**Special Education Issues Raised by California Local Education Agency Stakeholders**

ED has said it will grant states, local educational agencies (LEAs) and parents greater flexibility in meeting timelines spelled out in several federal laws governing special education. While the guidance from ED has been helpful, LEAs feel it is inadequate to assure they won’t face legal action if they are unable to provide all students with disabilities FAPE as defined in each student’s IEP using online tools.

The 3rd stimulus bill provides specific language that requires the Secretary to prepare and submit a report to Congress (Ed and Appropriation committees) with recommendations on any additional waivers under the IDEA, Rehab Act, ESSA and Perkins that the Secretary believes necessary to provide limited flexibility to States/LEAs to meet the needs of students during the emergency.

The following is a list of issues that have been raised by school board members, education legal counsel, by LEA administrators, and Special Education Local Plan Areas (SELPAs):

1. The U.S. Department of Education (ED) has demonstrated significant flexibility across elementary and secondary education as it relates to ESSA and we are hoping, to the extent possible, **ED will work toward consistency in advancing flexibility across all Federal education programs including special education.**
2. **The group is asking for suspension/waiver for the year on:**
   1. **State monitoring requirements – including CFR 300.600**
   2. **State performance plan and annual performance report (SPP/APR)**
   3. **Due process & complaint timelines – both new complaints and those currently in the pipeline with little or no personnel at the State or local levels to investigate or comply.**
   4. **15 % Significant disproportionality set-aside for non-compliance. LEAs should be urged to continue working on progress to address the issue, but the fiscal requirement to withhold funds should be lifted for this year.**
3. **Policy makers should be anticipating the need for a very significant compensatory education fund resulting from the loss of special education services due to COVID-19, to assist with the huge liability that will exist to address regression, trauma and other issues.** The reality is that there will likely be static progress for many students with disabilities (actually for all students) and potentially some regression. This raises significant liability issues for LEAs and there needs to be some relief when services and staff (both at the state and local levels) are not available to provide the necessary range of services due to the pandemic. **Further, the need for compensatory education services will extend well past this school year and into the next. A compensatory fund will need to span at least a couple of school years.**
4. Distance learning and more specifically on-line delivery of education will be of benefit for some students. However, it could/will pose a challenge for many students with IEPs who rely on in-person assistance for speech, occupational, physical or behavioral therapy, as well as instructional aides to help students access education in regular classrooms. **There needs to be flexibility in providing online instruction and student support services, especially if school sites are closed and those who provide “assistance services – OT, PT, Speech and Language – are not available.** Further, the IEP team must document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services. **Either suspend or relax mandates for prior written notice, modifying IEPs and the amount of documentation required during the pandemic. LEAs are concerned about the large volume of IEPs that would need to be amended in a very short period of time.**
5. Issue direct guidance that timelines for completing assessments underway are stopped as a result of the distance learning and a new 60-day timeline startsif the uncompleted portion involves direct classroom observation or administration of standardized test instruments to the student. **Ensure alignment of all assessment waivers for ESSA are also aligned to the needs and requirements of IDEA.**
6. Compliance timelines: **Waive all IEP timeline requirements for 60 days as LEAs develop distance-learning capabilities.**  Holding IEP meetings during this time cannot be meaningful and interfere with the large scale up of converting to distance learning in a very short time. The issue of developing and implementing distance learning capabilities applies for all students. The IEP timelines don’t allow for that development and should be waived. **The 60-day timeline could start from the time the LEA closed.**