



Legal Forum

Jan. 29, 2021

Q and A

Disclaimer: The information provided in this document was provided in February of 2021 and may change with further guidance from the state and/or a change in law.

Agenda

<https://charterselpa.org/wp-content/uploads/2021/01/Legal-Forum-Agenda-Final-2021.pdf>

PowerPoint

<https://charterselpa.org/wp-content/uploads/2021/01/FINAL-Legal-Forum-PPT-2021.pdf>

Assessments and Assessment Plans

QUESTION: When are having this upswing of initial assessments we are seeing that but when it comes to observations and the data collected is limited to: observation on ZOOMs limited information on classroom behavior, what is your best advice for addressing these components?

ANSWER: Conducting observations to the extent you can now is the best you can. However, make sure to document in the report the limitations of the observations and the potential impact such limits have on the results/recommendations. And also mention in the report that additional observations would be recommended once in-person learning resumes.

QUESTION: When sending out a copy of the psychoeducational report to parents prior to the meeting, we instructed psychs to add a draft watermark and remove the eligibility section. A psych responded as this isn't legally sound as the eligibility is just a recommendation. However, my team understands it to be considered predetermination. Is it ok and best practice to remove the eligibility and/or recommendation section on the draft report shared prior to the meeting?

ANSWER: There is case law to support psychoeducational reports should include a recommendation on eligibility and the rationale. The ultimate decision is the IEP team's but appropriate to provide psychologist's opinion and recommendation on eligibility. I'm not sure what the purpose of making the IEP being a draft form until after the meeting is finished. Presumably the findings and recommendations of the evaluator should not change based upon the outcome of the meeting.

QUESTION: I would like clarification on request for initial assessment. If a parent sends in writing a request for assessment, we have 15 days to hold a meeting to find out what is going on and what parent is looking for or is it mandatory to deliver an AP in the time frame? Is an

SST meeting an appropriate response to an initial request? If we need to send the AP, I am wondering why? It seems to me that we need to have an SST to determine needs and find out what is going on, not just assess because a parent asks.

ANSWER: State law requires an assessment plan be provided to the parent within 15 days of receipt of the written request for assessment. As such, if the LEA believes that assessment is not needed, we recommend that an SST be held within that 15-day timeline with the hope that general education interventions can be discussed with Parents. If parents agree to rescind the request for assessment, we recommend that you document their agreement to do so in writing to avoid non-compliance with State law.

QUESTION: Has there been rulings on districts doing virtual assessments, and parents pursuing a hearing or due process saying that they want an in-person assessment?

ANSWER: I don't believe so as of yet but anticipate that there will be.

QUESTION: Based on the in-person normed process of special ed. formal assessments, are the results considered valid if completed virtually?

ANSWER: Check with specific test publisher to determine if they consider administration of their assessments virtually to be valid. Many test publishers have done their best to accommodate the COVID restrictions and may have additional instructions on how to administer assessments. Also, CA Association of School Psychologists have excellent resources for virtual assessments available on their website.

QUESTION: Regarding evaluations, what is our obligation to consider the exclusionary factors of inadequate education due to school closure and difficulties accessing distance learning?

ANSWER: That obligation still exists, and the analysis will become more difficult due to disruption in in-person learning. NASP has recommended that educators restructure the process for analyzing if a student is at risk for SLD by first establishing or reestablishing core instruction and evidence-based interventions before considering whether a lack of appropriate instruction contributes to a student's low achievement. Use multiple sources of data too! IEP teams should consider the instruction provided to the student prior to school closures and the student's response documented at the time of referral; the instruction provided during school closures and the student's response; and the child's performance on all the required screenings and evaluations for the suspected disabilities. Additionally, NASP recommends schools review students' academic growth both before and after extended school closures and the summer break.

QUESTION: If we start submitting a new AP because a student has not been available for testing, does that cancel the original AP? I am not clear what you are trying to say here.

ANSWER: A parent has 15 calendar days to sign consenting an AP. If they did not sign, I would suggest re-issuing the AP when they come back to in-person instruction. I just was making the point that the parent does not need to re-initiate the request for assessment in writing.



QUESTION: If a parent refuses in-person assessments for an initial IEP due to covid and after multiple attempts to convince the parent, can we mark the student as DNQ because we were not allowed to assess? Of course, we would send a PWN and assess when school reopens. In the meantime, we could do a 504 Plan.

ANSWER: Can you have the parent sign the AP marking the box that states, "I do not consent to the proposed assessment described above.", then follow up with a PWN that documents the attempts to conduct assessment, provides the reasons the parent provided to decline assessment, and shows the LEAs intent to revisit assessment when in person instruction returns, or whenever the parent wishes to reopen the assessment? Just putting out the assessment plan protects the school from a later claim that the student should have been identified and assessed earlier.

QUESTION: What is the Ed Code that addresses screenings?

ANSWER: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation "shall not be considered to be an evaluation for eligibility for special education and related services." 34 CFR 300.302.

QUESTION: Re: screening. Can you provide examples of when we would and would not need consent and PWN under 34 CFR 300.302? For example, if a parent has speech and language concerns and the SLP would like to do a screener prior to making a determination about a full evaluation would they need to get consent prior to giving the speech screener?

ANSWER: Both the definition of "evaluation" and the exception look to the purpose for which the child is being assessed. If the purpose is 'to determine ... the nature and extent of the special education and related services that the child needs,' then it is an evaluation. But if the purpose is merely 'to determine appropriate instructional strategies for curriculum implementation,' then it is not an evaluation. This is a very fact specific question though. the law does not exempt all screenings. Instead, it only exempts screenings used for instructional purposes. Many professions use a set of simple or basic tests, "screenings", to identify individuals who may be at risk and therefore require more in-depth testing or evaluation. Under the IDEA and State law, unless the test is given to all students, this type of "screening" will most likely qualify as an assessment and requires parental consent. This situation often arises when a student is referred for speech and language services or another related service. The SLP or OT may, based on their professional judgment, elect to use a screening tool to determine if further assessment is warranted. This is generally acceptable as long as the assessment meets all of the other legal requirements for assessments. However, even if the testing is a basic screening device it is still being used to determine the scope or extent of services, e.g., eligibility. As such, the District is seemingly required to obtain parental consent prior to conducting this type of screening or assessment.

QUESTION: Do you advise conducting Mental Health Assessments virtually, especially if it's an area of suspected disability related to truancy?



ANSWER: I would love to hear from mental health providers, here, but as a lawyer, I would say yes to the extent that you feel comfortable that in your professional judgment that you were getting valid data to supply to an IEP team to consider services.

QUESTION: Is an evaluation always needed when doing an MDR?

ANSWER: No, LEAs are required to consider all relevant information (which usually includes previous evaluations and current data available to the team)

QUESTION: I joined late - we a parent that didn't want her daughter to have the triennial evaluation due to covid-19 but agreed to hold IEP meeting. SPED team updated present levels and updated goals. School psychologist used previous assessment and the student continues to qualify for services. An IEP meeting will be held next week. Mom stated that when things get better, she will approve in person evaluation - maybe in 2 months. Is there anything else that we should do?

ANSWER: I would suggest putting out a new assessment plan at that time unless you feel it is unnecessary. If parent and school agreed to the records review that was done, then you may not need to do further assessment.

Reopening Schools

QUESTION: When we return to in person, is there any guidance regarding cohorts and services? For example, we would be keeping scholars in cohorts to minimize infection rate, but our service providers provide support to multiple groups/grades. Is it recommended to continue virtual services? Having the providers just go from group to group?

ANSWER: The California Department of Public Health put out "Consolidated Schools Guidance" on January 14, 2021 called "COVID-19 and Reopening In-Person Instruction Framework & Public Health Guidance for K-12 Schools in California 2020-2021 School Year." After reading it, I came to the conclusion that cohorts should be kept together and individuals from different cohorts should not be pulled for group services unless those services are done virtually. However, a service provider could serve multiple cohorts as long as they are taking safety precautions. That document is easily searchable and on the CDPH website.

QUESTION: How should we respond to other students' parent concerns when some students come without a face covering, without violating confidentiality?

ANSWER: I would recommend a broad response and the provision of the CDPH face covering guidelines that indicates that not all individuals will be wearing a face covering and the other actions that the school is taking to ensure that students are socially distanced, surfaces are cleaned, etc.

QUESTION: What if the NPA mandates mask-wearing? Do they have to follow the law that medical/mental health condition exclusion re: making wearing? We have a student who can't wear a mask and the NPA has a mask wearing policy.

ANSWER: As the LEA, you will have to work with the NPA to determine protocol that aligns with CDPH guidance that they can live with or consider other NPA options



QUESTION: What about safety of providers and teachers? Why is it that we may need to go back to school prior to vaccination— this is gen ed and special ed? Why don't we seem to matter?

ANSWER: The health and safety of students and staff is the top priority when making the decision to physically reopen school campuses for use by students, staff, and others. Local educational agencies should work in collaboration with their local health officials in making the decision to safely reopen.

Emergency Contingency Plans:

QUESTION: In these cases being presented, was there any recognition of Emergency Contingency Plans (if those had been provided to parents)?

ANSWER: I believe all of these cases were heard before the obligation to have an emergency condition plan in the IEP was enacted.

QUESTION: Wouldn't an ECP indicating the services are different during virtual learning alleviate much of these issues?

ANSWER: If parents sign an IEP with revised services (in the ECP or otherwise), it will avoid an argument that there was a material violation of the IEP assuming that the LEA implements the terms of the revised IEP.

QUESTION: You recommend that IEP services NOT be reduced based on shortened school day?

ANSWER: The decision must be individualized for each student to ensure that the student can continue to receive educational benefit. A one size fits all approach is problematic.

QUESTION: If a student is currently in distance only education (families have a choice between distance only education and a hybrid model), and has very different needs virtually than in person (such as in person he will likely need a 1:1 aide), how should the annual IEP be written? For in person and then write the emergency contingency plan for the distance learning, or write the annual to reflect the distance learning happening this school year, and amend if/when the student is back in person?

ANSWER: I wonder if the SELPA can chime in here as to the limitations of SEIS? It would be great if the IEP could indicate the services for in-person and for distance learning. The ECP covers you when an emergency condition prevents in-person services for 10 days...but here it looks like it was a choice. Does SEIS allow for services to be written to cover both? I worry that it does not b/c there are service date requirements that you would not know. You can also write it to reflect the current plan and then amend when back to person. Or I would also feel comfortable with you writing the in-person alternative into the notes, but I am eager to hear if the SELPA agrees with me.

Hi there :) We are recommending (for now) that the Annual IEP show the in-person services on the FAPE page but address the distance learning and hybrid models at the IEP and make sure the info is in the notes as to which is being offered under what contingencies. Unfortunately,



the new ECP form in SEIS is not as comprehensive as the one we created ourselves (does not have the ability to show multiple contingencies). We are working on a guidance doc for the new ECP (it only came out last week) so we haven't yet finalized it. Stay tuned!!!

Distance Learning

QUESTION: What are our legal responsibilities around truancy during distance learning or tech access (like when a student's home wifi does not allow them to fully participate in online learning)?

ANSWER: As we discussed, students should have all technology needed to fully participate in the educational program being offered to avoid any complaint regarding lack of access or an argument that students are being charged "tuition" by requiring expenditure of funds to access their education.

QUESTION: If a school is open and a parent/guardian continues to choose to keep their student home, yet insists their student is struggling with distance learning, will schools still be held liable, even though they are offering the in-person instruction/differing options?

ANSWER: LEAs will want to document the offer of in-person services to argue against liability for a parent electing to keep their student on distance learning despite in-person schooling being available.

QUESTION: Is there any guidance around home base services (.i.e BII) obligation? There are agencies that are currently able to provide those services in the home setting. What would be the risk for the LEA to agency staff to the home?

ANSWER: Using an agency for services has the added benefit of the agency having their own insurance and a contractual agreement which hopefully indemnifies the LEA for the actions of the agency. However, as the LEA, to further limit exposure to liability, an LEA would want to ensure that the agency is utilizing health and safety protocol in alignment with local and state orders and that your contract meets legal requirements and provides for appropriate insurance and indemnification.

QUESTION: I wonder what the LEA's responsibility is to continue distance learning educational activities for students with disabilities who have excelled during distance learning?

ANSWER: An LEA must offer instruction through distance learning if it is unable to offer in-person instruction in part or fully pursuant to a state or public health order. Distance learning requirements are in place for the 2020–21 school year. The intent is that LEAs offer in-person instruction to the greatest extent possible.

QUESTION: There was a an OAH case where school only met 80% of services and was found to fail to meet IEP requirements. In our case, if an amendment was held and IEP agreed to revision of services, but there was a decrease of services comparable to services based on how DL is facilitated... is there guidance on when the team AGREES and signs an amendment with revision of services?



ANSWER: In that situation, whether or not the student received FAPE may not be analyzed under a failure to implement standard, because you will be implementing the amended IEP to which parent agreed. However, a parent could still argue that the services did not provide the student FAPE (regardless of whether they agreed to the reduction in services in the IEP). The LEA will need to have data to support that the reduced services were still reasonably calculated to ensure the student receive educational benefit.

QUESTION: What was this student's disability that qualified her for this exceptional level of service/need?

ANSWER: I believe this question may have been on the Pleasanton USD/Contra Costa COE case. The student had Wolf-Hirschhorn chromosomal syndrome which significantly affects all areas of her development. She is orthopedically, cognitively and visually impaired and is nonverbal. She has seizures and is fed through a tube.

QUESTION: What if the school offers multiple dates/times to connect via Zoom/online for services yet the student does not connect, even with reminders sent, or offered home packets of work to practice and student doesn't complete?

ANSWER: You will want to document that the services were made available and convene an IEP team meeting to address the lack of participation. The goal is to determine the underlying cause for the failure to participate in services and determine if it is in anyway related to the disability and what other supports/services may be needed to support engagement.

QUESTION: I'm curious if there has been any case law/updated thinking around a distance learning offer not being the same quantity of minutes as an in person offer, however, that being based on a changed need for distance vs. in person. For example, a student that has behavior support needs due to peer to peer conflict that doesn't exist in distance learning, or sensory needs that haven't been showing up in distance (I am asking this question in a scenario where a district has collected data to demonstrate a different need).

ANSWER: OAH is definitely looking at whether there was a material violation of the implementation of the IEP. However, in crafting remedies, they will consider whether the student continued to receive an educational benefit despite any lower or different service minutes.

QUESTION: Must exceptional circumstance exist before school closure?

ANSWER: There is nothing in the CDE guidance related to providing in-person services due to exceptional circumstances that only existed prior to school closure. So it is possible that due to the circumstances of the school closure, the student may have exceptional circumstances related to mental health or physical safety.

QUESTION: Is it up to individual NPAs whether or not they want to offer in person services? If you have an existing contract with a NPA but a provider does not want to work in person for a student that requires in person services (and the NPA is not able to assign another provider), would that be grounds to terminate the contract?



ANSWER: Each NPA is a private agency and able to make their own decisions with regard to in-person services

QUESTION: For in home services- does the SELPA or attorneys have recommendation for agencies that will provide these types of services?

ANSWER: The state maintains a list of nonpublic agencies. <https://www.cde.ca.gov/sp/se/ds/>
I think that Haynes and Professional Tutors of America have been doing in-home support -- can anyone confirm?

Enrollment and Residency

QUESTION: Are we obligated to keep a student enrolled who temporarily moves out of state (not COVID related)?

ANSWER: It's an interesting question b/c in a typical year there would not be distance learning and so their continued enrollment during a temporarily relocation (i.e. a parent sabbatical) would be subject to the school and parent agreeing to the student being on independent study in accordance with the school's independent study policy. I do not believe that a school would be required to offer independent study in such circumstances, but I am also unaware of any case law that has adjudicated any challenges with similar facts. I would suggest that an LEA have an independent study policy that describes the circumstances and the maximum length that it would agree to offer independent study to ensure consistent responses to parents who make this request.

QUESTION: Would the same (as above) information happen if the student goes out of the country as well?

ANSWER: yes, but again remember we are talking about the circumstances where they are maintaining CA residency.

QUESTION: What about situations where we know the student is attending a private school (confirmed by private school) but they have not unenrolled at our charter school (LEA). They have not responded to requests for an IEP meeting. Is there a process for unrolling a student when they have not attended?

ANSWER: I want to say disenroll and provide notice to the last known district of residence, but I do have questions. I think this is a better discussion to have directly with legal so that we can ask questions to provide legal advice tailored to the facts.

QUESTION: I have a K student who was enrolled, but mom has her dual-enrolled in a private preschool. To not violate FAPE, our school enrolled and was providing online services for her IEP. Mom's work schedule recently changed, which impedes student from engaging online. We have an on-site small group support, but student is NOT vaccinated and needs full day. Our SELPA advised that mom seek an ISP. Mom hasn't. In the meantime, student is not being serviced. So, what should our charter do at this point? I was advised to drop the student as she cannot be dual enrolled with us and private preschool. Yet, in doing so, are we violating Federal



IDEA? At the end of the day, I want to ensure the student DOES get the services. Can I reach out directly to the local district to provide services?

ANSWER: I would suggest an offline discussion one on one with legal counsel on this one b/c I have some questions. :)

QUESTION: If a student moves out of the country or to another state, can he/she still participate in distance education at a particular school?

ANSWER: If they have permanently moved out of state/country (i.e., no maintenance of residence and intent to return), then we cannot collect public funding for the student. However, be cautious about homeless protections which would allow the student to remain enrolled in the school of origin through the end of the school year. If they maintain a residence in CA with an intent to return, then they maintain residency for continued enrollment in distance learning at the school (for non- classroom based charters that means maintaining residency in your county or an adjacent county)

QUESTION: If the student who was removed from the school for not taking the standardized test (manifestation determination case) had not revoked consent, would this student be allowed to be removed from the school for not following the master agreement. I had previously been told that you can't remove students simply for not following the terms of the master agreement.

ANSWER: Maybe. There have been cases that indicate that disenrollment of a student with an IEP from a charter school is a change in placement that requires an IEP team meeting decision.

QUESTION: Thank you so much for presenting today! What if we have a student with IEP and they are logging in daily from Mexico, but parent says they are in California?

ANSWER: If they have permanently moved out of state/country (i.e., no maintenance of residence and intent to return), then we cannot collect public funding for the student. However, be cautious about homeless protections which would allow the student to remain enrolled in the school of origin through the end of the school year. If they maintain a residence in CA with an intent to return, then they maintain residency for continued enrollment in distance learning at the school (for non-classroom based charters that means maintaining residency in your county or an adjacent county)

Compensatory Education/ Learning Loss:

QUESTION: What does compensatory look like for a 504 plan given that it's a plan for general education accommodations?

ANSWER: Although most claims for compensatory education are brought under the IDEA, courts also allow students with disabilities and their parents to seek compensatory education as a remedy for alleged Section 504 violations. As used in Section 504, related aids and services are part of an appropriate education and must be provided to the extent that they enable the school district to meet the individual educational needs of students with disabilities as adequately as it meets the needs of nondisabled students.



QUESTION: Does this imply that we should document as compensatory ed vs. ESY is there is data showing regression (given the covid/school closure context)?

ANSWER: I would agree that regression due to COVID closures should be documented as compensatory education. However, each IEP team should still consider whether a special education student requires ESY (see PowerPoint)

QUESTION: If all students are experiencing learning loss how do we determine what compensatory ed looks like? How do we calculate mins? What if the parent is not making the student available for services?

ANSWER: If the parent is not making the student available for services and that is well-documented, that should be taken into account in determining whether comp ed is appropriate. The IEP team must make an individualized determination about whether comp ed is needed. Look at what the student actually needs in order to be placed back in the position in which he would have been had his services been provided in the first instance (more of a qualitative approach).

QUESTION: Are there conversations started around what is expected learning loss (e.g comparable to a GE student) v what is excessive learning loss that requires comp minutes?

ANSWER: We have not yet seen OAH doing extensive analysis of what all students lost versus general education students. However, I would anticipate that this defense will likely be attempted and considered over the upcoming months.

QUESTION: If schools had put in place emergency contingency plans in IEPs with parents would this count as the agreed upon IEP services and not suggest compensatory ed?

ANSWER: In that situation, whether or not the student received FAPE may not be analyzed under a failure to implement standard, because you will be implementing the amended IEP to which parent agreed. However, a parent could still argue that the services did not provide the student FAPE (regardless of whether they agreed to the reduction in services in the IEP). The LEA will need to have data to support that the reduced services were still reasonably calculated to ensure the student receive educational benefit.

QUESTION: Do compensatory services calculation need to include what nondisabled peers received as the IEP is to help SWD access curriculum in the same manner as non-disabled peers?

ANSWER: Students with disabilities should have the same access to "catch up" interventions being offered to students without disabilities

QUESTION: What do we call this remediation of skills/ services, if we want to avoid calling it comp ed to imply we violated FAPE?

ANSWER: I've heard some LEAs calling it "COVID-19 response services" but you can get creative!



QUESTION: In terms of comp time- what if a service is offered but the student doesn't show (assuming attempts have been made to get them there like reminders, changes in times best for kid/parent, etc.)

ANSWER: You will want to document that the services were made available and convene an IEP team meeting to address the lack of participation. The goal is to determine the underlying cause for the failure to participate in services and determine if it is in anyway related to the disability and what other supports/services may be needed to support engagement.

QUESTION: Is there any guidance for how LEAs should be collecting data relevant to the regression/recoupment model? Specifically, should LEAs be collecting different/additional data over and above the norm (progress on goals, teacher reports, grades, informal/formal assessment, etc.) as it relates to COVID school closures?

ANSWER: all of that and parent input as well as parents have been observing students more than school employees at the moment

QUESTION: In considering ESY can we add that as long as the student attends and participates in distance learning opportunities it will not be needed?

ANSWER: The IEP team should try to consider comp ed as distinct from ESY as much as possible. If the IEP team believes that Student's disability requires ESY, it would not be contingent upon the Student engaging in distance learning. However, the Student's lack of engagement in distance learning might lead to a need for compensatory education. Of course each student is unique and will have to be considered individually.

Absences/ Lack of Engagement/ Lack of Access During Distance Learning:

QUESTION: Should we consider filing due process for significant absences? If not, what should be a school's next steps? CPS?

ANSWER: Attorney response was it may be necessary- it depends on the situation. It is hard to advise without facts. Of course, as mandated reporters, a mandated reporter must make a report whenever, in his or her professional capacity they have knowledge or, or observe a child whom the mandated reporter knows or reasonably suspects is a victim of child abuse or neglect. Neglect is the negligent treatment or maltreatment of a child by a parent or caretaker under circumstances indicating harm or threatened harm to the child's welfare. Neglect can be classified into two categories, severe and general.

Severe neglect is the negligent failure of a parent or caretaker to protect the child from severe malnutrition or a medically diagnosed nonorganic failure to thrive. It also includes situations where the parent or caretaker willfully causes or permits the body or health of the child to be endangered. General neglect is the negligent failure of a parent or caretaker to provide adequate food, shelter, clothing, medical care, or supervision where no physical injury has occurred.

QUESTION: If we believe the withdrawal or disengagement concerns are related to the pandemic, and were not a concern in a typical school day, wouldn't that indicate that it is situational and may not require special education?

ANSWER: Perhaps, of course, this would be a consideration for the IEP team after evaluation.



QUESTION: Would parents not responding to the school's attempts to contact them be Parental Fault? Does it make a difference if the majority of the attempts were via phone rather than email or mail?

ANSWER: Document all attempts at communication as OAH will consider parents actions which interfered with the LEA's ability to serve

QUESTION: In regard to truancy if the student makes contact with the general education teacher is that participation? Even though no contact with sped providers?

ANSWER: It is participation under SB 98. But the failure to participate in special education services should trigger an IEP for discussion.

QUESTION: If a student with an IEP participates virtually by parent choice and parents say they can't make student participate and can't do anymore, what is our obligation to provide in person support for that student, especially when the parent doesn't want anyone there due to covid fears?

ANSWER: I would get into an IEP to discuss what is disability related and what is not. Use those re-engagement strategies and your attendance procedures. If you have school going on, perhaps you should be delivering supports on campus. Of course, every situation is unique based upon the student's unique needs.

QUESTION: Would it be appropriate to provide for parent counseling due to stressors of COVID that may be preventing a student from accessing distance learning?

ANSWER: yes absolutely. It is my understanding that some school districts have offered online support type courses for this purpose, but I cannot recall which ones now to give you an example. Anybody know? I think it depends on the situation, but for a general school parent counseling, it would be wonderful way of getting students engaged and supporting families! If the parent counseling is being added to an IEP as a service necessary for FAPE, I would recommend doing an ERMHS assessment to see what the student needs are and helping to determine what to work on during parent counseling long term. You could also consider not adding it as a service, but in the supplementary aids and services section (consultation) to assist in helping the parents at home in accommodating their child's learning. So- it depends!!

QUESTION: How can we support non-English speaking parents (with lack of technology understanding) to help their student?

ANSWER: parent training is a great idea. If you can record modules in different languages, I think this would go a long way in supporting the parent/student but also in avoiding claims

QUESTION: At what point should we consider due process against parents due to truancy? How would this look?

ANSWER: If the parent is refusing a service that the school believes is necessary to provide a student with FAPE, there is an obligation to file for due process but as Heather mentioned, OAH



will simply indicate that if the parent wishes to access their rights under the IDEA that it has been offered by the LEA. They really can't force the kiddo into school.

QUESTION: On the slide listing what we can do if there are truancy concerns...it stated we should document on the Notes page, shouldn't we document on the actual IEP, since the Notes page is not officially part of the IEP?

ANSWER: The notes are considered part of the IEP and will be considered by OAH as contemporaneous notes as to what was discussed and considered by the IEP team. A PWN can also serve a similar purpose.

QUESTION: We have parents that we gave 3 notification for an IEP meeting (8 through phone call, 3 notifications through mail, and 3 emails), and then we ended up holding without parents present. Now it is three months later and we still have no response from parent to sign the IEP. What is our next step? We've had an unsigned IEP in SEIS for a while.

ANSWER: You cannot implement portions of an IEP without parent consent but with the new IEP completed, you will then have an offer of FAPE for which you could file for due process. A lot of schools get stalled b/c they can't get the parent to an IEP and they allow the parent to delay the IEP indefinitely and then an offer of FAPE is not made. As a result, the LEA can't file for due process b/c there is no offer made.

QUESTION: What is your guidance on engagement issues that are due to socio-economic challenges or cultural differences rather than a child's disability (e.g. cramped living conditions, high school students going to work with a parent instead of attending classes)?

ANSWER: Hopefully as part of the reengagement strategies, your school would be teasing out these issues and considering other supports beyond that of special education services, including bringing in outside public support agencies as well.

QUESTION: If parent does not attend after all of the attempts as described, can you implement the items in the newly created IEP, that did not have parent participation or signature approval?

ANSWER: You cannot implement portions of an IEP without parent consent but with the new IEP completed, you will then have an offer of FAPE for which you could file for due process. A lot of schools get stalled b/c they can't get the parent to an IEP and they allow the parent to delay the IEP indefinitely and then an offer of FAPE is not made. As a result, the LEA can't file for due process b/c there is no offer made.

QUESTION: What is a school's requirement to provide in-home academic services for a student who is truant and not attending online learning?

ANSWER: It would be a consideration for the IEP team to consider what is disability related and what is parent conduct related. Other considerations beyond in-home support might be services on campus (subject to the county health order, of course), parent counseling/training. Utilize all your re-engagement strategies in your Learning Continuity and Attendance Plan and your attendance procedures.



QUESTION: Related to parent decisions impacting support, our LEA has provided in-person SCIA support in the home and parents have dismissed three providers and one agency. I believe they have the right to decide who is in their home BUT I think their reasons for the dismissals are not warranted. All is well documented but is there other action we should be taking? Thank you.

ANSWER: I think they do not have a right to choose the provider. Take their input if there is an allegation of some sort of mishandling or lack of qualifications, but ultimately the LEA chooses the service provider in alignment with the terms of the IEP

QUESTION: Some students are home alone and is responsible for caring for their younger siblings (infants, toddlers); parents are working outside of the home. Student is not attending.... any suggestions.

ANSWER: You will want to document that the services were made available and convene an IEP team meeting to address the lack of participation. The goal is to determine the underlying cause for the failure to participate in services and determine if it is in anyway related to the disability and what other supports/services may be needed to support engagement.

Prior Written Notice

QUESTION: If an NPA provider offers services through Zoom and the parent refuses to use this platform how should we proceed?

ANSWER: I would recommend getting into an IEP to determine what is required to offer the student FAPE. If FAPE can be delivered in that format, and the parent refusal has nothing to do with student's disability, I would document parent refusal and your offer. and follow up with a PWN.

QUESTION: If a teacher refers for evaluation and the team decides not to evaluate and provide intervention, what are the PWN obligations?

ANSWER: Good question! To be on the conservative side, it would be a good idea to send the parent prior written notice that the team determined not to offer an assessment following the teacher's referral and the basis for that decision (and all other components of PWN). Even though the referral didn't come from the parent, the LEA is still "refusing" an evaluation which would trigger PWN.

QUESTION: To clarify, a change in service minutes based on an assessment also requires a PWN?

ANSWER: Yes, because it is a proposal to change the level of services which is a component of FAPE. Remember, the PWN requirement may be met in the IEP document itself.

QUESTION: If changes are decided upon at the IEP with the parent (i.e., the discussion of student need reveals need for more/less support), does this require a PWN to be attached to that IEP?

ANSWER: Yes, because it is a proposal to change the level of services which is a component of FAPE. Remember, the PWN requirement may be met in the IEP document itself. The law does



not distinguish between changes that the parent agreed with v. disagreed with. PWN is to give the parent written notice of the changes proposed by the LEA.

QUESTION: Just to clarify, should we be sending out a PWN along with the IEP when a student qualifies for SpEd, does not qualify, and at each annual IEP?

ANSWER: Yes but remember that the PWN requirement may be met in the IEP document itself.

QUESTION: If a parent has already signed the IEP on the day of the meeting and changes are implemented?

ANSWER: Remember that the PWN requirement may be met in the IEP document itself. A reasonable time may be that the changes to the IEP will take effect the next day. So as long as your IEP included the 7 components of PWN, and the parent signed the IEP at the meeting, you have met the PWN requirements.

QUESTION: If PWNs are sent after a decision has been made or before it has been enacted, and parent does not respond to PWN, is the decision enacted? How do parents show that they approve?

ANSWER: You would only need parents to provide written consent to conduct an assessment or to implement an IEP. Not sure what other approval would be needed from a parent pursuant to a PWN.

Miscellaneous

QUESTION: Is there a site where we can find these, and other special education specific litigations?

ANSWER: There is an OAH special ed search option on this site

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Decisions-and-Orders>

QUESTION: Can you explain more about why licensure requirements for service providers within the state the student is located are an issue if they are still enrolled in CA schools? If a provider also has a credential through the CTC (i.e., PPS, Speech), do we need to be concerned about the licensure requirements as well?

ANSWER: The credential should not be an issue, but the licensure requirements have been an issue for some of the providers.

QUESTION: Where does a 1:1 aide fall in terms of LRE? Also, if a school has an awards ceremony, is having the special education teacher give out awards (not saying “this is our sped teacher”, but saying “this is Ms. Finen giving awards” okay, or is it a breach of confidentiality for the students receiving the awards?

ANSWER: The IDEA requires each public agency to ensure that: (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) Special classes,



separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. Generally speaking, provision of an aide would be considered a supplement aid/service that support student's placement in regular education. However, if a student is being so isolate from their peers in the general education classroom, that it may no longer be the least restrictive environment. On the second part of the question, I don't see any reason why your special education teacher can't provide awards to student.

QUESTION: Can an amendment be done without holding an IEP, if parent agrees to not hold an IEP meeting to make the change in services?

ANSWER: IDEA permits LEAs and parents to agree not to convene an IEP team meeting to make changes to the child's IEP, as long as the annual IEP meeting has been held. In these instances, the parents and the district may implement a written document to amend or modify the child's IEP

