LEGAL WEBINAR: REOPENING/RECLOSING PUBLIC SCHOOLS DURING THE COVID-19 PANDEMIC – PART 2
TODAY’S PRESENETERS

➢ Ernest Bell, Partner, Atkinson, Andelson, Loya, Ruud & Romo
➢ Jan Tomsky, Partner, Fagen Friedman & Fulfrost, LLP
➢ Marcy Gutierrez, Partner, Lozano Smith, LLP
➢ William Tunick, Partner, Dannis Woliver Kelley
INTRODUCTION

➢ The impact of SB 98 on special education
➢ Learning loss and compensatory education
➢ Child find during the pandemic
➢ Continuity plan, liability, and guidance on opening
THE IMPACT OF SB 98 ON SPECIAL EDUCATION
IN-PERSON EDUCATION

➢ **Must** offer to the “greatest extent possible”

➢ **Definition:**
   ➢ “Immediate physical supervision/control” of “certificated employee …”
   ➢ “While engaged in educational activities…”

➢ In compliance with health/safety orders
DISTANCE LEARNING (DL) - MAY

- May offer DL
  - School/LEA basis
  - Three categories of students

- May include:
  - Interaction - see next slide, this is mandatory
  - Instruction
  - Check-ins through computers/phones
  - Audio/video instruction
  - Printed material incorporating assignments
DL **MUST** INCLUDE

- **Must** include:
  - Access to connectivity and devices
  - Grade level content - equivalent to in-person instruction
  - Academic and other supports designed to address needs of pupils performing below grade level, and designated and integrated instruction in English language development

- Special Education/Related Services required by IEP, and accommodations necessary to ensure IEP can be implemented in DL

- **Daily live interaction required** with certificated employees and peers
  - Internet/telephone/other means
REDUCED MINUTES

➢ In-Person Instruction
  ➢ Instructional minutes - based on time scheduled under immediate physical supervision of certificated employee

➢ DL Instruction
  ➢ Instructional time - based on time value of assignments as determined by certificated employee

➢ Must document
  ➢ Daily participation for each pupil/each school day for DL
  ➢ In a weekly engagement record - daily participation & tracking assignments
EMERGENCY PLANS

➢ IEP must include a description of how IEP will be provided under emergency conditions when instruction can’t be provided to pupil for more than 10 school days

➢ The description must address:
  ➢ Special education and related services
  ➢ Supplementary aids and services
  ➢ Transition services
  ➢ ESY services
LEARNING LOSS AND COMPENSATORY EDUCATION
LEARNING LOSS/COMPENSATORY CLAIMS

➢ There is an expectation that many students will experience learning loss and academic regression during school closure

➢ In implementing “vigorous” distance learning, consider creating opportunities outside the school day for remediation
LEARNING LOSS/COMPENSATORY CLAIMS

➢ For students with IEPs, this may be an area of significant litigation

➢ Parents are entitled to file against districts, seeking compensatory services for services lost due to district error

➢ May import that analysis here based on USDE’s March 12, 2020 guidance
LEARNING LOSS/COMPENSATORY CLAIMS

➢ Prepare for such claims:
➢ Carefully document provision of IEP-based services, including efforts to provide them
➢ Monitor each student’s progress
➢ Parent communication is key: proactive, clear, thoughtful, responsive
➢ Prepare to assess when students return and to analyze student’s progress or regression then
CHILD FIND DURING THE PANDEMIC
CHILD FIND DURING THE PANDEMIC

➢ What is child find?
  ➢ For an introduction: BP 6164.4.

➢ Increase in signs of suspected disability?
  ➢ [https://time.com/5870478/children-mental-health-coronavirus/?fbclid=IwAR2mkS8fZMBA2Z2kJGpuRoQh3qGsY5qxEXbBjzhzglwvdkQtvYHTF7gdvo](https://time.com/5870478/children-mental-health-coronavirus/?fbclid=IwAR2mkS8fZMBA2Z2kJGpuRoQh3qGsY5qxEXbBjzhzglwvdkQtvYHTF7gdvo)

➢ Increase in rate of evaluations?
  ➢ “Didn’t SB 117 effectively toll timelines for new assessments?”
  ➢ Will there be an increased rate of students found eligible for special education?
CHILD FIND DURING THE PANDEMIC

➢ Assessment challenges include:
  ➢ Overwhelmed assessors
  ➢ Can assessors appropriately measure students’ functioning if:
    ➢ They cannot interact with students (particularly young ones) face-to-face?
    ➢ Classroom observations are impossible?
    ➢ Standardized measures cannot be administered remotely?
CHILD FIND DURING THE PANDEMIC

➢ What do school board members need to consider:
   ➢ The need for universal mental health curriculum and supports
     (https://www.cde.ca.gov/ls/he/hn/sandlmentalhealth.asp)
   ➢ Staff training in counseling and mental wellness support
   ➢ Parent training
   ➢ Support assessors
CONTINUITY PLAN, LIABILITY, & GUIDANCE ON OPENING
LEARNING CONTINUITY AND ATTENDANCE PLAN

➢ In lieu of LCAP for 2020-21

➢ No later than September 30, adopt plan addressing:
  ➢ Learning model(s)
  ➢ Learning loss
  ➢ Mental health of students/staff
  ➢ Professional development
  ➢ Pupil outreach
  ➢ School nutrition
DEVELOPMENTS REGARDING LIABILITY

- Limited *tort* liability
- Limitations on insurance coverage
- Prospect of legislation now uncertain
- Focus on orders/guidance, implementation, and documentation
GOVERNOR’S REOPENING
“FRAMEWORK”

➢ District may open *if*:
  ➢ Not put on watchlist
  ➢ Off watchlist for 14 days
  ➢ Waiver for elementary schools granted by local health officer after “consultation” with labor, parent and community organizations

➢ Once open:
  ➢ Exclude case and exposed contacts (likely classroom)
  ➢ School closure *may* be appropriate where 5% or more are positive within 14 days
  ➢ Superintendent *should* close district if 25% or more of schools have closed within 14 days
CDPH & CDC ISSUES MULTIPLE GUIDANCES

➢ CDPH/Cal-OSHA (July 17)
  ➢ Closures part of efforts to reduce transmission
  ➢ Provides prerequisites for opening
  ➢ Does not prohibit distance learning/hybrid models

➢ CDC (July 23)
  ➢ Most children infected by family members, not at school
  ➢ 6.6% of cases are under the age of 18
  ➢ School closures increase risk of family conflict and violence and worsen achievement gaps
GUIDANCE ON USE OF MASKS

➢ CDPH/Cal-OSHA
  ➢ Strongly encouraged 2 years – 2\textsuperscript{nd} grade
  ➢ Required for 3\textsuperscript{rd} grade – high school
  ➢ Required for staff

➢ CDC
  ➢ Recommended in most situations
  ➢ “May be considered” where students are at least 6 feet apart, recess, band/choir
  ➢ Policy to address bullying around using/not using masks
GUIDANCE ON SOCIAL DISTANCING, TESTING, AND SCREENING

➢ Social Distancing:
  ➢ CDPH – Distancing in transportation/movement; staff desks at least six feet from students
  ➢ CDC – Distancing of at least six feet, where feasible

➢ Testing of students and staff:
  ➢ CDPH – periodic staff testing
  ➢ CDC – not recommending testing

➢ Symptom screening:
  ➢ CDPH – screening for all entering a facility
  ➢ CDC – not recommending at schools, but daily at home
QUESTIONS?
UPCOMING WEBINARS

Big decisions: Distance learning and reopening schools for medium and large districts
➢ August 4 at 10:00 a.m.
➢ CSBA is hosting a diverse panel of school board members from across the state to discuss the challenges of reopening schools and distance learning.

Small districts, big challenges: Distance learning and reopening schools as a small district and county office of education
➢ August 4 at 2:00 p.m.
➢ Small districts have a unique set of challenges with reopening schools. CSBA is hosting a diverse panel of school board members from across the state to discuss the challenges of reopening schools and distance learning.

Strengthening the K-12 STEM Teacher Pipeline in California
➢ August 6, 2020 2:00 p.m.- 3:30 p.m.
This webinar will discuss some short and long-term strategies LEAs can use to increase the recruitment and retention of STEM teachers. We will highlight some successful in-state and out-of-state programs that seek to grow their own teacher pipelines. Finally, we will provide some questions board members can ask to address shortages within their LEA.

Learn more and register at: www.csba.org/webinars
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