

CLIENT NEWS BRIEF

Distance Learning & In-Person Instruction Requirements Under SB 98

On June 29, 2020, Governor Newsom signed Senate Bill 98 (SB 98) into law. Though SB 98 is a budget bill, it includes requirements regarding distance learning and in-person instruction, among other topics, for the 2020-2021 school year. This CNB addresses distance learning, while other CNBs, found (here) cover SB 98 as it relates to special education, charter schools, employee lay-offs, and LCAP.

It should be noted at the outset that while there has been much discussion regarding what learning will look like for 2020-2021, and while SB 98 sought to address the need for clarity, many questions still exist regarding what instruction will and must look like for 2020-2021. Thus, consultation with legal counsel is advised when determining what course of action a local educational agency will take.

Requirements for In-Person Instruction and Distance Learning

SB 98 states that school districts must offer "in-person instruction", and *allows* local educational agencies, including county offices of education, charter schools, and school districts (LEAs), to offer distance learning. SB 98 defines "in-person instruction" as "instruction under the immediate physical supervision and control of a certificated employee of the LEA while engaged in educational activities required of the student." SB 98 defines "distance learning" as "instruction in which the student and teacher are in different locations and students are under the general supervision of a certificated employee of the LEA." SB 98 goes on to provide that distance learning *may* include the following:

- Interaction and instruction between teachers and students through the use of technology.
- Video or audio instruction between the students and teachers that relies on computer or communications technology.
- Hard copies of materials that are subject to feedback.

SB 98 provides that distance learning *may* be offered under either of the following circumstances:

- On an LEA or schoolwide level as a result of an order or guidance from a state public health officer or a local public health officer; or
- For students who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19.

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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Based on the above, an LEA may close an entire site, or an entire district for example, in consultation with public health officers. Alternatively, distance learning may be offered on a student by student basis under the second bullet point.

Additionally, while the above list of when distance learning may be offered may appear exhaustive, letters submitted to the Senate Journal from Senator Holly J. Mitchell and Assembly member Philip Y. Ting provide that it is not the intent of the legislature to limit LEAs to those two scenarios. The letters state it is not the intent of the legislature to require an LEA to seek out or receive approval from a state or local public health officer prior to adopting a distance learning model. The letters went on to state that Section 43503 of the Education Code, added by SB 98, is not intended to prevent an LEA from adopting a distance learning, hybrid, or mixed-delivery model. Rather, the intent is to grant flexibility to an LEA to determine what instructional model the LEA will adopt during the COVID-19 pandemic, "taking into account the needs of their students, staff, and their available infrastructure, provided the model adheres to an applicable state or local public health order or guidance."

If an LEA wishes to rely on the intent letters to pursue a distance learning option outside of the two statutorily authorized scenarios listed above, it is recommended that the LEA be prepared to show how the needs of students, staff and/or infrastructure were taken into account in making the decision. In addition, it is recommended that any LEA considering this option consult with legal counsel to ensure compliance and to understand any associated risks, such as any potential risks to LEA funding.

In summary, and in light of the above, Section 43502 states that LEAs *are* required to offer in-person instruction during the 2020-2021 school year. However, it is unclear whether in-person instruction must be offered for the entirety of the year (from the first day till the last day), for all grade levels, or for the entire instructional day in order to meet the requirements of SB 98. It is recommended that LEAs consult with legal counsel when finalizing their plans for re-opening for the 2020-2021 school year.

Requirements if Distance Learning is Offered

If an LEA offers distance learning, it must ensure the following:

- Student access to internet connectivity and devices to participate in the educational program.
- Quality, challenging content aligned to grade level standards equivalent to in-person instruction.
- Supports to address the needs of students.
- Special education, related services, and accommodations required by an individualized education program.
- Designated and integrated instruction in English language development.
- Daily live interaction with certificated employees and peers.

SB 98 provides that "daily live interaction" may take the form of internet or telephonic instruction, or by other means permissible under public health orders. If "daily live interaction" is not "feasible" as part of regular instruction, the governing board of the LEA shall develop an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness.

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Development of Distance Learning Curriculum

SB 98 also appropriates \$750,000 to the Sacramento County Superintendent of Schools to develop and draft distance learning curriculum and instructional guidance for mathematics, English language arts, and English language development. The State Board of Education is then required to adopt distance learning curriculum and instructional guidance by May 31, 2021.

Instructional Days and Minutes for Distance Learning and In-Person Instruction

For the 2020-2021 school year, SB 98 provides that LEAs must comply with the minimum number of instructional days per school year, set forth under the Education Code and certain regulations. However, SB 98 modifies the instructional minute requirements, imposing minimum instructional minutes by grade level ranging from 180 minutes for kindergarten, 230 minutes for grades one through three, and 240 minutes for grades four through twelve, with variances specified under SB 98. SB 98 also provides that LEAs shall not be required to offer the minimum physical education minutes set forth under the Education Code.

SB 98 provides that LEAs may meet the minimum instructional minute requirements by in-person instruction or through distance learning, or through a combination thereof. SB 98 further provides that for in-person instruction, "instructional minutes shall be based on time scheduled under the immediate physical supervision and control of an employee of the LEA who possess a valid certification document." For distance learning, "instructional time shall be based on the time value of assignments as determined, and certified to, by an employee of the LEA who possesses a valid certification document." For combination programs, the LEA would add the time from in-person instruction and distance learning assignments.

Under SB 98, in order to meet the required 180 instructional days (175 days for charter schools), an "instructional day" is a day in which all pupils are scheduled for the length of the day established by the governing board/body of the LEA in a classroom under the immediate supervision of a certificated employee or in distance learning that meets the requirements set forth above.

Daily Participation Logs, Weekly Engagement Records and Attendance for Distance Learning

SB 98 provides that all LEAs must document daily participation of each student on each school day, in whole or in part, for which distance learning is provided. If the student does not participate in distance learning, then they must be marked absent. Participation includes, but is not limited to "evidence of participation in online activities, completion of regular assignments, completion of assessments" and contact with an employee of the LEA and the student or the parent/guardian of the student. Each LEA is also required to ensure that a "weekly engagement record" is completed for each student participating in distance learning.

For purposes of tracking average daily attendance, LEAs must document daily student participation when providing distance learning. LEAs are also required to develop written tiered re-engagement strategies for students who are absent from distance learning for more than three school days or 60% percent of the instructional days in a school week, which may include transitioning the student back to in-person instruction.

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LEAs have until September 1, 2020 to comply with the above. If an LEA fails to complete the daily participation log, weekly engagement letter, or abide by the attendance requirements, then the Superintendent of Public Instruction is required to withhold funds from the LEA's LCFF grant moneys as specified under SB 98.

Funds for Diagnostic Assessments

SB 98 also sets aside certain federal funds for eligible LEAs, to be used between specified dates, for activities that directly support student academic achievement and mitigate learning loss related to COVID-19 school closures.

Summer School 2020

SB 98 provides that summer school programs may be offered through distance learning. Regarding Title I Migrant Education summer school programs for eligible migrant children, SB 98 provides that LEAs that have closed their facilities due to COVID-19 are not required to make facilities available for migrant summer school programs and can offer these services via distance learning during the 2020 calendar year.

Federal and State Subsidized Childcare Programs

SB 98 requires childcare programs that receive federal and state subsidies that are physically closed due to COVID-19, to submit a distance learning plan and to provide those distance learning services to students as specified by the Superintendent of Public Instruction.

Takeaways

SB 98 and the legislative intent letters provide LEAs with options and requirements for distance learning offerings during the 2020-2021 school year. LEAs considering distance learning should work with legal counsel to navigate the options and requirements.

If you have any questions about SB 98 as it pertains to distance learning and in-person instructions, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).