



April 6, 2020



The Honorable Gavin Newsom, Governor
State of California
State Capitol
Sacramento, CA 95814



The Honorable Tony Thurmond, State Superintendent of Public Instruction
1430 N Street
Sacramento, CA 95814



The Honorable Toni Atkins, President pro Tempore
California State Senate
State Capitol
Sacramento, CA 95814



The Honorable Anthony Rendon, Speaker of the Assembly
California State Assembly
State Capitol
Sacramento, CA 95814



Disability Rights Education & Defense Fund

Re: Supporting Delivery of Special Education Services for Children with Disabilities During and Following the Pandemic



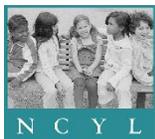
Dear Governor Newsom, Superintendent Thurmond, President pro Tempore Atkins and Speaker Rendon:



We appreciate your leadership in this time of unprecedented crisis and your continued commitment to ensuring the health and well-being of all the residents of the state, including the most vulnerable.



While California's response to COVID-19 is critical for all, children with disabilities, including those in foster care and/or on probation, uniquely rely on the public education, child welfare, and juvenile justice systems to ensure their emotional and educational well-being. It is critical that the State of California act swiftly and responsibly to address these urgent needs. Provided below is a summary of some of the most urgent needs facing children with disabilities related to the COVID-19 pandemic, together with policy recommendations to address these needs. The undersigned organizations urge the Administration and the California State Legislature to adopt the recommendations as part of California's COVID-19 response and relief efforts.



Our Most Vulnerable Children

795,000 children with disabilities live in California.¹ Children with disabilities are a vulnerable population within an education system operating under normal circumstances. When they experience intersectionality as a child in the foster care or juvenile justice system, are homeless, English language learners, or low income, this vulnerability is exacerbated exponentially.

Of the over 60,000 children in California's foster care system, up to 50% have disabilities. Further, children in the probation system have disabilities at a rate of 70-80% and up to 80% of these youth have prior child welfare involvement. These children are among the most marginalized members of our society. Removed from their families due to abuse and neglect, their trauma is often compounded by the instability they experience while in the juvenile dependency system, through placement and school changes.

At this time of crisis during the COVID-19 pandemic, when distance learning is the primary option, children with disabilities are at even greater risk of losing out on educational opportunities provided to other children. COVID-19 also poses a special risk to those children who are the legal dependents of the State of California, those in foster care or on probation. Families caring for children with disabilities who cannot attend school are under additional stressors, and there is greater risk of these children experiencing abuse or placement destabilization during the pandemic.

Issues Facing Students With Disabilities During COVID-19-Related Closures of In Person Instruction

Distance Learning: Districts² and regional centers are currently struggling to fund and distribute technology and connectivity to all children to begin distance learning. Children with Individualized Education Programs (IEP) and Individual Family Service Plans (IFSP) are receiving few, if any, of their state and federally mandated special education and early intervention services while schools and regional centers are closed as a result of COVID-19.³ Districts across Los Angeles County, and likely throughout California, are unilaterally changing children's placements and IEP/IFSP services without notice to parents.⁴ Parents are also not receiving the essential and federally mandated right to meaningful parental participation in deciding what services, technology, and accommodations children with disabilities require in order to access their education.

Additional Risk Factors: Families that are low income and/or parents for whom English is not their first language face additional struggles to access general education and special education services through distance learning. Children with behavioral, medical, and communication needs are especially harmed without specialized instruction and related services. While in-person behavioral services may not be possible, parent coaching for high needs children, such as those

¹ California Department of Education: <https://www.cde.ca.gov/sp/se/sr/cefspeced.asp>.

² Although we reference school districts throughout this letter, we use that term inclusively to include all local educational agencies including charter schools and county offices of education.

³ We reference school and regional center closures through this letter. This is meant to signal that physical buildings were closed, due to the requirements of social distancing to slow the spread of the pandemic, and that any educational services provided were vastly different from what children received in their classrooms and at their school sites. We acknowledge that most school, district, and regional center staff are working remotely in an effort to coordinate and deliver distance learning.

⁴ For children in the child welfare and/or juvenile justice systems, their parent's education rights may be limited and transferred to a court appointed education rights holder. We will use 'parent' through this document to inclusively include education rights holders.

with Autism, is essential to prevent regression. Medically fragile children are a high risk of serious health outcomes if they fall ill with COVID-19, yet also require special education services, such as nursing, rehabilitation services, or physical therapy to meet their daily living needs. Children with severe communication delays, if deprived of their speech and language therapy and the ability to interact with other children, will fall even further behind. We must develop a mechanism to support these children now with services that meet health and safety requirements and also create a mechanism to provide them with additional support when schools and regional centers reopen.

Early Intervention: Children with disabilities, birth to age three have a right to early intervention services, provided by regional centers in California. These services are deemed especially important and time sensitive to place children on an improved life trajectory by identifying and serving children with developmental delays at the earliest opportunity. These children are also not receiving their essential early intervention services. This consequence of the COVID-19 pandemic will have lifelong consequences for children who do not receive their essential early intervention services.

Immediate Solutions to Support Children With Disabilities During the Stay at Home Order & Distance Learning

Recommendation #1: Require Districts and Regional Centers to Develop Distance Learning IEPs and IFSPs to Ensure Equal Access to Educational Opportunities Uniquely Designed to Meet Each Child’s Disability Related Needs During the Period of School Closures and Freeze Last Agreed Upon IEP/IFSP to Resume Once Schools and Regional Centers Reopen

Each child with a disability has a right to a free appropriate public education (FAPE). Federal guidance makes clear that to the extent possible during the COVID-19 pandemic, children with disabilities should continue to receive their IEP/IFSP services.⁵ To the extent that all of a child’s IEP placement and services cannot be provided due to school closures caused by the outbreak, an IEP team must be convened to determine which services can be provided, which can be provided through alternate or additional methods, and how to otherwise meet the child’s disability related education needs during the crisis.⁶ An IEP team can consider distance learning options in a child’s IEP including online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities.⁷ Disability related modifications and services that can be effectively provided online include extensions of time for assignments, accessible reading materials, and some types of speech and language services through video conferencing.⁸ Teams may also determine that the parent will need access to consultation time with the child’s current providers, so that the parent, as the current provider of the child’s instruction in many cases, has the tools and modified materials that they need to support the child. A modified educational

⁵ 34 C.F.R. Sections 300.101, 300.201; Department of Education Guidance: Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020), hereinafter “DOE Guidance March 2020”, found at <https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/>, pages 2, 7.

⁶ DOE Guidance March 2020, page 2.

⁷ DOE Guidance March 2020, page 5.

⁸ Department of Education Guidance, Office for Civil Rights, Office of Special Education and Rehabilitation Services, Supplemental Fact Sheet Addressing the Risk of Covid-19 in Preschool, Elementary and Secondary schools (March 21, 2020), hereinafter “DOE/OCR Guidance March 21, 2020”, found at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

program and IEP must be uniquely designed by a qualified team including their general and special education teachers and any service providers (e.g., speech and language pathologist).⁹

IFSP services can also be provided in an alternate location, using a different provider, or through alternate means such as consultative services to the parent.¹⁰ It is the responsibility of the lead agency to ensure continuity of services.¹¹ A child's early intervention program must be designed by qualified personnel in each of the child's areas of need.

A child's parent or court appointed education rights holder has a right to meaningfully participate in the IEP/IFSP process.¹² IEP teams are not required to meet in person and can use technology to ensure meaningful parent participation.¹³ Convening an IEP/IFSP with relevant staff and parents allows an opportunity to reach agreement on what services will be provided during a school or regional center closure.¹⁴ Further, IFSPs must be convened when conditions warrant it.¹⁵

While it is critical that parents of children with disabilities be able to seek a distance learning IEP/IFSP to address the child's immediate needs during the COVID-19 crisis, which will likely include some type of modified or reduced services, they should be permitted to do so without giving up their right to the full program of special education services they received prior to the COVID-19 pandemic. This will enable more flexibility about services offered and accepted by all parties during this unique period.

In order to ensure that children with disabilities receive equal access to their education during periods of school closure and to ensure that they can resume full services and supports once the schools reopen, we recommend policymakers take the following action:

- Issue an Executive Order requiring school districts/regional centers to convene IEP/IFSP meetings within 45 days of a school closure for all children with disabilities to design an individualized program to meet the unique education needs of the child with a disability, and their family, including necessary assistive technology specialists to put into place assistive technology, essential academic and other support services, including extended school year services,¹⁶ accommodations, and modifications to allow them equal access to their education through distance learning as their general education peers. These meetings can occur via tele or video conference to protect the health and safety of all involved.
- Specify in the Executive Order that all related services (e.g., speech and language, occupational therapy, school based mental health/counseling services) should be provided through telehealth virtual options until the distance learning IEP/IFSP is

⁹ 34 C.F.R. Section 300.116; DOE Guidance March 2020, page 4.

¹⁰ DOE Guidance March 2020, page 8.

¹¹ DOE Guidance March 2020, pages 7-8.

¹² 34 C.F.R. Section 300.322, 300.342(d)-(e); California Education Code Sections 56341(b), 56343(c), 56400.4(b)..

¹³ Department of Education, Office for Civil Rights, Fact Sheet: Addressing the Risk of Covid-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020), hereinafter "DOE/OCR Guidance March 16, 2020" found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>, page 3.

¹⁴ DOE Guidance March 2020, page 5.

¹⁵ 34 C.F.R. Section 303.342 (b)(1); DOE Guidance March 2020, page 7.

¹⁶ Given the high risk that all children with disabilities, not provided with their full IEP/IFSP services during the outbreak, will experience regression, we suggest that IEP/IFSP teams consider extended school year services for all children.

held and the school district/regional center and parent agree otherwise. Order that the provision of all mental health/counseling services be provided with the confidentiality required under existing law, including for children in juvenile justice detention centers or congregate care settings.

- Specify in the Executive Order that a child's last agreed upon IEP/IFSP, prior to school closures or the cessation of early intervention services mandated by the COVID-19 pandemic is the child's last agreed upon IEP/IFSP. This last agreed upon IEP/IFSP must be resumed once the outbreak is over and schools/regional centers resume normal operations.

Recommendation #2: Provide Equal Technology and Connectivity Access to All Children with Disabilities Immediately, Including Parent Support in Native Language

Federal guidance makes clear that if a school district is providing educational opportunities to the general student population during a school closure, the district must ensure that children with disabilities have equal access to educational opportunities.¹⁷ This means that if districts are providing electronic devices and/or connectivity to all students, they must ensure that all children with disabilities can access and benefit from their education in an equally effective manner, including by providing different technology options for children with disabilities if needed. Students with disabilities also have a right to such technology as a reasonable accommodation under Section 504 of the Rehabilitation Act. We recommend policymakers take the following action:

- Issue an Executive Order directing school districts and regional centers to provide all children with disabilities access to a laptop, tablet, or similar devices and internet connectivity of high enough quality to adequately support specially designed distance learning, including any assistive technology that those children need, as determined by their IEP/IFSP team and agreed to by their parent. Ensure school districts and regional centers provide parents support, in their native language, to adequately utilize the technology, including hardware and software, required by children to access distance learning.
- Issue an Executive Order that learning materials and programs should comply with Web Content Accessibility Guidelines 2.0 AA levels of access to ensure that any assistive technology can access these materials.

Recommendation #3: Shorten Special Education Assessment Timelines for Assistive Technology

When a child with a disability requires a special education assessment, the district must gain parental consent, conduct the assessment, and review the results with an IEP team within 60 calendar days, excluding school breaks of longer than five days.¹⁸ Some children with disabilities may require immediate assistive technology assessments to determine how to meet their distance learning needs during the pandemic. Assessments should include a review of education records and history, parent and teacher distance interviews, and technology and curriculum trials explored remotely, ensuring that these assessments do not require face-to-face testing or

¹⁷ 34 C.F.R Sections 104.4, 104.33; 28 C.F.R. Section 35.130; DOE Guidance March 2020, page 2.

¹⁸ Federal guidance states that if general education children are receiving distance learning, children with disabilities have a right to services. DOE/OCR Guidance March 16, 2020, page 3. Despite the physical closure of schools, districts are receiving average daily attendance payments and many are providing educational services to students; these days should count in special education assessment timelines.

observations.^{19, 20} Assistive technology experts can suggest trials of assistive technology solutions and remain available to the IEP/IFSP team, and parents through a collaborative IEP/IFSP service, for trouble-shooting and ongoing curriculum modifications. We recommend policymakers:

- Issue an Executive Order specifying that special education assessment timelines for Assistive Technology assessments for the purpose of determining distance learning needs of children with disabilities, when requested by the parent or determined necessary by the school district/regional center, are shortened to 30 days during periods of school/regional center closures due to the COVID-19 pandemic. Districts and regional centers must still provide assistive technology to meet children's needs during the assessment process. Parental consent to such assessment can be given in writing through email or text, document signing technology, or verbally.

Actions to Ensure Comprehensive and Compensatory Support of Children With Disabilities Once Schools and Regional Centers Reopen and the Stay at Home Order is Lifted

Recommendation #4: Provide a Clear Right to Compensatory Education Services

While focusing on the immediate safety and health needs during the COVID-19 pandemic, we must also protect the rights of children with disabilities to access a FAPE following the crisis. Acknowledging that many IEP/IFSP services will be unavailable during the outbreak (e.g., special day class programs; center based programs), difficult to provide through distance learning (e.g., physical or occupational therapy), and of lesser quality when not shared within a group or classroom setting (e.g., social skills instruction), efforts must be made to protect the rights of these children to compensatory services to make up for these losses. Children with disabilities are so vulnerable to regression that there are statutory rights to extended school year services to attempt to prevent it.²¹

Federal guidance references that children with disabilities may be eligible for compensatory services as determined on an individual basis by their IFSP²² and IEP teams²³ due to any delays in service provision or decision making about how to provide services. Yet, that guidance triggers the right to compensatory services on a parent's ability to demonstrate regression or lost skills,²⁴ placing an undue burden upon the parent to prove the harm to their child, without adequate data typically collected by the school/regional center or the tools or professional qualifications required to measure progress. This process of determining regression or lost skills can also take significant time, which would mean additional months that children are not receiving these compensatory services. Further, not providing a clear path to compensatory services will require many families to undertaken extensive legal action, incurring unnecessary cost, delay, and a further break down of relationships between districts/regional centers and families. In order to prevent this unnecessary harm, we recommend policymakers take the following action:

¹⁹ DOE/OCR Guidance March 16, 2020, page 3.

²⁰ The purpose of these assessments is to try different types of hardware and software, assess various access methods, and evaluate the need for modifications, curriculum delivery strategies, or online programs.

²¹ 34 C.F.R. Section 300.106.

²² 34 C.F.R. Section 303.342(b)(1); DOE Guidance March 2020, page 7.

²³ DOE/OCR Guidance March 21, 2020, page 2

²⁴ DOE/OCR Guidance March 16, 2020, page 3.

- Enact state legislation guaranteeing compensatory services to children with disabilities at a rate of twice the services that should have been provided but were not due to closures caused by the COVID-19 outbreak, as defined by the state and county stay at home orders and school district closures or regional center cessation of services, in an effort to help children recoup. Regression must be assumed and not the responsibility of the parent to prove to school district/regional center officials. A child and family should be given twice the length of school/regional closures to utilize these compensatory services. Require IEP/IFSP teams to convene a meeting within 30 days of the stay at home order being lifted to determine what additional compensatory services will be provided.

Recommendation #5: Toll the Statute of Limitations on All Dispute Resolution

Senate Bill (SB) 117 (Chapter 3, Statutes of 2020) halts the timelines for resolving a Uniform Complaint Procedures Act complaint for a violation of special education rights during the COVID-19 pandemic. This takes away one of the most cost effective and powerful tools that parents of children with disabilities have to protect their children's rights. Yet, there is no similar tolling of the statute of limitations, meaning that parents cannot expect timely resolution of complaints, and may at the same time, lose their right to file a complaint due to the statute of limitations running. Further, although administrative due process cases and mediations are still occurring, there are many reasons why a parent may chose not to seek these dispute resolution options during the COVID-19 outbreak, including their inability to access records in a timely manner (due to the halt of the records request timeline under SB 117), their inability to gain appropriate assessments requiring face-to-face testing (due to the halt of this timeline under SB 117), the general unavailability of witnesses, or the strategic ineffectiveness of successfully arguing a child's case through video conferencing technologies. While the IDEA sets default limitations periods for due process complaints and court complaints, States are permitted to change them;²⁵ California has adopted 2 years and 90 days, respectively.²⁶ We recommend policymakers take the following action:

- Enact legislation that tolls all special education statutes of limitation for Uniform Complaint Procedures complaints, mediations, due process complaints, and civil actions to remain in effect during the COVID-19 pandemic, as defined by the start and final end date of state and county stay at home orders and school district closures or regional center cessation of services, and providing a minimum of 60 days after the final end date to file such actions.

Recommendation #6: Extend Age of Special Education and Early Intervention Exits

Children age out of regional center early intervention services on their third birthday. Young adults age out of special education services when they graduate high school or the semester in which they turn 22. We recommend policymakers take the following action:

- Enact state legislation mandating that children will not be exited from either special education program until the equivalent time of the COVID-19 pandemic (defined by state and county stay at home orders and school district/regional center closures or cessation of services) has passed after such birthday exits. This should in no way

²⁵ 20 U.S.C. 1415(f)(3)(C), (i)(2)(B); 34 C.F.R. Sections 300.507(a)(2), 300.516(b).

²⁶ Cal. Education Code Sections 56043(r), 56505(k) & (l).

affect age three transition timelines or prevent a youth who qualifies for high school graduation, and whose parent consents, from completing their timely graduation.

Supporting Delivery of Special Education Services for Children with Disabilities During and Following the Pandemic

Thank you for your time and attention to the needs of our most vulnerable children in this evolving situation and your leadership in this time of crisis. We appreciate the remarkable circumstances in which school districts and regional centers are operating and their efforts to provide education in this unprecedented time. We offer these recommendations as part of California's COVID-19 response and relief efforts to address the unique needs of California's children with disabilities and urge you to adopt these recommendations as we collectively work to support our youth to survive and recover from this crisis.

Our organizations are available as a resource to support children with disabilities, educators, child welfare and probation providers, policymakers, and funders during this time of emergency. Please contact Kristin Power, Alliance for Children's Rights, at (916) 838-3587 or k.power@kids-alliance.com if you have questions.

Sincerely,



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