

# CLIENT NEWS BRIEF

## False Alarm! CDE Reverses Own Changes to Initial Assessment Timelines, Reinstating Exception for School Breaks Over Five Days

Uncertainty and confusion developed in October 2013 when the California Department of Education (CDE) stated an intention to change the way initial assessment timelines are calculated. On January 17, 2014 CDE issued guidance reversing that decision and advising school districts to continue to utilize the school break exception to the 60-day assessment timeline, in compliance with the California Education Code.

In California, the timeline for completing an initial assessment and holding an Individualized Education Program (IEP) team meeting is generally 60 days from receipt of parental consent. (Ed. Code § 56043(c).) However, by statute, the 60-day timeline does not include “days between the pupil’s regular school sessions, terms, or days of school vacation in excess of five schooldays.” (Ed. Code § 56344.) The Individuals with Disabilities Education Improvement Act (IDEA) allows each state to establish its own assessment timeframe. (20 U.S.C. § 1414, subd. (a)(1)(c)(i)(I).) The official comments to the IDEA regulations expressly “decline() to require that a State-established timeframe be less than 60 days or to place additional requirements on states with timeframes of greater than 60 days . . . .” (71 Fed.Reg. 156, 46637.) California created its own timeline of 60 days, with a tolling period for school vacations in excess of five schooldays and periods between regular school terms. This has long been the initial assessment timeline under which school districts have operated.

On April 11, 2012, the Office of Special Education Programs (OSEP) of the United States Department of Education issued *Letter to Reyes*, evaluating the initial assessment timeline in North Carolina. North Carolina had established an assessment timeframe of 90 days and had generally incorporated the timeline exceptions included within the IDEA regulations. *Letter to Reyes* concluded that the IDEA did not contain an exception for school breaks and, as such, there was no such exception to incorporate into North Carolina’s timeline. Relying on that language, on October 24, 2013, CDE hosted a California Special Education Management Information System Software (CASEMIS) webinar stating “school vacation (was) no longer a valid reason” for not completing an initial assessment within 60 days.

The CDE webinar generated much concern and confusion. Districts wondered how assessments could practically be completed on shortened timelines and questioned the ability to staff assessments during summer vacations. Many wrestled with the apparent conflict between this newly announced rule and the language of the Education Code and sought to reconcile the two. Much discussion ensued amongst the various stakeholders in California in an effort to resolve the discrepancy. CDE sought additional guidance and clarification from OSEP regarding *Letter to Reyes* and its applicability to the California statutory timeline.

On January 17, 2014, Fred Balcom, Director of the Special Education Division at CDE issued guidance to the SELPA Administrators of California confirming initial assessment timelines will continue to be tolled during school breaks over five school days and between regular school sessions and terms, consistent with the

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Deborah R.G. Cesario  
Partner and Special Education  
Practice Group Co-Chair  
San Diego Office  
dcesario@lozanosmith.com



Sarah L. Garcia  
Senior Counsel and Special Education  
Practice Group Co-Chair  
Walnut Creek Office  
sgarcia@lozanosmith.com



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California Education Code. This confirmation officially resolves the concerns faced after the October 24, 2013 webinar. Accordingly, school districts should continue to calculate the 60-day timeline as they have previously. Specifically, "(a)n individualized education program required as a result of an assessment of a pupil shall be developed with a total time not to exceed 60 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of parent's written consent for assessment." (Ed. Code § 56344(a).)

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