
Assembly Bill 167 Further Details Independent Study and Attendance Accounting Requirements

October 1, 2021
Number 31

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Governor Newsom signed another education omnibus budget trailer bill on September 23, 2021, Assembly Bill (AB) 167. This legislation further modifies independent study and ADA apportionment requirements for the 2021-2022 school year. AB 167 follows the Education Omnibus Budget Trailer Bill (AB 130) approved in July 2021 that made significant changes to independent study. (See [Client News Brief Number 14](#).) A brief summary of AB 167's provisions that impact instruction and independent study during the 2021-22 school year is provided below.

Independent Study Requirements

AB 167 modifies Education Code 51745 to now also require that independent study be offered to students who are unable to attend in-person due to a COVID-19 quarantine. (Ed. Code, § 51745(a)(6).) AB 130 previously required independent study for students whose health would be put at risk by in-person instruction.

AB 167 also extends the time period for local educational agencies (LEA) to obtain a signed written agreement for an independent study program of any length of time during the 2021-22 school year, to no later than thirty (30) days following the first day of instruction *in an independent study program or October 15, 2021, whichever date comes later*. (Ed. Code, § 51747(g)(9)(F).)

In addition, AB 167 makes other minor edits that clarify the details for independent study, including, but not limited to, those set out in italics below.

- “Synchronous instruction” shall be provided by the teacher of record for a pupil or *the certificated employee of the LEA providing instruction for course-based independent study*. (Ed. Code, § 51745.5(d).)
- LEAs may only claim apportionment credit in independent study for the value assigned to student work product by a certificated teacher *employed by the LEA*. (Ed. Code, § 51747.5(b).)
- Tiered reengagement is expanded to include *pupils who are not generating attendance for ten percent (10%) of required minimum instructional time over four (4) continuous weeks of an LEA’s approved instructional calendar, and for pupils found not participatory pursuant to section 51747.5 for more than the greater of three (3) school*

days or sixty percent (60%) of the scheduled days of synchronous instruction in a school month as applicable by grade span. (Ed. Code, § 51747(d).)

- A student who does not participate in scheduled live interaction or synchronous instruction shall be documented as non-participatory for that school day *for purposes of pupil participation reporting and tiered reengagement.* (Ed. Code, § 51747.5(c).)
- For course-based independent study, school districts and county offices of education are now required to provide a written notice to parents, posted on the agency's website, of the options for in-person and independent instruction for the 2021-22 school year. This provision parallels the written notice requirements for traditional independent study. (Ed. Code, § 51749.6(b)(8).)

Some of these edits will require updates to board policies and may require updates to notices and written independent study agreements

Requests for Allowance of Attendance – Form J-13A

AB 167 modifies the parameters for LEAs seeking a Request for Allowance of Attendance Due to Emergency Conditions (Form J-13A). AB 130 required these LEAs to have a plan to offer independent study to students during this time of school closures in order to be eligible to receive ADA apportionments. AB 167 significantly narrows the availability of Form J-13A to those school closures or material losses of attendance situations that are due to COVID-19 related staffing shortages, for students whose individualized educational plan (IEP) does not specifically provide for participation in independent study, or for students who are enrolled in community day schools. (Ed Code, §§ 46392 and 46393).

AB 167 also increases the benchmark from 175 to 180 as the number of full-length instructional days that an LEA must provide instruction; LEAs that fall below this 180 day mark are eligible to submit a Form J-13A. Setting the benchmark higher translates to more LEAs being able to meet this instructional day element for the waiver and therefore more LEAs being eligible to submit the Form J-13A.

The modifications to the J-13A process are detailed and require thoughtful consideration. If your LEA is considering submitting a waiver request, consultation with counsel is recommended. The practical result of these modifications to the Form J-13A procedures is that LEAs should strive to provide independent study to students to the extent that staff is available to do so. This also applies to school districts and COEs with a waiver of the AB 130-mandated independent study program. In doing so, districts and COEs will enhance their eligibility to receive ADA and credit for providing instructional days and minutes.

Takeaways

With this legislative endorsement of independent study for this school year, LEAs should review and update their policies and regulations related to independent study, as well as their written agreements, notices, and related protocols. LEAs may also need to review agreements with third party instruction and content providers to ensure LEA staff is providing services required by law. All of this will assist in enhancing eligibility for apportionments.

Client News Brief

If you have any questions about AB 167 in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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