

COVID Legal Update #3: Important Highlights Concerning SB 117, Recent State Guidance, and Governor’s New Executive Orders

In the last three days Governor Gavin Newsom has issued Executive Orders N-29-20, N-30-20, and N-33-20, and signed SB 117 -- each designed to fight the impacts of COVID-19 in California. In addition, the California Department of Education (“CDE”) and the California Health and Human Services Agency (“HHS”) released COVID-19 guidance (“Guidance”) applicable to charter schools regarding child care and supervision, school meals, and distance learning, including considerations for English learners and students with disabilities. This Legal Alert will provide you with additional guidance and information regarding these new developments.

Such guidance does not constitute legal advice but is solely intended as a general resource to assist charter schools. For specific legal advice under the particular facts of your school’s situation, legal counsel should be consulted.

- **Links to the Executive Orders, CDE Guidance, and SB 117 Text**

Executive Orders:

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.18-N-30-20-Schools.pdf>

<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-signed.pdf>

CDE Guidance on Distance Learning: <https://www.cde.ca.gov/ls/he/hn/distancelearning.asp>

CDE Guidance on Meals: <https://www.cde.ca.gov/ls/he/hn/schoolmeals.asp>

SB 117: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB117

- **Governor Newsom’s Stay at Home Order**

On March 20, 2020 Governor Newsom issued a state-wide Stay at Home Order. This Order directs all Californians to remain in their homes except to seek out necessities such as food or medical care.

However, as the public school system is deemed a critical government function, this Executive Order allows charter schools to continue to operate as set forth in our prior Legal Alerts and in this Legal Alert.

- **State Legislature and Governor Pass SB 117 as Emergency Legislation**

- **Extra Funding for Cleaning and Protective Equipment**

SB 117 includes \$100,000,000 for local educational agencies (“LEA”) that provide any classroom-based educational programs between now and June 30, 2020, to purchase personal protective equipment and/or to pay for supplies and labor for cleaning school sites. Information about the application process for this funding is forthcoming.

- **Apportionment and Instructional Time**

SB 117 states that P-2 apportionment will be calculated based upon all full school months from July 1, 2019 to February 29, 2020, inclusive, and waives instructional day and minute requirements if a charter school does not meet these requirements as a result of a closure due to COVID-19. A charter school administrator will need to certify in writing to the Superintendent of Public Instruction (“SPI”) that the school was closed due to COVID–19 in order to take advantage of the instructional time waivers.

Please note that the CDE will likely be issuing a COVID-19-specific J13-A form (the form used to request funding as a result of an emergency), which will need to be completed in order to receive funding. We will be able to provide more information as to what the form will require once it is issued. When released, the form will be found here: <https://www.cde.ca.gov/fg/aa/pa/j13a.asp>.

- **ASES Program**

If your school receives funding through the After School Education and Safety Program (“ASES”) and has closed due to COVID–19, your school can submit a request to the CDE to give pupil attendance credit equal to the average annual attendance that your school would have received had it been able to operate its entire program during the time the school was closed due to COVID–19.

- **Impact on Assessments**

The deadlines for assessing English Learners has been extended by 45 days, unless further extended by the SPI. The testing window for the CAASPP and the physical performance test is extended by the length of time a school is closed due to COVID–19, or until the end of the testing window, whichever comes first. The Governor is also seeking a federal waiver from all CAASPP testing for the 2019-2020 school year, and we have recently learned that the US Department of Education has verbally stated that all requests will be granted.

- **Special Education Timelines**

Education Code Sections 56043(a) and 56321(a) require a LEA to develop an assessment plan within fifteen (15) calendar days from referral for assessment. These sections do not count days between regular school sessions or terms or days of vacation in excess of five (5) school days but requires the assessment plan to be developed within ten (10) days after the commencement of the subsequent regular school year if the referral for assessment was made within the last ten (10) calendar days of the prior school year. SB 117 states that the days that a school is closed due to COVID-19 are “days between a pupil’s regular school session up until the time the school reopens and the regular school session reconvenes.”

Education Code sections 56043(n) and 56504 allow a parent or guardian to examine student records of the child and receive copies of student records within five (5) business days and require a LEA to comply with a request for school records without unnecessary delay before an IEP meeting, a due process hearing, or resolution session. Section 56043(o) and Section 3024 of Title 5 of the California Code of Regulations require an LEA to send a student's records to a new LEA, in which the student has enrolled within five (5) working days from receipt of request. These timelines are waived pursuant to SB 117 “up until the time the school reopens and the regular school session reconvenes.”

***SB 117 specifically states that it does not waive any federal special education requirements.**

○ **Offering Independent Study**

A charter school that does not have an independent study program or a distance learning program in its currently-approved charter petition is not required to submit a request for a material revision to its chartering authority in order to offer such programs while the school is closed due to COVID-19 and complying with Executive Order N-26-20.

○ **UCP**

Uniform Complaint Procedure (UCP) timelines are extended by the length of time a school is closed due to COVID-19.

▪ **Executive Order N-29-20 Waives or Revises Brown Act Requirements Temporarily.**

Under this Executive Order, the following rules apply:

- Charter schools may hold public meetings via teleconferencing and make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Please note you are required to implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation and resolving any doubt whatsoever in favor of accessibility.

- Charter schools still need to comply with the timelines for posting agendas, including putting the agenda as a direct link on their website. The agenda must give notice of the means by which members of the public may observe and participate (e.g., conference call dial-in number, etc.). The agenda does not need to list the address from where each Board member will be calling in, agendas do not need to be posted at those locations, and the charter school does not need to make those locations accessible to the public or ensure that members of the public may address the body at those locations.
- A quorum of the Board does not need to participate from locations within the boundaries of the territory over which the charter school exercises jurisdiction.
- **These changes only apply during the period in which state or local public health officials have imposed or recommended social distancing measures.**

▪ **Guidance on Distance Learning**

○ **Distance Learning**

The guidance directs charter schools to immediately develop a plan for distance learning, which includes teacher training to implement the plan. It reminds LEAs that “not all children and families have access to devices or high-speed internet, and that the LEA may not be able to meet the needs of all its students through online instruction.”

“Distance learning” can include interacting through the use of computer and communications technology, as well as delivering instruction and check-in time with their teacher, video, or audio instruction through on-line interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology, and/or use of print materials incorporating assignments that are the subject of written or oral feedback.

Consider reminding employees of professional boundaries with students while interacting online and when audio or video recording, and seek approval of all parties to the recording.

○ **Students with Disabilities**

The U.S. Department of Education (“USDOE”) has stated that local educational agencies providing educational opportunities to all students must ensure that those educational opportunities are accessible to all students, including students with disabilities. The USDOE Guidance and the CDE Guidance also states that to the greatest extent possible, schools should provide a free appropriate public education (“FAPE”) including the provision of related services consistent with each student’s IEP, which could include virtual services, offering services on the school campus while

following social distancing protocols, and working with Nonpublic Schools and Agencies to determine what services they can provide during the closure.

The Guidance is clear that the requirements of the Individuals with Disabilities Education Act (“IDEA”) continue to apply. The U.S. Department of Education’s guidance regarding compliance with the IDEA during school closure in response to COVID-19 is available at:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

[As the continuing provision of special education services during a school closure is complex and requires consideration of both legal requirements and practical limitations, we would recommend that legal counsel is consulted as part of the planning process for distance learning.](#)

- **English Learners**

Charter schools must consider the unique learning needs of English learners in the development of their distance learning plan and will need to evaluate the language acquisition progress of English learners when school reopens.

- **School Meals**

If your school typically operates a Summer Food Service Program (“SFSP”) or Seamless Summer Option (“SSO”) in the summer months, you are authorized to open a COVID-19 SSO or SFSP by submitting a request to SNPINFO@cde.ca.gov with the information listed at <https://www.cde.ca.gov/ls/nu/waivereqschoolclosures.asp>.

Providing non-congregate meal service options can be done at the school site or at another easily accessible site. Meals should be taken away from the site, and schools may consider distributing meals using a school food truck, sending a bag meal(s) home with students for multiple days, keeping a school site open to distribute meals, partnering with local libraries that remain open to serve meals, or setting up a drive-through system in the parking lot to minimize contact. Families can drive through and pick up a meal for all children in the vehicle, but it is not permissible to provide meals to children who are not present.

California Department of Public Health’s COVID-19 food service employee health and personal hygiene protocols must be followed:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx>

Charter schools are not required to commence a summer food service program if they do not typically offer this program, but all LEAs are encouraged to “do what they can

to meet the needs of their students if schools are closed,” including directing families to nearby locations where meals are being offered.

- **Child Care and Supervision**

The Guidance directs charter schools to continue to provide “essential services” for children and families by connecting with local partners, agencies, and organizations to ensure students are supervised during school hours and work with the local resource and referral agency to link families to care facilities. This includes working with the Local Planning Council, the regional CCL office, and local child care programs to ensure continuity of child care services to families in need.

Charter schools should create a plan to ensure supervision of students during school hours and consider allowing the school campus to be used for pop-up child care programs.

Charter schools should notify families of the local programs that remain open, the consumer education hotline at 1-800-KIDS-793, and the following websites: <https://rrnetwork.org/> and <https://rrnetwork.org/family-services/find-child-care>

The Department of Support Services has established an emergency waiver for the operation of temporary childcare facilities. This waiver is applicable to all employers needing to immediately provide temporary employer-sponsored child care. This statewide waiver shall be in effect until the Governor’s Proclamation of a State of Emergency is no longer in effect.

Should you have any questions about this Legal Alert, please contact Sarah Kollman (skollman@mycharterlaw.com) or Lisa Corr (lcorr@mycharterlaw.com) at 916-646-1400. You can also [view past Legal Alerts here](#).

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