



# The Distance Learning Debacle: How to Advocate for Your Child in the COVID-19 Era

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# Special Education *is...*

- Defined by the Individuals with Disabilities Education Act (“IDEA”)
- Specifically designed instruction, at no cost to the parent, designed to meet the unique needs of a child with disabilities.
- Instruction can include classroom and home instruction as well as instruction provided in hospitals and institutions.



# Individualized and Appropriate

Education of a child must be individualized and appropriate to the child's needs;

To receive funding public school must have policy that ensures that all children with disabilities receive a Free Appropriate Public Education ("FAPE");

Program and services through an individualized education program ("IEP").



# CA Senate Bill 117



On March 17, 2020, in response to the COVID-19 pandemic, the Governor of California, Gavin Newsom, approved Senate Bill (“SB”) 117 which includes **temporary waivers** of existing state laws governing public schools in California.





# CA Senate Bill 117

**Why CA Public Schools have stopped teaching new concepts and consider Distance Learning a time of enrichment:**

- (1) Average daily attendance reported...shall only include all full school months from July 1, 2019 to February 29, 2020, inclusive.
- (2) The bill deems the instructional days and minutes requirements to have been met during the period of time public schools were closed due to COVID-19.



# CA Senate Bill 117



- **SB117 Impact on CA Special Education Timelines**



- Right to school records within five (5) business days **extended**.
- Right to receive written response to an assessment request within 15 days **extended**.



- Right to receive a response to a Compliance Complaint filed with the CDE within 60 days of filing the complaint **extended**.



# Betsy DeVos

## Secretary of Education, U.S. Department of Education

- In response to the Coronavirus Aid Relief, and Economic Security (“CARES”) Act, signed into law on March 27, 2020, Sec. DeVos issued a report on April 27, 2020 outlining her position on waivers to the Individuals with Disabilities Education Act (“IDEA”).
- Sec. DeVos made it clear that public schools are required to continue providing students a Free Appropriate Public Education (“FAPE”) in the least restrictive environment. Meaning, there are **no waivers or extensions** to IDEA for school-aged students (3 + years).



## IDEA Timelines Not Waived

- Right to request an IEP and have it held within 30 calendar days.
- IEPs must be held once per year.
- Assessments required by signed assessment plan must be completed within 60 days.
- Triennial assessments and IEPs must be completed every three (3) years.
- If a child changes public schools/districts, an IEP must be held within 30 days of the transfer to discuss IEP services in the new public school/district.



## Assessments

- Conducting an evaluation during COVID-19.
- Public School Responsibility to conduct assessments during COVID-19.
- Independent Educational Evaluations (“IEE”) during COVID-19.



## Conducting Assessments

- Conducting an evaluation during COVID-19.
  - If your child was in the middle of assessments (the assessment plan was signed prior to school closures)
  - If your child is due for their Triennial Assessments
  - Initial Assessments



# CA Senate Bill 98

On June 29, 2020, Governor Newsom signed Senate Bill 98 (“SB 98”) into law.

- Allows minimum number of instructional minutes per school day to be a combination of in person and distance learning.
- Defines Requirements of Distance Learning.
- Requires IEPs developed in CA to include description of how IEP will be implemented under “emergency conditions.”



# Required Instructional Minutes per School Day

Instructional Minutes required either in person or via Distance Learning\*:

- Kindergarten: 180 minutes
- Grades 1-3: 230 minutes
- Grades 4-12: 240 minutes

\*Distance Learning minutes are based on a time value determined by a certified employee and may not be actual time spent either in live interaction and/or working on an assignment.



# SB 98 Definition of Distance Learning

- Distance Learning: instruction where the pupil and instructor are in different locations & pupils are under the general supervision of a certified employee.
- Distance learning may include:
  - Interaction, instruction, and check ins between teachers and pupils through the use of a computer or communications technology.
  - Use of print materials incorporating assignments that are the subject of written or oral feedback.
  - Video instruction
  - Telecourses
- Must include daily live interaction with certified employees and peers.



# What is Daily Live Interaction?

- 2-way interaction between a certified teacher and students
- One-Way communication, including voicemails, emails or print materials is not live interaction.



# Required Contact with Parents

- The public school is required to provide regular communication with parents/guardians regarding the student's academic progress and progress on IEP goals and objectives.
- Communication with parent should be in the parent's primary language.
- The public school must document parent communications.



# SB 98 and IEPs

- IEPs in CA developed after June 29, 2020 must include:
  - **A description of the means by which the IEP will be provided under Emergency Circumstances**
- Distance Learning must provide special education, related services, and any other service with accommodations necessary to ensure an IEP can be implemented in a distance learning environment.
- Includes 1:1 aide support, Therapies, Tutoring, etc.



# What are “Emergency Circumstances”

- When instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days



## Public School Responsibilities: Assessments

- Public School Responsibility regarding assessments during COVID-19.
  - Recall that there are **no waivers or extensions** to IDEA for school-aged students (3 + years).
  - Recall that the state of California under SB 117 **extended** timelines for responding to a request for an assessment.



## Independent Educational Evaluations (“IEE”)

- You have the right to disagree with the results of a school evaluation and request an IEE, within two-years of the previous public school evaluation.



## Independent Educational Evaluations (“IEE”) and COVID-19

### Limitations of evaluators during COVID-19.

- Parent/Teacher Rating Scales ✓
- Records Review ✓
- Interviews ✓
- Observations
  - Depends on the current academic setting.
- In-Person Testing
  - Depends on the assessment:
    - Weschler Intelligence Scale for Children – Fifth Edition can be administered in a telepractice context using digital tools from Q-Global (2020, Pearson Assessments).
  - Depends on the evaluator.



## Prior Written Notice

34 CFR § 300.503

1. A description of the action proposed or refused by the public school;
2. An explanation of why the public school proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the public school used as a basis for the proposed or refused action;
4. A statement that the parents of a child with a disability have protection under the procedural safeguards;
5. Sources for parents to contact to obtain assistance in understanding federal special education laws;
6. A description of other options considered by the IEP team and the reason why those options were rejected; and
7. A description of the factors that are relevant to the public school's proposal or refusal.



# What is a Comparable Education?



## *When IEPs Must Be in Effect*

34 CFR § 300.323(e-f)

- The term Comparable comes from the Code of Federal Regulations describing, for example, IEPs for children who transfer from other Local Education Agencies (LEAs).
- When schools closed due to COVID-19, students with IEPs were forced into a new educational placement.



# **Distance Learning Plan (“DLP”): Is the DLP separate from an IEP?**



## ***DLP vs. IEP***

*A Distance Learning Plan (“DLP”) is an **extension and revision** of an IEP which addresses the location, and method of delivery of related services and education during school closures associated with COVID-19 for students who had an **existing IEP** prior to COVID-19.*



## ***DLP vs. IEP***

34 CFR § 300.324

*Just like an IEP, the DLP, as a **revision** of the IEP, in accordance with 34 CFR § 300.324 **must consider**:*

- The strengths of the child;
- The concerns of the parents for enhancing the education of their child;
- The results of the initial or most recent evaluation of the child; and
- The academic, developmental, and functional needs of the child.
- Including special factors (behavior, limited English proficiency, blind or visually impaired, deaf or hard of hearing, assistive technology devices and services).
- Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).



# ***Compensatory Education***

## **What is it?**

Compensatory education are services provided or ordered by a judge to compensate a student for educational opportunities that were lost when the public school **failed to provide** the student with a FAPE under the IDEA.



## ***Compensatory Education***

### **When is the best time to request it?**

- Planning on returning to the same school
- Privately placing before schools reopen



# *Compensatory Education*

## When is the best time to request it?

- **Planning on returning to the same school:** Tracking services that are not being provided during the school closures will open the door for discussions about compensatory education at a transition IEP once schools reopen.



# *Compensatory Education*

## When is the best time to request it?

- **Privately placing before schools reopen:**  
Reimbursement may be reduced or denied if
  - Parents did not inform the IEP Team that they disagreed with the public school's offer of FAPE, and intentions to enroll Student in a private school at public expense; or
  - Parents did not provide written notice 10 business days (including holidays that occur on a business day) to the public agency of their disagreement with the public school's offer of FAPE, and intentions to enroll Student in a private school at public expense. 34 CFR § 300.148



# Transition IEP

## Returning to School in the Fall

- What to expect
- How to prepare



# Transition IEP

Returning to School in the Fall



## What to expect

- *IEP Scheduling Delays*
- *Compensatory Education Delays*
- *Modified School Schedule (if schools do not fully return to normal)*
- *Possible regression on goals/skills*
- *Altered curriculums and State standards*





# Stay Put IEP



The Stay Put IEP is the controlling, or last consented to, IEP during a dispute or disagreement with proposed changes or new offers of FAPE.



Recall that the IDEA requires that schools give parents written notice (PWN) before making any change to an IEP. This notice gives parents a chance to agree or disagree with the changes.



If parents did not consent to any changes to the IEP, then the last consented IEP becomes the Stay Put IEP.



# Transition IEP

Returning to School in the Fall

## How to prepare

- Compare your DLP to the Stay Put IEP
- Track student participation and progress during Distance Learning
- Determine your student's present levels
- Define your concerns for the record



## Parent Concern vs. Present Levels

- Parent concerns are largely derived from observation.
- Present Levels are usually derived from data.



# Parent Concerns



Parent concerns are essential to laying the groundwork for the new IEP.



Example of a Statement of Concern:

*“I am concerned about my son’s reading levels. My son is also behind in math and his frustration levels are high when working on non-preferred tasks.”*





# Present Levels

## Present Levels of Academic Achievement:

- IEPs must include: A statement of the child's present levels of academic achievement and functional performance, including – how the child's disability affects the child's involvement and progress in the general education curriculum  
34 C.F.R. § 300.320(a)(1)(i)
- Requirements for evaluation and reevaluations must include: The present levels of academic achievement and related developmental needs of the child  
20 USC §1414(c)(1)(B)(ii)



# Present Levels

- Present levels of performance will provide the baseline for all annual goals (and objectives—not all public schools use objectives), thus **you cannot begin a discussion of goals without knowing your child's present levels of performance.**



# Present Levels

As a result of the COVID-19 closures, Parents will have *more* input on their Student's present levels of academic performance than the teachers.

Tracking data will be key to reporting on Present Levels.

# Data for Present Levels



Date of Lesson	Subject	Assignment	Specialist	Length of Session	Length of Participation	Student Participation	Assistance Level	Accommodation Type	Define Accommodation	Assistance	Parent Notes	% Completed	% Correct
1/1/2020	Math	Math - Adding and Subtracting	Teacher-SPED	30 Minutes	20 Minutes	Passive	Prompt	IEP	Extra time	10-prompts for 15-math problems.	He seems to understand the concept but then does poorly working independently.	30%	80%
1/1/2020	English	Reading - Chapter book	Teacher-GE	30 minutes	15 minutes	Active	Assist	New	Taking Turns	Parent reads every other paragraph.	He refused to read independently. When I read with him, he is able to sustain attention for 15 minutes but makes a lot of errors.	50%	70%



# Q & A