

Aug 27, 2020

Sent via e-mail

Re: Guidance to Public School Districts About Legal Requirements During the 2020-21 School Year

To all California Public School Superintendents,

Five months after causing abrupt school closures, the pandemic has only grown more severe, thrusting California schools into a prolonged crisis that is poised to affect education for the foreseeable future. As schools resume instruction, California students and school staff face immense and unprecedented challenges. The pandemic has disrupted all aspects of daily life: students are struggling to recover lost instruction from the previous year, teachers and families are adapting to completely different education models, and entire school communities are struggling with trauma and other mental health concerns. This pandemic magnifies long-existing inequities; as a result, those who were most vulnerable and most under-resourced before the pandemic are suffering the worst impacts. Black, Indigenous, and other students of color; low-income students; foster youth and unhoused students; English learners; students with exceptional needs; and many other student groups face acute and unique barriers that school leaders have an affirmative obligation to address.

Though federal and state policymakers have modified certain legal requirements, such as the expectation of completing a Local Control Accountability Plan, most legal and regulatory requirements remain in place to ensure California students continue to receive their fundamental right to education during this time. For example, the California Constitution, *Williams* sufficiency requirements, laws relating to English learners and special education students, and federal and state civil rights laws are all in effect during the upcoming academic year. This letter explains some of the relevant educational requirements governing California public schools as the school year begins, including districts' obligations to:

1. Provide high-quality, accessible, and free distance and hybrid learning, including services to English learners and services required by students' Individual Education Plans and Section 504 plans.
2. Provide critical mental health and social emotional resources.
3. Continue to use LCFF supplemental and concentration funds to increase and improve services for high-need students.
4. Implement meaningful community engagement practices when developing Learning Continuity and Attendance Plans.
5. Track student attendance, participation, and progress.

All Local Education Agencies ("LEAs") must implement and document these critical plans in the Learning Continuity and Attendance Plans ("LCPs") they must adopt by September 30.

While this letter describes the legal requirements for the upcoming school year, we also offer links to resources and best practices as an addendum to support school leaders to prioritize equity and provide the best possible education during these challenging times.

I. Distance and hybrid learning must be accessible, high-quality and free of charge

State leadership has made clear that distance or hybrid learning must be of equivalent quality to in-person instruction and be accessible to all students, particularly those who traditionally have been most under-resourced and have the highest needs during the crisis.

A. Equal learning opportunities of similar quality, whether in-person or at a distance, must be accessible to all

First, all distance learning, whether through synchronous instruction with teachers working directly with students, through asynchronous learning using technology-based resources or assignments, or through other means, must be “[c]ontent aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.”¹ **LEAs must describe in the LCP how students will have access to a full curriculum and the instructional resources that will be used to ensure continuity if a transition between in-person learning and distance learning is necessary.**²

Second, if a school is providing instruction through distance learning, it must provide “access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work.”³ Under the California Constitution and Education Code, schools must provide all technology and materials required to access instruction free of charge.⁴ Similarly, the *Williams* standards make clear that schools must provide sufficient textbooks or instructional materials—including distance learning technology—to use in class or take home⁵ and that such materials must be standards-aligned in the four core areas of mathematics, science, history-social science, and English/language arts.⁶ Accordingly, if a school provides instruction through an online platform, it must ensure that students have internet access and a device capable of running the requisite software and pay for these services if the family needs it.⁷ **LEAs are required to describe in their LCP how they are ensuring access to devices and connectivity and providing technological support, including their needs assessment process and how they are reaching students and families who struggled to get connected in the spring.**⁸ While the distance learning dialogue has understandably centered on closing the digital divide, schools must also provide free of charge any supplies necessary for learning (such as pencils, paper, art, and other school supplies).

Further, state and federal civil rights laws require school districts to protect certain student groups from discrimination.⁹ In other words, school districts must ensure that low-income students, students of color, LGBTQ students, and other protected groups have access to the same high-quality education as other students, including access to technology and high-quality instruction. **In fact, LEAs are required to describe in their LCPs their efforts to ensure that students and families with unique circumstances have access to devices and connectivity.**¹⁰

B. School districts must address the unique needs of English learners, students with exceptional needs, and other vulnerable students

LEAs are required to describe the additional support that they will provide during distance learning to support English learners, students with exceptional needs, students who are unhoused, and students in foster care and identify the targeted strategies that they will use to accelerate learning progress for these students.¹¹

School districts must continue providing English learners with targeted supports during the pandemic. As you are aware, federal and state law require districts to deliver effective language instruction to English learners and to eliminate barriers to core curricular requirements and equal educational opportunity.¹² Indeed, the Governor and legislature confirmed that these English learner requirements remain in effect and are more important than ever, mandating that distance learning include “[a]cademic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners,” among others.¹³ LEAs must describe these efforts in their LCPs.

Similarly, students with exceptional needs face many of the greatest challenges during the pandemic, and school districts must continue providing them with services consistent with their Individualized Education Programs, as required by the Individuals with Disabilities Education Act, and ensure equal access to educational programming for students with disabilities under Section 504 of the Rehabilitation Act of 1973 (“Section 504”). The federal government expressly declined to waive the special education requirements,¹⁴ and the California Department of Education has made clear that all school districts must “do their best in adhering to IDEA requirements, including federally mandated timelines, to the maximum extent possible” and “are encouraged to consider ways to use distance technology to meet these obligations.”¹⁵

LEAs should describe their plans to support other student groups as well, as the prompt in the LCP about support for students with unique needs must include, but is not limited to, the groups listed in the template. For example, even before the pandemic, Black students were experiencing educational barriers that have only been magnified by the crisis. We commend those LEAs that are specifically identifying in their LCPs how they plan to address unique challenges experienced by Black students and families during the pandemic. As you implement your plans to resume instruction in the new academic year, we urge you to commit resources specifically to support the unique needs of the students who have been impacted most severely by the pandemic, including Black, Indigenous, and other students of color, low-income students, English learners, and students with exceptional needs.

II. School districts must provide critical mental health and social emotional resources

It comes as no surprise that students and school communities are experiencing myriad mental health issues, including depression, anxiety, and trauma arising from the pandemic. For many students, particularly low-income students and others with fewer resources, as well as LGBTQ students who are not out in their lives away from school, school-based mental health services represent the only supports available. **Recognizing the urgent need, the Governor and legislature have mandated that school districts describe in the LCPs how they will monitor**

and support the social and emotional well-being of students and staff during the school year, including professional development and resources to address trauma and other impacts of COVID-19 on the school community.¹⁶

The state has allocated additional funding for these purposes, including a block grant to fund existing community schools and the federal CARES funds, which may be spent on integrated pupil supports, including “the provision of health, counseling, or mental health services,” “programs to address pupil trauma and social-emotional learning,” and “[f]amily and community supports [including] . . . mental health resources to support pupil learning.”¹⁷ Given the magnitude of the need, LEAs should also collaborate across agencies, with their cities, counties and regions to ensure the well-being of students, families, and staff are being addressed during the public health crisis. The CA Partnership for the Future of Learning has prepared [this checklist](#) for LEAs to review its mental health and social emotional wellness response.¹⁸ Please see additional resources in the addendum.

III. LCFF spending & stakeholder engagement requirements remain in effect

A. School districts have a continuing obligation to use supplemental and concentration funds to increase or improve services for high needs students

Although there is no LCAP for the 2020-21 school year, districts’ equity obligations under LCFF remain in effect. **Districts must identify the “specific actions and expenditures the school district . . . anticipates taking to support its ability to address the impacts of COVID-19” in its LCP.**¹⁹ Action descriptions must provide sufficient detail for stakeholders to understand what the district is planning to do, including the intended impact, for the district and its stakeholders to track implementation and effectiveness.²⁰ **As with the LCAP, districts must describe in their LCP how they plan to increase or improve services for foster youth, English learners, and low-income students in proportion to the amount of supplemental and concentration funds they received.**²¹ Districts must also demonstrate how services provided districtwide or schoolwide are addressing the needs, conditions, or circumstances of these students and are effective in meeting the needs of these students in particular.²²

B. School districts must meaningfully engage students, families and other stakeholders in decision making and learning

More than ever, student success this year will be predicated on districts’ meaningful and ongoing engagement with stakeholders. To create effective solutions, families must be valued as thought partners and co-educators, particularly as they are called on to team with teachers and other school staff to support students in distance learning. **Engagement should include engaging and supporting families who speak languages other than English to partner in their children’s education and provide input into the LCP.**²³

The LCP is a valuable tool to engage stakeholders and identify actions and services that will most benefit the school community. As such, the legislature and Administration established robust stakeholder engagement requirements modeled after those of the LCAP, including soliciting recommendations and comments from the public about actions and expenditures listed

in the plan and notifying the public of opportunity to provide written comments.²⁴ Notifications should be provided in languages other than English as needed.²⁵ Further, the district's Parent Advisory Committee (PAC) and English Learner PAC must have an opportunity to separately review and comment on the plan and the district must respond in writing to their comments.²⁶ The Learning Continuity Plan must be presented at a public hearing and the hearing agenda and plan must be posted at least 72 hours in advance and explain how to locate the Learning Continuity Plan.²⁷ The plan shall be adopted after the public hearing at a separately scheduled meeting by September 30.²⁸ **In addition, LEAs must provide remote participation opportunities at hearings and make efforts to solicit feedback from families and other stakeholders without internet access or who speak languages other than English.**²⁹ This process of soliciting feedback on your LCP should be well under way.

IV. Districts must track student attendance, participation, and progress

A. School districts must support students and families to engage in instruction

When schools across California suddenly closed last spring due to the pandemic, tens of thousands, if not more, Black, Latinx, and low-income students did not receive the support needed to regularly participate in distance learning.³⁰ **This year, LEAs must develop procedures to identify and support students and families who are facing barriers to participation in distance learning and are at risk of learning loss.**³¹ **These procedures and outreach plans should be described in the LCPs.** LEAs should bear in mind that certain student groups are at a higher risk of being disengaged, including youth in foster care, unhoused youth, youth in or transitioning from the juvenile justice system, newcomer students and English learners. These students require targeted support, which should be described in the LCP. Outreach strategies should consider the unique needs and barriers experienced by the student, particularly if they are in a high-risk group, and must include conducting outreach to students and their caregivers in languages other than English.

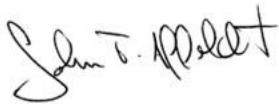
B. School districts must also evaluate and track the progress of each student

Assessing and tracking learning status is a crucial prerequisite to addressing the learning loss that English learners, low-income students, foster youth, students with exceptional needs, and students experiencing homelessness are more likely to experience as a result of COVID. **Therefore, the LCPs require LEAs to describe how, with what tools, and at what frequency they will assess student learning status in English language arts, English language development, and math.**³² LEAs must create a clear plan for they will use student participation and work completion, or failure to participate and complete work, in the calculation of grades and awarding of credits towards high school completion. Districts should consult with students, families, and educators in developing these plans.

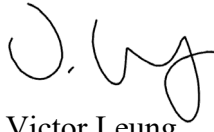
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We all share the same goal—to ensure that our school communities have the supports they need to endure through, and thrive following, the pandemic. Please ensure that you understand and comply with the legal requirements described above and reach out to Victor Leung at vleung@aclusocal.org or John Affeldt at jaffeldt@publicadvocates.org if you have any questions or concerns. We look forward to serving as a resource as we recover from the pandemic.

Sincerely,



John Affeldt
Managing Attorney
Public Advocates, Inc.



Victor Leung
Deputy Litigation Director
ACLU Foundation of Southern California

Attachment

Addendum: Best Practices and Resources

The following are best practices we collected from partners, stakeholders, and families to ensure that all students have access to a high-quality education this school year. Please continue to consult your communities to ensure that you develop and implement education plans that best support their needs.

Best practices to ensure that remote instruction is high-quality and accessible include:

- Ensuring structures for consistent two-way communication (a feedback loop) with students and families around the distance learning experience, including 1-to-1 outreach to every student and family at the start of the school year to assess their readiness and needs for distance learning.
- Capacity building for caregivers and instructional staff to ensure they have necessary skills to build successful partnerships to support children's learning.
- Loaning tablets, laptops, or Chromebooks to families without requiring them to pay, provide deposits, or sign liability forms.
- Providing families with mobile hot spots with sufficient data to access all learning opportunities.
- Providing synchronous instruction with teachers interacting directly with students in large and small groups through Zoom, Google Classroom, or other comparable digital platforms.
- Providing expanded learning opportunities to students most impacted by COVID and opportunities for small group instruction for all students, not only those with families who can afford private "pods."
- Defining minimum expectations for daily live interaction by grade span, including additional time requirements for English Language development, and specify the format for that interaction, e.g. through an online learning platform, phone calls, etc.
- Providing instruction in all content required under California law, including science, arts, social emotional learning, and comprehensive sexual health education at least once in middle school and once in high school.

Best practices to meet mental health and social emotional needs include:

- Having school counselors, social workers, and psychologists affirmatively reach out to all students to check in on their mental health through the phone and internet platforms.
- Providing systemwide ongoing and embedded professional development for all staff, especially frontline educators, on trauma-informed practices, anti-racist and culturally responsive education, and building social emotional connections so they can support students and their families and provide appropriate referrals.
- Investing in school-based mental health resources including FTE Pupil Personnel Service Credential holders in the areas of School Counseling, School Social Work, and School Psychology.

- Reaching out to LGBTQ students to develop protocols to safeguard student information about sexual orientation and gender identity, especially in communications involving parents and guardians, and to ensure digital platforms reflect students’ chosen names and pronouns without requiring legal documentation.
- Ensuring technological resources, including laptops and digital platforms, do not use internet filters that might block access to critical health and support resources like LGBTQ hotlines.
- Leveraging Federal relief funds and state, county and local resources to invest in community schools, health, and other social-emotional supports in collaboration with other agencies and community partners.

See this Mental Health and Social Emotional Checklist tool from the CA Partnership for the Future of Learning for more considerations and resources: <https://www.publicadvocates.org/wp-content/uploads/2020/07/final-pdf.pdf>.

Required practices to meet the equity obligations for supplemental and concentration funds include:

- Identifying in the LCP all actions and expenditures that contribute to increasing or improving services for foster, English learners, and low-income students.
- Providing clear descriptions of each action in sufficient detail for stakeholders to understand *what* the district is planning to do, including at different schools.
 - For example, a generic action for “mental health supports” is insufficient; instead, districts should describe exactly what services they are providing such as virtual counseling, professional development on trauma-informed practices, SEL curriculum, or peer-led student spaces for mutual support, etc.
- Providing sufficient information in action descriptions, including the intended impact, for the district and its stakeholders to track implementation and effectiveness.
- Describing how the needs, conditions, or circumstances of unduplicated pupils are addressed by the action.

Best practices for spending transparency include:

- Identifying the total amount of funds spent on each action and specifying the specific federal and/or state source(s) of funds.
- Clearly identifying when more than one funding source is used to support a single action.
- Providing an appendix table of all actions and spending to make clear the total spending and funding sources accounted for in the LCP.

Best practices for stakeholder engagement include:

- Providing professional development to educators and staff in best practices for student and family engagement to ensure successful school-to-home partnerships.
- Conducting regular wellness checks and family outreach to assess needs, identify supports, and build capacity, especially while students are engaged in distance learning.

- Ensuring that students and caregivers receive training to effectively utilize technology required for instruction, including developing strategies to provide technology support for non-English speaking families or others who experience barriers to access and use.
- Reaching out to families using multiple modes of communication designed to reach even those families without internet and families who speak languages other than English.
- Seeking input through an array of interfaces including online town halls, online and telephone surveys, paper surveys for families who pick up meals, e-mail and telephone hotlines; teleconferences; and social media outreach.

Best practices for tracking participation and reengaging students include:

- Clearly communicating to students, caregivers, and other stakeholders how participation will be monitored and assessed, particularly where independent assignment completion is counted as instruction time.
- Tracking and reporting disengagement rates by student group and, where there is any disproportionality, describe the reengagement strategies that will be used for the unique needs of the identified student groups.
- Providing targeted professional development to ensure staff receive appropriate training on effective reengagement strategies, particularly in implementing strategies for student groups who are disproportionately struggling with or are absent from distance learning.
- Creating an alternative plan for students who lack a conducive learning environment at home, including but not limited to students lacking a device or connectivity. This is particularly important for unhoused and other vulnerable students.

Best practices for evaluating and monitoring student progress include:

- Specifying in the LCP how the district plans to assess learning loss of all students, including the timing and frequency of such assessments, regardless of the performance record or status of the student.
- Clearly articulating how and how often student progress will be measured. Measurement of progress should consider grading practices, credit completion, and credit recovery modifications due to distance learning.
- Providing stakeholders with sufficient information to understand how identified learning loss and/or inadequate progress will trigger interventions and connect students to necessary supports.
- Working collaboratively with stakeholders to identify available services and supports. Consider implementing credit recovery programs, after school programming, and other academic intervention programming.
- Explaining how strategies to address learning loss for particularly vulnerable populations will differ from strategies provided to all students.
- Clarifying in the LCP how the effectiveness of actions to address and prevent further learning loss will be measured irrespective of the instructional model utilized by the district.
- Reporting the assessment and progress of students to inform instruction and provide transparency to the public and policymakers.

Additional resources on many of these best practices are available in a recently released report from the Learning Policy Institute, *Restarting and Reinventing School: Learning in the Time of COVID and Beyond* available at <https://learningpolicyinstitute.org/product/restarting-reinventing-school-covid-report>, as well as Public Advocates’ webpage at <https://www.publicadvocates.org/covid-k-12-resources/>. Additional resources from the ACLU of California about students’ rights, including those during the pandemic, are available at <https://www.myschoolmyrights.com>.

¹ Educ. Code § 43503(b)(2); *see also Butt v. California*, 4 Cal. 4th 668, 685 (1992) (a school district violates students’ constitutional rights if it fails to provide education that falls substantially below statewide standards).

² CDE, Learning Continuity and Attendance Plan Instructions (2020-21) at pp. 3-4, *available at* <https://www.cde.ca.gov/re/lc/documents/lrngcntntyatndncpln-instructions.docx>.

³ Educ. Code § 43503(b)(1).

⁴ Section 5 of Article IX of the California Constitution; Educ. Code §§ 49010(b)(3) (“educational activities [must] be provided free of charge to all pupils without regard to their families’ ability or willingness to pay fees or request special waivers”), 49011(a) (“A pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.”).

⁵ Educ. Code § 60119(c)(1).

⁶ Educ. Code §§ 60119(a)(1)(A); 1240(c)(2)(B).

⁷ *Id.*

⁸ *See supra* note 2 at p. 6.

⁹ Gov’t Code § 11135; Title VI of the Civil Rights Act of 1965, 42 U.S.C. § 2000d; Educ. Code § 220.

¹⁰ *See supra* note 2 at p. 6.

¹¹ *See supra* note 2 at pp. 7-8.

¹² 20 U.S.C. § 1703(f) (districts must take “appropriate action to overcome language barriers that impede equal participation by students in instructional programs”); *Lau v. Nichols*, 414 U.S. 563 (1974) (interpreting Title VI, 42 U.S.C. § 2000d, *et seq.* to require school districts to take affirmative steps to address language barriers so that English learners may participate meaningfully in schools’ educational programs) *Castenada v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981) (citing *Lau v. Nichols*, 414 U.S. 563 (1974)) (“schools are not free to ignore the need of limited English speaking children for language assistance to enable them to participate in the instructional program of the district.”); *see also* Educ. Code § 440(a) (“A local educational agency shall provide instructional services to limited-English-proficient pupils and immigrant pupils in conformity with Section 6801 and following of Title 20 of the United States Code.”).

¹³ Educ. Code § 43503(b)(3).

¹⁴ Carolyn Jones, *Federal special education law must stay intact during school closures, Devos says*, EdSource (Apr. 27, 2020), <https://edsources.org/2020/federal-special-education-law-must-stay-intact-during-school-closures-devos-says/630298>.

¹⁵ California Department of Education, *COVID-19 School Closures and Services to Students with Disabilities* (Apr. 9, 2020 & Mar. 20, 2020), <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>.

¹⁶ Educ Code §§ 43503(b)(3) (“Distance learning shall include . . . [a]cademic and other supports designed to address the needs of . . . pupils requiring mental health supports”); 43509(f)(1)(D)-(E) (districts must show how they will “monitor and support the mental health and social and emotional well-being of pupils and staff during the school year” and “[w]hat professional development will be provided to staff, and what resources will be provided to pupils and staff to address trauma and other impacts of COVID-19 on the school community.”).

¹⁷ SB 98 §§ 110(d)(4), (e)(4)(B).

¹⁸ This resource is available at <https://www.publicadvocates.org/wp-content/uploads/2020/07/final-pdf.pdf>.

¹⁹ Educ. Code § 43509(f)(1).

²⁰ See LAUSD CDE Decision, p. 22 (July 30, 2020).

²¹ Educ. Code § 43509(f)(3).

²² Cal. Code Regs. Tit. 5 § 15496(b).

²³ See *supra* note 2 at pp. 2-3; see also Cal. Educ. Code 43509(b)(5)(B).

²⁴ See Educ. Code §§ 43509(b)(1)-(2).

²⁵ Consistent with Educ. Code § 48985.

²⁶ Educ. Code § 43509(b)(3).

²⁷ Educ. Code § 43509(b)(4).

²⁸ Educ. Code § 43509(b)(5)(A).

²⁹ Educ. Code § 43509(b)(5)(B).

³⁰ Paloma Esquivel, et al., *L.A. Latino, Black students suffered deep disparities in online learning, records show*, LA Times (Jul. 16, 2020), <https://www.latimes.com/california/story/2020-07-16/latino-and-black-students-hard-hit-with-disparities-in-their-struggle-with-online-learning>; Paloma Esquivel, et al., *A generation left behind? Online learning cheats poor students, Times survey finds*, LA Times (Aug. 13, 2020), <https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project>

³¹ Educ. Code §§ 43504(f)(2); 43509(f)(1)(F).

³² See *supra* note 2 at p. 8.