



Payments to NPS/As During the Pandemic

Below is a summary of recent laws, regulations, and/or guidance around the payment of NPSs and NPAs during the COVID-19 pandemic. Specific determinations based on individual student and provider circumstances are decisions that must be made by your school.

SB 117, Section 1

(b) It is the intent of the Legislature that a local educational agency receiving a hold harmless apportionment pursuant to this section ensures that the local educational agency's employees and contractors are compensated and paid during the period of time a school is closed due to the coronavirus (COVID-19), as reasonably anticipated if the school has not been closed due to COVID-19.

[SB 117 Apportionment Letter 3-30-20](#)

3/18/20 CDE Webinar, Nonpublic Schools and Agencies (NPS/A) Slide

- CDE encourages continued payment to NPS/As. LEAs should work with NPS/As to take advantage of services that can be offered by NPS/As that elect to continue to provide services during school closures
- LEAs and NPS/As should work collaboratively to ensure continuity of services for students currently served by NPS/As, pursuant to the IEP, including exploring options related to distance learning

3/20/20 CDE FAQs: Is the CDE encouraging continued utilization of and payment to Nonpublic Schools and Agencies (NPS/As)?

Yes. California NPS/As provide critical programs and related services to students with disabilities. LEAs should work collaboratively with NPS/As to ensure continuity of services, including moving to virtual platforms for service delivery to the extent feasible and appropriate. In an effort to ensure that the full continuum of placements and service delivery options remains available to students and LEAs subsequent to these unprecedented school site closures, CDE encourages LEAs to continue to use the services of NPS/As during school site closures, including distance learning options made available by NPS/As, so that NPS/As may continue to receive payment in accordance with pupils IEPs and the Master Contracts/Individual Service Agreements between LEAs and NPS/As.

The Setting

- Governor Newsom's Executive Order [N-26-20](#) is about economic relief. School funding is being held harmless and, in concept, LEAs are to do the same with employees and partners (e.g. substitutes, vendors, contractors).
- The language of the Executive Order and legislation is very broad. Widely held understanding is that the intent of the legislation is create latitude for LEAs to make decisions about contractor payments at the local level during the shutdown, based on the particular circumstances and relationships.
- Capitol Advisors Group, LLC has reported that in talks with the Administration aimed at clarifying the definition of contractors, the term was meant to apply to "usual and current" contracts, i.e. contracts that LEAs were paying at the time of closure and which the LEA would have expected to continue paying if the shutdown did not occur. NPS contracts for currently placed students would fall into this category, whereas a contract with an NPA that provided services 6 months ago and is not currently being utilized would likely not.

- As an LEA, a charter school needs to ensure that the LEA's instructional infrastructure is maintained, so that when the crisis subsides, educating students can ramp back up to business as usual.
- Federal guidance identifies schools as an essential government service, which would include contractors necessary to deliver educational services.
- Much is being asked of California's LEAs, and taking a good faith, common sense approach is the best we can do.

Considerations

- Contractors that provide regular, daily services such as NPSs may be very different in terms of maintaining your instructional infrastructure than contractors who provide occasional services. Focus on the partners who provide critical services to students and whose economic viability is directly tied to your LEA.
- The pro forma Master Contract provides for student absences, and that the LEA is not responsible for payment of services when student is absent. Talk to your vendor. If an NPS/A is able to continue service per CDE guidance, and the student elects not to show up for service, perhaps it would represent a legitimate absence. Talk about what it takes to serve kids and keep the vendor economically viable as a partner.
- Is a pay-now-work-later arrangement a viable alternative for both parties, where a credit is built up that can be used over an extended period next year?
- There is a distinction between what's permitted by contract and what an LEA should do from a policy perspective regardless of the contract to ensure continued service once schools reopen. So, helping a vendor stay economically viable does not necessarily mean paying for services that are in fact not rendered. Contract addendums or amendments help establish that difference.
- Links to sample contract addendums/amendments appear below. As with all guidance and MOU examples, a review of your particular circumstances by and advice from your legal counsel is strongly encouraged.

[Link to Generic Contract Amendment](#)

[Link to Master Contract Amendment](#)

[Link to NPS/A MOU](#)

[Link to Transportation - Interim MOU](#)

