



September 2021

## **AB 167: AMENDS EDUCATION CODE INDEPENDENT STUDY STATUTES**

On September 23, 2021, Governor Newsom signed AB 167. This bill yet again amended the California Education Code independent study statutes. The changes are not as drastic as the changes made pursuant to AB 130, but will require updates to district independent study policies.

### **1. Basis for Request of Independent Study**

Pursuant to AB 130, Education Code section 51745(a)(6) was added to allow students to participate in independent study (“IS”) if the parent or guardian determined that the student’s health would be at risk by attending in-person school. AB 167 added that a student “who is unable to attend in-person instruction due to a quarantine due to exposure to, or infection with, COVID-19, pursuant to local or state public health guidelines” is eligible for instruction through IS. If a student has to quarantine for more than 15 days (either one time or cumulative), the student must participate in IS that meets the synchronous and live interaction requirements (often referred to as “long-term IS”). If a student enters IS for under 15 days (often referred to as “short-term IS”) due to COVID-19 quarantine, there still must be a signed written agreement. If the student has an IEP, the IEP team must approve the IS.

### **2. Who May Provide Synchronous Instruction**

AB 167 added that a “certificated employee of the local educational agency providing instruction for course-based independent study” may also provide synchronous instruction.

### **3. Tiered Reengagement Strategies**

AB 130 required tiered reengagement strategies for students not generating attendance for more than three schooldays or 60 percent of the instructional days in a school week. If this threshold is met, the LEA must then implement the reengagement strategies developed pursuant to Education Code section 51747(d)(1)-(4) and any other strategies developed by the LEA. AB 167 clarified thresholds mandating LEAs to engage in reengagement strategies. AB 167 added “or 10 percent of required minimum instructional time over four continuous weeks of a local educational agency’s

approved instructional calendar; pupils found not participatory pursuant to Section 51747.5 for more than the greater of three schooldays or 60 percent of the scheduled days of synchronous instruction in a school month as applicable by grade span.”

One of the required reengagement strategies was “Notification to parents or guardians of lack of participation within one school day of the absence or lack of participation.” AB 167 replaced the word “absence” with “recording of a non-attendance day.”

#### **4. Time Line for Signing Independent Study Written Agreement**

AB 130 required that the IS written agreement be signed within 30 days of the first day of instruction. AB 167 attempted to extend that timeframe by stating it must be signed within 30 days of the first day of instruction or by October 15, whichever is later. This allows more time to obtain signatures for those that began IS at the beginning of the school year, but does not add anytime moving forward. As October 15 is less than 30 days away, the 30 days will always be later.

#### **5. Apportionment During Quarantine**

AB 167 added Education Code section 51747(j) to address apportionment during the 2021-2022 school year only. This section allows for LEAs to claim apportionments for students participating in IS due to COVID-19 quarantine pursuant to local or state guidance. This includes students who cannot participate in classroom-based instruction and school closures due to COVID-19. LEAs will receive apportionment for these students for each day that the student participates in IS and meets all other apportionment requirements of IS.

#### **6. Documentation of Student’s Work**

Education Code section 51747.5(b) outlined that apportionment may only be claimed “to the extent of the time value of pupil work products, as personally judged in each instance by a certificated teacher.” AB 167 added that the teacher must be employed by the LEA.

Education Code section 51747.5(c) was amended in regards to defining “nonparticipatory” for purposes of reporting student participation and tiered reengagement. The statute previously stated that a student should be marked as “nonparticipatory” if the student did not participate in “independent study on a schoolday.” AB 167 deleted that wording and made it more specific stating that the student should be marked “nonparticipatory” if the student does not participate in “live interaction or synchronous instruction.”

#### **7. State Compliance Reporting**

Compliance review audits were added to Education Code section 51749.5(f)(2). Previously, only staffing ratios were required. It states, “Commencing with the 2021-2022 fiscal year Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, the Controller shall incorporate compliance reviews for subdivisions (a) to (e), inclusive, unless compliance

verification for those subdivisions is already included in the audit guide. Findings of noncompliance shall result in the loss of apportionment equal to the average daily attendance impacted by the noncompliance.” Please note this will apply moving forward, not just for the 2021-2022 school year.

## **8. Amendments to “Course-Based” Independent Study Written Agreement**

AB 167 amended Education Code section 51749.6 to essentially bring it in line with written agreement and notice requirements of IS in Education Code section 51747 (also known as “traditional independent study”).

Subdivision (b)(8)(A) added the requirement that for the 2021-2022 school year only, the LEA must notify the parents and guardians of students that IS is available and that notification must, at a minimum, be posted on the LEA’s website. The notice is required to include notification of the right to request a student-parent-educator conference prior to enrolling in IS, student’s rights in regards to enrolling, disenrolling and reenrolling in IS, and the synchronous and asynchronous instructional time.

Subdivision (b)(8)(B) was added to describe the requirements of the pre-enrolling meeting that may be requested by a parent or student. It has the same requirements: may be held in person, by telephone or videoconference and is an opportunity for parent or student to ask questions about the IS program.

Subdivision (c) was added to allow for apportionment for IS students who are on IS due to quarantine for exposure or infection with COVID-19 or for school closures due to COVID-19. LEAs will receive apportionment for these students as long as the student participates that day and meets all other apportionment requirements of IS.

Subdivision (d) added the same compliance review requirements as described above in paragraph 7.

## **9. Use of J-13A Forms for ADA Apportionment**

AB 130 first amended IS to allow for those students who had health concerns to have an alternative that was as close as possible to the legislative preferred in-person instruction. As AB 130 was being passed and implemented, there was another COVID-19 surge fueled in part by the Delta variant, causing more students than originally contemplated to require IS. It became apparent that districts were having to quarantine more students due to this than originally contemplated. This caused districts to have issues claiming ADA apportionment for students who were on short-term IS and special education students who were likely not able to obtain the consent of the IEP team for placement in IS.

The legislature has attempted to address these issues in AB 167 by amending Education Code section 46392. First, as to students with an IEP, subdivision (c)(2)(A) was added stating that

“From September 1, 2021, to June 30, 2022, inclusive, with the *exception of a material loss of attendance for pupils who are individuals with exceptional needs, ...whose individualized education program....does not specifically provide for participation in independent study* or pupils enrolled in community day schools...., a school district, county office of education, or charter school shall not receive average daily attendance credit pursuant to this section for pupils that have been quarantined and are unable to attend in-person instruction due to exposure to, or infection with, COVID-19 pursuant to local or state public health guidance.” [Emphasis added.] This section specifically excludes special education students from the requirement that they must be in IS to obtain ADA apportionment for the district.

Second, subdivision (c)(2)(B) was added to allow for a district to obtain ADA credit for school closures related to COVID-19 or material loss of attendance due to COVID-19 staffing shortages if the district can prove by affidavits of the governing board of the district, county office of education, or charter school, and the county superintendent of schools:

1. An inability to provide in person instruction to students due to staffing shortages as a result of staff quarantines.

2. As to certificated staff shortages, the district has exhausted all options for obtaining staff coverage, including all certificated staff and substitute teacher options, and has consulted with their county office of education, which confirmed the district’s inability to staff certificated teachers.

3. As to classified shortages, the district has exhausted all options for obtaining staff coverage, including all staff, and has consulted with the county office of education, which confirmed the district’s inability to staff these positions.

Please contact our office should you have any follow up questions or need assistance in amending your independent study policy.

- Melissa D. Allen

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