

MEMORANDUM

TO: AZCASE

FROM: The Education Law Attorneys at Udall Shumway

DATE: April 26, 2018

RE: Updated Information Re: Providing Special Education Services During Teacher Walkout

On April 24, 2018 (4:19 p.m.), the Arizona Department of Education's (ADE) Exceptional Student Services Department (ESS) sent an email to Special Education Directors entitled, "ESS Walkout Statement". In short, ADE cited to *Letter to Balkman* (23 LRP 3417 OSEP April 10, 1995) and advised that if a PEA is unable to provide regularly scheduled IEP services during a teacher walk out, the PEA will "be required to make other arrangements to provide services [during the walk out] or reschedule the required IEP services in order to meet its responsibility of providing free appropriate public education (FAPE) to students in accordance with their IEPs."

As you may know, *Letter to Balkman* provided guidance in relation to scenarios in which a school was in session and a student missed services due to staff absences or inability to serve the students. This is not the same situation as when a school/district is closed and there is not a school day (or workday) for which any staff for student could be absent.

Our research revealed that there was further guidance from OSEP that was more pertinent to the issue our schools are facing with the teacher walk out. *Letter to Pergament*, 62 IDELR 212 (OSEP December 20, 2013) (included with this Memo) relates directly to a school/district closure for a 1-week period resulting from a teacher strike. In *Letter to Pergament*, OSEP opined as follows:

- If the delivery of services is disrupted for all or nearly all of the students due to a short-term teacher's strike, the LEA is not required to provide services to the affected children with disabilities during that same period of time.
- Whether and to what extent a student is entitled to compensatory education after the end of the teacher's strike is a determination that must be made by the child's IEP team based on whether the disruption in services denied the child educational benefit.

- Assuming the child's annual IEP meeting has already taken place, the parent and district could agree to make changes to the IEP, such as the provision of compensatory education, by developing a written document to modify the IEP instead of holding a meeting. In this case, the IEP team would need to ensure that the IEP team is informed of the changes.

In response to ADE's email, many of you reached out for assistance in understanding why the Districts/Charter Schools would be required to provide services to students with disabilities if the District/Charter School was closed due to the walk out. In our view, the concern was well founded. Therefore, our firm reached out to ADE on April 26, 2018 to ask that ADE consider *Letter to Pergament* and clarify to PEAs that they are not required to "make other arrangements to provide services at [the same time as the walkout] or reschedule the required IEP services," as stated in ADE's April 24, 2018 correspondence.

We were gratified to receive a prompt response from ADE, letting us know that ADE is going to issue a clarification to Special Education Directors that is aligned with OSEP's guidance in *Letter to Pergament*. This means that ADE agrees that Arizona's public schools will not be expected or obligated to provide IEP services during school closures due to teacher walkouts.

We are hoping that ADE very promptly uses its Listerve to disseminate its clarification email. However, even with the clarification, school districts and charter schools will need to consider "next steps", including what communication will be sent to parents. It's a good thing Special Education Directors love challenges!

Please do not hesitate to contact us or the attorney(s) that regularly represent your schools if you need legal assistance.

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