



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and  
college districts  
throughout the state.*

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Monica D. Batanero  
Nancy L. Klein  
Margaret M. Merchat  
Jennifer E. Nix  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

*Of Counsel*  
Robert J. Henry  
Janna L. Lambert  
Virginia A. Riegel

## LEGAL UPDATE

May 4, 2015

**To:** Superintendents, Member School Districts (K-12)  
**From:** Jennifer E. Nix, Schools Legal Counsel *JEN*  
**Subject:** Recent Changes to Independent Study Programs  
Memo No. 10-2015

---

Senate Bill (“SB”) 858 and SB 876 amended the laws regarding independent study programs. Several of the amendments went into effect on July 1, 2014, and others will become effective in the 2015-2016 fiscal year. For your convenience, a portion of the amended statutes are attached to this legal update.

Three changes took effect on July 1, 2014:

1. Independent study program agreements may be up to one school year, rather than the previous limit of only one semester<sup>1</sup>;
2. The current written agreement on file for each independent study student may be maintained electronically<sup>2</sup>; and
3. The Local Educational Agency (“LEA”) is no longer required to sign and date student work products when assessing the time value of student work products for apportionment purposes.<sup>3</sup>

This Legal Update addresses key changes that take effect on July 1, 2015, regarding the following topics:

1. Changes to student-teacher ratios<sup>4</sup>;
2. Conditions for providing an independent study course<sup>5</sup>; and
3. Computation of average daily attendance<sup>6</sup>.

---

<sup>1</sup> Education Code section 51747(c)(5).

<sup>2</sup> Education Code section 51747(c)(8)(B).

<sup>3</sup> Education Code section 51747.5(c).

<sup>4</sup> Education Code section 51745.6

<sup>5</sup> Education Code section 51749.5(a)

<sup>6</sup> Education Code section 51749.5(b)



## **Changes to Student-Teacher Ratios (Education Code section 51745.6)**

Effective the 2015-2016 fiscal year, LEAs are required to use a grade-span calculation to determine independent study student-teacher ratios. Previously, an LEA-wide calculation was used.<sup>7</sup> The applicable grade spans are: K-3; 4-6; 7-8; and 9-12. The statute directs the California Department of Education (“CDE”) to specify how the ratios are calculated. The most current information from CDE can be found here: <http://www.cde.ca.gov/sp/eo/is/calculations.asp>. The new law permits LEAs to use a collectively-bargained comparative ratio using a higher or lower grade-span ratio for independent study programs. Only those units of average daily attendance for independent study that do not exceed the applicable grade-span ratios will be eligible for state apportionments, unless a higher ratio has been negotiated in a collective bargaining agreement. Finally, if an LEA of residence has a memorandum of understanding to provide instruction and coordination with the LEA of attendance at which a pupil is enrolled, then the applicable grade-span ratios are the ratios for the LEA of attendance providing the independent study program to the student.

## **Conditions for Providing an Independent Study Course (Education Code section 51749.5(a))**

Changes for the 2015-2016 fiscal year also include fifteen conditions that the LEA must satisfy to provide an independent study course. The most important conditions are:

1. The LEA must adopt policies incorporating the amended statutes at a public meeting.
2. The LEA must have a signed learning agreement completed and on file for each student, as detailed in Education Code section 51749.6.
3. A student cannot be required to enroll in an independent study course.
4. Students and teachers must communicate at least twice per month in-person, by telephone, or by any other live visual or audio connection to assess the student’s educational progress.

Please refer to Education Code section 51749.5(a) for a full list of the conditions for independent study programs.

## **Instructions on Computing Average Daily Attendance (Education Code section 51749.5(b))**

The law now contains detailed instructions for computing average daily attendance of each student enrolled in an independent study course. Please refer to Education Code section 51749.5(b) for those instructions.

---

<sup>7</sup> This provision was to be effective for the 2014-2015 fiscal year. However, due to timing concerns, LEAs were permitted to calculate student-teacher ratios using either the overall-LEA-wide or grade-span basis for 2014-2015. All LEAs are required to calculate student-teacher ratios using the grade-span basis beginning in the 2015-2016 fiscal year.



The law also was amended to permit a virtual or online charter school to claim independent study average daily attendance if a student who is enrolled in the school moves to a residence outside of the geographical boundaries of the virtual or online charter school. However, the virtual or online school may only claim average daily attendance for such a student for the duration of the courses in which the student is enrolled or until the end of the school year, whichever occurs first. This provision is only operative until January 1, 2018.

Please contact our office with questions regarding this Legal Update or any other legal matter.

Attachment

*The information in this Legal Update 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 to your specific situation.*

© 2015 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for non-commercial purposes.*

**§ 51749.5. Independent study courses for pupils in kindergarten and grades 1 to 12; conditions; evaluation**

(a) Notwithstanding any other law, and commencing with the 2015-16 school year, a school district, charter school, or county office of education may, for pupils enrolled in kindergarten and grades 1 to 12, inclusive, provide independent study courses pursuant to the following conditions:

(1) The governing board or body of a participating school district, charter school, or county office of education adopts policies, at a public meeting, that comply with the requirements of this section and any applicable regulations adopted by the state board.

(2) A signed learning agreement is completed and on file pursuant to Section 51749.6.

(3) Courses are taught under the general supervision of certificated employees who hold the appropriate subject matter credential pursuant to Section 44300 or 44865, or subdivision (I) of Section 47605, meet the requirements for highly qualified teachers pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and are employed by the school district, charter school, or county office of education at which the pupil is enrolled, or by a school district, charter school, or county office of education that has a memorandum of understanding to provide the instruction in coordination with the school district, charter school, or county office of education at which the pupil is enrolled.

(4)(A) Courses are annually certified, by school district, charter school, or county office of education governing board or body resolution, to be of the same rigor and educational quality as equivalent classroom-based courses, and shall be aligned to all relevant local and state content standards.

(B) This certification shall, at a minimum, include the duration, number of equivalent daily instructional minutes for each schoolday that a pupil is enrolled, number of equivalent total instructional minutes, and number of course credits for each course. This information shall be consistent with that of equivalent classroom-based courses.

(5) Pupils enrolled in courses authorized by this section shall meet the applicable age requirements established pursuant to Sections 46300.1, 46300.4, 47612, and 47612.1.

(6) Pupils enrolled in courses authorized by this section shall meet the applicable residency and enrollment requirements established pursuant to Sections 46300.2, 47612, 48204, and 51747.3.

(7)(A) Certificated employees and each pupil shall communicate in person, by telephone, or by any other live visual or audio connection no less than twice per calendar month to assess whether each pupil is making satisfactory educational progress.

(B) For purposes of this section, satisfactory educational progress includes, but is not limited to, applicable statewide accountability measures and the completion of assignments, examinations, or other indicators that evidence that the pupil is working on assignments, learning required concepts, and progressing toward successful completion of the course, as determined by certificated employees providing instruction.

(C) If satisfactory educational progress is not being made, certificated employees providing instruction shall notify the pupil and, if the pupil is less than 18 years of age, the pupil's parent or legal guardian, and conduct an evaluation to determine whether it is in the best interest of the pupil to remain in the course or whether he or she should be referred to an alternative program, which may include, but is not limited to, a regular school program. A written record of the findings of an evaluation made pursuant to this subdivision shall be treated as a mandatory interim pupil record. The record shall be maintained for a period of three years from the date of the evaluation and, if the pupil transfers to another California public school, the record shall be forwarded to that school.

(D) Written or computer-based evidence of satisfactory educational progress, as defined in subparagraph (B), shall be retained for each course and pupil. At a minimum, this evidence shall include a grade book or summary document that, for each course, lists all assignments, examinations, and associated grades.

(8) A proctor shall administer examinations.

(9)(A) Statewide testing results for pupils enrolled in any course authorized pursuant to this section shall be reported and assigned to the school or charter school at which the pupil is enrolled, and to any school district, charter school, or county office of education within which that school's or charter school's testing results are aggregated.

(B) Statewide testing results for pupils enrolled in a course or courses pursuant to this section shall be disaggregated for purposes of comparing the testing results of those pupils to the testing results of pupils enrolled in classroom-based courses.

(10) A pupil shall not be required to enroll in courses authorized by this section.

(11) The pupil-to-certificated-employee ratio limitations established pursuant to Section 51745.6 are applicable to courses authorized by this section.

(12) For each pupil, the combined equivalent daily instructional minutes for enrolled courses authorized by this section and enrolled courses authorized by all other laws and regulations shall meet the minimum instructional day requirements applicable to the local educational agency. Pupils enrolled in courses authorized by this section shall be offered the minimum annual total equivalent instructional minutes pursuant to Sections 46200 to 46208, inclusive, and Section 47612.5.

(13) Courses required for high school graduation or for admission to the University of California or California State University shall not be offered exclusively through independent study.

(14) A pupil participating in independent study shall not be assessed a fee prohibited by Section 49011.

(15) A pupil shall not be prohibited from participating in independent study solely on the basis that he or she does not have the materials, equipment, or Internet access that are necessary to participate in the independent study course.

(b) For purposes of computing average daily attendance for each pupil enrolled in one or more courses authorized by this section, the following computations shall apply:

(1)(A) For each schoolday, add the combined equivalent daily instructional minutes, as certified in paragraph (4) of subdivision (a), for courses authorized by this section in which the pupil is enrolled.

(B) For each schoolday, add the combined daily instructional minutes of courses authorized by all other laws and regulations in which the pupil is enrolled and for which the pupil meets applicable attendance requirements.

(C) For each schoolday, add the sum of subparagraphs (A) and (B).

(2) If subparagraph (C) of paragraph (1) meets applicable minimum schoolday requirements for each schoolday, and all other requirements in this section have been met, credit each schoolday that the pupil is demonstrating satisfactory educational progress pursuant to the requirements of this section, with up to one school day of attendance.

(3)(A) Using credited schoolday attendance pursuant to paragraph (2), calculate average daily attendance pursuant to Section 41601 or 47612, whichever is applicable, for each pupil.

(B) The average daily attendance computed pursuant to this subdivision shall not result in more than one unit of average daily attendance per pupil.

(4) Notwithstanding any other law, average daily attendance computed for pupils enrolled in courses authorized by this section shall not be credited with average daily attendance other than what is specified in this section.

(5) If more than 10 percent of the total average daily attendance of a school district, charter school, or county office of education is claimed pursuant to this section, then the amount of average daily attendance for all pupils enrolled by that school district, charter school, or county office of education in courses authorized pursuant to this section that is in excess of 10 percent of the total average daily attendance for the school district, charter school, or county office of education shall be reduced by either (A) the statewide average rate of absence for elementary school districts for kindergarten and grades 1 to 8, inclusive, or (B) the statewide average rate of absence for high school districts for grades 9 to 12, inclusive, as applicable, as calculated by the department for the prior fiscal year, with the resultant figures and ranges rounded to the nearest 10th.

(c) For purposes of this section, “equivalent total instructional minutes” means the same number of minutes as required for an equivalent classroom-based course.

(d) Nothing in this section shall be deemed to prohibit the right to collectively bargain any subject within the scope of representation pursuant to Section 3543.2 of the Government Code.

(e)(1) The Superintendent shall conduct an evaluation of independent study courses offered pursuant to this section and report the findings to the Legislature and the Director of Finance no later than September 1, 2019. The report shall, at a minimum, compare the academic performance of pupils in independent study with demographically similar pupils enrolled in equivalent classroom-based courses.

(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on September 1, 2023, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.