



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

July 2, 2020

**To:** Superintendents, Member School Districts (K-12)  
**From:** Jennifer E. Nix, Associate General Counsel <sup>JEN</sup>  
Kaitlyn A. Schwendeman, Assistant General Counsel <sup>KAC</sup>  
**Subject:** **SB 98 Provides Requirement for IEPs to Address Distance Learning**  
**Memo No. 40-2020**

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The Governor signed the budget trailer education Senate Bill (“SB”) 98 on June 29, 2020. Our office will be issuing a Legal Update that summarizes the main implications of SB 98. The purpose of this Legal Update is to specifically address the provisions related to serving students with disabilities.

First, SB 98 makes a permanent change to the requirements of individualized education plans (“IEPs”). Specifically, each IEP must now “describe the means by which the [IEP] will be provided in emergency conditions, as described in Section 46392, in which instruction or services, or both, cannot be provided to the pupil at either the school or in person for more than 10 school days.” (Sec. 66, amending section 56345 of the Education Code). Those emergency conditions include:

- Fire;
- Flood;
- Impassable roads;
- Epidemic;
- Earthquake;
- An imminent “major safety hazard,” as determined by local law enforcement;
- A strike in pupil transportation services provided by a non-school entity, and/or
- Any condition provided in Education Code section 41422.

The IEP must specify special education and related services; supplementary aids and services; transition services; and extended year services. Implementation of those services should take into account any relevant public health order.

This new requirement must be included in every IEP as of the next regularly scheduled revision, or any initial IEP.

It is unclear how the Legislature expected this provision to be implemented. It is impractical and potentially impossible to plan for every type of emergency situation



in a child's IEP, and to know what resources may be available to serve students during any given emergency. We are hopeful that CDE will provide guidance as to this provision.

In the interim, schools should ensure that students' IEPs address these items for the current pandemic, and, if applicable, wildfire season.

Second, regarding extended school year ("ESY"), Section 96 of SB 98 provides that a LEA may claim apportionment for distance learning ESY this summer under the following conditions:

1. The time value of each student's work products is determined by a certificated teacher to be equivalent to the ESY minimum day requirements, unless otherwise specified in the student's IEP; and
2. The student's work is aligned with the student's IEP goals to promote measurable progress.

However, Section 96 only applies to the time between the end of an LEA's 2019-2020 school year and June 30, 2020. Any ESY provided after June 30, 2020, is arguably subject to the instructional day requirements specified in Section 3043 of Title 5 of the California Code of Regulations.

Finally, other sections within SB 98 address special education funding, and inclusion of plans for students with exceptional needs within distance learning and continuation of education plans, however these are addressed at a school-, district-, or SELPA-wide basis. Thankfully, funding was maintained for the increase to the special education base rate and for the low-incidence disabilities cost pool.

Please contact our office if you have questions regarding this Legal Update, or regarding any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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