

# Analysis of AB 130 and Providing Independent Study via Contracted Services

August 05, 2021

Assembly Bill 130 requires local education agencies (LEA) to offer independent study to students during the 2021-2022 school year. As LEAs work to increase independent study offerings to comply with AB 130, a question has arisen as to whether AB 130 requires the teachers providing independent study to be certificated employees of the LEA. More specifically, does AB 130 support denial of average daily attendance (ADA) apportionment to LEAs that contract out for independent study services?

## **Executive Summary**

The language in AB 130 and related regulations appears to allow an LEA to contract out for independent study services and still qualify for proportional funding, provided that: 1) a certificated LEA employee generally supervises the independent study program, and 2) the independent study program complies with all of the other requirements specified in section 51747 of the Education Code.

## **Analysis**

AB 130 amended the Education Code to require LEAs to offer independent study during the 2021-2022 school year and identifies the type of staff who can provide different components of independent study. A summary of these requirements follows.

### **Synchronous Instruction**

The independent study program must include “synchronous instruction” for all independent study students, with varying frequency by grade level. (Ed. Code, § 51749.5(a)(C).) Synchronous instruction means “classroom-style instruction or designated small group or one-on-one instruction delivered in person.” (Ed. Code, § 51745.5(d).) The “teacher of record” must provide synchronous instruction. (*Id.*) Section 51747.5 does not define “teacher of record,” but does specify that a “certificated teacher” must judge student work to determine time value. This provision does not explicitly require this certificated teacher to be an LEA employee.

### **Daily Live Interaction**

The District must also provide students in grades 4 through 8 with “daily live interaction.” (Ed.

Code, § 51749.5(a)(4)(C)(ii).) In contrast to synchronous instruction, “live interaction” means interaction between the student and LEA classified or certificated staff for purposes of maintaining school connectedness and may include wellness checks, progress monitoring, provision of services, and instruction. (Ed. Code, § 51745.5(a).) This distinction between synchronous instruction (requiring a certificated teacher) and live interaction (requiring classified or certificated staff *from the LEA*) suggests an LEA must use district staff to provide live interaction, but could contract out the synchronous instruction component.

### **LEA “General Supervision” of the Independent Study Program**

A LEA staff member must provide general supervision of a student’s independent study program. Section 51747.5 of the Education Code requires independent study to be “coordinated, evaluated, ... and under the general supervision” of an employee of the LEA who has a valid certificate. (Ed. Code, § 51747.5(a).)

“General supervision” means the supervising teacher’s:

- Continuing oversight of the study design, implementation plan, allocation of resources, and evaluation of student progress; and
- Personal determination or personal review of the determination made by another certificated teacher of the time values for apportionment purposes of each student’s work products.

(5 California Code of Regulation [“C.C.R.”] § 11700(b).)

A “supervising teacher” is the certificated teacher employed by the LEA and assigned, as noted in the independent study agreement, the responsibility for coordinating, evaluating, and providing general supervision of the independent study program. (5 C.C.R. § 11700(j).)

Neither the definition of “general supervision,” nor “supervising teacher” requires the LEA-employed supervising teacher to provide the actual independent study instruction.

### **Contracting Out for Independent Study Services**

Given the exact language of AB 130 and the related regulations, in our opinion, a reasonable interpretation is that an LEA may contract out for independent study services and still qualify for proportional funding, provided that a certificated LEA employee generally supervises the independent study and the LEA meets all other independent study requirements specified in Education Code section 51747.

### **Recommendations**

As always, interpretation of new law is always evolving and we anticipate LEAs will receive ongoing clarification from the California Department of Education (CDE). In the meantime, we recommend the following practices to help secure apportionment for students participating in independent study for the 2021-2022 school year:

## **Implementation**

- Students in grades TK-3 receive daily synchronous instruction by a certificated teacher who is not necessarily an LEA employee;
- Students in grades 4-8 receive daily live interaction with a certificated or classified LEA employee and at least weekly synchronous instruction by a certificated teacher who is not necessarily an LEA employee;
- Students in grades 9-12 receive at least weekly synchronous instruction by a certificated teacher who is not necessarily an LEA employee;
- For all students, assign an LEA certificated employee for general supervision, which includes:
  - Oversight of the study design, implementation plan, allocation of resources, and evaluation of student progress; and
  - Personal determination or personal review of the determination made by another certificated teacher of the time values of each student's work products for apportionment purposes.

## **Oversight**

- Ensure employees, contractors, and vendors providing synchronous instruction and live interaction have appropriate educational credentials.
- Ensure employees, contractors, and vendors providing synchronous instruction and live interaction comply with requirements for daily and weekly instruction and interactions.
- Ensure the certificated employees responsible for general supervision provide supervision, review curriculum, evaluate student progress, and personally review determinations made by other teachers of time value of work.

## **Planning (from CDE)**

- Notify parents of their options to enroll their pupil in in-person instruction or independent study during the 2021–2022 school year, which includes:
  - The right to request a pupil-parent-educator conference meeting prior to enrollment.
  - Pupil rights regarding procedures for enrolling, disenrolling, and reenrolling in independent study.
  - The synchronous and asynchronous instructional time that a pupil will have access to as part of independent study
- Obtain signed written agreements with parents no later than 30 days after the first day of

instruction with the following terms:

- The manner, time, frequency, and place for communicating with a pupil's parent or guardian regarding academic progress.
- The inclusion of confirming or providing access to all pupils to the connectivity and devices adequate for participation and completion of work in the specific resources made available to the pupil.
- The level of satisfactory educational progress that would trigger an evaluation of whether or not the pupil should be allowed to continue in independent study.
- Duration of the agreement, including beginning and end dates not to exceed one school year.
- A detailed statement of academic and other supports provided to address the needs of pupils not performing at grade level, or needed support in other areas such as English learners, individuals with exceptional needs in order to be consistent with the pupil's individualized education program or 504 plan, pupils in foster care, pupils experiencing homelessness, and pupils requiring mental health supports.
- A provision for electronic signatures if a LEA chooses to make use of electronic signatures for written agreements.

If you have any questions about implementation, oversight, or planning your LEA's independent study program, please contact a **DWK attorney** in our **Students and Special Education Practice Group**.

## **PRACTICE AREAS**

- Students and Special Education