



BARGAINING ADVISORY

Distance Learning During the COVID-19 Pandemic

Background

The World Health Organization has declared COVID-19 a pandemic, and California has declared a state of emergency. The need to slow community spread through social distancing has resulted in the closure of many local education agencies (LEAs). During this time, student and staff safety are of paramount concern. The duration of the crisis and extent of school closures is currently unknown. As a result, many LEAs are considering implementing distance learning to bridge the loss of instructional time. This advisory seeks to provide guidance, clarification, and advice on best practices regarding the issues presented when considering a distance learning program.

California Education Code Sec. 51865 defines “distance learning” as “instruction in which the pupil and instructor are in different locations and interact through the use of computer and communications technology. Distance learning may include video or audio instruction in which the primary mode of communication between pupil and instructor is instructional television, video, telecourses, or any other instruction that relies on computer or communications technology.”

Many LEAs are attempting to implement distance learning programs and more traditional “independent study” packet work as a replacement for traditional classroom instruction during school closures due to the pandemic, and chapter leaders should immediately become involved in this decision-making process through bargaining, consultation, and all other means possible.

Frequently Asked Questions and Issues to Address

Will my LEA jeopardize its funding by not offering distance learning during COVID-19 related closures?
The short answer is “no.” California Education Code Sec. 41422 does not require maintenance of educational programs to receive continued state funding.

The Governor’s March 13, 2020 Executive Order (N-26-20) does not override this statutory provision, stating only that “if an LEA closes its schools to address COVID-19, as provided in Paragraph 4 of this Order, the LEA will continue to receive state funding to support the following during the period of closure,” listing four items that funding may be used to support, including: 1) continuing to deliver high-quality educational opportunities; 2) providing meals; 3) arranging for the supervision of students during school hours, to the extent practicable; and 4) continuing to pay its employees. The Order is clear that the LEA may continue delivering “educational opportunities to students *to the extent feasible through, among other options, distance learning and/or independent study...*”

Will my LEA have to make up days missed due to COVID-19 related school closures if it does not offer distance learning?

Again, the short answer is “no.” According to the California Department of Education (CDE), “when the SSPI authorizes credit for days that school was closed, LEAs receive instructional time credit for



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the day(s) and minutes lost due to the emergency closure...The instructional time credit satisfies state law with regard to both the instructional day and minutes requirement.” (www.cde.ca.gov/fg/aa/pa/formj13faq.asp#SchoolClosure). Additionally, the Governor’s Executive Order states for “LEAs that initiate a school closure to address COVID-19, the closure shall qualify as a condition that prevents the maintenance of the LEA’s schools during a fiscal year for at least 175 days pursuant to Education Code section 41422...” Finally, the Executive Order suspends the affidavit requirements for waiver of the 175-day mandate, so long as the LEA’s top administrator certifies that the closure occurred to address COVID-19.

The Right to Bargain Over Distance Learning Programs

California’s Educational Employment Relations Act (EERA) covers wages, hours of employment, and safety conditions falling within the scope of mandatory bargaining. The District’s obligation to give notice and an opportunity to bargain over those mandatory subjects remains in effect, even during a crisis. However, it is critical to review the specific provision of your collective bargaining agreement (CBA) and their impact on this situation. We strongly recommend consulting with your Primary Contact Staff person if you have questions or concerns.

If distance learning is not part of the normal work expected of unit members, its implementation changes working conditions. Work beyond the normal expectations should through bargaining be compensated and/or accommodated in some other acceptable way(s). Additional training, preparing alternative lessons, methods of alternative interaction with students, and changes to workload that affect one’s hours of employment or conditions of work should be negotiated. Class size or caseload issues, teacher evaluation and grading requirements, technological and other support, should also be considered. In the specific context of distance learning, LEA-provided access to equipment and internet resources are essential to a quality program, and unit members should not be expected to bear the financial burden for costs associated with distance learning or other nonclassroom-based programs.

Ensuring Equity and Access for All Students

All eligible students must be able to participate in distance education on an equitable basis without regard to economic or social status. LEAs should be mindful of students who may not have the ability to participate in nonclassroom alternatives due to the lack of access to a quiet space, home support, or access to technology. These Inequities and difficulties are currently exacerbated by the fact that many public libraries, recreation centers, and other possible study locations are closing. Additionally, if the LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities (also see CTA’s Advisory “Special Education Concerns During the COVID-19 Pandemic (3/16/2020)” for more information).



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Pedagogical Considerations

How familiar should one be with the online platform that may be planned for use during the shutdown?
Ideally, prior to being assigned to online instruction, educators should be provided professional development and afforded the requisite technological infrastructure and technical support. Chapters should negotiate the nature and duration of infrastructure and support to be provided, keeping in mind that flexibility and ongoing support will be critical as educators and students navigate unfamiliar processes and technology. We do not recommend teachers and students use new or unfamiliar online learning platforms or learning management systems (LMS) without prior training or support. Additionally, chapters should negotiate to provide staff an appropriate number of workdays to prepare lessons before teaching students online. LEAs should provide on-going support for students, teachers, and parents when considering distance learning, and it is imperative to have a flexible distance learning plan that may be changed as needs arise. Safeguarding the personal data of students and educators must also be a top priority, with data privacy a paramount concern.

During the shutdown, where may one receive additional support or find other educators who are using long distance learning programs?

Many educators are using the hashtag #remotlearning to provide support and share ideas as they navigate shutdowns and use long distance learning. The CTA Instruction and Professional Development (IPD) department is also curating articles and resources on Wakelet at: <https://wke.lt/w/s/t4Jjtc>.

What kind of lessons should one teach and how frequently should educators provide instruction?

Online instruction should be provided at consistent times throughout the day. Distance learning must be developmentally appropriate. For example, a kindergarten teacher may have story time through an online platform if students have access to that technology. The International Society for Technology in Education (ISTE) has [recommendations for online learning](#), including [ten strategies to use during the outbreak](#).

Distance learning should be subject to the criteria adopted for quality education and regular curriculum review procedures/standards in each LEA or school. Additionally, students should not be penalized in ways that might delay promotion or graduation or prevent credit for recognition/honors due in adequate provisions for, or unreasonable requirements surrounding, courses that cannot be replicated online (fine arts, laboratory sciences, career and technical education courses, etc.).

Are the criteria for distance learning different from teaching in the classroom?

Teachers who provide distance education should be licensed in the subject matter taught and hold a teaching credential. Even though distance learning is temporary, teachers should be skilled in learning theories, technologies, and pedagogies appropriate for the online environment.

What types of assessments are appropriate for distance learning during the shutdown?

Chapters should negotiate over the appropriate use of assessments during periods where distance learning is used, recognizing that this is uncharted territory for both educators and students and that



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unexpected challenges will arise. Consider bargaining to suspend the use of assessments altogether during shutdowns or, at a minimum, avoiding the use of summative assessments in favor of formative assessment where appropriate.

Technical Support Considerations

What support will be provided to members for successful distance learning?

For many members, this may be the first time they have experienced or been asked to engage in distance learning. There are many technical issues to address, including for example, which platforms may be used (Google Classroom, ClassDojo, etc.). LEAs should have a list of approved platforms that members have access to and should provide training to implement those platforms before being expected to fully engage with students. How, when, and where that training is provided should be negotiated, clearly communicated, and equitable in access.

What equipment should be provided to members?

LEAs should provide unit members a computer and access to legally purchased and licensed software necessary to support the educational program, such as curriculum-based software and other tools to assist instruction. Unless bargained otherwise, members should not be required to use their own personal devices to deliver distance learning. Considerations should also be made for members who live in areas with poor internet access.

Should grading be expected?

There are several factors to consider. Grading online assignments is much more time consuming than grading paper assignments. Chapters should bargain the impacts and effects of grading during the shutdown, keeping equity issues in mind.

If students have technical issues who will they turn to?

Technical assistance should be available whenever needed by students and faculty. LEAs should have a flexible but clear plan that identifies technical support personnel, contact information, and contingencies for issues that will undoubtedly arise. On-going communication by the LEA with school staff, students, and parents on technical issues and support is key.

What else should be considered?

Teaching in a distance format is very different than in a standard classroom. Remember to take frequent breaks from the computer screen and sit at an ergonomically correct work area. "On screen" time needs to be balanced with time to prepare, which can take longer for distance learning.



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The Long-Term Impact on Public Education

What should we do if our public-school employer considers contracting out distance learning services to a nonclassroom-based charter school?

If your chapter faces this issue, notify your CTA Primary Contact Staff person immediately. Some LEAs have recently been approached by nonclassroom-based charter schools with contract proposals to support educational services during school closures. This is a bad idea. Contracting out has both negative fiscal and pedagogical implications. The effectiveness of some nonclassroom-based models are [unproven](#). Additionally, recent [scandals](#) demonstrate that some nonclassroom-based charter schools are susceptible to corruption and mismanagement (this is, in part, what led to California's two-year [moratorium](#) on new nonclassroom-based charters). During these uncertain times, breaking the connection between a student and teacher and transferring it to a wholly new school environment and staff could exacerbate an already difficult situation.

Many collective bargaining agreements prohibit contracting out of bargaining unit work. Even if not explicitly prohibited in a CBA, LEAs cannot unilaterally contract out bargaining unit work without negotiation with the union. If an LEA considers contracting with an outside entity to provide distance learning, chapters should demand the LEA immediately cease and desist from such actions.

If your LEA has been approached and/or is considering contracting out instruction to nonclassroom-based charter schools, please inform the CTA charter school team at charterquestions@cta.org.

Privacy Concerns

How can we best protect student privacy if we begin using new educational technologies?

As LEAs scramble for alternatives to classroom instruction, education technology ("ed tech") companies may view this public health emergency as an opportunity to expand the market for their products. In this time of uncertainty, especially with rising fears about the economy, LEAs may be tempted to adopt "solutions" from ed tech companies, especially as many start offering resources [for free](#). However, educators and parents often do not realize that online learning companies are allowed to collect, store, and sell personal data about their children. Additionally, the pedagogical effectiveness of many of these new technologies is untested.

Before adopting new ed tech resources, associations should urge their LEAs to:

- Exercise extreme caution or refrain from signing new contracts with any ed tech company
- Refrain from adopting new ed tech resources if there is no evidence of pedagogical effectiveness
- Ensure that any new ed tech resource complies with the Student Online Personal Information Protection Act



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While LEAs are urged to use a common platform so educators do not have to employ multiple distance learning technologies, educators may also be individually searching for online solutions and resources. Before adopting any new software, technology, app, or online platform, educators should:

- Stick to tools designed with education in mind, especially if students are going to sign up and create accounts
- Be mindful about how the tools ask students to sign up, enter personal information, or share anything online
- Always get parental consent first — email a note home to ask for permission
- Avoid apps, games, or websites that seem focused on advertising
- Be cautious with tools that claim to be educational but are also aimed at consumers or the business world

For more information, see the [Educator Toolkit for Teacher and Student Privacy](#) from the Parent Coalition for Student Privacy and CTA's resources for [protecting children's online privacy](#).

Charter School Bargaining Units

Does all of this apply to our union charter schools?

Some charter schools may be concerned that AB 1505, which places a two-year moratorium on new nonclassroom-based schools, prohibits the use of online learning, independent study, or other distance learning options during a closure due to COVID-19. However, the Governor's Executive Order explicitly allows all LEAs (including charter schools) to offer distance learning during a closure related to COVID-19. Importantly, however, this only applies during a closure due to COVID-19 and cannot be a permanent part of the charter school's instructional design.

Additionally, Education Code Secs. 46392 and 41422, which address ADA and other funding issues in cases of emergency, apply to charter schools.

Additional Information and Updates

This Advisory will be updated as additional information becomes available, particularly later this week when further clarification pursuant to the Governor's Executive Order will be issued. In the meantime, particularly during these very difficult times, questions should immediately be directed to your local CTA Primary Contact Staff person.