

# Special Education Law During COVID

— PRAISE 10/29/20

- *Disclaimer: The information shared in this webinar is not intended to serve as, nor should it replace, legal advice pertaining to your own child's situation. The purpose of this webinar is educational only and neither the sharing of the content, nor conversations during this webinar, create an attorney-client relationship between Jennifer Callahan and the participants.*

# What does the law say about special education?

The Individuals with Disabilities Education Act is the federal law that governs special education.

Students with disabilities are entitled to a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment

Schools are responsible for identifying and evaluating students with disabilities who live in their district. (CHILD FIND)

Public schools are responsible for providing services to children to help them meet their education goals based on their individual needs

Schools are required to include parents/guardians in decisions about special education. **Meaningful participation**

# What does “appropriate” mean, exactly?

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- U.S. Supreme Court case: *Endrew F. v. Douglas County School Dist* (2017)
- A school must offer an IEP reasonably calculated to enable a child to make progress. The team must have a “cogent and responsive” explanation for how the IEP will do so.
- The IEP must be “appropriately ambitious” in light of the student’s unique circumstances, based on input from all members of the IEP team.
- IEPs must contain **goals** that are measurable and based on accurate data, **services** that are necessary for the student to benefit from special education, **accommodations** needed to access the curriculum, and all of these delivered in a **placement** that is the **Least Restrictive Environment**.

# What does the law say about special education *right now*?

FEDERAL and STATE LAW requiring FAPE for your student IS STILL IN EFFECT.

- All important laws remain in effect:
  - ❖ FERPA (student privacy and education records)
  - ❖ IDEA (special education/ IEPs)
  - ❖ Section 504 and the ADA (non-discrimination/equal access)
- The *manner* in which services and instruction are delivered MAY be different (by computer, at home, by phone, for example) but your student must still be able to access and benefit from their education and make meaningful progress toward INDIVIDUALIZED goals.

## Distance Learning Plans and the newly required description of the IEP during emergency times (CDE guidance 9-30-20)

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- SB 98, now codified in the Cal Ed Code sec. 56345, requires a description of how each IEP will be delivered under emergency circumstances.
- Recently, the CDE has said that this description is part of the offer of FAPE for your student and should be individualized.
- If this descriptions inadequately addresses your student's needs, an IEP team meeting should be held to address this. (IEP teams are required to meet when a student demonstrates a lack of expected progress.) Teachers and parents are encouraged to work together to ensure that a student is able to access instruction and that the delivery of instruction is effective. The student's IEP can be changed or amended at any time with agreement from both the parents and the LEA.

# Services

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- Students are still entitled to receive the services they need in order to have a Free and Appropriate Public Education and work towards their IEP goals.
- Focus on goals – *what is needed to meet them?*
  - May seem counterintuitive- instinct might be focus on replicating minutes
  - But- focusing on equalizing service minutes may not result in equal benefit to student
- Flexibility and Creativity are key: In-Person allowed if . . .
  - Schools are allowed to provide services in the home or in non-traditional environments, like the park, as long as they comply with local health rules and ***the IEP team determines that, for this individual student, exceptional circumstances necessitate provision of in-person IEP services.*** (See CDE guidance April 9, 2020)
  - Schools can provide collaboration and coaching services to families
  - Providers may be able to meet outside of normal school hours

# Parent's job right now

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- Observe your student and record those observations with as much specificity as possible, approaching it like a scientist or a data collector.
- Note your concerns just as specifically for your IEP team.
- Communicate your concerns, in writing if possible. Document all verbal conversations with a follow-up email confirming the concerns you shared, requests you made, responses given and any plans made for follow-up.
- If you know it is not working, but don't quite know what your student needs, ask for an assessment to help give the team data and suggestions on how to solve the problem.
- If the district has said NO to something you believe your student needs (in-person services, assessment, certain accommodations, etc.) *ask for a PWN*

# Prior Written Notice (“PWN”)

- When the district proposes or refuses to do something that involves a student’s identification, assessment, placement or FAPE, the parent is entitled to a PWN.
- **PWN must include:**
  - (1) Description of action proposed or refused.
  - (2) Explanation of why school proposes or refuses to take that action *specific to your student* (because IEPs must be individualized).
  - (3) Each evaluation, procedure, test, report, etc. the school used as a **BASIS**.
  - (4) Copy of the parent’s rights to challenge the action or inaction.
  - (5) Sources of advocacy assistance for parents.
  - (6) Other options the school considered and why they were rejected.
  - (7) Other reasons for the school’s action or inaction.





# Possible Assessment Area: Assistive Technology

Box often checked NO on IEP document, without any discussion. Sample request:

<https://dredf.org/wp-content/uploads/2016/02/AT-Assessment.doc>

**IDEA 2004 requires IEP teams to consider the assistive technology needs of all children with disabilities.** (20 U.S.C. 1414(d)(3)(B)(v))

- If you think your child needs assistive technology, you need to request that the IEP team refer your child for an evaluation by an assistive technology specialist.
- An assistive technology evaluation may include a functional evaluation of your child **in school** or **at home**.
- Assistive technology specialists have special knowledge and expertise. If your child's needs are complex or you anticipate resistance, ask the assistive technology specialist to join the IEP team.
- **Law also requires schools to provide assistive technology training for the teachers, child, and family.** (20 U.S.C. 1400(2)(E) & (F))

# Returning to School

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- No one knows when exactly that will happen!
- You don't have to wait for school to open to ask for things that your child needs.
- It's better for everyone, schools included, if schools continue to meet their special education obligations during this time
  - Don't want schools to be overwhelmed when they reopen
  - Regression (not just academically-behavior, mental health, practical skills, communication)
  - Compensatory education

Tip: You can request (in writing) an IEP meeting the week before schools reopen to provide team with your input/data about progress/problems, and create a school reintegration plan together.

# Returning to School

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- You can prepare for returning to school by:

- Keeping a weekly log of what services your child is receiving
- Keeping a log of how your child is progressing or regressing
  - Particularly important for skills that can't easily be measured on a test
- Communicating with the IEP team about your observations

- Once school reopens, you and the IEP team should:

- Discuss your child's present level of performance.
- Discuss your child's goals
- Discuss what services your child needs to bridge the gap between present levels and goals; these may be different from the services your child was receiving in school prior to the closure.

When we talk about special ed goals, we talk about "baseline", which is where a child starts, "goal", which is where we want the child to finish, and "present levels" which is where a child is on their path between start and finish.

# Compensatory Education

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**Definition:** When a school fails to provide a student with a Free and Appropriate Public Education, it can make up for the lack of education by providing compensatory services.

**Purpose:** The point of compensatory education is to place the student in the position they would have been if the school had provided appropriate educational services.

**Comp Ed & Covid-19:** IEP teams *should* consider whether your student has regressed, or failed to progress, in general ed curriculum or towards IEP goals, and if so, if (and what kind of) comp ed is needed. School districts are aware that many special education students will require compensatory education services due to the disruptions caused by COVID-19. But, you should not assume that the school district will proactively offer them. If you ask for services and the school refuses, you can contact your DREDF (Disability Rights and Education Defense Fund), and education advocate or an attorney to understand your options and/or seek legal help.

# Resources

- Guidance from CA Dept of Ed on in person instruction and services in pods, as well as parent consent to distance learning plans and more:  
<https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>
- Special ed tools, ideas and resources for distance learning compiled by CDE:  
<https://www.sipinclusion.org/distance-learning-resources/>
- **ALL DREDF Sample letters** (including Assistive technology):  
<https://dredf.org/special-education/sample-letters/>
- Tool to track delivery of services:  
[https://www.disabilityrightsca.org/system/files/file-attachments/2020.06.09\\_Service\\_Log.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/2020.06.09_Service_Log.pdf)
- Guide to Parents' Rights during COVID by Albany Disability Squad and DREDF:  
[https://www.disabilityrightsca.org/system/files/file-attachments/2020.06.09\\_Service\\_Log.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/2020.06.09_Service_Log.pdf)

# More Resources

- **Special Education Rights and Responsibilities Manual for parents:**  
<https://serr.disabilityrightsca.org/>
- North Region SELPA Community Advisory Committee – get involved to give input on special ed policy and priorities in your SELPA, including improving alternative dispute resolution services and parent education.  
<https://www.northregionselpa.org/apps/news/article/1071051>
- DREDF Special Ed Newsletter: July 2020:  
<https://us2.campaign-archive.com/?u=d8372142072c8ce7f2e90e349&id=a6122ef7f4>
- Assistive Technology ideas/resources:
- <https://www.understood.org/en/school-learning/assistive-technology/finding-an-assistive-technology/free-assistive-technology-tools-on-the-web>
- <https://oae.stanford.edu/students/covid/AT-online-learning>
- <https://education.jhu.edu/2020/04/5-tips-to-promote-access-for-students-who-use-assistive-technol>

# DREDF COVID-19 SPED NEWSLETTERS

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06/30/2020 - Survey: Tell us what you think about schools reopening

06/30/2020 - Special Edition: New! US Dept of Education Dispute Resolution During COVID-19 Emergency

05/29/2020 - Special Edition: Youth with Disabilities and COVID-19: You Can Make a Difference!

04/28/2020 - Special Edition: Request an online/phone IEP meeting

03/27/2020 - Special Edition: Special Education During COVID-19 School Closures

02/25/2020 - Special Edition: Signing the IEP: Options for Parents

02/01/2020 - Special Edition: Communication and Conflict in Special Education