

Information on Revised August Budget Trailer Bill (Senate Bill 820) and Special Education Timelines

Date: August 26, 2020

Subject: Official Message from the State Director of Special Education

Dear Special Education Local Plan Area Directors, Special Education Administrators at County Offices, and Special Education Program Directors:

The California Department of Education (CDE), Special Education Division (SED) has received many questions related to special education assessment timelines since SB 117 (Chapter 3, Statutes of 2020) was approved by the Governor on March 17, 2020, in response to the COVID-19 pandemic.

In SB 117, Section 8, the Legislature waived Local Educational Agency (LEA) compliance with two provisions of state special education law that do not appear in federal law: *Education Code (EC)* Section 56321(a), stating that if an assessment is to be done, an assessment plan must be provided to the parent within 15 days of a referral, and *EC* Section 56504, stating that the LEA must provide a student's school records within five business days of a parent request. SB 117, Section 8 stated that the waivers apply while school remains closed due to COVID-19, even if distance learning is offered. SB 117, Section 8, nevertheless encourages LEAs to respond as expeditiously as possible to parent requests received during a time when a school is closed due to COVID-19.

The purpose of SB 117 was to ensure LEAs continued to receive funding during the COVID-19 emergency and to allow for flexibility to continue to provide educational options to students given the widespread, abrupt physical closures of school at that time. As LEAs have had time to plan for the 2020–21 school year, and as subsequent requirements around distance learning have been put in place, the purposes for the SB 117, Section 8 waivers may no longer remain, thus prompting inquiries about the ongoing applicability of those provisions. As such, the CDE has been having ongoing conversations with the Legislature and the Administration to elevate issues from the field and need for clarity. The Legislature and the Administration expressed their intent to address these issues with August Budget Actions.

On August 24, 2020, the Legislature amended SB 820 to render SB 117, Section 8 inoperative **on July 1, 2020**. The proposed language is currently found in Section 56 of SB 820, which can be viewed by accessing the following link:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB820

Please note that this bill, although in print and available to read, is not yet law until the Legislature passes it and the Governor signs it. However, the CDE, SED felt it appropriate to alert you of changes that are in print in the bill.

It is important to note that SB 117, Section 8 is state legislation that did not waive any related requirements in the federal special education law, the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.). As the federal Office of Special Education Programs (OSEP) stated in the Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020), federal special education timelines are not waived, and, as a general principle, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate.

The CDE, SED will keep you apprised of future actions taken by the Legislature and Administration on this issue.

Should there be any questions related to this information, please contact the appropriate Focused Monitoring and Technical Assistance (FMTA) Consultant using the contact information provided on the CDE FMTA Consultant Assignments by Region web page at <https://www.cde.ca.gov/sp/se/qa/fmtacncnt.asp>.

Sincerely,

Heather Calomese, Director
Special Education Division