



RE: Coronavirus (COVID-19) Update

DATE: March 16, 2020

Overview

These are unprecedented times for certain. We are monitoring the various communications distributed by agencies across the State and will update this document with additional information as it is received. For now, we hope this memo will provide some initial guidance.

Closure

What does “closure” mean? Can staff still be on campus?

Because most schools are closing voluntarily (with the exception of those schools in Riverside County, which were ordered to close by the County Public Health Department), staff presence at the school site is discretionary on the part of the school’s board and administration. Some schools are keeping a skeleton staff on site (e.g., having limited maintenance or security staff on site occasionally), but there are obvious risks to doing so.

Riverside County Department of Public Health has issued an [Order](#) limiting access to schools during closure to “essential” personnel only.

If your school is not closed, you should know that Education Code sections 49451 and 48213 and 5 CCR section 202 allow for the exclusion of any student whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease or the continued presence of the student would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel and similar provisions of the Health & Safety Code exist to prohibit students and teachers who reside in a quarantined area from coming on to campus (Health & Safety Code Section 120230).

In addition, local, state, and federal health authorities are providing guidance and directives regarding the exclusion of certain students and staff from campus for fourteen (14) days from the day of their last exposure. These currently include students, teachers, and staff who present with fever and/or respiratory infection symptoms; those who have traveled over the course of the last fourteen (14) days to an area identified by the Center for Disease Control as Level 3 (currently China,

Iran, Italy, and South Korea and those who have been in close contact with someone diagnosed with COVID-19.

Brown Act

The Governor's [Executive Order N-25-20](#) provides some flexibility for teleconference meetings of a charter school's governing board. However, the Order has created a lot of confusion. Many schools have interpreted it to mean that an entire charter school board can meet telephonically without being at the school site or a quorum being within the jurisdiction of the charter school.

That is only true if the charter school can provide a location for the public that *is* ADA accessible and offers the public the right to “observe” and offer public comment to the board members during the meeting. In addition, the notice requirements (i.e., posting requirements) remain the same.

Obviously, the requirement to provide such a publicly accessible location presents a problem. We are reading guidance from various government agencies that people should not congregate in groups larger than 10 or 25 people and that schools must be closed to non-essential personnel (which would include visitors such as parents). Practically speaking, we do not know how a charter school would be able to adhere to the Executive Order as a result and strongly recommend legal guidance on this topic.

Independent Study/Distance Learning

The Governor's [Executive Order N-26-20](#) provided assurances that a charter school would continue to receive funding during a closure to support, among other things, “high-quality education opportunities to students to the extent feasible . . . distance learning and/or independent study.”

Most of our clients are offering or considering independent study or some type of distance learning solution during the period of closure. The CDE has provide an excellent [matrix of different solutions](#), including independent study.

Depending on which option your school chooses, certain requirements necessarily must be met and there are certain consequences for each option. We ask that you explore the options carefully and we are always available to discuss the pros and cons of each option.

In addition, the Governor's Office is to issue additional guidance on this topic by March 17, 2020. We will update this memo accordingly once the guidance is issued.

Food Services

The Governor's [Executive Order N-26-20](#) provided assurance that a charter school would continue to receive funding during a closure to support, among other things, food services in "noncongregate settings."

The Nutrition Services Division of the California Department of Education has issued an [immediate waiver](#) to serve meals through the Summer Food Service Program and Seamless Summer Option during a school closure. The waiver allows meals to be "taken away from the site and consumed elsewhere."

In addition, the Governor's Office is to issue additional guidance on this topic by March 17, 2020. We will update this memo accordingly once the guidance is issued.

Student Supervision

The Governor's [Executive Order N-26-20](#) provided assurance that a charter school would continue to receive funding during a closure to support, among other things, "supervision for students during ordinary school hours."

Obviously, such supervision presents practical issues with assembling groups of more than 10 or 25 people, and we have not had any clients pursue this option at this time. Before doing so, we would recommend you seek legal counsel.

Payroll

The Governor's [Executive Order N-26-20](#) provided assurance that a charter school would continue to receive funding during a closure to, among other things, "continue to pay its employees."

For employees are continuing to work on independent study (such as teachers and school personnel supporting them), the assurance that they can continue payroll as normal is a welcome relief. For employees who may perform work that is not required during a school closure, a charter school may be able to employ those personnel to support other school functions and employees may work remotely. In addition, the Governor's [Executive Order N-25-20](#) allows employees who cannot work during a school closure to apply for unemployment insurance through the Employment Development Department.

Special Education

Special education and related services raise a number of questions in the context of independent study.

The Governor's [Executive Order N-26-20](#) provided assurance that further guidance will be issued by March 17, 2020 regarding how schools can “ensure that students with disabilities receive a free and appropriate public education consistent with their individualized education program and meet other procedural requirements under the Individuals with Disabilities Act and California law.”

IEP and Placement

2006 guidance from the California Department of Education clarified that “despite the existence or lack of a program for a student with disabilities at a charter school, enrollment may not be denied.” This requirement applies without exception to charter schools that offer an independent study program. See CFR section 104.4(b)(30) and Ed. Code section 47646(a). As such, if you choose to offer independent study, it must be offered to students with an IEP or 504 plan.

However, California Education Code section 51745(c) requires that the IEP specifically provide for such a placement. Thus, no student who qualifies for special education services under the Individuals with Disabilities in Education Act (“IDEA”) shall participate in independent study unless it is specifically authorized under his or her IEP. As such, the charter school moving students with active IEPs to independent study should:

- Provide a PWN regarding the change in placement; and,
- Convene an IEP meeting within thirty (30) days from the student's placement in independent study to determine if the placement may continue.

Independent Study Master Agreements

All independent study placements require a master agreement. Coordinating the collection of signed master agreements may be difficult for a charter school that does not traditionally offer independent study and finds its entire student population suddenly on independent study. Please strive to ensure that every student has a fully executed master agreement in the file.

We would note that the OAH has held that the IDEA prevails over state laws under the Supremacy Clause of the Constitution and, therefore, a special education student should not be denied the right to enroll in independent study based on his or her parent's refusal to enter into an independent study agreement. (Camptonville Union Elementary Sch. Dist. (March 18, 2009) OAH Case. No. 2008090659.)

Compensatory Education

If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Services and Assessments

Many schools already utilize some online services for special education; however, many such special education and related services may not be possible via independent study (e.g., adaptive PE, BII).

Schools should also be aware that HIPPA may require certain security protocols when using videoconferencing or similar technologies to work with students (e.g., DIS Counseling).

We have received information that at least one SELPA has advised closing school entirely and not providing any educational programming at all to avoid later claims for compensatory education. If you wish to discuss the matter, please contact us at any time.

If a providing agency cannot provide or refuses to provide services during a closure, you may have little choice but to offer compensatory education.

With regard to open assessments, the same issue may arise. The assessment may need to be completed at such time as the assessor is once again available or agreeable to continuing. We would note that if the school is forced to close and cannot provide any instruction for any student for a period greater than five days, an assessment may be postponed until school resumes.

IEP Meetings

Charter schools should do whatever they can to adhere to IEP timelines and other procedural requirements. The reality is that you may not be able to, in which case the IEP team should convene as soon as practicable to address the situation.

Documentation

As always, document every communication thoroughly and include notations regarding the emergency situation we find ourselves in.

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