



We at Tollner Law Offices hope you and your family are staying safe and healthy during these unprecedented times. We are open and continue serving students and families as they struggle to navigate the shifting landscape of closed schools, shuttered business, and sheltering at home. We maintain our commitment to the rights of individuals with disabilities and are still working to assure students' access to education during the COVID-19 crisis, and position them for the best possible recovery when this crisis passes.

We've been fielding a lot of questions from the families we support. We hope these answers to the most frequently asked questions will help you understand your child's rights:

Question #1:

Can my child get special education services if my school is closed because of COVID - 19?

Answer #1:

If your school is providing education services (like virtual classrooms, or teacher "check-ins") or learning resources (i.e., work packets, access to e-books or audiobooks) to general education students, they must provide students with disabilities *equal access* to those services and resources.

Equal access may require accommodations and modifications. Accommodations should mirror your IEP, such as materials in an accessible format, offering no-cost devices, subscriptions, and assistive technology, or chunking and reducing assignment. Modifications may lower the level of the actual curriculum. But should be appropriately ambitious, not just busywork. Equal access may also require individualized direct instruction and related services, such as speech therapy, occupational therapy, or behavioral supports.

The delivery of education must consider the individual and unique needs of your child. For some students, telephone or online/video conferencing instruction or services may work. For others, services may need to be directly provided at a school site or in the home. The delivery method should take into account the health and safety of the child, your family, as well as other students and staff.

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You can request an Individualized Education Plan (IEP) meeting to discuss an interim IEP and put appropriate accommodations, modifications, and services in place during the closure. You may ask that this IEP be held on the telephone or via online videoconference.

Question #2:

My child's school is completely shut down and/or is refusing to provide any special education services. What can I do?

Answer #2

If your school is failing to provide services during the school closure, your child may be entitled to compensatory education services to make up for missed school services. **Keep a journal of the special education or 504 plan services your child has lost out on due to the school closure and request an IEP or 504 plan meeting to discuss compensatory services.**

Question #3:

My student's annual IEP team meeting was scheduled to occur after March 17. It was canceled when all schools closed. Will the District re-schedule the IEP?

Answer #3:

It Should. Right now, every School District is supposed to comply with the federal laws regarding annual IEPs. California Department of Education ("CDE") guidance correctly states that Federal timelines remain in force, meaning that school districts should ***do their best*** to adhere to them ***to the maximum extent possible***. The IDEA still requires School Districts to convene IEP team meetings during school closures. During this extraordinary public health emergency, School Districts will likely excuse strict compliance with timelines for IEP meetings. If the District has already missed the date for your child's annual IEP, then they will very probably reach out to you to convene the meeting. It will either be virtual or as a phone conference. Some districts are already trying to schedule IEPs, while others have not formulated a plan. Reach out, preferably in writing via email, to your School District to ask if they are planning on convening an IEP meeting. Let them know you are ready and willing to participate via phone or videoconference. So

long as your District schedules an IEP between now and when the schools open again, we believe the courts will excuse any timeline violations.

Question #4:

My child's next IEP is his/her triennial, and the District is not seeking to conduct the triennial assessments in advance. Is that a violation of the law?

Answer #4:

Technically, yes. The CDE stated that Federal timelines remain in force during school closures. School districts are expected to adhere to them, to the maximum extent possible, by using distance technology to meet assessment obligations.

However, according to the Office of Civil Rights (OCR's) March 16, 2020, Fact Sheet, any assessments that require face-to-face assessment or observation should be delayed during COVID-19 school closures. OCR does not have the right to ignore Federal IDEA timelines, but you should consider the safety of your family and others and may wish to avoid face to face assessments during this public health crisis.

The State suspended the 60-day timeline for conducting assessments (and the U.S. Congress may eventually do the same). If you signed and returned an assessment plan before the schools closed, then we recommend writing to the District to clarify the status of their assessments before the shutdown and ask that they continue with any portion of the evaluations that do not require in-person meetings.

One purpose of a triennial is to re-evaluate if your student is still eligible for special education. It's legally permissible for a School District to conduct a triennial assessment through a review of existing data only. If your student's IEP team believes the existing data supports continuing eligibility, it can move forward and complete the reevaluation using the current data only. These steps are legally permissible and might be appropriate for some students. However, we believe that a comprehensive assessment is more valuable. After students experience the disruption of the school closures, complete assessments will be even more important and appropriate for most students. We recommend considering waiting for a full and comprehensive evaluation after schools reopen.

Question #5:

I requested a copy of my student's school file during the school closure period, and the school told me they could not provide it while schools are closed. Is that a violation of the law?

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Answer #5:

Probably not. The State of California has already waived (paused) its obligation to respond to requests for student's files under the previous timeline, and the federal government will likely do the same. However, until the federal government formally changes the rule, the IDEA still technically requires districts to deliver a copy of a student's file to parents or their counsel. The School District's personnel who are in charge of documents are subject to the "shelter in place" order, making compliance problematic.

Question #6:

Which special education timelines have been altered in California?

Answer #6:

A new law referred to as SB 117 is in effect while the public schools are closed due to COVID-19. SB 117 impacts special education timelines. Specifically, SB 117 **paused the following deadlines:**

1. The right to receive an **assessment plan** within fifteen (15) days after your child a referral for special education assessment.
2. The right to receive **copies of your child's school records within five (5) business days** after a request, before any IEP meeting, or before any due process hearing or resolution session.
3. When your child enrolls in a new school district, the right to have your former school district send your **child's records to the new one** within five (5) business days.

SB 117 also extends **timelines under the Uniform Complaint Procedures (UCP)** by the length of time a school remains closed due to COVID-19.

These timelines will start again once schools reopen, and the regular school session begins again. SB 117 considers your school "closed," even if it offers independent study, distance learning, or both.

The special education timelines that SB 117 waives are state law requirements. SB 117 **does not waive any federal requirements imposed under the federal Individual with Disabilities Education Act (IDEA).**

Question #7

What timelines are still in effect right now?

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Answer #7

Schools must still convene **IEP meetings within 30 days of a parent's request and review IEPs at least annually**. However, given the need for social/physical distancing, parents and an IEP Team can agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls.

The parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting to make changes to the IEP. Rather, they may instead **decide to amend or modify the child's current IEP without a meeting**.

The Federal timelines requiring an initial evaluation within 60 days of receiving parental consent remains in place. However, a meaningful assessment may be hindered due to the public health crisis.

A reevaluation of each child with a disability must still occur at least every three years.

Question #8

Can I still file due process complaints?

Answer #8:

Yes.

The California Department of Education is continuing to accept IDEA compliance complaints. However, they are extending the 60-day investigation period by the length of the school site closure during the emergency.

California's Office of Administrative Hearings (OAH) is still up and running. They are accepting case filings and conducting mediations. At the moment, hearings have been suspended due to COVID 19 concerns. You will find updated information on the impact of COVID-19 on special education due process hearings on the OAH's website.

Question #9:

My daughter is currently at a private school that I had unilaterally placed her in at public expense. The private school is providing an education to its students online, and there is no tuition reduction. Will I still be reimbursed by the District for tuition during this time?

Answer #9:

It depends. If your student is on an IEP at a private placement, the School District should continue to fund the placement. If the Non-Public School ("NPS") continues to provide services per the master contract/individual service agreement, then the School Districts

should continue to pay. Continuity of payment is consistent with the intent of the state legislature outlined in SB 117, which specify that District's should continue paying their contractors during the period of school closure.

If you are getting reimbursed for your student's placement through a settlement agreement, and your student continues to receive an education, reimbursement should proceed according to the settlement agreement. Many public schools and private specialty schools have gone online since the shelter-in-place edict. Public schools are treating online learning as a valid and appropriate educational approach for most students during the pandemic. Even if the online education your child is receiving from your private school is less than the education and classes your child received before the closures, your District should not reject your reimbursement request.

If you have unilaterally placed your child and are hoping to file a Request for Due Process to receive reimbursement in regard to the tuition you are paying, you will need to consult legal counsel in regard to the likelihood of reimbursement under these unique circumstances. There are many factors that go into the determination that a school district should pay for a private school tuition or other services that a child needs to make educational progress, and we strongly suggest you seek the advice of counsel before making that decision.

Question #10:

I was about to give notice of unilateral placement at public expense and then the schools closed and the specialty school I had in mind for my child is no longer taking in new students. Can I still give notice during the school closure period and start my child at the specialty school in the fall (assuming schools have reopened by then)?

Answer #10:

Potentially yes. If it is clear from the history and the written record that your child was not making meaningful progress in the district program and that is what led you to investigate and eventually decide upon a private school for your child, then that evidence does not go away just because the schools closed. You would still be entitled to FAPE in the fall when schools reopened, and that may mean your child needs to be elsewhere if FAPE is not being offered in the current district program. Whether you have a good case or not for district funding of a specialty school is typically dependent on a host of factors. As such, you should seek the advice of legal counsel in this area before making that decision.

Question #11:

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My son has ADHD and was in all gen ed classes with IEP supports when the schools closed. He has tried the online courses the District has made available. Still, he cannot learn that way and is getting nothing out of his education and is falling apart at home. What can we do? Can we get him other services that might work better during this period and expect the school to pay us back?

Answer #11

Maybe. If your special education student is not appropriately served by the school district because they cannot effectively learn using online programs and your District will not provide an effective and appropriate alternative, you may argue for district reimbursement of unilaterally procured services. You must give advance written notice of unilateral placement at public expense two full weeks (10 business days) BEFORE you start your child in any program to secure your right to seek reimbursement. As counseled above, it is best to seek the advice of an attorney if you are expecting compensation for the educational services you provide to your student. Generally, there is a case for getting reimbursed for unilaterally provided services if you can establish a) that the School District's offered program is inappropriate b) that the program and/or services you purchased are meeting your student's needs and c) advance notice of unilateral provision of the services. We recommend seeking out legal counsel to understand the risks associated with unilaterally procured services/placement.

Question #12:

Should I still record my upcoming IEP even though I am not there in person?

Answer #12:

Definitely, yes! You should never go to another IEP, in person or online, without first giving 24 hours notice of recording and then recording the meeting. It is THAT important.

Question #13:

Is there anyone I can call to get some information about my child's educational options during this crisis?

Answer to all of the above:

TLO provides all parents with a free 20-minute consult. After that consult, Parents may have to send us some of their documents and schedule a meeting (online during school closures and shelter-in-place) for a more in-depth analysis of their case. Still, we are

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typically able to determine if we can assist you with your situation during the free consultation call. So please do call us if you have any questions.

IMPORTANT NOTICE TO ALL

The new “CARE” law (Coronavirus Aid, Relief, and Economic Security Act) asks U.S. Education Secretary DeVos to provide Congress with a report and recommendations regarding the implementation of our basic civil rights laws during this time of crisis (the IDEA and Section 504 of the Rehabilitation Act). Waiver of these laws could allow schools to opt-out of providing free appropriate public education to students with disabilities in the least restrictive environment, cancel individualized education plans, remove procedural safeguards, and much more. If Congress acts on proposed waivers, it could mean eliminating educational services and/or protections from children with disabilities.

Please contact your local representatives to tell them that you do not support waivers of our special education/disability rights laws.

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