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LEGAL UPDATE

October 27, 2020

To: Superintendents, Member School Districts (K-12)
From: Damara L. Moore, Senior Associate General Counsel *DM*
Subject: Senate Bill 820's Wide-Ranging Amendments to the Law
Memo No. 66-2020

This legal update reviews some key changes to the law made by Senate Bill 820 (“SB 820”), the education cleanup bill passed on September 21, 2020. The bill affected everything from distance learning, charter schools, the definitions of instructional materials, how SELPAs may use their funds, changes to the local control funding formula (“LCFF”), state preschools, and county superintendent duties.

Distance Learning

SB 820 allows a local educational agency (“LEA”) providing distance learning to students to record synchronous and asynchronous videos of instruction, without the consent of the teacher or principal, for the purpose of distance learning.¹ This issue arose during distance learning, due to a provision of the Education Code that otherwise requires teacher and principal consent to record class instruction.²

Charter Schools

The Legislature also made some significant changes to charter school funding provisions, and clarified that charter schools must use certificated employees to provide distance learning in accord with charter school certification requirements.³

¹ Cal. Educ. Code § 43503(d).

² Cal. Educ. Code § 51512.

³ See Cal. Educ. Code §§ 43504(c) (distance learning), 43505 (charter school funding).



Instructional Materials

SB 820 amended the definition of “technology-based” materials, as the term is used in the context of governing boards’ duties to adopt instructional materials. “Technology based materials” now include “the electronic equipment required to make use of [technology based materials] used by pupils and teachers as a learning resource, including, but not limited to, laptop computers and devices that provide internet access.”⁴ Such equipment was formerly excluded.

SELPA Funds and Mental Health Services

General funds appropriated to SELPAs for the 2020-21 school year for mental health related services may be used for the provision of these services to students, whether or not a student has an individualized education program (“IEP”).⁵

LCFF Budget Overview

For the 2020-2021 school year, the LCFF budget overview for parents, to be adopted by December 15, 2020, must be aligned with the learning continuity and attendance plan. The template and instructions for the Budget Overview for Parents is posted on this CDE web page: <https://www.cde.ca.gov/re/lc/>.

State Preschools

SB 820 also requires the state to reimburse a contracting agency for a California state preschool program if the program operates on a LEA campus that was closed by local or state public health guidance or orders, where the LEA required the early learning and care program to close.⁶ Furthermore, counties moving into in-person instruction should be aware that “[t]o ensure continuity of care and access to services during the COVID-19 pandemic, the governing board or body of the local educational agency requiring a [such a] closure shall discuss in a public hearing and prepare a plan for safely reopening early learning and care programs as soon as safely possible, *but no later than when local education agency campuses open for in-person instruction.*”⁷ (Emphasis added.)

County Superintendents of Schools

SB 820 impacts county superintendents by modifying some of the requirements for their annual site visits this school year. County superintendents must annually submit a report at a regularly scheduled November board meeting to the governing board of each school district under his or her jurisdiction, as well as other public agencies, describing the state of the schools in the county that are ranked in deciles 1 to 3, inclusive, of the 2006 base Academic Performance Index.⁸ SB 820 allows information in this report to be gained through sources other than a site visit. It

⁴ Cal. Educ. Code § 60010(m)(2).

⁵ Cal. Educ. Code § 56836.07(d).

⁶ Cal. Educ. Code § 8209(f)(1)(C).

⁷ *Id.*

⁸ Cal. Educ. Code § 1240(c)(2)(B).



provides: “For purposes of the annual report[], a county superintendent of schools may rely on information obtained only through means other than a physical visit to the schoolsite, including school administrator or teacher surveys. However, the report shall include a justification indicating why a schoolsite visit was not conducted and an outline of plans to conduct a schoolsite visit as soon as possible, and the county superintendent of schools shall provide an updated report before July 1, 2021.”⁹

In addition, the annual site visits county superintendents are required to make are waived for schools closed for in-person instruction. “This waiver applies only for the time during which the school does not provide in-person instruction, and the county superintendent of schools shall make a plan to visit all necessary schoolsites as soon as possible,” which must be noted in an outline within the report.¹⁰ After in-person instruction resumes, “if a county superintendent of schools is unable to visit a schoolsite in sufficient time to include the observations in the report . . . , any schoolsite not visited shall be prioritized for a visit as soon as possible during the following school year.”¹¹

SB 820 also waived the requirement that 25 percent of the county superintendent’s annual visits be unannounced.¹² “An unannounced visit may be undertaken at the discretion of the county superintendent of schools in compliance with any orders or guidance issued by any local or state public health official.”¹³

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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⁹ Cal. Educ. Code § 1241(b)(2).

¹⁰ Cal. Educ. Code § 1241(b)(3).

¹¹ *Id.*

¹² Cal. Educ. Code § 1241(b)(4).

¹³ *Id.*