



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
Ellie R. Austin
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Leah M. Smith
Loren W. Soukup
Erin E. Stagg

Of Counsel
Robert J. Henry
Frank Zotter, Jr.

LEGAL UPDATE

September 27, 2021

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Assistant General Counsel *KAS*
Subject: Assembly Bill 167 and Revisions to Independent Study for 21-22
Memo No. 30-2021

The purpose of this legal update is to discuss the changes to independent study laws for the 2021-22 school year, as contained in Assembly Bill (“AB”) 167, the education cleanup bill signed by the Governor on September 23, 2021. It became effective immediately.

Pass/No-Pass

AB 167 extends the deadline to October 1, 2021 for parents or students aged 18 or older to request to change a reported grade on the transcript of a student enrolled in a high school course in 2020-21 from a letter grade to pass/no-pass. Requests that are received on or by October 1, 2021 must be granted. AB 167 also provides that local educational agencies (“LEAs”)¹ may grant requests that are made after that date. LEAs should update their websites accordingly with this new information, including whether or not the LEA will consider requests received after October 1.

Quarantined Students

AB 167 makes clear that LEAs must offer independent study to students who are unable to attend in-person instruction due to quarantine related to COVID-19.

Written Agreements

As discussed in Legal Update 27-2021, LEAs must have on file a signed written agreement to participate in independent study. AB 167 makes clear that this written agreement must be in place regardless of the length of the independent study program.

Furthermore, AB 167 amends Education Code section 51747 to clarify that the written agreement must be in place either (a) no later than 30 days after the first day

¹ For the purposes of this memo, LEA is defined to mean school district, county office of education or charter school.



of instruction in an independent study program, or (b) by October 15, whichever is later.

Synchronous Instruction

For those LEAs offering course-based independent study programs, Education Code section 51745.5 has been amended to clarify that “synchronous instruction” may be provided by the certificated employee of the LEA that is assigned to teach the course-based independent study. This allows an LEA to have multiple certificated employees assigned to the same course, and count the synchronous instruction from one for all students taking the course, whether or not the student was assigned to that instructor’s roster.

Also, AB 167 makes clear that if a student fails to participate in scheduled live interaction or synchronous instruction, that student should be marked non-participatory for that school day, for purposes of tiered reengagement.

Tiered Reengagement

AB 167 clarifies that LEAs’ written independent study policies must include procedures for tiered reengagement when:

- A student has not generated attendance for three school days or 60% of the instructional days in a school week; or
- **A student has not generated attendance for 10% of the required minimum instructional time over four continuous weeks; or**
- **If the student is found to be not participating for more than the greater of 3 school days or 60% of the scheduled days of synchronous instruction in a school month; or**
- If the pupil is in violation of the written independent study agreement.

LEAs should amend their independent study policies to ensure that the new criteria (in bold) are included.

Review of Student Work

Education Code section 51747.5 is amended to require that an LEA may only claim apportionment for independent study work based on the time value of the student’s work products as judged by a certificated teacher employed by the LEA.

Funding Protection

To address LEAs’ concerns about potential funding losses related to quarantine, AB 167 provides that LEAs may receive ADA credit if the LEA can show that the student participated in and met all other requirements of independent study during the time that in-person instruction was not possible due to:

- Student quarantine or infection due to COVID-19, or
- School closure due to staff shortages related to COVID-19.

LEAs that are Not Providing Independent Study

LEAs that obtained a waiver from the County Office of Education or are otherwise not obligated to provide independent study pursuant to Education Code section 51745 may still wish to offer some version of independent study.

As discussed above, requests for J-13A waivers to obtain ADA for (1) students who are on quarantine, (2) school closures due to staff shortages, or (3) less than 180 days of instruction due to



School & College Legal Services of California
Tel: (707) 524-2690 Fax: (707) 578-0517
www.sclscal.org

emergency will only be granted for those LEAs that can demonstrate that they offered some version of independent study to the affected students.

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

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.

© 2021 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 the client's own non-commercial purposes.