



LAW UPDATE EDUCATION

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INDEPENDENT STUDY POLICY AND WRITTEN AGREEMENT AMENDMENTS

In April 2022, the California Department of Education (“CDE”) settled a lawsuit brought by four students with exceptional needs alleging that the independent study statutes were discriminatory because there were additional hurdles these students had to overcome to participate in independent study that general education students did not have to navigate. Part of the settlement agreement required CDE to recommend language to the state legislature addressing students with exceptional needs in the independent study statutes.

The recommended language was contained in AB 181, the Education Omnibus Budget Trailer Bill, which recently passed amending the independent study statutes. In addition to changes regarding students with exceptional needs, there were changes to tiered intervention, who must sign the master written agreement, and calculation of apportionment. To continue to receive apportionment for independent study, a district’s independent study policy and written agreements must be amended according to the following sections:

Education Code section 51745

Education Code section 51745 describes the circumstances in which independent study can be requested. The first amendment to this section was that the education opportunity offered through independent study described in subdivision (a)(3)¹ was eliminated. The other five remain as examples of educational opportunities for independent study.

Second, subdivision (c) was amended pursuant to the settlement agreement described above. It now states (new portions are underlined):

An individual with exceptional needs, as defined in section 56026, may participate in independent study, if the pupil’s individualized education program developed

¹ Previous Education Code section (a)(3) stated, “Individualized alternative education designed to teach the knowledge and skills of the core curriculum. Independent study shall not be provided as an alternative curriculum.”

pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 specifically provides for that participation. If a parent or guardian of an individual with exceptional needs requests independent study pursuant to paragraph (5) of subdivision (a), the pupil's individualized education program team shall make an individualized determination as to whether the pupil can receive a free appropriate public education in an independent study placement. A pupil's inability to work independently, the pupil's need for adult support, or the pupil's need for special education or related services shall not preclude the individualized education program team from determining that the pupil can receive a free appropriate education in an independent study placement.

The additional wording, pursuant to the settlement agreement, is meant to encourage districts to accept students with exceptional needs into independent study, but stops short of mandating admission. A district can no longer reject a student solely on the basis of the student's inability to work independently, need for adult support, or need for special education services. However, federal law requires districts to provide FAPE and these amendments do not change that requirement. An IEP team can and should still consider these factors in the overall analysis of determining what the appropriate placement is in order to provide the student with FAPE. The least restrictive environment should remain one of the focal points of the IEP team's decision process.

While this subdivision may appear to require acceptance of students with exceptional needs into independent study, it does not. A student can and should be excluded from independent study if the IEP team determines that independent study is not the appropriate placement. If the IEP team places a student in independent study pursuant to an agreed upon IEP, independent study becomes stay-put. Should the district later determine independent study is inappropriate and the parents do not agree to the change in placement, the student would remain in independent study during pendency of a due process proceeding.

It should also be noted that this additional language only applies to the analysis if the student with exceptional needs requests independent study pursuant to subdivision (a)(5). That subdivision allows for independent study if a student's health would be put at risk by in-person instruction as determined by parent or guardian, or for a student who cannot attend in-person instruction due to quarantine for exposure to or infection with COVID-19. These additions do not apply to any other basis of request for independent study.

Finally, it is important to recognize that this is California state law and the federal IDEA will always supersede state law when a district is defending an IEP in due process. The primary focus of the analysis to admit or not admit a student into independent study must always remain whether or not that placement provides FAPE.

Education Code section 51745.5

Subdivision (d) defines “synchronous instruction” for purposes of independent study. In regard to who can provide synchronous instruction, the subdivision previously stated it could be provided by “the teacher of record for that pupil pursuant to Section 51747.5.” The amendment expanded who could instruct and now reads, “by a teacher or teachers of record....”

Education Code section 51746

There was a slight change to this section which provided that services and resources be made available to students in independent study. Instead of naming independent study an “alternative placement,” it now names it “the most appropriate placement for the pupil being referred.”

Education Code section 51747

This section describes what must be included in the district’s independent study policies in order to receive apportionments for students in independent study. Subdivision (c) required that the content of the materials used must be aligned to the grade level standards that were “provided at a level of quality and intellectual challenge” substantially equivalent to in-person instruction. The amendment deleted that part and now requires content to be at “grade level standards that is substantially equivalent to in-person instruction.”

Subdivision (d) outlined the tiered reengagement strategies that are required of all districts. The percentages for missing instructional days has changed. There are now three instances when a district must use the tiered reengagement strategies:

1. A student who does not generate attendance for more than 10 percent of the required minimum instructional time over four continuous weeks of the approved instructional calendar;²
2. A student who does not participate in synchronous instructional offerings pursuant to section 51747.5 for more than 50 percent of the scheduled times of synchronous instruction in a school month; OR³
3. A student who is in violation of the independent study written agreement.

Subdivision (d) concludes with instruction as to what shall be included in the tiered reengagement procedures. The subdivision previously stated that the list of suggestions shall

² This subdivision previously required student to miss three schooldays or 60 percent of the instructional days in a school week or 10 percent of required minimum instructional time over four continuous weeks of instructional calendar before engaging the tiered reengagement strategies.

³ This subdivision previously required student to miss 60 percent of the scheduled days, not time, of scheduled synchronous instruction time in a month before engaging the tiered reengagement strategies.

“include, but are not necessarily limited to...” Amended subdivision (d) still requires that, at a minimum, those four requirements are in the procedures, but it now states the programs used shall include “local programs intended to address chronic absenteeism.”

Subdivision (g) lists the requirements for the independent study master written agreement. The only change to this subdivision is in regard to who should sign the agreement and when it should be signed. For a student participating in independent study for more than 14 school days, the written agreement must be signed before the commencement of independent study. AB 181 added the “certificated employee designated as having responsibility for the special education programming of the pupil” as one of the people who must also sign the agreement; all others previously listed remain.

Beginning with the 2022-2023 school year, a student participating in independent study for less than 15 days must sign a written agreement within 10 school days of commencement of the first day of enrollment in independent study. This agreement must be signed by the student, student’s parent, guardian, caregiver, if student is under 18 years old, certificated employee who has been designated as having responsibility for the general supervision of independent study, and the certificated employee designated as responsible for the student’s special education programming.

Subdivision (9)(F) that mandated the signing requirements for written agreements in the 2021-2022 school year also added the certificated employee responsible for special education programming as a required signer. If you have a written agreement from last year that must be signed when school starts, this applies.

Subdivision (h)(2) previously required the district to hold a meeting with the parent or guardian prior to signing the written agreement if requested. While the amendment still allows a parent to request a meeting, the “shall conduct” was deleted making the meeting non-mandatory by the district. Even though the district is no longer required to hold the meeting, it still may be advantageous to the district to hold it. For example, if the student does not perform well and the district decides to exclude the student from independent study, documentation that the district met individually with the student to explain independent study, including potential consequences for non-compliance, will provide additional support of the student’s exclusion.

Subdivision (i) states that subdivisions (d)⁴, (e)⁵ and (f)⁶ do not apply to independent study under 15 school days. AB 181 added that these subdivisions also do not apply to a student who is in a comprehensive school for classroom-based instruction and is under the care of appropriately licensed professionals and participates in independent study due to necessary medical treatments or inpatient treatment for mental health care or substance abuse. The district is tasked with

⁴ Procedures for tiered reengagement strategies.

⁵ Requirements for live interaction and synchronous instruction in independent study.

⁶ Requirement to transition student back to in-person instruction within five days of request.

obtaining evidence from the licensed professional regarding the need for student to participate in independent study pursuant to this section.

Education Code section 51747.5

AB 181 amended the subdivision of this section which addresses the requirements to claim apportionment credit for independent study. Subdivision (b)(1) states that the legislature intended for teachers to be given access to digital assignment tracking systems to assist in reducing workload associated with evaluating and accounting for students' work. The legislature added that the digital assignment tracking system should also assist with tracking synchronous instruction. More significantly, AB 181 added an additional way to claim apportionment credit. In addition to work product submitted by the student being used to calculate the time value, section 51747.5 now allows the time a student participates in synchronous instruction to be used in calculating time value. Specifically, subdivision (b)(2) allows the district to add together:

1. For each school day, the combined equivalent daily time value of student work products, as personally judged by a certificated employee; AND
2. For each school day, the combined daily instructional minutes a student participated in synchronous instruction as required by sections 51745.5(d) and 51747(e), for which evidence of student participation is furnished and maintained.

Evidence of student participation may include, but is not limited to, verified (by a certificated employee) student work produced or performed and maintained by the district for each hour or fraction of the synchronous instructional offering. The district may claim the apportionment credit for the student's participation in synchronous instruction to the extent it augments the time value of student work product.

The average daily attendance computed as described above cannot result in more than one unit of average daily attendance per student. The average daily attendance may only be credited as specified in this section.

Education Code section 51749.5

This section was slightly amended to include the language making it appear more permissive for students with exceptional needs to participate in course-based independent study. Subdivision (a)(7)(A) previously read that a student with exceptional needs "shall not participate in course-based independent study unless the pupil's" IEP specifically provides for it. This subdivision now reads that a student with exceptional needs "may participate in course-based independent study if the pupil's" IEP specifically provides for it.

Education Code section 51749.6

This section was amended to reflect the same changes in regard to who must sign the written agreement in course-based independent study described above for independent study pursuant to section 51745.⁷ It was also amended to require the signature of the certificated employee designated as having responsibility for the student's special education programming.⁸

These amendments must be addressed in the district's independent study policy and written agreements in order to qualify for the district's apportionment. If you have questions or need assistance with amending your district's policy and written agreements, please contact our office.

As a reminder, districts were only required to offer independent study during the 2021-2022 school year. AB 181 did not change this; therefore, districts are no longer required to offer independent study.

Please contact our office if you have follow-up questions.

- Melissa D. Allen

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

⁷ This amendment is reflected in subdivision (b)(1)

⁸ This amendment is reflected in subdivision (b)(7)