



Legislature Adopts AB 167 to “Clean Up” Independent Study Requirements and the Emergency Apportionment Provisions

September 13, 2021

On September 9, the California Legislature adopted AB 167, a bill aimed at cleaning up the independent study and emergency apportionment provisions of AB 130 which was adopted in July. AB 167 also cleans up other areas, including extending the timeline for grade change requests pursuant to AB 104, adopted earlier this year. It is anticipated that the Governor will sign AB 167 as it is our understanding that his Administration worked closely with the Legislature in drafting the language of the bill. YM&C is offering a webinar to discuss AB 167 on Thursday, September 16 at 12:00 PM. We hope that you will join us for a detailed discussion of the changes to the Education Code and their impact on charter school policy and operations.

The following offers a brief summary of the major AB 167 changes as applied to charter schools:

| Education Code Section | Summary of Revision |
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| 41422 | <ul style="list-style-type: none">• Protects a charter school that is unable to offer 175 days of instruction due to COVID-related staffing shortages, after consultation with the County Office of Education and Superintendent of Public Instruction that all alternative staffing options have been exhausted.• Does not apply protections to charter schools for failure to offer 175 days for other COVID-related closures (other than staffing shortages) and instead provides credit for instructional days and minutes that had been scheduled for in-person instruction provided that instruction was instead offered through legally compliant independent study. |
| 46392 | <ul style="list-style-type: none">• Provides for emergency apportionment protection for charter school closures related to staffing shortages related to COVID-19 under specified conditions which includes consultation with the county office of education and the Superintendent of Public Instruction and exhaustion of all options for obtaining staff coverage.• Prohibits emergency apportionment for other COVID-related quarantines or closures from September 1, 2021 – June 30, 2022, with the exception of a material loss of attendance for pupils with IEPs whose IEP does not provide for participation in independent study. |

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| 46393 | <ul style="list-style-type: none"> • Requires an LEA to certify that it has a plan for independent study when making an affidavit supporting a request for any emergency apportionment for events occurring after September 1, 2021, that resulted in a school closure or material decrease in attendance (i.e. COVID related staffing shortage, or other emergencies such as fire, flood, earthquake, etc.). • Under these circumstances, independent study must be offered within 10 days of the first day of school closure or material decrease in attendance. • Under these circumstances, pupils with exceptional need must receive the services identified in their IEP pursuant to the “emergency provisions” of their IEPs (pursuant to Section 56345(a)(9)) and are authorized to participate in an independent study program. |
| 49066.5 | <ul style="list-style-type: none"> • An LEA must accept a grade change request for a 2020-21 high school course to pass/no pass as long as the application is received by October 1, 2021, and may accept the grade change request after October 1, 2021. |
| 51226.9 | <ul style="list-style-type: none"> • Provides for the adoption of a model curriculum related to native American studies by September 1, 2025. • Beginning in the year following the completion of the model curriculum, each charter school maintaining any of grades 9-12 that does not otherwise offer a standards-based Native American studies curriculum is encouraged to offer a course of study in Native American studies (as an elective in the social sciences or English language arts in at least one year in grades 9-12). |
| 51745 | <ul style="list-style-type: none"> • Authorizes independent study for a pupil who is unable to attend in-person instruction due to a quarantine due to exposure to, or infection with COVID-19 pursuant to local or state public health guidance. |
| 51745.5 | <ul style="list-style-type: none"> • Clarifies that synchronous instruction may be provided by the teacher of record pursuant to Education Code Section 51747.5 or the certificated employee of the LEA providing instruction for course-based independent study. |

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| 51747 | <ul style="list-style-type: none"> • Alters the tiered reengagement strategies by adding a trigger for a pupil who is not generating attendance for 10% of required minimum instructional time over four continuous weeks of an LEA's approved instructional calendar, or pupils not participating in synchronous instruction for more than the greater of three schooldays or 60% of the scheduled days of synchronous instruction in a school month as applicable by grade span. Changes the one school day notification to parents or guardians within one school day of the recording of a non-attendance day or lack of participation. • Requires a fully signed written independent study agreement for an independent study program of any length of time no later than 30 days after the first day of instruction in an independent study program or October 15, whichever date comes later. • Upon request of the parent or guardian of a pupil, before signing a written independent study agreement, an LEA must conduct a telephone, videoconference, or in-person pupil-parent-educator conference or other school meeting to allow the pupil, parent or guardian, and education advocate (if requested by the pupil or parent) to ask questions about educational options. • Clarifies that an LEA shall be eligible for apportionment for the 2021-22 school year for independent study for pupils that are subject to quarantine for exposure to, or infection with, COVID-19 pursuant to local or state health guidance. LEAs shall receive apportionment for these pupils for all schooldays that they participate in and meet all other apportionment requirements of independent study while in quarantine or during a school closure. • Clarifies that a classroom-based charter school that provides independent study for pupils that are subject to quarantine for exposure to, or infection with COVID-19 pursuant to local or state health guidance shall not become a nonclassroom-based charter school due to that independent study attendance. However, existing requirements continue to apply to instances where a parent or guardian requests independent study for any other reason. |
| 51747.5 | <ul style="list-style-type: none"> • Clarifies that time value determination of work product must be judged by a certified teacher employed by the LEA. • Clarifies that an LEA must document each pupil's participation in live interaction and synchronous instruction on each school day for which these are provided as part of the independent study program. A pupil who does not participate in scheduled lived interaction or synchronous instruction shall be documented as nonparticipatory for that school day for purposes of pupil participation reporting and tiered reengagement. |
| 51749.5-51749.6 | <ul style="list-style-type: none"> • Provides conforming revisions to allow for course-based independent study for students subject to quarantine for exposure to, or infection with, COVID-19 pursuant to local or state health guidance and requires a pupil-parent-educator conference upon request by the parent or guardian of a pupil, and before signing a written agreement for course-based independent study. |
| Section 47 of the Statutes of 2021 | <ul style="list-style-type: none"> • Allows a substitute teacher to serve in a substitute teaching assignment for up to 60 cumulative days for any one assignment until July 1, 2022. |

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As always, the attorneys of Young, Minney & Corr are available to advise you as you continue to navigate these uniquely challenging times. Should you have any questions about this Legal Alert, please contact Lisa A. Corr (lcorr@mycharterlaw.com) or Janelle A. Ruley (jruley@mycharterlaw.com) via email or at (916) 646-1400. You can also view past Legal Alerts here.