



EQUAL JUSTICE SOCIETY



April 22, 2020

Alameda County Office of Education
Superintendent L. Karen Monroe
Board President Joaquín Rivera

Contra Costa County Office of Education
Superintendent Lynn Mackey
Board President Vikki J. Chavez

Marin County Office of Education
Superintendent Mary Jane Burke
Board President Curtis Robinson, M.D.

Napa County Office of Education
Superintendent Barbara Nemko
Board President Jennifer Kresge

San Francisco County Office of Education
Superintendent Vincent Matthews
Board President Mark Sanchez

San Mateo County Office of Education
Superintendent Nancy Magee
Board President Hector Camacho, Jr.

Santa Clara County Office of Education
Superintendent Mary Ann Dewan
Board President Claudia Rossi

Solano County Office of Education
Superintendent Lisette Estrella-Henderson
Board President Peggy A. Cohen-
Thompson

Cc:
Peter Birdsall, Executive Director
California County Superintendents
Educational Services Association

Dear Superintendents and Board Presidents of Bay Area County Offices of Education:

We are writing to you as a coalition of legal service providers and advocates in the Bay Area who serve students in this region. We, like you, are concerned about COVID-19's impact on the particularly vulnerable students that we serve. In all times, students of color, students who live in low-income families, students with disabilities, students in foster care, students who are homeless, students who come into contact with the juvenile justice system, and students who are English Language Learners face obstacles to educational attainment that can lead to involvement in the criminal justice system. Now, more than ever, we must work together to ensure that educational practices continue to uplift our counties' students.

We have attached to this letter recommended education practices that aim to alleviate the specific burdens on these student populations during and in the aftermath of the pandemic. Our hope is that the students we serve continue to receive the support they need so they do not enter the school-to-prison pipeline, miss critical academic instruction, or otherwise lose connection to their education.

The school closures have been especially challenging for the students we represent, such as:

- Michael¹, a tenth grader who was looking forward to the chance to improve his attendance and grades after time in Juvenile Hall. However, when he was released, his school was closed and he was unable to enroll. His inability to enroll in school has him worried that he won't be able to comply with his probation requirements and he will be sent back to Juvenile Hall.
- Kyle, a seventh grader with a mental health disability, who has struggled with his behavior at school. After a recent Individualized Education Program (IEP) decision, he was supposed to receive services for the first time in his school career, which would address some of the behavioral concerns. Unfortunately, he has received no services since the schools closed, and his family has no access to a computer or wireless internet.
- Antonio, a tenth grader, who was supposed to have his initial IEP meeting but could not once the schools closed. His testing indicates that he has cognitive, audio processing and visual processing disorders. Unsurprisingly, he's struggling to manage, keep up, and navigate all the platforms the school uses for distance learning and is overwhelmed by the amount of reading he has to do. His parents are monolingual and have lost their jobs, so have been able to provide limited support.

Many of our clients are experiencing issues similar to those described above. In writing this letter, our intention is to provide additional support to the dedicated educators and administrators on the front lines by uplifting policies and practices that can address the needs of the most vulnerable students, and to request greater transparency in the adoption of such policies and practices.

We address this letter to County Offices of Education (COEs) specifically because of the important role COEs play in supporting districts in the county and students enrolled in COEs' own schools. COEs have responsibilities and discretionary abilities related to school finances, information sharing and improvement of school services that, taken as a whole, uniquely position them to take action during and in the aftermath of this pandemic.²

We appreciate the work COEs are already doing to coordinate with each other, public health agencies, and school districts that are requesting help. However, we urge COEs to take a more proactive role by allocating staff time and resources to supporting, advising and making transparent how districts and COE schools are already implementing or plan to implement the attached recommendations.

¹ Pseudonyms used for confidentiality.

² COEs are responsible for fiscal oversight of school districts in the county (Cal Educ. Code § 1240); can provide "consultative or coordinative services" to school districts in their counties to help the districts meet federal requirements for the receipt of federal funds (Cal. Educ. Code § 1242); review and approve all Local Control and Accountability Plans (LCAPs) (Cal. Educ. Code § 52070); make approved LCAPs transparent and accessible to the public on their website (see Cal Educ. Code § 52065); and have special discretionary powers, if approved by the County Board of Education, "to promote advancement of education," including doing research and investigation that relate to the management and finances of the schools within the county, and informing the public about the educational programs of the districts within their jurisdiction (Cal Educ. Code §1260(a), (c)). Finally, aside from supporting districts, COEs must manage the administration of their own educational programs. See *id.*

Finally, in all policy areas, it is important to be aware that the most vocal populations may not always be the most vulnerable. As COEs and districts move forward in adopting policies and practices, including the attached, to serve vulnerable students, we ask that you proactively communicate with vulnerable populations about their needs and craft policies in anticipation of those needs. This proactive outreach will enhance transparency and encourage community involvement.

We hope we can discuss our recommendations with you and work together to ensure that all students, especially those who are most vulnerable, are supported during this unprecedented crisis. We are available to meet via telephone or videoconference as early as possible within the next week. Please contact the organization listed next to your county in the signature block below to let us know of your response and availability for a meeting.

Thank you for your efforts on behalf of students and families in this time of need. The attachment of recommendations follows on page 5 of this document.

Sincerely,

Alameda County: *East Bay Community Law Center*

- Contacts: Oscar Lopez, Staff Attorney & Clinical Supervisor, olopez@ebclc.org, and Whitney Rubenstein, Staff Attorney & Clinical Supervisor, wrubenstein@ebclc.org

Contra Costa County: *Bay Area Legal Aid*

- Contact: Alexandria Sadler, Staff Attorney, asadler@baylegal.org

Marin and Napa Counties: *Bay Area Legal Aid*

- Contact: Lillian Chen, Supervising Attorney, Youth Justice, lchen@baylegal.org

San Francisco County: *Legal Services for Children*

- Contact: Anabel Kingwood, Staff Attorney, anabel@lsc-sf.org

San Mateo County: *Stanford Youth and Education Law Project, Mills Legal Clinic*

- Contacts: Bill Koski, Director, bkoski@law.stanford.edu and Tara Ford, Clinical Supervising Attorney, taraford@law.stanford.edu

Santa Clara County: *Law Foundation of Silicon Valley, Legal Advocates for Children and Youth*

- Contact: Julia Souza, Supervising Attorney, julia.souza@lawfoundation.org

Solano County: *Legal Services of Northern California*

- Contact: Ary Smith, Staff Attorney, arysmith@lsnc.net

With Additional Support from the Following Organizations:

Abre' Conner, Staff Attorney
ACLU Foundation of Northern California

Sylvia Torres-Guillén, Director of Education
Equity
ACLU of California

Andrew J. Imparato, Executive Director
Disability Rights California

Tori Porell, Equal Justice Works Fellow
East Bay Children's Law Offices

Raúl Arroyo-Mendoza
Contra Costa County Defenders Association
Pacific Juvenile Defender Center

Chris Bridges, Staff Attorney
Equal Justice Society

Deborah Escobedo, Senior Attorney, Racial
Justice-Education
*Lawyers' Committee for Civil Rights of the
San Francisco Bay Area*

Atasi Uppal, Attorney, Juvenile Justice &
Education
National Center for Youth Law

Jasmine Miller, Legal Fellow
Youth Law Center

Supporting Vulnerable Youth During and After the COVID-19 Crisis: Recommendations for County Offices of Education and the Districts They Support

Below are recommendations sourced from a coalition of legal service providers in your counties, as well as organizations that work on education equity issues on a state or nation-wide basis. A common theme that runs through many of these policy areas is the inequities that can result from the shift to distance learning. We know that this is an issue that many educators are working to address, and applaud the efforts of school districts so far - for example, to distribute laptops and internet hotspots to vulnerable students. However, disparities in access to technology are just one aspect of a multi-faceted problem. We hope that these recommendations can provide some guidance for how COEs and districts can address other issues related to the shift to distance learning.

1. **Transparency of learning plans:** Students and their parents or guardians are struggling to locate vital information about their education opportunities during the pandemic, as well as any adjustments to instruction that will occur during the summer months or early in the next school year. COEs should do the following, and support districts in their counties with doing the same:
 - a. Post on district and COE website a standalone, printable document that contains key information regarding the district's COVID-19 learning plan and contact information for key school district staff. Use media, robo-calls or other measures to alert families to the location of plans
 - b. Make learning plans available in languages other than English that are widely spoken in the community they serve.
 - c. Provide learning plans in hard copy at free lunch pick up sites.
 - d. Provide or facilitate access to technology devices and internet services that are necessary for students to engage in learning plan.

2. **Enrollment and re-entry:** Students with high school mobility, such as foster youth, homeless youth, and justice-involved youth, often experience difficulty in staying enrolled in school as they move between different institutional or home settings. This concern is heightened now, as many schools are closing down their enrollment and records processing centers, and as youth may be moved from their prior living arrangements due to COVID-19. COEs should do the following, and support districts in their counties with doing the same:
 - a. Ensure that youth transferring to district-run schools from court and community schools are promptly enrolled, by engaging in transition planning and working directly with districts, rather than relying on families and caregivers to initiate enrollment.
 - b. Create a streamlined, easily accessible enrollment process for all youth, consistent with the immediate enrollment provisions for foster youth,³ justice-

³ Foster youth have the right to immediate enrollment in school, regardless of outstanding fines or fees, or inability to produce records. Cal. Educ. Code § 48853.5(f)(8).

involved youth,⁴ and homeless youth.⁵ Technology access should be addressed during the enrollment process to ensure that students can participate in school as soon as they are enrolled.

- c. Coordinate with school districts and the SELPA to ensure continuity of special education services, EL services, counseling services, food services, and other supportive programming for youth moving between school districts.
3. **School discipline**: We understand that many school districts have postponed expulsion hearings until schools physically re-open. This is not a trauma-informed practice. It is well-documented that our most vulnerable students are the ones most likely to be recommended for expulsion. These students need additional support and comfort during this time, and postponing an expulsion hearing will only prolong the anxiety and stress associated with such proceedings. Moving forward with video expulsion hearings also presents several challenges related to equity and witness examination, which will undoubtedly result in mass expulsion appeals to the County Offices of Education. Additionally, school administrators' rationale for expulsions – campus safety – is not a concern during school closures, so expulsions do not serve a legitimate educational or safety-related purpose. For the same reasons documented in a recent request to Governor Newsom (see *Attachment 1*), COEs should do the following, and support districts in their counties with doing the same:
- a. Immediately dismiss any pending expulsion recommendations;
 - b. Rescind any expulsions subject to an appeal to the County Office of Education;
 - c. Re-admit all students whose readmission date occurs during school closures;
 - d. Prohibit the use of school suspensions during the distance learning phase.
4. **Special education**: Students with disabilities are particularly vulnerable during the COVID-19 pandemic. These students have lost access to many of the educational services and supports they are entitled to, and are at greater risk of losing out on educational opportunities. COEs should do the following, and support districts in their counties with doing the same:
- a. Work in conjunction with families to develop distance learning plans for students with IEPs that contemplate (1) services that can be maintained under the student's current IEP; (2) services that can be provided through alternative or additional methods; (3) supplemental supports that are needed in order for students to successfully engage with their educational program including, assistive technology, online or virtual instruction, instructional telephone calls or video chats, and consistent check-ins with families; (4) and how the district will otherwise meet the student's disability related education needs throughout the duration of the COVID-19 school closures. Distance learning plans should be

⁴ Schools cannot delay enrolling a justice-involved student for any reason, including requiring a meeting prior to enrollment, outstanding fees, fines, or other items or moneys due to the school last attended, inability to produce academic records, medical records, immunization records, or inability to produce proper uniform/school dress. Cal. Educ. Code §§ 48645.5(c), 48647(a).

⁵ Homeless youth have the right to immediate enrollment in school under the McKinney-Vento Act and under Cal. Educ. Code § 48850(a)(3).

documented through interim, time-limited, amendments to student IEPs. The student's last agreed upon IEP, prior to the COVID-19 school closures, will reactivate upon the reopening of school districts and the student's return to school.

- b. Continue to provide services that can be administered via telehealth including, but not limited to, mental health/ERMHS counseling, speech and language therapy, and occupational therapy.
 - c. Continue to hold IEP meetings telephonically or via video conferencing and adhere to IEP timelines to the extent possible. This includes responding to requests for assessment, generating assessment plans, and responding to requests for records. Should families be unable to meet during the school closure, meetings should be postponed by mutual agreement.
 - d. Convene IEP teams, within 30 school days of schools reopening, to make an individualized determination about whether and what type of compensatory education is appropriate for the student.
5. **Special considerations regarding education in alternative schools:** Youth in alternative schools, including COE educational programs such as independent study, court, and community schools, should have equitable access to education. COEs should do the following, and support districts in their counties with doing the same:
- a. Implement technology-based distance learning strategies. This is particularly critical for youth who remain incarcerated, who are already cut off from the support of their friends and family and are at great risk of social isolation. These youth are often already behind in academic skills and are disproportionately likely to be special education students; they must have access to individualized learning. Even if technology-based distance learning cannot be implemented, it is paramount that work be individualized and students still be able to contact teachers for guidance.
 - b. Continue working with postsecondary partners, probation, and school counselors to provide college access opportunities to youth in COE schools and independent study, including dual enrollment and assistance with FAFSA and college applications.
 - c. Communicate the educational plans for each student to their caregivers and attorneys, if applicable, in the language that is most comfortable for them.
 - d. **For Court Schools specifically:**
 - i. Collaborate with probation to ensure that educational services, including special education services, are being provided in a manner that promotes the socio-emotional, as well as physical health, of their students. **Under no circumstances should COEs endorse or engage in practices that result in solitary confinement of children;** while the release of youth in juvenile hall is not under the COEs jurisdiction, the COE should make every effort to collaborate with probation and the juvenile court to ensure that youth transition to the community with access to educational services.

1. Under Ed Code 48647 (recently modified by AB 1354, effective Jan. 2020), the COE is responsible for overseeing the successful transition of youth from court school to community, including record transfer, immediate enrollment, and placement in appropriate classes. The COE is also responsible for creating an individualized transition plan for youth who have been detained for more than 20 consecutive school days and overseeing the implementation of that plan.
 - ii. Collaborate with probation to ensure that youth have access to technology for education, as well as for purposes of visitation and other services that require technology. While visitation is not typically in the purview of the COE, in many juvenile halls, school facilities are the only places that have computers and internet access. COEs should be proactive in offering their expertise and equipment to ensure that any youth who do remain in custody at this time are able to maintain relationships with family and service providers.
6. **Special considerations for foster youth**: Along with the other vulnerable populations of youth mentioned in this letter, youth in foster care are already severely impacted by the school closures due to COVID-19. For many, school is a tremendously stabilizing factor in their lives, and without that support, we are already seeing students lose their foster or residential placements. Foster youth are also more likely than their peers to already be behind in educational attainment. COEs should do the following, and support districts in their counties with doing the same:
 - a. Increase outreach by **Foster Youth Coordinating Programs and district liaisons** to foster youth, in order to ensure continued access to supports like food service, counseling, post-secondary access, and distance learning.
 - b. Ensure school stability rights are protected. If foster youth move during this time, their **school of origin** right allows them to remain enrolled in their district of origin, and access any distance learning opportunities there. COE Foster Youth Coordinators should advise districts that these students have access to any physical materials needed for distance learning, even if they have moved out of their district.
7. **Attendance and truancy**: There are many factors that contribute to attendance challenges, and COVID-19 will unquestionably add another layer of complexity to school attendance. Because of lingering fear, as well as possible regression in academic ability, we can expect that school attendance will decline for the remainder of this school year and well into next school year. Rather than taking a punitive approach to this crisis, COEs should do the following, and support districts in their counties with doing the same:
 - a. Advise all school districts in the county to eliminate referrals to the District Attorney's office for truancy charges in juvenile court through the remainder of the 2020-21 school year, at minimum, and

- b. Advise school districts to eliminate formal or informal transfers of students to other schools, regardless of whether they are comprehensive or alternative schools, through the end of the 2020-21 school year, at minimum.
- 8. **Grades:** Because of these various concerns posed by distance learning for high needs students, it would be inequitable to assign grades in the same manner as done during the traditional school year. COEs should do the following, and support districts in their counties with doing the same:
 - a. No student's grade should be negatively impacted. More specifically, no student's grade should drop from the grade they had prior to school closures.
 - b. Students should have the opportunity to improve their grades from where they were prior to the pandemic by completing work during the distance learning period.