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**CRITICAL UPDATE:**  
**UNDERSTANDING THE FINANCIAL AND LEGAL EFFECTS OF THE BUDGET TRAILER BILL ON CHARTER SCHOOLS**

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## Disclaimers

- This webinar cannot substitute for personalized legal advice.
- Our advice can change tomorrow. Or an hour from now.
- With so many participants and so little time “live” questions are impossible, but we’ve designed this with your questions in mind.
- We’re covering urgent pieces of SB 98 today. Follow up webinars are likely. Feel free to email with suggested follow up topics.
- Sign up for our legal alerts on our website: [www.mycharterlaw.com](http://www.mycharterlaw.com).
- Our attempts at humor are not intended to minimize the gravity of the situation (and *warning*: we are a little punchy from lack of sleep)

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## OVERVIEW OF SB 98

(AND CONVENIENTLY OUR LIST OF TOPICS FOR DISCUSSION)

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**Senate Bill 98  
Critical Overview**



- ADA Cap for 2020-21 Based Upon 2019-20 ADA
- Deferrals and Zero Inflation Adjustments for 2020-21
- Flattens SELPA funding to \$625 per ADA or the amount received in 2019-20, whichever is greater

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**Senate Bill 98  
Critical Overview**



- Defines Instructional Day for 2020-21 to Include “Distance Learning”
- Lowers Instructional Minutes and Requires Daily Instructional Minutes
- Establishes Minimum Standards and Documentation Requirements for Distance Learning

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**Senate Bill 98  
Critical Overview**



- Eliminates LCAP for 2020-21 but Adds a “Learning Continuity and Attendance Plan” Due by September 30, 2020
- Adds an IEP Requirement for IEP Implementation Under Emergency Conditions
- Distinguishes a Nonclassroom-Based Charter School for 2020-21 for Many of these Provisions
- Establishes Additional Requirements for “Continuing Charter Schools” Operating Facilities Outside the Boundaries of their Chartering Authority
- Revises Renewal Requirements

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# FINANCIAL EFFECTS OF SB 98

(AKA: the roof is on fire)



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## Quadruple Survival Threats...



- Deferrals of state aid funds
- Cap on ADA growth
- Potential for State Revenues to Slide Further?
- COVID Turbulence



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## Call for Quadruple Bypass



1. Managing State Aid Deferrals
  - Credit Markets Tightening
  - Ask for Exemption from Deferrals (EC 14041.8)
    - \* Chartering Authority Certifies in Consult with Co Superintendent that you are unable to meet obligations in that or any subsequent month.
    - \* It is a Race! Limited availability!
  - Borrow from county (EC 42621 & 42622)
  - Revenue Anticipation Notes
  - Receivable Sales



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**Call for Quadruple Bypass** 

2. Cap on ADA Growth

- Legislature has capped ADA at the amount earned by charter schools and school districts as of February 29, 2020. This concept seems to have been borrowed from the community college funding system.
- Governor's signing message gives a tiny ray of hope.
- Do not disenroll students now if possible. Wait and see if resolution is achieved through these strategies before the school year begins.
- Consider freezing new enrollment

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**Calls for Quadruple Bypass** 

2. Cap on ADA Growth

- Continue political advocacy
- Consider litigation if impact is significant for your school(s)
- What if my growth is planned for a future year?
- New schools approved prior to June 20 or at July SBE meeting can still get ADA funding.

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**Call for Quadruple Bypass** 

2. Cap on ADA Growth – Is Litigation the Answer?

- First charter lawsuit challenging cap on ADA growth anticipated next week.
- Your school should consult us if you are harmed in a significant way so that we can discuss if litigation is a good solution.
- You might qualify for funding to cover some costs based on need, facts, and strength of your case.
- Growing school districts may also sue.

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**Call for Quadruple Bypass**



3. Managing Potential Further State Revenue Slide

- State attempting to manage budget decline with deferrals
- Increasing COVID cases leading to business shutting down again.
- Business shutdowns = less taxes
- Less taxes = potential further mid-year reductions and deferrals
- Hold the line on any unnecessary expenses now
- Re-negotiate NOW with landlord and vendors

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**Call for Quadruple Bypass**



4. COVID Turbulence

- Potential lawsuits could prove to be a major threat to budget stability
  - \* Lawsuits may cause lenders to deny cash flow or facility loans
  - \* Cost of defense could be high
  - \* Mitigation of risk essential!
- Enrollment declines tied to school model or inability to recruit during shelter-in-place.
- Cost of compliance as yet unknown.

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**Other Fiscal Provisions**



Charter schools, school districts and county offices of education shall not expend funds for courses or instruction offered by private or public colleges or universities beyond that permitted in pursuit of a high school diploma, except for courses or instruction in which pupils are enrolled in before July 1, 2020.

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## CARES Funding

1. Classroom-based schools benefit the most, but nonclassroom-based schools still get something from one of three pots.
2. Funds come with strings attached – money targeting direct support for students. (See section 110 of SB 98 for details).
3. Local Funded Charters Included in District's Numbers
4. Maintain all receipts/records for 3 years or until completion of audit, whichever is later.

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## LEGAL EFFECTS OF SB 98

(aka: Lisa got the easier part of the discussion)

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## Definitions

“Local educational agency” for purposes of Part 24.5 “School Finance, Instruction, and Accountability in the 2020-21 School Year” does not include a school classified as a nonclassroom-based charter school as of the 2019-20 school year. (EC § 43500(c))

\*only for purposes of that Part (Sections 43500-43511)

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**Definitions**



“Distance learning” means instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certificated employee of the local educational agency. (EC § 43500(a))

*\*Distance Learning does not require a material revision to a charter and does not change a classroom-based charter school in the 2020-21 school year to a nonclassroom-based charter school.*

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**Definitions**



Examples of Distance Learning (EC § 43500(a)):

- Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology.
- Video or audio instruction in which the primary mode of communication between the pupil and certificated employee is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.
- The use of print materials incorporating assignments that are the subject of written or oral feedback.

When your white board is at school



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**Definitions**



Distance Learning may be offered under either of the following circumstances:

- 1) As a result of an order or guidance from a state or local public health officer; or
- 2) For pupils who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19

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**Definitions**



**Distance Learning must include all of the following:**

- (1) Confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work.
- (2) Content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.
- (3) Academic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports.

*(list continues on next slide)*

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**Definitions**



**Distance Learning must include all of the following (continued from prior slide):**

- (4) Special education, related services, and any other services required by a pupil's IEP with accommodations necessary to ensure that IEP can be executed in a distance learning environment.
- (5) Designated and integrated instruction in English language development for English learners, including assessment of English language proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and, as applicable, support for dual language learning.
- (6) Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness. This interaction may take the form of internet or telephonic communication, or by other means permissible under public health orders. \*\*If daily live interaction is not feasible as part of regular instruction, the governing board or body of the local educational agency shall develop, with parent and stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness.

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**Definitions**



"In-Person Instruction" means instruction under the immediate physical supervision and control of the local educational agency while engage in educational activities required of the pupil. (EC § 43500(b))



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## Definitions



“Instructional Day” means “a day in which all pupils are scheduled for the length of the day established by the governing board or body of the local educational agency in a classroom under the immediate supervision of a certificated employee or in distance learning that meets the minimum requirements described in this part”

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## Instructional Days



- Continued Minimum of 175 Instructional Days (5 CCR 11960) (Schools failing to meet minimum requirements risk .0056 of apportionment for each day)
- For 2020-21 “Instructional Day” for site-based charter schools can be accomplished through in-person instruction or a combination of in-person instruction and distance learning (EC § 43502(c))
- For nonclassroom based charter schools, continue with 175-day calendar and continue to comply with all statutory requirements for Independent Study (EC § 43505(b)(3))
- No penalties for failing to meet the legal requirements of distance learning before September 1, 2020

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## Instructional Minutes



| Grade Band  | Standard Annual Instructional Minutes Requirements for Charter Schools per 47612.5 (In effect prior to and after 2020-21) | Minimum School Day Requirement for Site Based Charter Schools for 2020-21 per EC § 43502 (Converted to Annual For Comparison Purposes) |
|---|---|--|
| K   | 36,000 minutes  | 180 daily<br>(180 x 175 = 31,500)  |
| 1-3   | 50,400 minutes.   | 230 daily<br>(230 x 175 = 40,250)  |
| 4-8   | 54,000 minutes.   | 240 daily<br>(240 x 175 = 42,000)  |
| 9-12  | 64,800 minutes.   | 240 daily<br>(240 x 175 = 42,000)  |
| Students in grades 11-12 and are enrolled part time in classes of CSU or University, UC, or Community College for academic credit |   | 180 daily<br>(180 x 175 = 31,500)  |
| Continuation High School  |   | 180 daily<br>(180 x 175 = 31,500)  |

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## Calculation of Instructional Minutes

| Type of Instruction                | Determined By:  |
|------------------------------------|---|
| In Person                          | The time scheduled under the immediate physical supervision and control of a credentialed employee. (EC § 43502(e)(1))  |
| Distance Learning                  | The time value of the assignments as determined and certified by a credentialed employee. (EC § 43502(e)(2))  |
| Combined                           | Both the time scheduled under the immediate physical supervision and control of a credentialed employee combined with assignments made under the general supervision of a credentialed employees. (EC § 43502 (e)(3)) |
| Nonclassroom Based Charter Schools | Presumably, continue as done in prior years. *please note, instructional minutes not currently included in the audit guide for nonclassroom based charter schools.  |

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## Attendance

- Compulsory Attendance Requirements Continue to Apply (EC § 43504(a))
- A local educational agency shall offer in-person instruction to the greatest extent possible. (EC § 43504(b))
- Daily participation must be documented for each day distance learning is utilized. (EC § 43504(d))
- Each school shall regularly communicate with parents and guardians regarding a pupil's academic progress. (EC § 43504(g))

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## Documentation of Daily Participation in Distance Learning

Documentation of Daily Participation includes (but it not limited to)

- Evidence of participation online, completion of assignments or assessments, and contacts between employees and pupils or parents
- A “weekly engagement record” must be completed.
  - At a minimum the “weekly engagement record” must document synchronous or asynchronous instruction for each whole or partial day, verifying daily participation and tracking assignments. (EC § 43504(e))

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## Addressing Student Absences from Distance Learning



- A student not participating in distance learning (and not in-person) on a schoolday is deemed absent for that schoolday and documentation of the absence is required for purposes of reporting chronic absenteeism rates. (EC § 43504(f))
- Each local educational agency shall develop written procedures for tiered reengagement strategies for all pupils who are absent from distance learning for more than three schooldays or 60 percent of the instructional days in a school week.
  - These procedures shall include, but are not limited to:
    - verification of current contact information for each enrolled pupil
    - daily notification to parents or guardians of absences,
    - a plan for outreach from the school to determine pupil needs including connection with health and social services as necessary and,
    - when feasible, transitioning the pupil to full-time in-person instruction.




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## Learning Continuity and Attendance Plan



- Local Control and Accountability Plan ("LCAP") and LCAP update is suspended for all charter schools for 2020-21
- Learning Continuity and Attendance Plan ("LCAP2") is Due by September 30, 2020




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## Learning Continuity and Attendance Plan Content



**Must align with a template developed by the CDE. The CDE must develop the template by August 1, 2020 to include minimal requirements described in EC § 43509(f). Topics include:**

Continuity of learning and impact of COVID-19 on pupils, staff, and community, and specific actions and expenditures to address the impact of COVID-19 including:

- 1) In person instructional offerings
- 2) Distance learning
- 3) Addressing pupil learning loss during 2019-20 and 2020-21 school years
- 4) Mental health and social and emotional well-being of pupils and staff
- 5) Professional Development and resources for pupils and staff to address trauma and other impacts of COVID-19


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**Learning Continuity and Attendance Plan Content (Cont'd)**



- 6) Pupil engagement and outreach
- 7) Procedures for tiered reengagement strategies for pupils who are absent from distance learning
- 8) School nutrition, including how the charter school will provide meals for pupils who are eligible for free or reduced-price meals

*\*the minimum content of the template for the LCAP2 as required by Section 43509(f) is far more detailed*

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**Learning Continuity and Attendance Plan Process for Adoption**



Charter school board must consult with teachers, principals, administrators, other school personnel, local bargaining units, parents, and pupils in developing a LCAP2. The process for engagement must include ALL of the following:

- The administrator shall solicit recommendations and comments of members of the public regarding the specific proposed actions and expenditures
- The administrator shall notify members of the public of the opportunity to submit written comments using the most efficient method of notification possible and, if 15% or more of the pupils enrolled in the charter school (census data from the prior year) speak a primary language other than English, in that primary language.
- The administrator shall present the LCAP2 at a public hearing of the charter school board for review and comment by members of the public. The agenda for the public hearing shall be posted at least **72 hours** before the public hearing and shall include the location where the LCAP2 will be available for public inspection.

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**Learning Continuity and Attendance Plan Process for Adoption (Cont'd)**



- The charter school board shall adopt the LCAP2 in a public meeting. This meeting shall be held after, but not on the same day as, the public hearing.
- Must provide options for remote participation in the public hearings and make efforts to solicit feedback to reach pupils, families, educators, and other stakeholders who do not have internet access, or who speak languages other than English.
- Not later than five days after adoption of a LCAP2, the charter school board shall file the LCAP2 with its chartering authority and the county superintendent of schools, or only to the county superintendent of schools if the county board of education is the chartering authority.
- Must post in the same manner as the LCAP – on the homepage of the internet website.

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## Additional IEP Content



For Initial IEP's or the Next Regularly Scheduled Revision of an IEP, the Content of the IEP must include pursuant to EC 56345 §(a)(9)

- A description of the means by which the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days.
- The description shall take into account public health orders and include all of the following:
  - (i) Special education and related services.
  - (ii) Supplementary aids and services.
  - (iii) Transition services
  - (iv) Extended school year services

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## Charter Renewal



- For charter schools eligible for "high track" or "low track" renewal, the data requirement was expanded from "two consecutive years immediately preceding the renewal decision" to "**two of the three years** immediately preceding the renewal decision," if the two years preceding the renewal decision include 2019-20
- If seeking renewal during...
  - 2020-21: use 2017, 2018 and/or 2019 Dashboard + CDE data released July 1, 2020
  - 2021-22: use 2018 and 2019 Dashboard + CDE data released July 1, 2021
  - 2022-23: use 2019 and 2021 Dashboard + CDE data released February, 2022
  - 2023-24: use 2021 and 2022 Dashboard + CDE data released February, 2023

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## Continuing Charter Schools



A "continuing charter school" is a charter school existing as of Oct. 1, 2019, *that secured a new charter with a different chartering authority in order to comply with new limits on the geographic location of the site pursuant to AB 1505/1507.*



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## Continuing Charter Schools



- If, at renewal, the charter school gets a new charter approved, the State will not consider it a “new” charter school for funding purposes and academic data, but rather a “continuing school.”
- Status applies whether the underlying facility was site or a resource center.
- Also includes current SBE-authorized schools that are designated to the local District or County upon renewal appeal.


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## Continuing Charter Schools



- SB 98 establishes the procedures that continuing charter schools must follow (EC § 47653)
  - Notification to the CDE of “continuing charter school” status in format established by CDE by May 15 before the fiscal year in which the charter school is to be regarded as a continuing charter school
  - Substantiation of previous existence (attendance records or other documents to verify previous provision of instruction at the site)
  - Failure to provide notice and substantiation relieves the CDE of obligation to regard as continuing (default to “new”)
  - Must commence instruction before Sept. 30<sup>th</sup> of the year the petition is effective.
  - Not eligible for funding as a new charter school
- The new law is not intended to conflict with federal Title programs, where a “continuing charter school” may otherwise be deemed a new charter school


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**Thank you for attending this webinar.**

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**More questions?**  
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