



AL. MUJARES, Ph.D.  
County Superintendent of Schools

200 Kalmus Drive · P.O. Box 9050  
Costa Mesa, CA 92628-9050

(714) 966-4220  
(714) 434-4945 FAX

## SCHOOLS LEGAL SERVICE

JEFFREY J. RIEL  
General Counsel

CLAIRE Y. MOREY  
LYSA M. SALTZMAN  
RUTH D. BREWDA  
CARL J. PIPER  
Counsel

NORMA GARCIA  
Paralegal

July 12, 2021

OPAD 21-09

To: District Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Assistant Superintendents of Instruction

From: Jeffrey J. Riel *JR*  
General Counsel

Ruth Brewda *RB*  
Counsel

Re: Independent Study

On July 9, 2021, Governor Newsom signed [Assembly Bill 130](#) which, among other provisions, amended the independent study requirements beginning with the 2021-22 school year. AB 130 incorporates and makes permanent some of the distance learning requirements imposed during COVID-19. These changes will impact the operation of traditional independent study programs. The major changes are noted below.

### **Districts Must Offer Independent Study for 2021-22**

Generally, districts may, but are not required to, offer independent study programs through Education Code sections 51745-51749.6. For the 2021-2022 school year only, school districts and county offices of education **must** offer independent study to meet the educational needs of certain pupils, including a pupil whose health, as determined by the parent or guardian, would be put at risk by in-person instruction.

School districts and county offices of education may meet the requirement to offer independent study during the 2021–22 school year by contracting with a county office of education or by entering into an interdistrict transfer agreement with another school district pursuant to Education Code section 46600. In limited circumstances, a school district or county

office of education may seek a waiver of the requirement to offer independent study.<sup>1</sup>

### **Adoption of Independent Study Policy**

A school district, county office of education or charter school (collectively LEA) may not receive apportionments for independent study unless the LEA has adopted and implemented written policies that include the provisions outlined in Education Code section 51747. LEAs currently offering independent study should review and, likely, amend its policy to include the new requirements. LEAs that have not previously offered independent study will need to adopt a policy. An independent study policy must include the following (new requirements are *italicized*):

1. The maximum length of time, by grade level and type of program, that may elapse between the time an independent study assignment is made and the date by which the pupil must complete the assigned work.
2. *The level of satisfactory educational progress and the number of missed assignments that will be allowed before an evaluation is conducted to determine whether to allow a student to remain in an independent study program. Satisfactory educational progress must be determined based on pupil achievement and engagement, completion of assignments, learning required concepts, and progressing toward completion of the course of study or specific course.*
3. *The provision of content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction. For high schools, this includes access to all courses for graduation and approved by the University of California or the California State University as creditable under the A-G admissions criteria.*
4. *Procedures<sup>2</sup> for tiered reengagement for students who are not generating attendance for three or more school days, or 60 percent, of instructional days in a school week, or are violating the independent study agreement.*
5. *A plan for daily live interaction<sup>3</sup> and synchronous instruction<sup>4</sup> specified by grade level as follows:*

---

<sup>1</sup> A district may seek a waiver if (1) offering independent study would create an unreasonable fiscal burden due to low numbers of pupils participating or other extenuating circumstance, and (2) the school district or county office of education does not have the option to enter into an interdistrict transfer agreement with another school district or to contract with a county office of education to provide an independent study option.

<sup>2</sup> Procedures shall include, but are not limited to, verification of current contact information for each enrolled pupil, notification to parents or guardians of lack of participation within one school day of the absence or lack of participation, a plan for outreach from the school to determine pupil needs, including connection with health and social services as necessary.

- a. *For pupils in transitional kindergarten and grades 1 to 3, inclusive, a plan to provide opportunities for daily synchronous instruction for all pupils throughout the school year.*
  - b. *For pupils in grades 4 to 8, inclusive, a plan to provide opportunities for both daily live interaction and at least weekly synchronous instruction for all pupils throughout the school year.*
  - c. *For pupils in grades 9 to 12, inclusive, a plan to provide opportunities for at least weekly synchronous instruction for all pupils throughout the school year.*
6. *A plan to transition pupils when families wish to return to in-person instruction from independent study expeditiously within five instructional days.*
  7. A requirement that a current written agreement for each independent study pupil shall be maintained on file.

### **Written Independent Study Agreements**

Education Code section 51747 has always required a written independent study agreement. The additional requirements added to Education Code section 51747 will require updates to current written independent study agreements, which must include the following (new requirements are *italicized*):

1. The manner, time, frequency, and place for submitting a *pupil's assignments, for reporting the pupil's academic progress, and for communicating with a pupil's parent or guardian regarding a pupil's academic progress.*
2. The objectives and methods of study for the pupil's work, and the methods used to evaluate that work.
3. The specific resources, including materials and personnel, that will be made available to the pupil. *These resources shall include confirming or providing*

---

<sup>3</sup> "Live interaction" means interaction between the pupil and classified or certificated staff, and may include peers, provided for the purpose of maintaining school connectedness, including, but not limited to, wellness checks, progress monitoring, provision of services, and instruction. This interaction may take place in person, or in the form of internet or telephonic communication. (Education Code section 51745.5(a))

<sup>4</sup> "Synchronous instruction" means classroom-style instruction or designated small group or one-on-one instruction delivered in person, or in the form of internet or telephonic communications, and involving live two-way communication between the teacher and pupil. Synchronous instruction shall be provided by the teacher of record for that pupil pursuant to Section 51747.5. (Education Code section 51745.5(d)).

*access to all pupils to the connectivity and devices adequate to participate in the educational program and complete assigned work<sup>5</sup>.*

4. A statement of the policies adopted pursuant to subdivisions (a) and (b) regarding the maximum length of time allowed between the assignment and the completion of a pupil's assigned work, *the level of satisfactory educational progress*, and the number of missed assignments allowed before an evaluation of whether or not the pupil should be allowed to continue in independent study.
5. The duration of the independent study agreement, including the beginning and ending dates for the pupil's participation in independent study under the agreement. No independent study agreement shall be valid for any period longer than one school year.
6. A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.
7. *A statement detailing the academic and other supports that will be provided to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, individuals with exceptional needs in order to be consistent with the pupil's individualized education program or plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils in foster care or experiencing homelessness, and pupils requiring mental health supports.*
8. The inclusion of a statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate. In the case of a pupil who is referred or assigned to any school, class, or program pursuant to an expulsion under Education Code sections 48915 or 48917, the agreement also shall include the statement that instruction may be provided to the pupil through independent study only if the pupil is offered the alternative of classroom instruction.

### Signatures

Before the commencement of independent study, each written agreement shall be signed by the pupil, the pupil's parent, legal guardian, or caregiver, if the pupil is less than 18 years of

---

<sup>5</sup> An LEA may not claim state funding for the independent study if the LEA has provided any funds or other thing of value to the pupil that the LEA does not provide to pupils who attend regular classes. (Education Code section 51747.3) AB 130 clarified that providing access to connectivity and local educational agency-owned devices adequate to participate in an independent study program are not considered funds or other things of value.

age, the certificated employee responsible for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the pupil. For the 2021-22 school year **only**, the written agreement may be signed no later than 30 days **after** the first day of instruction.<sup>6</sup> Although the agreement can be signed within 30 days, the LEA must comply with the independent study requirements upon commencement of instruction. The written agreements may be signed using a “digital signature” that complies with Government Code section 16.5 and 2 CCR 22000, et seq.<sup>7</sup>

### Notification

For the 2021–22 school year **only**, school districts and county offices of education must notify the parents and guardians of all enrolled pupils of their options to enroll their child in in-person instruction or independent study during the 2021–22 school year. This notice<sup>8</sup> shall include written information on the LEA’s internet website, including, but not limited to, the right to request a pupil-parent-educator conference meeting before enrollment pursuant to this section, pupil rights regarding procedures for enrolling, disenrolling, and reenrolling in independent study, and the synchronous and asynchronous instructional time that a pupil will have access to as part of independent study.

### Pupil-Parent-Educator Conference

Before signing a written independent study agreement, and upon the request of the parent or guardian of a pupil, the LEA shall conduct a phone, videoconference, or in-person pupil-parent-educator conference or other school meeting during which the pupil, parent or guardian, and, if requested by the pupil or parent, an education advocate, may ask questions about the educational options, including which curriculum offerings and nonacademic supports will be available to the pupil in independent study, before making the decision about enrollment or disenrollment in the various options for learning.

Based on the plain language of the statute, an LEA would need to conduct an in-person conference or meeting for this purpose only when a conference is specifically requested by the parent or guardian.

---

<sup>6</sup> Education Code section 51747(g)(9)(F).

<sup>7</sup> Under Government Code section 16.5, a “digital signature” is considered a type of “electronic signature” as defined by Civil Code section 1633.2 but includes additional certifications regulated by the state.

<sup>8</sup> The written information in the notification must, in addition to being written in English, must be written in the primary language when 15 percent or more of the pupils enrolled in a local educational agency speak a single primary language other than English, as determined from the census data submitted to the department pursuant to Section 52164 in the preceding year.

### Shorter Term Independent Study Exception

For pupils that participate in an independent study program for fewer than 15 schooldays in a school year, the requirement to include a tiered reengagement strategy, opportunities for daily synchronous instruction and a transition plan to return to in-person instruction do not apply. This should assist LEAs in providing short-term independent study to students who may have been excluded from in-person instruction for a COVID related reason.

### Compliance

Commencing with the 2021–22 fiscal year the Controller must incorporate verification of the adoption of independent study policies required by Education Code section 51747. As part of the audit process, LEAs that do not have compliant policies and procedures risk the loss of apportionment for independent study. Additionally, the requirements of Education Code section 651747 cannot be waived.

### **Coordination, Evaluation and Supervision of Independent Study**

Generally, LEAs may claim apportionment credit for independent study only to the extent of the time value of pupil work product, as personally judged in each instance by a certificated teacher.<sup>9</sup> Now, Education Code section 51747.5 also provides that to claim apportionment, an LEA must document each pupil's participation in live interaction and synchronous instruction pursuant to Education Code section 51747 on each schoolday, as applicable, in whole or in part, for which independent study is provided.

A pupil who does not participate in independent study on a schoolday must be documented as nonparticipatory for that schoolday. Additionally, LEAs are required to maintain written or computer-based evidence of pupil engagement that includes, but is not limited to, a grade book or summary document that, for each class, lists all assignments, assessments, and associated grades. Teachers should be given access to digital assignment tracking systems to reduce workload associated with evaluating and accounting for pupil work.

### **Course-Based Independent Study**

Education Code section 51749.5 authorizes an LEA to offer course-based independent study, which is less commonly provided by LEAs. In general, course-based independent study permits LEAs to offer individual courses through independent study while the student continues to attend classroom-based instruction. AB 130 incorporated similar changes as outlined above into the course-based independent study requirements. Accordingly, LEAs that offer course based independent study should review and update its board policy and procedures to align with the changes to Education Code section 51749.5.

---

<sup>9</sup> Education Code section 51747.5

A review of course-based independent study is beyond the scope of this advisory. Please contact our office if you would like additional information on course-based independent study.

The changes to independent study attempt to provide families concerned about returning to in-person instruction an opportunity to access educational programs with similar qualities as distance learning provided during the 2020-2021 school year. Unfortunately, doing so through independent study statutes will impact traditional independent study programs that were designed to address a different population. We recognize the challenges LEAs will face in trying to implement these requirements for the 2021-2022 school year. We hope that CDE will provide additional information or guidance in this area.

We will continue to monitor this issue and provide updated guidance as necessary. Please contact our office if you have any questions or would like to discuss this matter further.

JJR/RDB:jmr

*The information herein is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We therefore recommend that you consult legal counsel to advise you on how the law applies in your specific situation.*