



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and college  
districts throughout the  
state.*

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  
Sarah Hirschfeld-Sussman  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Kaitlyn A. Schwendeman  
Loren W. Soukup  
Erin E. Staggs

*Of Counsel*  
Robert J. Henry  
Margaret M. Merchat  
Patrick C. Wilson  
Frank Zotter, Jr.

## LEGAL UPDATE

March 20, 2020

**To: Superintendents, Member School Districts (K-12)**  
**From: Jennifer E. Nix, Associate General Counsel** JEN  
**Subject: Distance Learning – Establishing Offer of FAPE**  
**Memo No. 21-2020**

---

As you move to distance learning for your students, please follow the following general guidelines:

1. Call the parent and discuss what their concerns are regarding access to distance learning, what supports they would find most useful, and what barriers exist to provision of services (ie, computer with video capabilities, internet).
  - a. If you have determined that you can provide the student’s services, but through telephonic or video conference, discuss that plan with the parents. Let them know that you will be sending an IEP amendment that covers what you have discussed for their review and consent. For these students, send an IEP amendment with a prior written notice [*see Model PWN – Change to Distance Learning – No IEP Meeting Needed*].
2. Hold IEP meetings for students whose services cannot be provided 100% through distance learning. IEP meetings can be held through video or phone conference.
  - a. At the IEP meeting, focus on:
    - i. How can we support the student in making progress on his/her IEP goals? What services can support that progress, and how are they provided?
    - ii. What supports and/or accommodations does the student need to access the general education distance learning program?
  - b. At every IEP meeting, acknowledge that compensatory services might be needed, and that such need will be reviewed by looking at progress on IEP goals once in-person services can resume.
    - i. Some services cannot be provided through distance learning, such as PT and APE



- c. The more the IEP team can individualize the services provided to the student's needs within the constraints of the situation, the stronger the offer of FAPE will be. Try to think outside of the box, including using consult, 1:1 time, virtual services, etc.
3. Reflect the offer of FAPE in the distance learning setting as follows:  
*Offer of FAPE during school closure due to COVID-19:*  
*Distance Learning Curriculum (specify)*  
*Accommodations/Modifications (specify)*  
*Services (specify, including method of delivery)*  
  
*IEP team will meet once in-school services recommence to determine if Student made expected progress on IEP goals during the school closures, and, if not, what compensatory education services are required to support expected goal progress.*
4. Obtain parent consent to the IEP amendment.
  - a. If parent does not consent, discuss with parent whether they are refusing previously consented-to services, but provided through a different method (e.g., online therapy). In the absence of parental consent, send home a prior written notice with what will be provided to the student during the school closure.

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.*

© 2020 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*