

CLIENT NEWS BRIEF

Recent Executive Orders Increase Access to Childcare for Essentials Workers

In the wake of statewide school closures, workers combatting COVID-19 on the front lines have encountered difficulties finding childcare while they go to work. In an effort to assist these essential infrastructure workers, on April 4 and 7, 2020, Governor Gavin Newsom signed Executive Orders (EO) [N-45-20](#) and [N-47-20](#). Both EOs temporarily waive certain Education Code provisions regarding childcare and development services provided by local educational agencies (LEAs) to children from infancy to 13 years of age, among other things, with the specific purpose of allowing essential workers to access childcare during the COVID-19 pandemic. The waived provisions mainly impact LEA-operated preschool and after school programs that receive state and federal subsidies. While neither EO requires LEAs to provide childcare to children of essential workers, they do loosen restrictions previously limiting the ability of LEAs to grant children of some essential workers access to childcare.

Executive Order N-45-20

EO N-45-20 temporarily waives certain portions of the Child Care and Development Services Act (the Act) (Ed. Code, § 8200 et seq.) and its accompanying regulations which ordinarily might prevent LEA-operated childcare programs, including preschool and afterschool programs, from serving children of essential workers. Specifically, EO N-45-20 temporarily waives the following:

- eligibility requirements for non-CalWORKS federal and state subsidized early learning and care services (e.g., preschool classes);
- enrollment priorities (except children who are at risk of being neglected or abused retain first priority);
- fees for families using “preschool and child care and development services”; and
- various requirements for the 21st Century Community Learning Centers grant and the After School Education and Safety grant.

Subsidies for families currently enrolled in LEA-operated childcare programs are not changed by EO N-45-20. The EO’s waivers allow LEA-operated childcare providers that are currently open to serve a greater population, but do not require any LEA-operated childcare providers to reopen.

EO N-45-20 also allows the Department of Social Services (DSS) to waive certain licensing, contractual and payment requirements related to LEA-operated childcare providers, and waives limitations on data-sharing between the California Department of Education (CDE) and DSS in an effort to hasten identification of SNAP-eligible students during the pandemic. Lastly, EO N-45-

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20 requires CDE and DSS to jointly develop guidance for how to prioritize enrollment for children of essential workers into LEA-operated childcare programs, as well as guidance regarding safe practices for LEAs providing childcare during the pandemic. The initial guidance can be found [here](#).

Executive Order N-47-20

EO N-47-20 expands upon EO N-45-20 in a number of ways. It grants DSS the power to waive requirements of the Welfare and Institutions Code and accompanying regulations related to the In-Home Supportive Services program (which does not directly impact LEAs.)

As it pertains to LEAs, EO N-47-20 expands the scope of EO N-45-20 by:

- adding that non-CalWORKS early learning and care eligibility and enrollment requirements in the Act are waived not only for children of essential infrastructure workers, but also for “children with disabilities or special health care needs whose individualized education programs and individual family support plans include early childhood education services”;
- waiving the Act’s requirement for a written referral from a “legal, medical, or social services agency” for children at risk of abuse or neglect to have enrollment priority; and
- ordering CDE and DSS to jointly develop guidance for how to prioritize early learning and care enrollment for not only children of essential critical infrastructure workers, but also for children with disabilities or special health care needs whose individualized education programs and individual family support plans include early childhood education services. The complete guidance can be found [here](#).

Takeaways

EOs N-45-20 or N-47-20 increase access to childcare programs administered by LEAs for essential workers and students with disabilities or special health care needs. Neither EO requires currently closed LEA-operated childcare providers to reopen or that LEAs provide childcare in any manner, but the subtext of these EOs certainly encourages currently closed LEA-operated childcare providers to reopen. Many public agencies are working together to coordinate childcare for essential workers, while others are referring essential workers to existing childcare facilities that have openings due to the number of children staying home.

Related Resources

The legal and practical realities of the current crisis are ever-changing. 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 them here: <http://www.lozanosmith.com/covid19.php>.

For more information on current requirements for public agencies to provide childcare, public funding tied to childcare services, or the recently issued Executive Orders, or to discuss any other issues arising because of 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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