



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Monica D. Batanero  
Jennifer Henry  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Kaitlyn A. Schwendeman  
Loren W. Soukup  
Erin E. Stagg

*Of Counsel*  
Ellie R. Austin  
Robert J. Henry  
Patrick C. Wilson  
Frank Zotter, Jr.

## LEGAL UPDATE

July 31, 2020

**To:** Superintendents, Member School Districts (K-12)  
**From:** Jennifer E. Nix, Associate General Counsel <sup>JEN</sup>  
**Subject:** **Sample Language to Meet New Emergency Conditions Requirement in IEPs**  
**Memo No. 45-2020**

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As provided in our Legal Update Memo No. 40-2020, the law as modified by Senate Bill 98 (“SB 98”) requires Individualized Education Program (“IEP”) teams to “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, but are not limited to, fire, flood, epidemic, and earthquake.

Under the new requirements, the IEP must include a section detailing what special education and related services, supplementary aids and services, transition services, and extended year services each student will receive in the event of any emergency condition that necessitates school closure of more than ten (10) school days. This new requirement must be included in every IEP as of the next regularly scheduled revision, or any initial IEP.

Many of our clients have requested guidance as to what this should look like in the IEP. Until such time as the California Department of Education (“CDE”) provides additional guidance and/or an update to the model forms is released,<sup>1</sup> it is recommended that you include in the notes section of each student’s IEP language similar to the following:

*Offer of FAPE that will be provided under emergency conditions (e.g., fire, flood, impassable roads, epidemic, earthquake, imminence of a major safety hazard, or an order issued pursuant to Education Code 41422) in which instruction or services, or both, cannot be provided to the student either at school or in person for more than ten (10) school days:*

*Special education and related services (specify what will be provided and the means of delivery)*

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<sup>1</sup> SELPA Directors are working on model forms and guidance to be distributed to Local Educational Agencies (“LEAs”).



*Supplementary aides and services (specify what will be provided and the means of delivery)*

*Transition aids and services (if appropriate, including method of delivery)*

*\*\*Note if services will change during school closure over ESY*

*In the event that the above offer of FAPE cannot be implemented during an emergency school closure that lasts more than ten (10) school days during which other students are receiving educational services, the IEP team will re-meet as soon as practicable to determine how the IEP can be implemented under those emergency situations.*

*This offer will not be implemented if it is inconsistent with a public health order or directive, is inconsistent with the school's emergency preparedness procedures, and/or would interfere with the health and safety of students or staff during emergency conditions.*

*The educational placement and services made available during the time frame of "emergency conditions" are not stay-put, and upon termination of the emergency, your student's stay-put IEP is the most recent IEP with parental consent to implement.*

IEP teams should make individualized determinations as to what services each student will need in the event of an emergency school closure of more than ten (10) days. That decision may include different services than would be provided if school were in session, depending on each student's needs and what services can be safely provided during an emergency school closure.

It is important to note that, although COVID-19 is an emergency condition that would fall under the above provisions in a student's IEP, the IEP team may want to have a different set of services for the current distance learning situation and a general emergency condition. Notably, the law has significant requirements for distance learning that are specific to the current pandemic, and the law requires that each IEP be implemented to the fullest extent possible at this time. IEP teams will want to consider whether the current program is appropriate for use in any other emergency condition.

Furthermore, as noted above, the new IEP language is not required until each student's next regularly scheduled IEP or initial IEP. That is in contrast to the fact that Parents should be aware of the offered services during distance learning prior to the start of the school year.

We will keep you updated on any additional guidance from CDE regarding the new legal requirement.

Please contact our office with questions regarding this Legal Update or 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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