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May 21, 2021

Via e-mail only

Heather Calomese, Director
Special Education Division
California Department of Education
Special Education Unit
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Sacramento, CA 95814-5901
Email: hcalomese@cde.ca.gov

Re: Urgent request that CDE issue guidance to school districts regarding COVID-19 Compensatory Education

Dear Director Calomese,

We urgently request the California Department of Education (CDE) to issue guidance to school districts to help them create a clear and uniform process to determine and offer COVID-19 compensatory education to students with Individualized Education Programs (IEPs) impacted by COVID-19 school closures and distance learning.

It is clear that school districts across California lack a consistent process to determine and offer compensatory education and services to students with IEPs. As you are aware, federal and state guidance direct schools to offer compensatory education through an IEP meeting when a student with an IEP did not receive a free and appropriate public education as a result of the COVID-19 pandemic.¹

¹ Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschools, Elementary Schools, and Secondary Schools While Serving Children With Disabilities, United States Department of Education,

Since March 2020, we have received dozens of calls from families concerned that their children have lost access to critical special education instruction and related services due to COVID-19 school closures and distance learning. We are directing families to contact their child's IEP teams to request compensatory education based on federal and state guidance. But, school districts' responses to families vary.

Some school districts are requiring families to use the alternative dispute resolution process and to sign waivers of special education claims to receive compensatory education. Other school districts are offering general education summer learning loss programs or other programs not tailored to individual student need. However, compensatory education and services cannot be conflated with learning loss programming. Some school districts have not yet developed a compensatory education process.

In addition, most school districts refuse to use the phrase "compensatory education" or "compensatory services". These districts claim that using the term "compensatory" implies that the school districts are responsible for failing to provide a free and appropriate public education to students with disabilities during the COVID-19 pandemic. As a result, school districts are using alternative phrases, such as "recoupment services", "learning loss mitigation", and "unfinished learning". The great variation in what these phrases mean only confuses families and creates further barriers to accessing much needed special education and services to students with disabilities.

We would like to call your attention to a "Family Fact Sheet: COVID-19 Compensatory Services and Recovery Support for Students with IEPs During the COVID-19 Pandemic" issued in September 2020 by the

Office for Civil Rights (March 21, 2020), available at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> ("IEP teams ... must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations."); Special Education Guidance for COVID-19, California Department of Education (March 20, 2020), available at: <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp> ("the IEP team will need to make individualized decisions regarding whether compensatory services are required when the regular provision of services resumes").

Massachusetts Department of Elementary and Secondary Education.² This Family Fact Sheet provides families with an overview of their child's special education rights, uniform definitions, student priorities, and a uniform process for school districts to determine and offer COVID-19 compensatory education and services.

Based on the above, we request that CDE issue guidance to school districts that:


1. Directs school districts to use the phrase "COVID-19 compensatory education" to refer to special education and related services that were delayed, interrupted, suspended, or inaccessible because of the COVID-19 pandemic.
2. Sets forth a clear and uniform process for school districts to determine and offer COVID-19 compensatory education to students with IEPs who experienced delayed, interrupted, suspended, or inaccessible special education instruction and services due to the COVID-19 pandemic. Further, this process should:
 - a. Require school districts to prioritize collecting data and conducting assessments of students with IEPs to determine the effect of the COVID-19 pandemic on each individual student's learning, engagement, attention, behavior, progress, and skills;
 - b. Create a set of common questions that an IEP team should ask for each student impacted by the COVID-19 pandemic to determine whether a student needs COVID-19 compensatory education;
 - c. Require an IEP meeting to discuss COVID-19 compensatory education, as set forth in federal and state guidance; and
 - d. Prohibit school districts from requiring families to sign waivers in exchange for COVID-19 compensatory education.

² Family Fact Sheet: COVID-19 Compensatory Services and Recovery Support for Students with IEPs During the COVID-19 Pandemic, Massachusetts Department of Elementary and Secondary Education (September 2020), available at: <https://www.doe.mass.edu/covid19/sped/family-fact-sheet/>.

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Thank you for your consideration of this request.

Sincerely,


Andrew J. Imparato
Executive Director

CC: Tony Thurmond, California Superintendent of Public Instruction,
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