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**ALLIANCE**  
*for* **CHILDREN'S**  
**RIGHTS**



**ACLU**  
**CALIFORNIA**  
**ACTION**

September 22, 2021

The Hon. Tony Thurmond  
State Superintendent of Public Instruction  
California Department of Education  
Via email only: [superintendent@cde.ca.gov](mailto:superintendent@cde.ca.gov)

Dr. Linda Darling-Hammond  
President  
California State Board of Education  
Via email only: [sbe@cde.ca.gov](mailto:sbe@cde.ca.gov)

**RE: Urgent Guidance on Independent Study Needed to Better Support Families**

Dear Superintendent Thurmond and President Darling-Hammond:

As a group of community-based organizations and advocates, we write to urge the California Department of Education and State Board of Education to issue clarifying guidance that will ensure students with disabilities and students who are English learners have access to key protections and rights currently in place under California law regarding remote learning and independent study. We have heard numerous stories from the community regarding school districts' lack of understanding of, and failure to implement, existing law. The recent message sent by the Department of Finance on September 3, 2021, detailing the State Board of Education's perspective on current law and upcoming legislative "fixes," was helpful in that it corrected some common misconceptions and clarified vague aspects of the new independent study law. We also know that AB 167 includes additional clarifications to the law that are useful.

However, the clarifications do not address some additional, significant struggles that families and students across the state continue to face, including denial of access to services, supports, and in some cases, access to any education at all. To address these outstanding violations of rights, additional clarifying guidance is still necessary; we provide details on suggested guidance language below.

**First, we would like to share some themes summarizing the concerning stories we have heard from the community over the past month, from counties in the Bay Area, Central Valley, Central Coast and Southern California:**

- Families are generally not learning about their rights to independent study as a form of remote learning, and students with disabilities are particularly being discouraged from exploring that option.
- Students enrolled in bilingual programs are told that bilingual support/instruction is not available through independent study. When independent study consists of packets of materials and minimal contact with teachers and peers, there is no context for English language development (ELD).
- Districts are stating that students with disabilities will not qualify for independent study unless the parent/guardian waives the student's right to a Free Appropriate Public Education (FAPE). This constitutes discrimination based on disability.
- Districts are declining to expedite Individualized Education Program (IEP) meetings or to amend IEPs without such meetings when families request independent study based on their student's health risk. Because of these delays, students are missing many days of instruction and are typically receiving none of their required special education services during this time. Students are counted absent during these days with no interim instruction and have been threatened with truancy or SARB referrals.
  - In one case, a student with disabilities exiting a court school was not enrolled in school for more than a month because the receiving district would not convene a timely IEP meeting to change his placement to independent study. He received no appropriate interim education options.
- When IEP meetings are finally held, districts are:
  - Only offering in-person special education services, regardless of a student's stated health risk and request for independent study, or
  - Telling parents their two options are to either waive the student's right to FAPE so services can be reduced or send them to school in-person, despite the health risks.
    - Service reductions have particularly occurred when students require group-based, academic supports, or 1:1 aide services.

While we are struggling, as advocates, to support the families and organizations from whom we have received calls, there are surely many other parents/guardians who do not have advocates supporting them. They are thus even more unlikely to have their education rights acknowledged or protected.

**Therefore, we urge you to issue clear guidance stating the following, which are in alignment with current state and federal law:**

- 1) Districts cannot issue informal or formal policy statements that students with disabilities are generally unsuited to receive FAPE through independent study, as this would constitute discrimination based on their disability.
- 2) Districts cannot coerce or require parents/guardians of students with disabilities to waive the student's right to FAPE, in whole or in part, as a condition of enrollment in

- independent study.
- 3) LEAs cannot make a single offer of FAPE that requires the student to attend in-person only.
  - 4) AB 130/167 does not waive the obligations of districts to abide by federal special education law, including offering specially designed instruction outside of the independent study framework to meet the needs of students with disabilities who cannot attend school in person because of health risks.
  - 5) Districts should ensure English learners receive both designated and integrated instruction in English language development, including assessment of English language proficiency, support to access curriculum, and, as applicable, support for dual language learning. Districts need to know that providing designated and integrated English language development is a legal mandate regardless of context for delivery of instruction.
  - 6) Districts must share and implement required written procedures with parents/guardians, especially those with limited internet access and in the language spoken by the parents/guardians for those who are monolingual.
  - 7) Districts should not penalize students who miss instructional time because of the district's delay in informing them about or enrolling them in independent study - for example, with truancy violations or SARB referrals. If the delay is caused by the district's delay, students should receive compensatory services for those missed.

We are looking forward to the time when all of our students can be back in school in-person. However, the continuing COVID-19 pandemic gives many families no choice but to opt their children out of full in-person instruction. We urge the CDE and SBE to issue guidance that will empower and support school districts in providing as much assistance as possible to families and students - including but not limited to students with disabilities and English learners - who are navigating these education options.

Thank you for your attention to these urgent concerns from our community members. Please contact Atasi Uppal, [auppal@youthlaw.org](mailto:auppal@youthlaw.org) or Samantha Tran, [stran@childrennow.org](mailto:stran@childrennow.org), if you are available to discuss these matters further.

Sincerely,

Kathy Sher, Legislative Attorney  
ACLU California Action

Martha Hernandez, Executive Director  
Californians Together

Kristin Power, VP, Policy & Advocacy  
Alliance for Children's Rights

Samantha Tran, Senior Managing Director,  
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Alma Cervantes, Regional Education Equity  
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Carol Green, President  
California State PTA

Atasi Uppal, Senior Policy Attorney  
National Center for Youth Law

CC (via email):

Brooks Allen, Executive Director, SBE

Sarah Neville-Morgan, Deputy Superintendent of Public Instruction, CDE

Heather Calomese, Director, Special Education, CDE

Alesha Moreno-Ramirez, Director, Multilingual Support Division, CDE

Lisa Borrego, Director, Family Engagement Office, CDE