

School Started What Now?

August 27, 2020



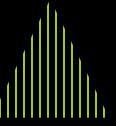
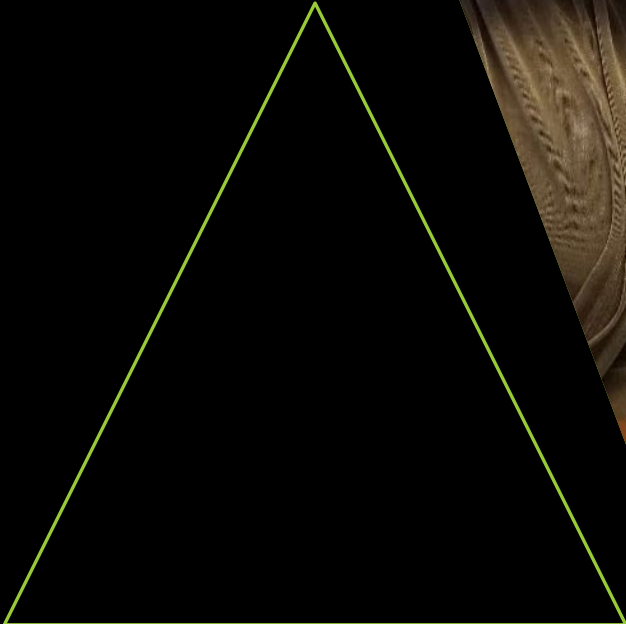
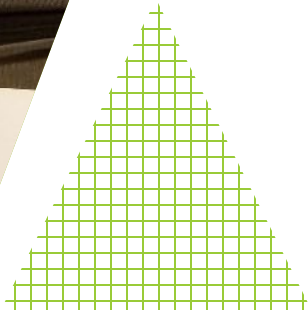
NEWMAN AARONSON VANAMAN LLP





Valerie Vanaman

- More than 40 years within Special Education law
- Founder of the oldest and most experienced law firm representing families with special needs



Tonight's Discussion

Federal Law Remains in Place

State Law and Problems

Assessments

IEPs

Due Process Remains in Effect

Remote Learning Challenges

Possible Course of Action for Parents

Q & A

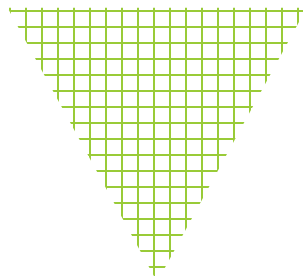




Dina Kaplan

Practiced law for 40 years, 26 of which as an attorney for children with special needs

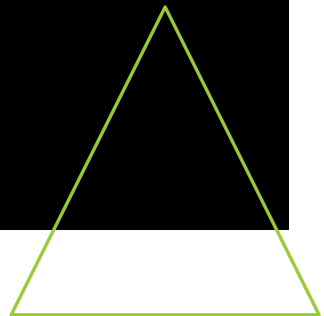
Inspired by her son who has multiple disabilities and knows personally, parents' struggles



Federal Law Remains in Place

- The Individuals with Disabilities Education Act (IDEA)—20 U.S.C. Sections 1400-1419
 - **Section 1400(d) states the purpose of IDEA:**

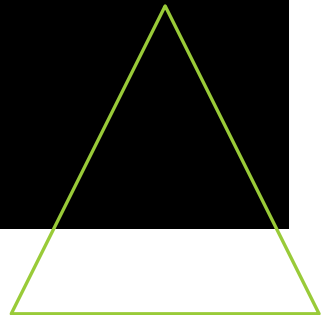
“ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living;” and to insure that the rights of children and their parents are protected

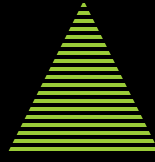




IDEA

- Federal law controls over state law. State law cannot provide less than federal law but can provide more
- Federal requirements have not been waived
- The case of *Endrew F. v. Douglas County School District*, the U.S. Supreme Court held:
 - A school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances and every child should have the chance to meet challenging objectives.





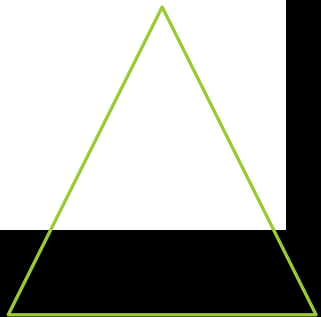
IDEA

◦ Assessments

- Initial assessments completed and an IEP meeting held within 60 calendar days of consent
- No timeline in IDEA for reassessments except not more than one time per year but required every three years. CA law provides a 60-day timeline for both initial assessments and re-evaluations
- Variety of assessment tools
 - All areas of suspected disability and appropriate to yield accurate information regarding all of child's educational, developmental and functional needs
 - Determine present levels of performance and eligibility
 - Independent Educational Evaluation



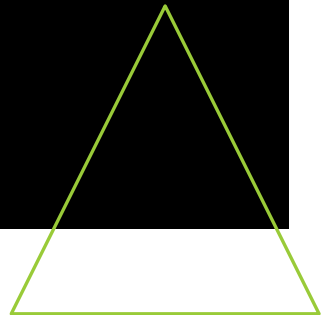
IDEA

- **Individualized Education Programs (IEPs)**
 - Categories of eligibility: mental retardation (Intellectual Disability); hearing impairments; speech or language impairment; visual impairments; emotional disturbance; orthopedic impairments; autism; traumatic brain injury, other health impairment; specific learning disability
 - Must need special education and related services in order to benefit from educational program
 - Content: statement of present levels of performance; measurable annual goals and short-term objectives; statement of special education and related services and supplementary aids and services that enable the child to meet goals be involved in the general curriculum and be educated with non-disabled peers; accommodations and modifications
 - Related Services are called Designated Instructional Services (DIS) in California and include such things as speech therapy, occupational therapy, and physical therapy
 - Team must consider Assistive Technology needs
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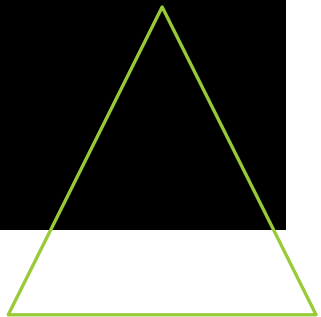
IDEA

- **Dispute Resolution**
 - Can participate in an informal dispute resolution process
 - Formal Due Process with the Office of Administrative hearings (OAH), which includes resolution session, mediation and hearing





Essential Elements of Concern During COVID-19

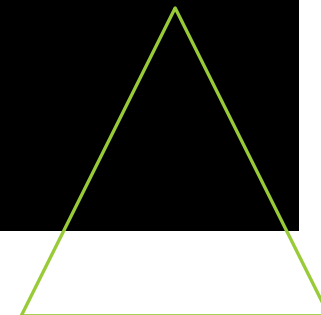
- March 2020 [Q&A](#) on “Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak”
 - If the district continues to provide educational opportunities for general education students during the closure, it must ensure that students with disabilities have equal access to education and the provision of FAPE
 - Distance learning plan can be included in an IEP or as a separate document and indicate how and where special education and related services will be provided
 - If a child is unable to benefit from special education and related services virtually or in any other manner provided during shutdown, consider compensatory educational services
 - Very important to document what should be provided, what is being provided and whether child is benefiting
- 



Essential Elements of Concern During COVID-19

- IDEA Remains in full force and effect
 - The Federal government has not granted any waivers of any requirements of IDEA
 - April 27, 2020, Secretary of Education, Betsy DeVos declined to grant waivers

“While the department has provided extensive flexibility to help schools transition, there is no reason for Congress to waive any provision designed to keep students learning...With ingenuity, innovation and grit, I know this nation’s educators and schools can continue to faithfully educated every one of its students.”





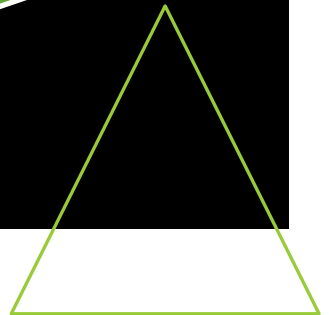
What Continues?

IEPs must continue. IEPs should be held virtually. Districts must have an IEP in place for each eligible student at the start of each school year. Districts must conduct triannual IEPs

DIS services must continue and may under certain circumstances be provided in person.

Assessments must continue. Some assessments can be done virtually. Some assessments need to be done in person but should not be delayed.

Due Process continues in order to seek compensatory educational services for loss of educational opportunities (consider when is the best time to file). Need documentation.





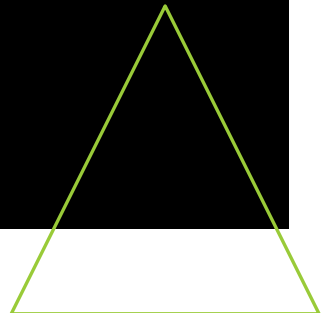
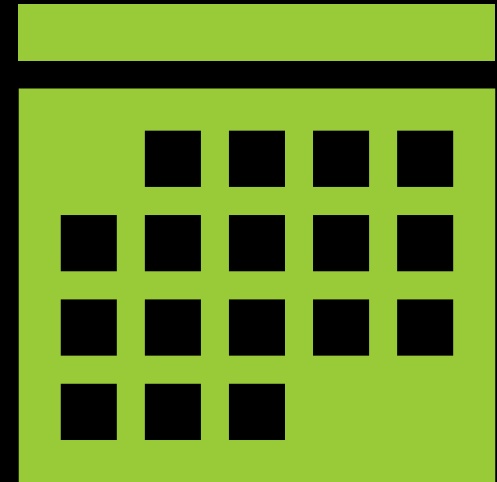
Jodi Ossen Bynder

- Protecting the rights of children with disabilities for over 25 years
- A dedicated advocate for families and students



State Law and Problems

- California Education Code Section 56043 timeline requirements
 - Develop assessment plan within 15 calendar days of parent request
 - Produce records within 5 business days of receipt of request
 - Don't count days between terms or school holidays in excess of 5 days





State Laws

SB117

- Days school closed due to COVID-19 count as days between regular session
- Applies during distance learning
- Expired 7/1/20
- Yet districts are still not assessing

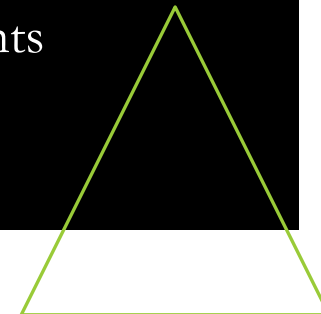
SB 820

- Pending budget trailer bill
- Is **NOT** extending the timelines of SB 117
- Assessments resuming?



Public Health Orders

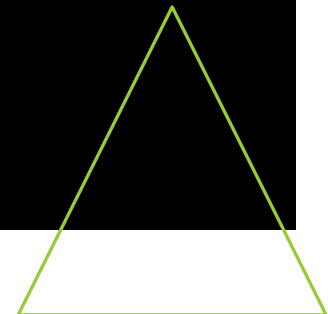
- Districts use County and State Public Health Orders as justification for no assessment
- Assessments for behavior and/or mental health deemed essential?
- Office of Special Education Programs (OSEP) encourages exploration of remote assessments





Where does that leave us?

- Some counties beginning to resume assessments;
- Private psychologists conducting both virtual and in person assessments
- Districts remain obligated to comply with Federal law
- Lack of compliance by Districts?
- Lack of valid information in IEPs?

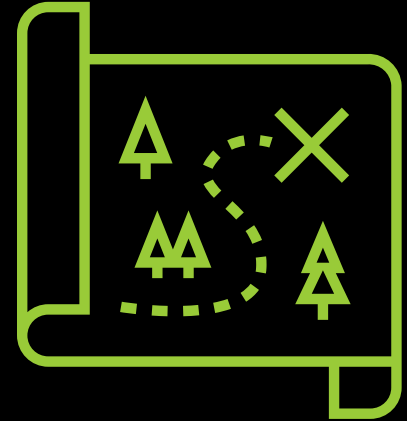


Sophia Bliziotis

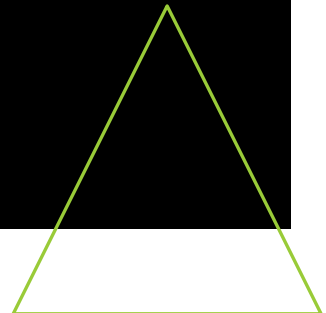
- Protecting the rights of children with disabilities for over 15 years
- A dedicated advocate for families and students



State Law and IEPs



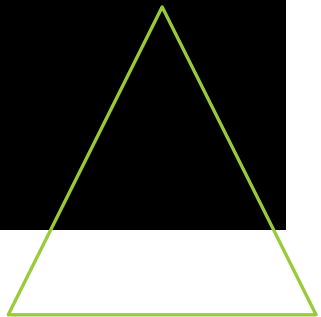
- Budget Act
 - A road map to understand what districts must do
 - SB 98 – Passed June 2020, adding and amending sections of the California Education Code
 - Intended to give Local Education Agency flexibility to adopt hybrid instructional models
 - Requires IEPs include a description of how IEPs will be provided in emergency conditions when services and/or instruction cannot be provided in person for more than 10 days
 - Distance Learning requirements are added, and must include special education and related services
 - Other services in the IEP with needed accommodations to ensure the IEP can be executed in a Distance Learning Environment
 - Allows each Local Education Area to be creative in developing instructional models so long as the requirements are met





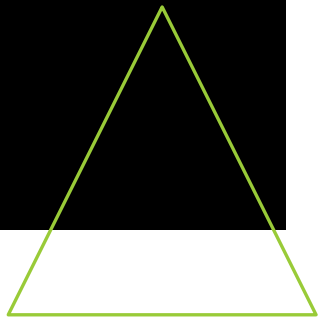
Budget Act

Added sections to California Education Code

- Preference for in-person instruction
 - Cal Ed Code §43501 -- Lays Out Minimum instructional minutes for Distance Learning
 - Cal Ed Code §43502 -- Allows Distance Learning with Requirements
 - Cal Ed Code §43503 Allows for Distance Learning WHEN
 - There is an order or guidance from a state or local public health officer
 - Students who are medically fragile, or would be put at risk, or self-quarantining
 - Cal Ed Code §43504 -- LEAS “Shall offer in-person instruction to the greatest extent possible”
 - Attendance/Participation still mandatory
 - In person hybrid instruction see guidance : California Department of Public Health on June 5, 2020 (needs local health officer approval)
- 



Distance Learning Has Strict Requirements

- Must provide access to connectivity and devices so pupil can participate in the educational program and complete assigned work
 - Content aligned to grade level standards provided with the same level of quality and intellectual challenge equivalent to in-person instruction
 - Academic and other supports designed to address the needs of pupils who are performing below grade level or need support in other areas
 - Special education, related services and any other services required by the IEP
 - English language development
 - Daily Live Interaction with certificated employees and peers for purposes of instruction , progress monitoring and maintaining school connectedness
- 



Budget Act

Cal Ed. Code §43504

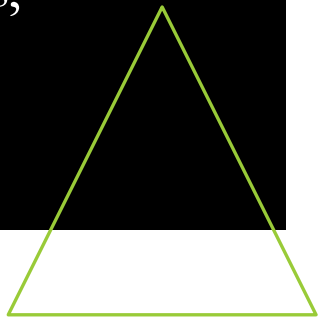
- Must document daily participation and engagement of students
- Evidence of participation in online activities, assignments, and assessments
- Contact between the LEA and the pupil or parent/guardian
- Can be marked absent





School District, County Office of Education or Charter School

Cal Ed. Code § 43509(f)(1) (B – G)

- Must define how participation will be measured
 - Must assess students for learning loss during COVID-19
 - Must have a plan to address student learning loss
 - Must have a plan to measure the effectiveness of the interventions used to address learning loss
 - Must have a plan to monitor the mental health and social and emotional well-being of the pupils and staff
 - What Additional supports are needed for special education students, English learners, pupils in foster care and pupils are experiencing homelessness?
- 

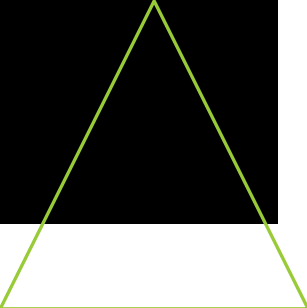


Bryan Winn

- Bryan is motivated by the desire to improve the future of each child's life
- Pursued a legal career which could provide him with the opportunity to make significant positive changes in the lives of others

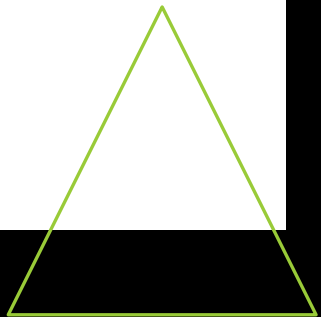


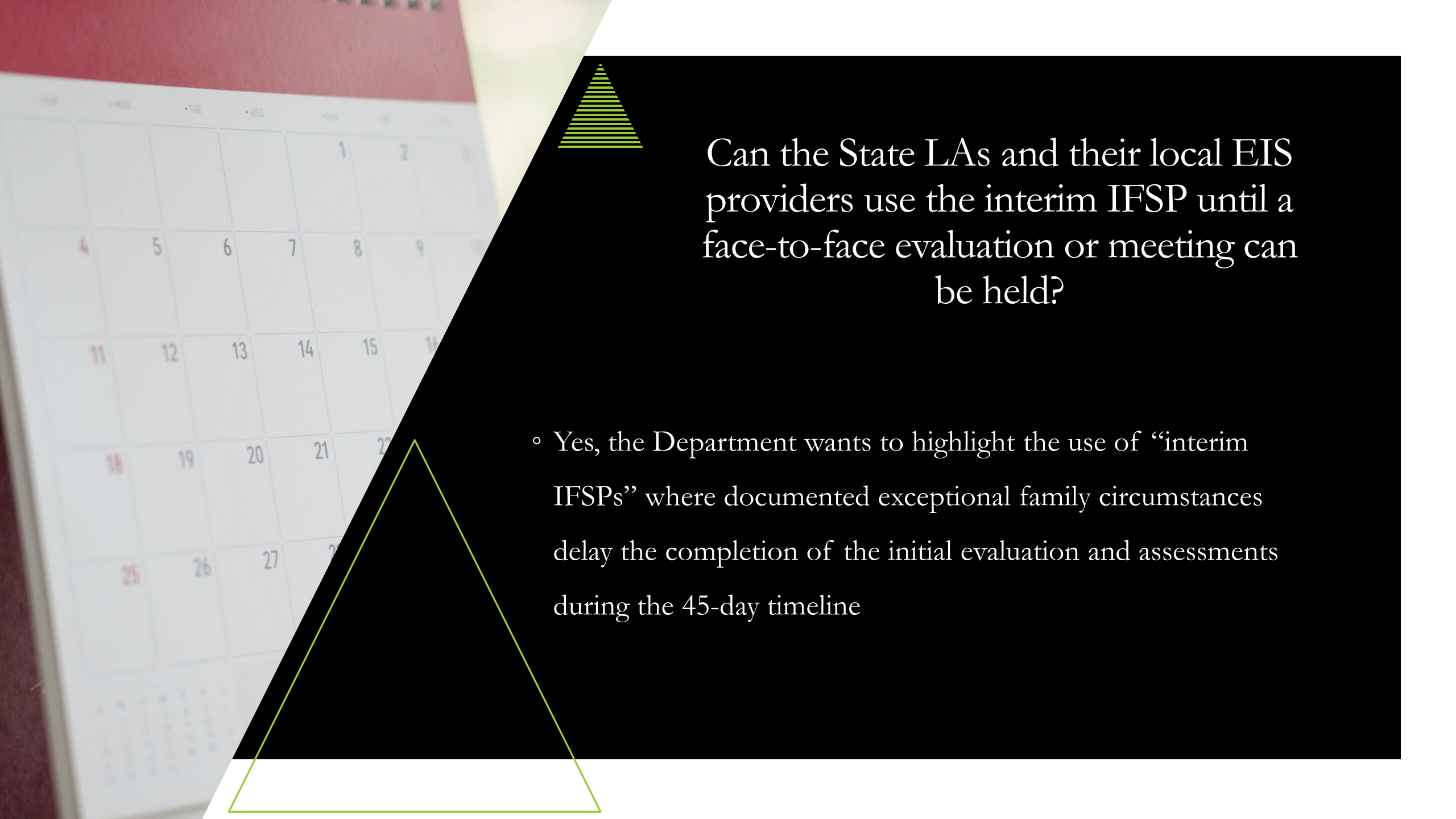
Due Process Remains in Effect

- Federal Directive
 - OSEP, within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issued a [Q & A](#) regarding Federal Law and guidance during COVID-19
 - The IDEA Part C 45-day timeline is in 34 C.F.R. §§ 303.310, 303.342(a), and 303.345(c)
 - The 45-day timeline applies to:
 - Any screening offered by the State
 - The initial evaluation
 - The initial child and family assessment
 - The initial individualized IFSP meeting
- 



What exceptions are available to a State Lead Agency (State LA) and its early intervention service (EIS) providers in meeting the 45-day timeline requirement?

- The child or parent is unavailable to complete the screening, initial evaluation, initial assessments of the child and family, or initial IFSP meeting due to exceptional family circumstances documented in the child's early intervention records; or
 - The parent has not provided consent for the screening, initial evaluation, or initial assessment of the child, despite documented, repeated attempts by the State LA or EIS provider to obtain parental consent
 - Under COVID-19 or any other national emergency, meeting the 45-day timeline may be difficult or impossible, under this “exceptional family circumstances” outside the control of the State LA's or EIS provider's control, the State LA or EIS provider must:
 - document in the child's early intervention record of exceptional family circumstances; and
 - complete the activities as soon as possible after the documented exceptional family circumstances no longer exist
- 



Can the State LAs and their local EIS providers use the interim IFSP until a face-to-face evaluation or meeting can be held?

- Yes, the Department wants to highlight the use of “interim IFSPs” where documented exceptional family circumstances delay the completion of the initial evaluation and assessments during the 45-day timeline



- California Department of Education

- If IEP teams meet virtually while school sites are closed due to COVID-19, how should parent consent be obtained? Is verbal consent sufficient?

- 34 CFR Section 300.101(b) provides that “a parent must understand and agree in writing. Verbal consent is not sufficient. IDEA does not specify how consent should be obtained. Therefore, the LEA may use applications such as Docusign, Adobe Sign etc. as well as scanned photographs of signed signature pages.

- <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>



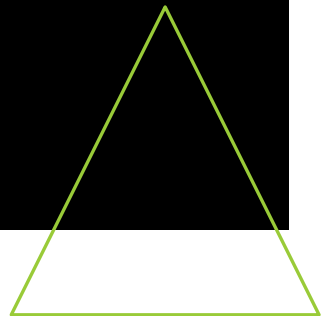
Remote Learning Challenges

- Technology/Parent challenges
- Provision of one-to-one services
- Related/DIS Services
- Student challenges



Technology/Parent Challenges

- Access to all necessary equipment
- Internet access and access sufficient to run the devices
- Having the knowledge to use the device/platform
- Burden falling on parents to teach/implement assignments/provide therapies
 - Parents not trained to provide these services
 - Forces parents to further juggle distance learning, work, other kids

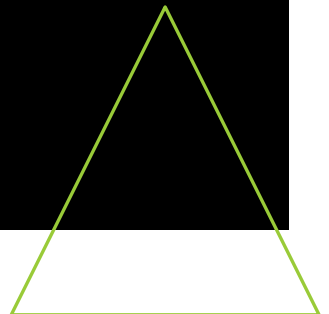




Provision of one-to-one services

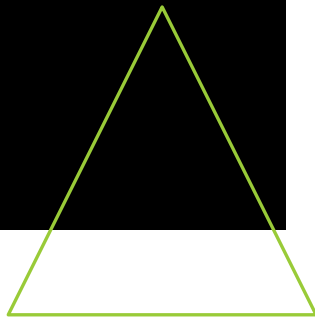


- No in-home/in-person services
 - District refuses to sign waivers.
 - May be able to provide service through insurance?
 - Regional Center as payor of last resort?
- Can child benefit from remote service?
- Can behavior support (“BII/BID”) providers be deemed “essential?”
 - YES – per [Governor’s Executive Order N-33-20](#)
 - But, LAUSD refuses to provide in person services., other districts may be more flexible.
 - Office of Administrative Hearings just issued a Stay Put Order to maintain in person one-to-one health aide





Related/DIS services (speech therapy, OT, PT, etc.) provided via Zoom

- Many services require in person instruction
 - Service is provided by “check ins” or instruction sheets
 - Districts are failing with respect to provision of these services
 - Keep a *written log*
 - What services should be provided per IEP
 - What services are *actually* being provided
 - What benefit is child receiving from the service
 - Districts have not been relieved of the obligation to provide minutes set forth in IEP
 - California Department of Public Health issued revised guidelines on Tuesday
 - One-to-one specialized services may be provided to a child in a small cohort at school
 - Specialized services include
 - OT
 - Speech Therapy
 - Medical, behavioral or educational support services
- 



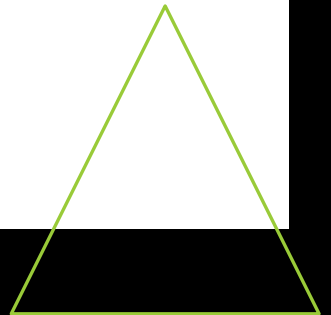
Student Challenges

Can't sustain attention for length of Zoom session

Embarrassed to be seen on Zoom

Ask for accommodations

- Student checks in and can then turn off camera
- Student can take breaks after x minutes
- Private message the teacher with questions
- Alternate ways to turn in work
- Schedule one-to-one time with teacher





Better Connections



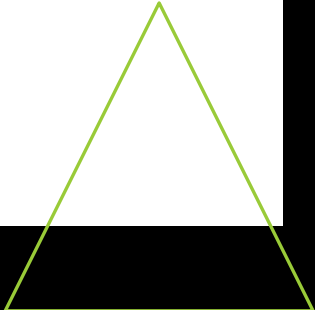
What Can We as a
Community Do?

Possible
Next Steps



Document Everything

Keep a log of all interactions between your student and the district, school personnel, and any other services providers

- All correspondence
 - Keep track of what actually takes place
 - Instruction services
 - Compensation services
 - Therapeutic services
 - Keep track of what *doesn't* take place
 - IEP not being implemented
 - Reimbursement
 - Develop good baseline information
 - What did your student achieve before COVID-19?
 - What is the situation since in-person schooling stopped?
 - Mark your calendar for notification dates
 - Notice of IEP
 - Notice of assessments
 - A [service log template](#) is available at our site
- 



Due Process

- The process and timeframes are different now, but Due Process remains in effect, and your best option may still be to file

Stay Put

- A Stay Put ruling may allow your student to continue in a known environment, giving you time to determine the best next step

Political Action

- School Boards
 - Let them know your concerns
 - Schedule a meeting with the director of special education
 - Write letters or emails
- City, state, and national government
 - Write your representatives
 - Call their offices
 - Vote

Do they know what decisions
are being made?

Have they authorized the
decisions?

Could there be litigation over
any of those decisions?

Thank You



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