



BARGAINING ADVISORY

Bargaining Changes to Independent Study for 2021-22 and Beyond

Background

As a result of the passage of AB 130, there are several changes to independent study (IS) that have immediate effect. Some changes apply to school districts, county offices of education (COE), and charter schools, while others impact only school districts and COEs. Several very important changes require swift action by local educational agencies (LEAs) and, by extension, may trigger opportunities for chapters to consult on educational program decisions and/or demand to bargain changes in working conditions and compensation. Below are the most immediate changes.

Immediate Changes to Independent Study

- For 2021-22 only, all districts and COEs (not charter schools) are required to offer IS as an educational option unless they receive a hardship waiver, contract to provide IS through a COE, or enter into an interdistrict transfer agreement for the relevant students with another LEA.
- To generate apportionment for IS, all LEAs must have adopted and implemented board policies and written student master or learning agreements. AB 130 added many new elements to be included in board policies and written agreements (for more details, see the [Summary of Independent Study Changes 2021-22](#) below, [CDE Changes to Independent Study Requirements](#), and the [CDE Independent Study program webpage¹](#)).
- New requirements by grade level for live interaction and/or synchronous instruction:
 - TK-3 – daily synchronous instruction for all pupils
 - 4-8 – both daily live interaction and at least weekly synchronous instruction
 - 9-12 – at least weekly synchronous instruction
- LEAs must have procedures for tiered reengagement strategies.
- LEAs must have a plan to transition pupils who wish to return to in-person instruction in no more than five instructional days.
- Short-term IS (fewer than 15 school days per school year) is exempt from the new requirements for live interaction, synchronous instruction, tiered reengagement strategies, and a transition plan for students to return to in-person instruction.
- For 2021-22 only, school districts and COEs must notify parents and guardians of their options to enroll their pupil in in-person instruction or IS during the 2021–22 school year and this notice must be posted on the LEA website.
- For 2021–22 only, written agreements must be signed no later than 30 days after the first day of instruction (usually written agreements must be signed before IS instruction can begin). However, it is important to note that all other IS requirements must be met upon commencement of instruction.

¹To date, the CDE Independent Study program webpage has only limited updates that reflect the changes in AB 130. More changes to the site are expected in the coming days and weeks.



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- For school districts, the minimum number of IS days to qualify for apportionment changed from five to three consecutive school days.
- If an LEA must close schools due to emergency conditions (COVID, fires, etc.) and was not able to make up the instructional days and/or minutes but wishes to apply for a J-13A waiver for attendance and instructional time credit, it must include a plan for offering IS to the affected pupils within ten days of the school closure.

Bargaining Implications and Advice

- At a minimum, there are likely to be issues that require impacts and effects bargaining and/or consultation opportunities as a result of school districts and COEs being required to offer IS as an alternative to in-person instruction for 2021-22. Depending on how the employer wishes to structure the IS system, there may be bargainable issues around transfers and reassignments, extra duties, compensation, etc. Chapters should endeavor to be included in discussions concerning the planning for IS in 2021-22 and carefully review existing agreements to determine what is already covered and what may require quick bargaining. Communicate with your CTA staff person for the latest information and to consider appropriate strategies for your local.
- Generally, chapters have the right to request to consult on educational program changes including modifications to board policy. Because schools are starting instruction now or very soon, LEAs will likely fast track the necessary changes to board policy and IS written agreements to be eligible to count IS ADA for funding purposes. In addition, chapters may want to discuss and/or consult on LEA plans for IS if school closure becomes necessary due to a pandemic spike or any other “emergency condition” that would cause LEAs to file a J-13A waiver to prevent losing ADA and apportionments. Since LEAs survived distance learning, including transitioning from in-person to distance learning almost overnight, it is now expected that some form of IS will be implemented within ten days of a school closure.
- Avoid plans to offer IS that require teachers to have in-person students and online students at the same time. We learned during distance learning that this form of hybrid teaching/learning was not only disastrous for students but not sustainable and nearly impossible for teachers.
- Be aware of IS student to teacher ratio requirements. This is not a new issue, but this ratio must now be audited and noncompliance can thus result in a loss of funding. Chapters can, or may have already, bargained an alternative average daily attendance (ADA) to full-time equivalent (FTE) certificated employees providing instruction ratio [\[51745.6\]](#). This is a good time to review your collective bargaining agreement or memorandum of understanding to determine if you have bargained a student to teacher ratio for any of the LEA’s educational programs, as the Education Code uses the bargained ratio for other educational programs as a proxy for the IS ratio. This means if you have bargained a student to teacher ratio for in-person or “traditional” schools, that ratio applies to IS and, when audited, the LEA can lose ADA/funding if its IS program has a higher ratio.
- The new live interaction, synchronous instruction, and reengagement strategies requirements include tracking student participation. *Since independent study is funded based on ADA derived by the time value of student work as judged by a certificated teacher*, the tracking of live interaction, synchronous instruction, and reengagement strategies, may confuse people because “attendance” may be collected as part of that tracking. LEAs must provide opportunities for live interaction, synchronous instruction, and reengagement, but a student’s participation or non-participation in these activities has no impact on ADA



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for funding purposes. A student's lack of participation should trigger tiered reengagement strategies to help get them back on track and/or the process for assessing the student's continued placement in IS.

- The legislature expressed in AB 130 that “teachers be given access to digital assignment tracking systems to reduce workload associated with evaluating and accounting for pupil work.” Chapters should work closely with LEAs to establish or enhance the existing digital tracking systems (i.e., learning management systems or others) to minimize educator workload in relation to necessary student work and participation documentation. It should be noted that AB 130 clarifies and authorizes IS student participation, work product, and associated signatures on written agreements may be in a digital format.
- It is important to be aware that a teacher may have any valid California teaching credential to be deemed qualified for an assignment as a teacher in traditional independent study (most LEAs have traditional independent study programs). However, for course-based independent study, “courses are taught under the general supervision of certificated employees who hold the appropriate subject matter credential” [\[51749.5\(a\)\(3\)\]](#).

The above bargaining considerations are not exhaustive and will likely be updated as we all learn more. Also, each LEA/chapter likely has unique circumstances that should be considered. Therefore, beyond the general information provided here, specific questions and concerns should be directed to your CTA Primary Contact Staff person.

Also, please see a summary of Independent Study changes for 2021-22 on the following pages.



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Summary of Independent Study Changes (2021-22)

The following information is a summary of the changes with links to Education Code sections related to independent study that were part of the 2021-22 final state education budget, including AB 130.

J-13A Waiver – LEAs submitting a [J-13A School Closure or Material Decrease](#) waiver shall certify that it has a plan for which independent study will be offered to pupils [\[46393\]](#).

Minimum number of days for ADA – In computing the ADA of a school district, there shall also be included the attendance of pupils participating in independent study for three or more consecutive schooldays [\[46300\(e\)\(1\)\]](#) (up from five days).

Audit – The Controller shall incorporate into the 2021-22 Guide for Annual Audits of K–12 Local Education Agencies the following including fiscal penalties for noncompliance:

- Verification of the average-daily-attendance-to-certificated-employee ratios [\[51745.6\(e\)](#) and 51749.5].
- Verification of written policies [\[51747\(j\)\]](#).
- Compliance reviews for coordination, evaluation and supervision of Independent Study by an employee of the LEA with a valid certification, time value of pupil work product, documentation of live interaction and synchronous instruction, and evidence of pupil engagement [\[51747.5\(f\)\]](#).

Traditional Independent Study

- LEA's Required to Offer Independent Study – For the 2021-22 school year only, all LEAs shall offer independent study to meet the educational needs of pupils [\[51745\(a\)\]](#).
 - An LEA may meet this requirement by contracting with a COE, by entering into an interdistrict transfer agreement with another school district for the relevant students, or the requirement may be waived by the COE under certain conditions.
- Educational opportunities offered through independent study may now include Individualized study for a pupil whose health would be put at risk by in-person instruction, as determined by the parent or guardian of the pupil [\[51745\(a\)\(6\)\]](#).
- Definitions [\[51745.5\]](#)
 - “Live interaction” means interaction between the pupil and LEA 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.
 - “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](#).
- Independent Studies Written Policies – An LEA's independent study written policies must now include the level of satisfactory educational progress (as defined) in addition to the number of missed assignments



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that will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study [\[51747\]](#).

- Content must be aligned to grade level standards and provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction. For high schools, this shall include access to all courses offered by the LEA for graduation and approved as creditable under the A–G admissions criteria.
- Requirements by grade level for live interaction and/or synchronous instruction [\[51747\(e\)\]](#):
 - TK-3, a plan to provide opportunities for daily synchronous instruction for all pupils throughout the school year.
 - 4-8, a plan to provide opportunities for both daily live interaction and at least weekly synchronous instruction for all pupils throughout the school year.
 - 9-12, a plan to provide opportunities for at least weekly synchronous instruction for all pupils throughout the school year.
- Procedures for tiered reengagement strategies for all pupils who are not generating attendance for more than three schooldays or 60% of the instructional days in a school week, or who are in violation of the written agreement [\[51747\(d\)\]](#). These procedures shall include, but are not necessarily limited to, all of the following:
 - 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 clear standard for requiring a pupil-parent-educator conference to review a pupil’s written agreement and reconsider the independent study program’s impact on the pupil’s achievement and well-being.
- A plan to transition pupils whose families wish to return to in-person instruction from independent study expeditiously, and, in no case, later than five instructional days [\[51747\(f\)\]](#).
- Updates to the Current Written Agreement for each independent study pupil shall be maintained on file, including for reporting the pupil’s academic progress; for communicating with a pupil’s parent/guardian regarding a pupil’s academic progress; and 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 [\[51747\(g\)\]](#).
 - Written agreements may be signed using an electronic signature that may be a marking that is either computer generated or produced by electronic means and is intended by the signatory to have the same effect as a handwritten signature [\[51747\(g\)\(9\)\(E\)\]](#).
 - For the 2021–22 school year only, an LEA shall obtain a signed written agreement for independent study no later than 30 days after the first day of instruction [\[51747\(g\)\(9\)\(F\)\]](#).
- For the 2021–22 school year only, school districts and county offices of education shall 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 school year. This notice shall include written information on the LEA’s



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website about the right to request a pupil-parent-educator conference meeting before enrollment, 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 [\[51747\(h\)\(1\)\]](#).

- Short-term Independent Study – Procedures for tiered reengagement strategies, live interaction, synchronous instruction, and a transition plan for students to return to in-person instruction shall not apply to pupils that participate in an independent study program for fewer than 15 schooldays in a school year [\[51747\(i\)\]](#).
- Providing access to connectivity and LEA-owned devices adequate to participate in an independent study program and complete assigned work or to participate in an independent study course shall not be considered funds or other things of value and is therefore permitted [\[51747.3\(b\)\]](#).
- Apportionment Credit – Existing law allows an LEA to claim apportionment credit for independent study only to the extent of the time value of pupil work products, as personally judged in each instance by a certificated teacher. *It is the intent of the Legislature that teachers be given access to digital assignment tracking systems to reduce workload associated with evaluating and accounting for pupil work* [\[51747.5\(b\)\]](#).
- Documenting Live Interaction and Synchronous Instruction – An LEA shall document each pupil’s participation in live interaction and synchronous instruction 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 shall be documented as nonparticipatory for that schoolday [\[51747.5\(c\)\]](#).
 - An LEA shall 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 [\[51747.5\(d\)\]](#).

Course-Based Independent Study (less common)

- CALPADS Independent Study Field – LEAs are now required to complete a field in CALPADS for the number of pupils participating in independent study for 15 or more schooldays [\[51749\(b\)\]](#).
- Courses are annually certified, by LEA governing board or body resolution, to be of the same rigor, educational quality, and *intellectual challenge substantially equivalent to in-person instruction* and equivalent classroom-based courses, and shall be aligned to all relevant local and state content standards. For high schools, this shall include access to all courses offered by the LEA for graduation and approved creditable under the A-G admissions criteria [\[51749.5\(a\)\(4\)\(A\)\]](#).
- Requirements by grade level for live interaction and/or synchronous instruction [\[51749.5\(a\)\(4\)\(B\)\]](#):
 - TK-3, a plan to provide opportunities for daily synchronous instruction for all pupils throughout the school year.
 - 4-8, a plan to provide opportunities for both daily live interaction and at least weekly synchronous instruction for all pupils throughout the school year.
 - 9-12, a plan to provide opportunities for at least weekly synchronous instruction for all pupils throughout the school year.



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- An individual with exceptional needs shall not participate in course-based independent study, unless the pupil's individualized education program specifically provides for that participation [51749.5(a)(7)(A)].
 - A temporarily disabled pupil shall not receive individual instruction pursuant to Section 48206.3 through course-based independent study.
- Satisfactory educational progress shall be determined based on all of the following indicators [51749.5(a)(8)]:
 - The pupil's achievement and engagement in the independent study program, as indicated by the pupil's performance on applicable pupil-level measures of pupil achievement and pupil engagement.
 - The completion of assignments, assessments, or other indicators that evidence that the pupil is working on assignments.
 - Learning required concepts, as determined by the supervising teacher.
 - Progressing toward successful completion of the course of study or individual course, as determined by the supervising teacher.
- Procedures (as defined) for tiered reengagement strategies for all pupils who are *not making satisfactory educational progress in one or more courses* or who are in violation of the written agreement [51749.5(a)(8)(C)].
- A plan to transition pupils whose families wish to return to in-person instruction from course-based independent study expeditiously, and, in no case, later than five instructional days [51749.5(a)(9)].
- Independent Study Written Agreement – Updates to the requirement that a current written learning agreement for each independent study pupil shall be maintained on file and 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 [51749.6(a)]. Traditional Independent Study already had similar requirements.
 - Specific resources that will be made available to the pupil include confirming or providing access to all pupils to the connectivity and devices adequate to participate in the educational program and complete assigned work.
 - A statement that enrollment in a course authorized pursuant to Section 51749.5 is an optional educational alternative in which no pupil may be required to participate.
 - 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.
 - The objectives and methods of study for the pupil's work and the methods used to evaluate that work.
 - A statement of the adopted policies 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 course-based independent study.
 - A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the learning agreement, to be earned by the pupil upon completion.



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- The learning agreement shall be signed before the commencement of an independent study course [\[51749.6\(b\)\]](#).
 - Either an original document or an electronic file of the original document is allowable documentation for auditing purposes.
 - Signed written agreements, supplemental agreements, assignment records, work samples, and attendance records assessing time value of work or evidence that an instructional activity occurred may be maintained as an electronic file.
 - Written agreements may be signed using an electronic signature that may be a marking that is either computer generated or produced by electronic means and is intended by the signatory to have the same effect as a handwritten signature [\[51749.6\(b\)\(6\)\]](#).
 - For the 2021–22 school year only, an LEA shall obtain a signed written agreement for independent study no later than 30 days after the first day of instruction [\[51749.6\(b\)\(7\)\]](#).