IEP. Because schools are physically closed, educational services must now be provided through alternative options such as distance learning. The CDE provides that it is not necessary to amend an IEP solely to reflect that the student’s previously-agreed upon services are now being provided away from the school. CDE quotes guidance from the Office of Special Education Programs (OSEP) which allows flexibility for schools that may not be able to provide all services in the same manner that they were provided before school closures.

Guidance from both CDE and OSEP focus on the methods and location of providing service and operate under the assumption that a student’s current IEP services can remain the same despite school closures. This means that if a student is able to receive agreed-upon IEP services through distance learning, an IEP amendment would not be necessary. According to the CDE, the “IEP that was in effect at the time of the physical school closure



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remains in effect, and LEAs should, to the greatest extent possible, continue to provide the services called for in those IEPs in alternative ways.” In these instances, it is unnecessary to develop an IEP amendment and obtain parental consent to that amendment.

It is important to note that CDE’s guidance does not provide a sweeping exemption for IEP amendments. An IEP amendment may still be required, depending upon the circumstance. For example, an IEP amendment may be required if: (1) parents request an IEP meeting or propose an IEP amendment, (2) the district needs to address unique circumstances related to alternative service delivery, or (3) there are changes to the special education and related services provided, including but not limited to a change in the frequency or duration of services. In deciding whether an IEP amendment is necessary and/or appropriate, the district should consider whether services are being altered in any way other than the location or method of delivery. Any other changes should be addressed through IEP amendment.

If an IEP amendment is necessary, LEAs should consider including language that indicates that the amendment is temporary. This would explain that the amendment will only be in effect during the COVID-19 school closures and that the student’s IEP will revert back to the last agreed upon IEP closures when schools re-open.

Examples:

IEP amendment not necessary:

- Last agreed-upon IEP provides 30 minutes weekly of Speech and Language Therapy, and the district offers to provide the same level of Speech and Language Therapy, through teletherapy.
- Last agreed-upon IEP provides for full inclusion and access to a mental health therapist, and the district offers to provide access to a mental health therapist through some form of distance learning, such as through access to the therapist via phone or video conferencing.

IEP amendment recommended:

- Service minutes are reduced from the frequency and duration set forth in the last agreed-upon IEP.
- Current goals cannot be implemented in a distance learning model and need to be changed.
- Last agreed-upon IEP includes small group services, which must now be provided individually through distance learning.

The above-mentioned examples do not constitute an exhaustive list but are meant to be illustrative of the situations in which IEP amendments are recommended, as there are many situations in which IEP amendments may be required, per CDE’s most recent guidance.

2. [Q: Is the LEA precluded from providing services to students with disabilities in-person or in the home for the purpose of supporting the student in accessing alternative learning options?](#)

A: Generally, no, but with the understanding that federal, state, and local health official guidance should be followed. While LEAs are not precluded from providing services in-person or in the home, this does not mean that services must be provided in-person or in the home. CDE states that “in some exceptional

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circumstances, 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)." But there must first be an individualized determination that the student needs in-person or home services in order to fulfill that purpose and the health and safety of all involved must remain the primary consideration.

3. **Q: Where can a parent of a student with a disability go if there is a question about their student's IEP?**

A: CDE advises parents to communicate with the school district if they have any questions regarding their child's IEP. CDE encourages parents to reach out to their school site or district office to discuss the impact of the pandemic on their child's education. Accordingly, we recommend that districts continue to openly communicate with parents and remain accessible to them during this time.

4. **Q: What should an LEA do if it has closed school sites due to COVID-19 and is unable to meet the obligation to have an IEP or an Individual Family Service Plan (IFSP) in effect for a child transitioning from Part C to Part B no later than the child's third birthday?**

A: Here, it is clear that the CDE intends for districts to follow the timelines specified under the IDEA and to develop and implement IEPs by the third birthday of a child transitioning from Part C to Part B preschool programs. At this time, the U.S. Department of Education has not waived or exempted this requirement. To meet this obligation, the district may conduct meetings virtually via telephone, videoconference, or by other means consistent with state and local social distancing orders.

5. **Q: If IEP teams meet virtually while school sites are closed due to COVID-19, how should parent consent be obtained? Is verbal consent sufficient?**

A: No, verbal consent is not sufficient and written consent should still be obtained. Use of electronic signatures or digital signatures can be utilized, per the most recent CDE guidance. Options for electronic signatures or digital signatures could include, but are not limited to, use of applications such as HelloSign, DocuSign, Adobe Sign, as well as scanned copies or photographs of signed signature pages. For record keeping purposes, LEAs should maintain proof of consent, including printed or mailed copies of signed documents.

Related Resources

In our continued effort to equip public agencies with useful insights, we have compiled a suite of links to several resource and guidance documents and webpages available from the federal and state governments regarding COVID-19. You can access the suite here: <http://www.lozanosmith.com/covid19.php>.

For more information on issues arising from COVID-19, please contact one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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