PACE

COMMENTARY

Improving Services for Students with Disabilities

The Opportunity and the Risk of Inaction



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Students with disabilities have been especially affected by the COVID-19 pandemic. They and their parents have reported higher levels of anxiety and depression, the loss of specialized services and supports, and poor results from distance learning. Compared to the general student population, families with students with disabilities are more likely to express concern for their mental health and their children are more likely to experience little to no remote learning (see recent and forthcoming work on this topic).

Since students with disabilities are guaranteed the right to a free and appropriate education under federal and state law, leaders at the state and local level are bracing for legal action as parents and guardians seek recourse and additional support to make up for the past year of disrupted learning. Special education law includes the guarantee that families can contest services through explicit processes described in statute. This due process system can result in high costs, complexity, and parent dissatisfaction; the system can also constrain needed partnerships between families and schools. An expected influx of legal cases related to COVID-19 school disruptions are likely to overwhelm existing systems, resulting in additional delays to services and yet more negative educational impacts. At the same time, some families may not be aware of the rights that they have. Low-income families, those who face language barriers, and families who have recently migrated may have limited knowledge of and experience with available avenues for questioning and contesting services for their children.

The call to streamline processes for redressing educational loss and lack of access to those systems by vulnerable populations fuels an impetus for much-needed improvements in California's education of students with disabilities. In rebuilding from the pandemic, educational leaders can knit together a better system to determine student needs and supports in partnership with families. A more nuanced system of reconciling student needs with appropriate services can decrease conflict and can reduce impacts on individual and institutional capacity. We can simultaneously increase the potential of systems by spending time and resources on the most important task: improving learning outcomes for all students, including those with disabilities.

THE SIZE AND SCOPE OF THE ISSUES

California's education system faces the aftermath of COVID-19 with mounting concerns about its special education system. As local education agencies (LEAs) ramp up back-to-school efforts, schools will have to meet current student needs that have been heightened by the fact that expected and needed services were not offered during the 2019–20 and 2020–21 school years. Several indicators point to imminent systemic stress. Studies report that disruptions to the delivery of special education occurred particularly with access to services such as speech/language, occupational, and physical therapies.

Even where therapists were available online, the wide range and nature of the services alongside the varying capacity of in-home caregivers and family members able to assist their children during online therapy complicated service delivery. Students with complex needs had difficulty with remote education and therapy; they were further hampered by limited access to technology and equipment needed to implement learning.

Shortened school days and limited live communication with teachers further constrained service delivery. Someindividualized educational plans (IEPs) required four or more hours of special education services. When school days were reduced, even basic instruction was often not provided at all—much less the total hours of special education services that were promised. From a survey of 2,500 school leaders, the American Institutes for Research (AIR) reported difficulties with delivering hands-on instruction, making instructional accommodations, engaging with families, collaborating with social services or other agencies, and delivering the least restrictive environment (LRE) to students with disabilities.

Additional California data suggest that students with disabilities had lower rates of active and passive engagement online than their peers as well as a disproportionate lack of participation in any form of distance education. Mental health concerns were twice as likely for students with disabilities as they were for those without identified disabilities. Research has demonstrated that student learning has been substantially affected by the pandemic, but the impact is likely much worse for students with disabilities.

SERVICES FOR STUDENTS WITH DISABILITIES IN CALIFORNIA

California serves more than 795,000 newborns, toddlers, children, adolescents, and young adults through special education services. At no cost to families, California's educators offer specially designed instruction to meet the unique needs of these learners in a variety of settings. These services are described in individualized family service or educational plans that are co-constructed by families, students, and service providers. Every year these plans are renewed, the student's progress is assessed, and the parties' responsibilities are assigned to ensure that the plans are implemented with fidelity.California confirms that the federal Individuals with Disabilities Act (IDEA) is implemented and handles complaints that may arise when caregivers and educators disagree.

When this many individuals are involved, disagreements can be anticipated. And even prior to the pandemic, disagreements were rising here in California; the Office of Administrative Hearings (OAH) reported that complaints to the state have risen from 2,677 in 2009 to 4,904 in the 2018–19 fiscal year, an increase of 83%. This contrasts with the national trend of decreasing special education complaints reported by the Center for Appropriate Dispute Resolution in Special Education (CADRE). Now, with in person learning disrupted in the state since California districts and schools began closing on March 7, 2020, increasing complaints could potentially overwhelm the current due process system.

While students are beginning to return to in-person learning at the end of the 2020–21 school year, schools are faced with the aftermath of a year spent in distance education with widely disparate successes and failures. And as education in the 2021–22 school year comes to look more like prepandemic education, families and education staff will return to the IEP process to address students' needs. Families will ask for IEP facilitation; will obtain informal, local mediation; will solicit parent-to-parent assistance; and/or will turn to an ombudsperson for settling disagreements over identification, service delivery, and placement. If these informal avenues don't work, due process hearings, mediation, and state complaints currently comprise the sole avenues of formal dispute resolution. These same processes will govern any request for missed services and supports during COVID-19 conditions and such requests are likely to pour into overtaxed school systems.

Compensatory education may be required when there has been a denial or delay of IEP services that has caused a student not to progress as expected. For instance, a student may not have been able to receive the number of minutes per week allocated for speech/language therapy. This missed time may cause a student not only to have stopped improving their speech/language but also, in some cases, to have returned to older patterns of speaking and understanding. For each student, the determination of compensatory education is made individually based on data that demonstrates regression or denial of services.

Compensatory education can be agreed to through the IEP process, alternative dispute resolution, mediation, hearings, or complaints to the California Department of Education (CDE) or Office of Administrative Hearings (OAH). Remedies are usually additional services but can include monetary compensation.

THE IMPORTANCE OF PREVENTATIVE ACTION AND EARLY INTERVENTION IN COVID-19 RECOVERY

Two arenas must be emphasized in determinations of compensatory education. The first is a focus on**the prevention of complaints** by proactively engaging families in a process of discovery and development of compensatory plans.CADRE—with its extensive experience helping states reduce complaints and increase the capacity of local education systems to address and resolve student needs—advocates for the prevention of family–system disputes. These elements are critical for success: (a) family engagement; (b) family and educator reconciliation and collaboration education; (c) language access; (d) collaboration with Family Empowerment Centers; and (e) LEA plans to support and conduct outreach to identify and implement useful resolution strategies.

In addition to prevention, **early intervention** is key to getting back to educating students with disabilities. A focus on early intervention means that systems are in place for informal and voluntary dispute resolution processes. These processes can also be used to reconcile needs of students who are under juvenile court jurisdiction and/or are subject to out-of-home placement.

LEAs should be supported to develop these elements of a prevention and early intervention system. They will, in particular, need additional funds to develop these early intervention and prevention processes. Funding such processes can lead to a stronger, more equitable system of mediation and support for all families and can offer education systems the opportunity to create more nimble and responsive systems of support for their students with disabilities.

RECOMMENDATIONS FOR CALIFORNIA POLICYMAKERS AND LEADERS

The anticipated acceleration of requests for compensatory special education services because of COVID-19 has the potential to undercut districts' capacity to serve their students. If half of the families with students who currently receive special education seek compensatory services, the cost to California's education system is likely to rise above one billion dollars (based on estimates from the CA Assembly Appropriations Committee analysis).

Preventative investments that incentivize informal resolutions as well as early intervention prevent conflicts from escalating to more lengthy, expensive, and contentious cases. However, California has historically had a weak infrastructure for supporting these informal processes of dispute resolution, and thus a high number of conflicts escalate to legal action.

Further, the California Special Education Task Force report (2015) found that inequities were inherent in the state's system of dispute resolution. Research cited in the report found that the cost and complexity of engaging in due process hearings deter low- and middle-income families from using the protection provisions of IDEA. Language and income are barriers to retaining representation for due process. Districts with large proportions of low-income students are more likely to struggle to meet IDEA mandates while the families that they serve are less likely to file complaints than are families in districts serving a higher income population. Thus, while IDEA creates the possibility of invoking legal recourse for ineffectual special services, families bear the burden of instigating these recourses. Language barriers include inadequate translation and interpretation offered by education systems. Family participation is also hampered by deficit views of family capacity, cultural misinterpretations, incomplete knowledge about appropriate services, confusion concerning special education jargon and the purpose of the IEP, and challenges with the quantity and quality of information received at home. Ensuring equity in outcomes is a critical benchmark for equity in special education services.

Other states anticipating a crisis at the point that schools begin meeting in person have issued guidance to their school districts and agencies to address the anticipated flood of family requests for compensatory services. The process for determining whether compensatory services are needed as well as how and for how long they will be provided will create the possibility of disagreement between overstretched schools and families that will advocate for the rights of their children to opportunities to learn and to make up for time lost during COVID-19.

The California Department of Education needs to offer guidance and support to education providers throughout the state as well as to assure families that a fair, just process will support effective family–school collaboration. Funding to ensure that this occurs is crucial to student success and school functioning.

A proposed bill (AB 967) could deliver historic investments in dispute resolution processes with a proven track record of preventing and resolving disputes in an equitable and cost-effective manner. AB 967 would require LEAs to confront inequity by conducting outreach to families that are typically left out of the process and are unable to access their due process rights. The proposed legislation also requires accountability and enhances family supports by involving California Special Education Local Plan Areas (SELPAs), the CDE, and Family Empowerment Centers (FECs) throughout the process. This bill is supported by over 130 school agencies and individuals. It offers hope, equity, and recourse to families—and, in doing so, builds a stronger special education system for the state.

If the bill is enacted, LEAs will have a system that they can continue to use to strengthen their ties to families long after the COVID-19 crisis ends.

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