

AMENDED IN SENATE AUGUST 16, 2011

AMENDED IN SENATE JULY 13, 2011

AMENDED IN SENATE JUNE 20, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 853

**Introduced by Assembly Member Blumenfield
(Coauthors: Assembly Members Beall, Cook, and Garrick)**

February 17, 2011

~~An act to add and repeal Section 46300.8 of the Education Code, relating to online education. An act to amend Sections 41344.4, 46300, 46300.6, 46300.7, 51745.6, 51747, and 51747.3 of, and to add Sections 51745.2 and 51747.1 to, the Education Code, relating to schools.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 853, as amended, Blumenfield. ~~Online education: school attendance. Schools.~~

Existing law establishes the public elementary and secondary school system in this state, and further establishes a funding system pursuant to which the state apportions funds to local educational agencies based on, among other factors, the average daily attendance of pupils at the schools operated by those agencies. Numerous statutes and regulations govern the calculation and reporting of average daily attendance.

~~This bill, commencing with the 2013–14 fiscal year, would provide that school districts, county offices of education, and charter schools that offer online education courses may claim attendance toward average daily attendance on the basis of a pupil's attendance in an online course or courses that satisfy prescribed criteria.~~

~~The bill would require the Superintendent of Public Instruction, in consultation with the Controller and Director of Finance, on or before December 31, 2012, to make revisions to any attendance accounting manual or guidance provided to school districts, county offices of education, or charter schools that are necessary to conform to these provisions, or to clarify these provisions with respect to attendance accounting procedures for asynchronous online courses, as defined. The bill additionally would require the Superintendent, in consultation with the Director of Finance, to adopt rules and regulations for the purposes of clarifying or expanding the procedures required for verifying the identification of pupils participating in asynchronous online courses and including pupil attendance in asynchronous online courses in the calculation of average daily attendance.~~

~~The bill would make all of these provisions inoperative on July 1, 2017, and repeal them on January 1, 2018.~~

This bill, commencing with the 2011–12 school year, would authorize, for purposes of computing average daily attendance, the inclusion of pupils under the supervision and control of a certificated employee of the school district or county office of education who is delivering synchronous, online instruction, as defined, provided that this instruction meets specified criteria. The bill would require, if a school district or county office of education elects to offer synchronous, online instruction, that the school district or county office of education ensure that all pupils who choose to enroll in an online course have access to the computer hardware or software necessary for the pupil to participate in the course.

Existing law authorizes the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. Existing law requires, in computing the average daily attendance of a school district, that there be included the attendance of pupils participating in independent study for 5 or more consecutive schooldays. Existing law prohibits a school district or county office of education from receiving apportionments for independent study unless it has adopted and implemented certain policies.

The bill, commencing with the 2011–12 school year, would authorize the governing board of a school district or a county office of education to offer, as independent study, asynchronous, online instruction, as defined in accordance with specified criteria. The bill would require that if a school district or county office of education elects to offer

asynchronous, online instruction pursuant to these provisions, that the school district or county office of education ensure that all pupils who choose to enroll in an asynchronous, online course have access to the computer hardware or software necessary for the pupil to participate in the course.

The bill would also modify the requirements relating to apportionments for independent study, by requiring that there be, at a minimum, biweekly contact between teachers and pupils, and basing a pupil's continued participation in independent study on that pupil making satisfactory educational progress, as defined.

Existing law requires that local educational agencies and county boards of education be subject to financial and compliance audits, as specified. Existing law authorizes the county superintendent of schools to waive the requirement that a local educational agency repay an apportionment based on an audit exception if specified criteria are met.

This bill would authorize the Superintendent of Public Instruction to waive the requirement that a county board of education repay an apportionment based on an audit exception if specified criteria are met. The bill also, for both local educational agencies and county boards of education, would authorize the waiver of certain audit exceptions relating to independent study, provided that these exceptions are deemed to be minor and inadvertent.

The bill also would make technical, conforming, and clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 41344.4 of the Education Code is amended*
2 *to read:*
3 41344.4. (a) (1) ~~Notwithstanding any other provision of law,~~
4 a local educational agency is not required to repay an
5 apportionment based on a significant audit exception related to
6 the requirements specified in paragraphs (1), (2), and (3) of
7 subdivision (b) of Section 14501 if the county superintendent of
8 schools certifies to the ~~Superintendent of Public Instruction~~ and
9 the Controller that the audit exception was corrected by the local
10 educational agency or that an acceptable plan of correction was
11 submitted to the county superintendent of schools pursuant to

1 subdivision (k) of Section 41020. With respect to textbooks and
2 instructional materials, the plan shall be consistent with the
3 requirements of subparagraph (A) of paragraph (2) of subdivision
4 (a) of Section 60119.

5 (2) *Notwithstanding any other law, a local educational agency*
6 *is not required to repay an apportionment based on a significant*
7 *audit exception related to the requirements specified in subdivision*
8 *(b) of Section 51747 if the county superintendent of schools certifies*
9 *to the Superintendent and the Controller that the audit exception*
10 *was corrected by the local educational agency or that an*
11 *acceptable plan of correction was submitted to the county*
12 *superintendent of schools pursuant to subdivision (k) of Section*
13 *41020. Before making this certification, the county superintendent*
14 *of schools shall first make a determination that the noncompliance*
15 *cited in the audit exception is minor and inadvertent. The county*
16 *superintendent of schools is limited to waiving the requirement*
17 *that these audit exceptions be repaid to two school years in any*
18 *five consecutive school years for each local educational agency.*

19 (b) (1) *Notwithstanding any other law, a county board of*
20 *education is not required to repay an apportionment based on a*
21 *significant audit exception related to the requirements specified*
22 *in paragraphs (1), (2), and (3) of subdivision (b) of Section 14501*
23 *if the Superintendent certifies that the audit exception was*
24 *corrected by the county board of education or that an acceptable*
25 *plan of correction was submitted pursuant to subdivision (m) of*
26 *Section 41020. With respect to textbooks and instructional*
27 *materials, the plan shall be consistent with the requirements of*
28 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*
29 *60119.*

30 (2) *Notwithstanding any other law, a county board of education*
31 *is not required to repay an apportionment based on a significant*
32 *audit exception related to the requirements specified in subdivision*
33 *(b) of Section 51747 if the Superintendent certifies that the audit*
34 *exception was corrected by the county board of education or that*
35 *an acceptable plan of correction was submitted pursuant to*
36 *subdivision (m) of Section 41020. Before making this certification,*
37 *the Superintendent shall first make a determination that the*
38 *noncompliance cited in the audit exception is minor and*
39 *inadvertent. The Superintendent is limited to waiving the*

1 *requirement that these audit exceptions be repaid to two school*
2 *years in any five consecutive school years.*

3 *SEC. 2. Section 46300 of the Education Code is amended to*
4 *read:*

5 46300. (a) (1) In computing average daily attendance of a
6 school district or county office of education, there shall be included
7 the attendance of pupils while engaged in educational activities
8 required of those pupils and under the immediate supervision and
9 control of an employee of the *school* district or county office who
10 possessed a valid certification document, registered as required
11 by law.

12 (2) (A) *Commencing with the 2011–12 school year, attendance*
13 *of pupils under the supervision and control of a certificated*
14 *employee of the school district or county office of education who*
15 *is delivering synchronous, online instruction shall be included in*
16 *computing average daily attendance, provided that all of the*
17 *following occur:*

18 (i) *The certificated employee providing the instruction confirms*
19 *pupil attendance through visual recognition using web cameras*
20 *or periodic voice responses during the class period. A pupil logon,*
21 *without any other pupil identification, is not sufficient to confirm*
22 *pupil attendance.*

23 (ii) *The class has a regularly scheduled starting and ending*
24 *time, and the pupil is scheduled to attend the entire class period.*
25 *Average daily attendance shall be counted only for attendance in*
26 *classes held at the regularly scheduled time.*

27 (iii) *An individual with exceptional needs, as defined in Section*
28 *56026, may participate in synchronous, online instruction only if*
29 *his or her individualized education program developed pursuant*
30 *to Article 3 (commencing with Section 56340) of Chapter 4 of Part*
31 *30 specifically provides for that participation.*

32 (iv) *If a school district or county office of education elects to*
33 *offer synchronous, online instruction pursuant to this paragraph,*
34 *the school district or county office of education shall not deny*
35 *enrollment to a pupil based solely on the pupil's lack of access to*
36 *the computer hardware or software necessary to participate in the*
37 *course. If a pupil chooses to enroll in a course and does not have*
38 *access to the necessary equipment, the school district or county*
39 *office of education shall provide, for each pupil who chooses to*

1 enroll in a synchronous, online course, access to the computer
2 hardware or software necessary to participate in the course.

3 (v) The ratio of average daily attendance for synchronous, online
4 pupils who are 18 years of age or younger to school district
5 full-time equivalent certificated employees responsible for
6 synchronous, online instruction, calculated as specified by the
7 department, shall not exceed the equivalent ratio of pupils to
8 full-time certificated employees for all other educational programs
9 operated by the school district, unless a higher or lower ratio is
10 negotiated in a collective bargaining agreement.

11 (vi) The ratio of average daily attendance for synchronous,
12 online pupils who are 18 years of age or younger to county office
13 of education full-time equivalent certificated employees who
14 provide synchronous, online instruction, to be calculated in a
15 manner prescribed by the department, shall not exceed the
16 equivalent ratio of pupils to full-time certificated employees for
17 all other educational programs operated by the high school or
18 unified school district with the greatest average daily attendance
19 of pupils in that county, unless a higher or lower ratio is provided
20 for in a collective bargaining agreement. The computation of the
21 ratios specified in clause (iii) and this clause shall be performed
22 annually by the reporting agency at the time of, and in connection
23 with, the second principal apportionment report to the
24 Superintendent.

25 (B) The Superintendent may establish rules and regulations for
26 purposes of implementing this paragraph.

27 (C) For purposes of this paragraph, “synchronous, online
28 instruction” means a class or course in which the pupil and the
29 certificated employee who is providing instruction are online at
30 the same time and use real-time, Internet-based collaborative
31 software that combines audio, video, file share, and other forms
32 of interaction.

33 (b) (1) For purposes of a work experience education program
34 in a secondary school that meets the standards of the California
35 State Plan for Career Technical Education, “immediate
36 supervision,” in the context of off-campus work training stations,
37 means pupil participation in on-the-job training as outlined under
38 a training agreement, coordinated by the school district under a
39 state-approved plan, wherein the employer and certificated school
40 personnel share the responsibility for on-the-job supervision.

1 (2) The pupil-teacher ratio in a work experience program shall
2 not exceed 125 pupils per full-time equivalent certificated teacher
3 coordinator. This ratio may be waived by the state board pursuant
4 to Article 3 (commencing with Section 33050) of Chapter 1 of
5 Part 20 of Division 2 under criteria developed by the state board.

6 (3) A pupil enrolled in a work experience program shall not be
7 credited with more than one day of attendance per calendar day,
8 and shall be a full-time pupil enrolled in regular classes that meet
9 the requirements of Section 46141 or 46144.

10 (c) (1) For purposes of the rehabilitative schools, classes, or
11 programs described in Section 48917 that require immediate
12 supervision, “immediate supervision” means that the person to
13 whom the pupil is required to report for training, counseling,
14 tutoring, or other prescribed activity shares the responsibility for
15 the supervision of the pupils in the rehabilitative activities with
16 certificated personnel of the district.

17 (2) A pupil enrolled in a rehabilitative school, class, or program
18 shall not be credited with more than one day of attendance per
19 calendar day.

20 (d) (1) For purposes of computing the average daily attendance
21 of pupils engaged in the educational activities required of high
22 school pupils who are also enrolled in a regional occupational
23 center or regional occupational program, the school district shall
24 receive proportional average daily attendance credit for those
25 educational activities that are less than the minimum schoolday,
26 pursuant to regulations adopted by the state board; however, none
27 of that attendance shall be counted for purposes of computing
28 attendance pursuant to Section 52324.

29 (2) A school district shall not receive proportional average daily
30 attendance credit pursuant to this subdivision for a pupil in
31 attendance for less than 145 minutes each day.

32 (3) The divisor for computing proportional average daily
33 attendance pursuant to this subdivision is 240, except that, in the
34 case of a pupil excused from physical education classes pursuant
35 to Section 52316, the divisor is 180.

36 (4) Notwithstanding any other provision of law, travel time of
37 pupils to attend a regional occupational center or regional
38 occupational program shall not be used in any manner in the
39 computation of average daily attendance.

1 (e) (1) In computing the average daily attendance of a school
 2 district, there shall also be included the attendance of pupils
 3 participating in independent study conducted pursuant to Article
 4 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for
 5 five or more consecutive schooldays.

6 (2) A pupil participating in independent study shall not be
 7 credited with more than one day of attendance per calendar day.

8 (f) For purposes of cooperative career technical education
 9 programs and community classrooms described in Section 52372.1,
 10 “immediate supervision” means pupil participation in paid and
 11 unpaid on-the-job experiences, as outlined under a training
 12 agreement and individualized training plans wherein the supervisor
 13 of the training site and certificated school personnel share the
 14 responsibility for the supervision of on-the-job experiences.

15 (g) (1) In computing the average daily attendance of a school
 16 district, there shall be included the attendance of pupils in
 17 kindergarten after they have completed one school year in
 18 kindergarten or pupils in a transitional kindergarten program after
 19 they have completed one year in that program if one of the
 20 following conditions is met:

21 (A) The school district has on file for each of those pupils an
 22 agreement made pursuant to Section 48011, approved in form and
 23 content by the department and signed by the pupil’s parent or
 24 guardian, that the pupil may continue in kindergarten for not more
 25 than one additional school year.

26 (B) The pupils participated in a transitional kindergarten
 27 program pursuant to subdivision (c) of Section 48000.

28 (2) A school district ~~may~~ shall not include for apportionment
 29 purposes the attendance of any pupil for more than two years in
 30 kindergarten or for more than two years in a combination of
 31 transitional kindergarten and kindergarten.

32 *SEC. 3. Section 46300.6 of the Education Code is amended to*
 33 *read:*

34 46300.6. ~~The State Department of Education~~ *department* shall
 35 not apportion funds to a local ~~education~~ *educational* agency for a
 36 pupil in the independent study program if that agency has provided
 37 any funds or other things of value to the pupil or his or her parent
 38 or guardian that the agency does not provide to pupils who attend
 39 regular classes or to their parents or guardians. *This section shall*
 40 *not apply to online instruction courses for which local educational*

1 agencies provide computer equipment, software, or both, or other
2 components necessary for pupils to participate in online
3 instruction.

4 SEC. 4. Section 46300.7 of the Education Code is amended to
5 read:

6 46300.7. (a) Notwithstanding any other ~~provision of law, no~~
7 a school district or county office of education shall *not* receive
8 apportionments for any pupil in independent study unless that
9 entity receives written permission from the parent or guardian of
10 the pupil prior to the commencement of independent study by that
11 pupil. The written permission shall specify the actual dates of
12 participation, the methods of study and evaluation, and the
13 resources to be made available for the independent study program
14 for the pupil, *and may include the methods of study and evaluation,*
15 *and the resources to be made available for the independent study*
16 *program for the pupil. Commencing with the 2011–12 school year,*
17 *a school district or county office of education may begin services*
18 *and claim average daily attendance upon its receipt of the*
19 *electronic copy of the written permission. Each school district and*
20 *county office of education also shall maintain a copy of the original*
21 *signed written permission.*

22 (b) For purposes of this section, an “electronic copy” includes
23 a computer or electronic stored image of an original document,
24 including, but not limited to, portable document format (PDF),
25 JPEG, or other digital image file type, which may be sent via fax
26 machine, e-mail, or other electronic means.

27 SEC. 5. Section 51745.2 is added to the Education Code, to
28 read:

29 51745.2. (a) Commencing with the 2011–12 school year, the
30 governing board of a school district or county office of education
31 may offer to pupils asynchronous, online instruction in accordance
32 with the requirements of this article and the following:

33 (1) If a school district or county office of education elects to
34 offer asynchronous, online instruction pursuant to this paragraph,
35 the school district or county office of education shall not deny
36 enrollment to a pupil based solely on the pupil’s lack of access to
37 the computer hardware or software necessary to participate in the
38 course. If a pupil chooses to enroll in a course and does not have
39 access to the necessary equipment, the school district or county
40 office of education shall provide, for each pupil who chooses to

1 enroll in an asynchronous, online course, access to the computer
 2 hardware or software necessary to participate in the course.

3 (2) A pupil shall not be charged for his or her participation in
 4 the online course.

5 (3) Pupil work product created in an asynchronous, online
 6 course is property of the school district or county office of
 7 education for purposes of evaluation and supervision of
 8 independent study under Section 51747.5.

9 (b) For purposes of this section, “asynchronous, online
 10 instruction” means a class or course where the certificated
 11 employee and pupil may be online at different times, allowing
 12 pupils and certificated employees to participate according to their
 13 own schedules. Communication and interaction may occur via
 14 e-mail, Internet Web sites, online discussion forums, message
 15 boards, weblogs, podcasts, testing, or other electronic means.

16 SEC. 6. Section 51745.6 of the Education Code is amended to
 17 read:

18 51745.6. (a) The ratio of average daily attendance for
 19 independent study pupils 18 years of age or less to school district
 20 full-time equivalent certificated employees responsible for
 21 independent study, calculated as specified by the ~~State Department~~
 22 ~~of Education~~ department, shall not exceed the equivalent ratio of
 23 pupils to full-time certificated employees for all other educational
 24 programs operated by the school district, *unless a higher or lower*
 25 *ratio is provided for in a collective bargaining agreement.* The
 26 ratio of average daily attendance for independent study pupils 18
 27 years of age or less to county office of education full-time
 28 equivalent certificated employees responsible for independent
 29 study, to be calculated in a manner prescribed by the ~~State~~
 30 ~~Department of Education~~ department, shall not exceed the
 31 equivalent ratio of pupils to full-time certificated employees for
 32 all other educational programs operated by the high school or
 33 unified school district with the ~~largest~~ *highest* average daily
 34 attendance of pupils in that county, *unless a higher or lower ratio*
 35 *is provided for in a collective bargaining agreement.* The
 36 computation of those ratios shall be performed annually by the
 37 reporting agency at the time of, and in connection with, the second
 38 principal apportionment report to the Superintendent ~~of Public~~
 39 ~~Instruction.~~

1 (b) Only those units of average daily attendance for independent
2 study that reflect a pupil-teacher ratio that does not exceed the
3 ratio described in subdivision (a) shall be eligible for apportionment
4 pursuant to Section 42238.5, for school districts, and Section 2558,
5 for county offices of education. Nothing in this section shall
6 prevent a school district or county office of education from serving
7 additional units of average daily attendance greater than the ratio
8 described in subdivision (a), except that those additional units shall
9 not be funded pursuant to Section 42238.5 or Section 2558.

10 (c) The calculations performed for purposes of this section shall
11 not include either of the following:

12 (1) The average daily attendance generated by special education
13 pupils enrolled in special day classes on a full-time basis, or the
14 teachers of those classes.

15 (2) The average daily attendance or teachers in necessary small
16 schools that are eligible to receive funding pursuant to Article 4
17 (commencing with Section 42280) of Chapter 7 of Part 24.

18 (d) The pupil-teacher ratio described in subdivision (a) in a
19 unified school district participating in the class size reduction
20 program pursuant to Chapter 6.10 (commencing with Section
21 52120) may, at the school district's option, be calculated separately
22 for kindergarten and grades 1 to 6, inclusive, and for grades 7 to
23 12, inclusive.

24 (e) The pupils-to-certificated-employee ratio described in
25 subdivision (a) may, in a charter school, be calculated by using a
26 fixed pupils-to-certificated-employee ratio of 25 to one, or by being
27 a ratio of less than 25 pupils per certificated employee. All charter
28 school pupils, regardless of age, shall be included in
29 pupil-to-certificated-employee ratio calculations.

30 *SEC. 7. Section 51747 of the Education Code is amended to*
31 *read:*

32 51747. A school district or county office of education shall not
33 be eligible to receive apportionments for independent study by
34 pupils, regardless of age, unless it has adopted written policies,
35 and has implemented those policies, pursuant to rules and
36 regulations adopted by the Superintendent of Public Instruction,
37 that include, but are not limited to, all of the following:

38 (a) ~~The maximum length of time, by grade level and type of~~
39 ~~program, that may elapse~~ *There shall be, at a minimum, biweekly*
40 *contact between certificated employees providing instruction and*

1 *pupils to assess progress. A pupil shall not have more than four*
 2 *weeks between the time an independent study assignment is made*
 3 *and the date by which the pupil must complete the assigned work,*
 4 *unless there is a specific extension for longer project-based*
 5 *assignments.*

6 *(1) Every two weeks, if no satisfactory educational progress*
 7 *has been made pursuant to paragraph (3), a certificated employee*
 8 *shall send a warning notice to the pupil and the pupil’s parent or*
 9 *guardian.*

10 ~~(b) The number of missed assignments that will be allowed~~
 11 ~~before~~

12 *(2) After four weeks without satisfactory educational progress,*
 13 *an evaluation is shall be conducted to determine whether it is in*
 14 *the best interests of the pupil to remain in independent study, or*
 15 *whether he or she should return to the regular school program. A*
 16 *written record of the findings of any evaluation made pursuant to*
 17 *this subdivision shall be treated as a mandatory interim pupil*
 18 *record. The record shall be maintained for a period of three years*
 19 *from the date of the evaluation and, if the pupil transfers to another*
 20 *California public school, the record shall be forwarded to that*
 21 *school. A pupil shall not continue to participate in independent*
 22 *study for more than six weeks without evidence of satisfactory*
 23 *educational progress unless there is a special determination*
 24 *documented by the district or county superintendent or his or her*
 25 *designee.*

26 *(3) For purposes of this section, “satisfactory educational*
 27 *progress” includes measures such as the completion of*
 28 *assignments, participation in assessments and required labs or*
 29 *online workgroups, or other indicators that the pupil is working*
 30 *on assignments and learning required concepts, as determined by*
 31 *the supervising certificated employee.*

32 ~~(e)~~

33 *(b) A requirement that a current written agreement for each*
 34 *independent study pupil shall be maintained on file including, but*
 35 *in a paper or electronic copy. The written agreement shall include*
 36 *a copy of the governing board’s independent study authorization,*
 37 *which may include, but is not limited to, all of the following:*

38 *(1) The manner, time, frequency, and place for submitting a*
 39 *pupil’s assignments and for reporting his or her progress.*

1 (2) The objectives and methods of study for the pupil’s work,
2 and the methods utilized to evaluate that work.

3 (3) The specific resources, including materials and personnel,
4 that will be made available to the pupil.

5 (4) A statement of the policies adopted pursuant to subdivisions
6 ~~(a) and (b)~~ *subdivision (a)* regarding the maximum length of time
7 ~~allowed between the assignment and the completion of a pupil’s~~
8 ~~assigned work, and the number of missed assignments allowed~~
9 ~~prior to biweekly contact between teachers and pupils, and the~~
10 ~~requirement that there be satisfactory educational progress within~~
11 ~~each four-week period, without which there shall be an evaluation~~
12 ~~of whether or not the pupil should be allowed to continue in~~
13 ~~independent study, and the stipulation that a pupil shall not remain~~
14 ~~in independent study if more than six weeks elapse without the~~
15 ~~pupil making satisfactory educational progress.~~

16 (5) The duration of the independent study agreement, including
17 the beginning and ending dates for the pupil’s participation in
18 independent study under the agreement. ~~No~~ *An* independent study
19 agreement shall *not* be valid for any period longer than one
20 semester, or one-half year for a school on a year-round calendar
21 *school year*.

22 (6) A statement of the number of course credits or, for the
23 elementary grades, other measures of academic accomplishment
24 appropriate to the agreement, to be earned by the pupil upon
25 completion.

26 (7) The inclusion of a statement in each independent study
27 agreement that independent study is an optional educational
28 alternative in which no pupil may be required to participate. In the
29 case of a pupil who is referred or assigned to any school, class, or
30 program pursuant to Section 48915 or 48917, the agreement also
31 shall include the statement that instruction may be provided to the
32 pupil through independent study only if the pupil is offered the
33 alternative of classroom instruction.

34 (8) Each written agreement shall be signed, ~~prior to the~~
35 ~~commencement of independent study,~~ by the pupil, the pupil’s
36 parent, legal guardian, or caregiver, *and* if the pupil is less than
37 18 years of age, the certificated employee who has been designated
38 as having responsibility for the general supervision of independent
39 study, ~~and all persons who have direct responsibility for providing~~
40 ~~assistance to the pupil.~~ For purposes of this paragraph “caregiver”

1 means a person who has met the requirements of Part 1.5
 2 (commencing with Section 6550) of the Family Code. *Independent*
 3 *study may commence upon receipt of an electronic copy of this*
 4 *agreement.*

5 (9) *With respect to noncompliance with this subdivision, only*
 6 *audit findings deemed minor and inadvertent may be waived,*
 7 *pursuant to Section 41344.4.*

8 (c) *For purposes of this section, an “electronic copy” includes*
 9 *a computer or electronic stored image of an original document,*
 10 *including, but not limited to, portable document format (PDF),*
 11 *JPEG, or other digital image file type, which may be sent via fax*
 12 *machine, e-mail, or other electronic means.*

13 SEC. 8. *Section 51747.1 is added to the Education Code, to*
 14 *read:*

15 51747.1. (a) *A school district or county office of education*
 16 *shall maintain electronic or hard copies of the gradebook of each*
 17 *certificated employee providing independent study for the purpose*
 18 *of verifying work completed by independent study pupils. A school*
 19 *district and county office of education shall not be required to*
 20 *store hard copies of pupil work samples as a condition of*
 21 *apportionment for independent study.*

22 (b) *For purposes of this section, an “electronic copy” includes*
 23 *a computer or electronic stored image of an original document,*
 24 *including, but not limited to, portable document format (PDF),*
 25 *JPEG, or other digital image file type, which may be sent via fax*
 26 *machine, e-mail, or other electronic means.*

27 SEC. 9. *Section 51747.3 of the Education Code is amended to*
 28 *read:*

29 51747.3. (a) (1) ~~Notwithstanding any other provision of law,~~
 30 ~~a local educational agency, including, but not limited to, a charter~~
 31 ~~school, may shall not claim state funding for the independent study~~
 32 ~~of a pupil, whether characterized as home study or otherwise, if~~
 33 ~~the agency has provided any funds or other thing of value to the~~
 34 ~~pupil or his or her parent or guardian that the agency does not~~
 35 ~~provide to pupils who attend regular classes or to their parents or~~
 36 ~~guardians. A charter school may shall not claim state funding for~~
 37 ~~the independent study of a pupil, whether characterized as home~~
 38 ~~study or otherwise, if the charter school has provided any funds~~
 39 ~~or other thing of value to the pupil or his or her parent or guardian~~

1 that a school district could not legally provide to a similarly situated
2 pupil of the school district, or to his or her parent or guardian.

3 (2) *Paragraph (1) does not apply to online instruction courses*
4 *for which the local educational agency provides computer*
5 *equipment, software, or both, or other components necessary for*
6 *pupils to participate in online instruction.*

7 (b) Notwithstanding paragraph (1) of subdivision (d) of Section
8 47605 or any other ~~provision of~~ law, community school and
9 independent study average daily attendance shall be claimed by
10 school districts, county superintendents of schools, and charter
11 schools only for pupils who are residents of the county in which
12 the apportionment claim is reported, or who are residents of a
13 county immediately adjacent to the county in which the
14 apportionment claim is reported.

15 (c) The Superintendent of ~~Public Instruction~~ shall not apportion
16 funds for reported average daily attendance, through full-time
17 independent study, of pupils who are enrolled in school pursuant
18 to subdivision (b) of Section 48204.

19 (d) In conformity with Provisions 25 and 28 of Section 2.00 of
20 the Budget Act of 1992, this section is applicable to average daily
21 attendance reported for apportionment purposes beginning July 1,
22 1992. The provisions of this section are not subject to waiver by
23 the ~~State Board of Education~~ *state board*, by the ~~State~~
24 ~~Superintendent of Public Instruction~~, or under any provision of
25 Part 26.8 (commencing with Section 47600).

26 ~~SECTION 1. Section 46300.8 is added to the Education Code,~~
27 ~~to read:~~

28 ~~46300.8. (a) Commencing with the 2013–14 fiscal year, a~~
29 ~~school district, county office of education, or charter school may~~
30 ~~claim attendance toward average daily attendance, for the purposes~~
31 ~~of calculating average daily attendance pursuant to Section 46300,~~
32 ~~on the basis of a pupil's attendance in an online course or courses~~
33 ~~if all of the following apply:~~

34 ~~(1) The pupil is enrolled in grade 9, 10, 11, or 12.~~

35 ~~(2) The pupil is a California resident.~~

36 ~~(3) The pupil is enrolled in classes that include courses in a~~
37 ~~classroom-based setting, courses that are offered through an online~~
38 ~~program, or both.~~

39 ~~(4) The pupil meets minimum instructional time requirements~~
40 ~~pursuant to:~~

- 1 ~~(A) Section 46141 and Section 46201, 46201.5, or 46202, as~~
2 ~~applicable, for pupils enrolled in a noncharter school in a school~~
3 ~~district or county office of education.~~
- 4 ~~(B) Section 46170, for pupils enrolled in a continuation school.~~
- 5 ~~(C) Section 46180, for pupils enrolled in an opportunity school.~~
- 6 ~~(D) Subdivision (c) of Section 47612.5, for pupils enrolled in~~
7 ~~a charter school.~~
- 8 ~~(5) Each online course in which the pupil is enrolled is a~~
9 ~~high-quality online course.~~
- 10 ~~(b) For purposes of this section, a “high-quality online course”~~
11 ~~is defined as an online course that meets all of the following~~
12 ~~requirements:~~
- 13 ~~(1) The online course is approved by the governing board of~~
14 ~~the school district or county office of education, or by the~~
15 ~~governing body of the charter school.~~
- 16 ~~(2) The online course is certified to meet these requirements,~~
17 ~~through board resolution, by the governing board of the school~~
18 ~~district or county office of education, or by the governing body of~~
19 ~~the charter school.~~
- 20 ~~(3) The online course is certified by the governing board of the~~
21 ~~school district or county office of education, or by the governing~~
22 ~~body of the charter school, as being as rigorous as a~~
23 ~~classroom-based course and meeting or exceeding all relevant state~~
24 ~~content standards.~~
- 25 ~~(4) Either of the following:~~
- 26 ~~(A) The teacher is online at the same time as each pupil, is~~
27 ~~accessible to each pupil attending the synchronous online course~~
28 ~~to respond to pupil queries, assign tasks, and dispense information,~~
29 ~~and is able to make a visual connection with each pupil for~~
30 ~~purposes of verifying attendance or providing immediate~~
31 ~~supervision of the pupil.~~
- 32 ~~(B) The teacher may be online at different times than each pupil,~~
33 ~~is accessible to each pupil attending the asynchronous online course~~
34 ~~to respond to pupil queries, assign tasks, and dispense information,~~
35 ~~and, for purposes of verifying attendance, is able to employ at least~~
36 ~~one of the following:~~
- 37 ~~(i) Periodic proctored examinations.~~
- 38 ~~(ii) Direct teacher-pupil meetings no less than twice per calendar~~
39 ~~month.~~

1 ~~(iii) A visual connection, including, but not limited to, Internet~~
2 ~~Webeam.~~

3 ~~(5) (A) The ratio of pupils enrolled in that course to full-time~~
4 ~~equivalent certificated teachers teaching the online course is less~~
5 ~~than or equal to the ratio of pupils to teachers in traditional~~
6 ~~classroom study of the same subject matter in the school, school~~
7 ~~district, or the unified school district with the largest average daily~~
8 ~~attendance of pupils in that county for the prior school year, as~~
9 ~~reported on the Internet Web site of the department.~~

10 ~~(B) If the online course is new or deemed by the governing~~
11 ~~board of the school district or county office of education, or by~~
12 ~~the governing body of the charter school, to be unique to the online~~
13 ~~setting, the ratio of pupils enrolled in that course to full-time~~
14 ~~equivalent teachers teaching the online course shall not exceed 30~~
15 ~~to 1.~~

16 ~~(6) When a traditional classroom-based course of the same~~
17 ~~course title exists within the school district, county office of~~
18 ~~education, or charter school, the subject matter content of the online~~
19 ~~course is the same as for the traditional classroom-based course.~~

20 ~~(7) The teacher of the online course holds the appropriate subject~~
21 ~~matter credential and meets the requirements for a highly qualified~~
22 ~~teacher pursuant to the federal No Child Left Behind Act of 2001~~
23 ~~(20 U.S.C. Sec. 6301 et seq.).~~

24 ~~(8) Statewide testing results for online pupils are reported and~~
25 ~~assigned to the school in which the pupil is enrolled for regular~~
26 ~~classroom courses, and to any school district or county office of~~
27 ~~education within which that school's testing results are aggregated.~~

28 ~~(9) The online course is offered by a high school, continuation~~
29 ~~school, county office of education, or charter school offering~~
30 ~~instruction in any of grades 9 to 12, inclusive.~~

31 ~~(10) No pupil is assigned to the online course unless the pupil~~
32 ~~voluntarily elects to participate in the online course and the parent~~
33 ~~or guardian of the pupil provides written consent before the pupil~~
34 ~~participates in the online course.~~

35 ~~(11) No pupil voluntarily electing to participate in the online~~
36 ~~course is denied access because the pupil lacks the computer~~
37 ~~hardware or software necessary to participate in the online course.~~

38 ~~(12) No pupil is charged for his or her participation in the online~~
39 ~~course.~~

1 ~~(13) Pupils enrolled in the online course take examinations by~~
2 ~~proctor, or other reliable methods are used to ensure test integrity,~~
3 ~~and there is a clear record of pupil work, using the same method~~
4 ~~of documentation and assessment as used in a classroom-based~~
5 ~~course.~~

6 ~~(14) Contemporaneous records of the time that a pupil spends~~
7 ~~online in the course and in related activities, and of the time the~~
8 ~~teacher is online with pupils, are maintained by the school district,~~
9 ~~county office of education, or charter school.~~

10 ~~(e) Nothing in this section shall be interpreted to mean that a~~
11 ~~charter school provides classroom-based or nonclassroom-based~~
12 ~~instruction for purposes of the state board determination made~~
13 ~~pursuant to Section 47612.5.~~

14 ~~(d) Attendance accounted for pursuant to subdivision (a) and~~
15 ~~compliance with the requirements of subdivision (b) are subject~~
16 ~~to the audit conducted pursuant to Section 41020.~~

17 ~~(e) A pupil shall not be credited with more than five days of~~
18 ~~course attendance per calendar week or more than the total number~~
19 ~~of calendar days that regular classes are maintained by the school~~
20 ~~district, county office of education, or charter school during the~~
21 ~~fiscal year.~~

22 ~~(f) To remain eligible for claiming average daily attendance and~~
23 ~~generating apportionments, a pupil over 19 years of age enrolled~~
24 ~~in an online course or courses shall be continuously enrolled in~~
25 ~~public school and make satisfactory progress toward award of a~~
26 ~~high school diploma. The Superintendent shall, on or before~~
27 ~~December 31, 2012, adopt regulations defining “satisfactory~~
28 ~~progress.”~~

29 ~~(g) The Superintendent, in consultation with the Controller and~~
30 ~~the Director of Finance, on or before December 31, 2012, shall do~~
31 ~~all of the following:~~

32 ~~(1) Make revisions to any attendance accounting manual or~~
33 ~~guidance provided to a school district, county office of education,~~
34 ~~or charter school that are necessary to conform to this section.~~

35 ~~(2) Make revisions to any attendance accounting manual or~~
36 ~~guidance provided to local educational agencies that are necessary~~
37 ~~to clarify attendance accounting procedures for asynchronous~~
38 ~~online courses.~~

39 ~~(3) Make recommendations to the appropriate policy and fiscal~~
40 ~~committees in both houses of the Legislature and to the Governor~~

1 regarding statutory changes that would be necessary to allow pupil
2 attendance in asynchronous online courses to be included in the
3 calculation of average daily attendance pursuant to Section 46300.

4 (h) Pupil attendance in asynchronous online courses shall not
5 be included in the calculation of average daily attendance pursuant
6 to Section 46300 until the Superintendent has adopted rules and
7 regulations pursuant to subdivision (l).

8 (i) For purposes of calculating average daily attendance pursuant
9 to Section 46300 and meeting the minimum instructional time
10 requirements specified in paragraph (4) of subdivision (a):

11 (1) A pupil enrolled in a noncharter school and engaged in
12 educational activities in an online course meeting the requirements
13 of subdivisions (a) and (b) shall be deemed to be under the
14 immediate supervision and control of an employee of the school
15 district or county office of education who possesses a valid
16 certification document, registered as required by law.

17 (2) A pupil enrolled in a charter school and engaged in
18 educational activities in an online course meeting the requirements
19 of subdivisions (a) and (b) shall be deemed to be attending at the
20 schoolsite of the charter school.

21 (j) For purposes of calculating average daily attendance pursuant
22 to Section 46300, a school district, county office of education, or
23 charter school claiming pupil attendance in an online course
24 meeting the requirements of subdivision (b) shall not be required
25 to meet the requirements of Article 5.5 (commencing with Section
26 51745) of Chapter 5 of Part 28.

27 (k) For purposes of this section, the following definitions apply:

28 (1) "Asynchronous online course" means a course where the
29 teacher and pupil may be online at different times and are unable
30 to interact simultaneously.

31 (2) "Synchronous online course" means a course where the
32 teacher and pupil are online at the same time and able to interact
33 at that time.

34 (l) The Superintendent, in consultation with the Department of
35 Finance, shall adopt rules and regulations, pursuant to the
36 rulemaking provisions of the Administrative Procedure Act
37 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
38 Division 3 of Title 2 of the Government Code), for both of the
39 following purposes:

- 1 ~~(1) Clarifying or expanding the procedures required for verifying~~
2 ~~the identification of pupils participating in asynchronous online~~
3 ~~courses meeting all of the requirements of subdivisions (a) and~~
4 ~~(b):~~
- 5 ~~(2) Including pupil attendance in asynchronous online courses~~
6 ~~in the calculation of average daily attendance pursuant to Section~~
7 ~~46300. The Superintendent shall ensure that the rules and~~
8 ~~regulations adopted for this purpose are consistent with the~~
9 ~~revisions and recommendations required pursuant to subdivision~~
10 ~~(g):~~
- 11 ~~(m) No provision of this section shall be waived unless the~~
12 ~~waiver is specifically authorized in statute.~~
- 13 ~~(n) This section shall become inoperative on July 1, 2017, and,~~
14 ~~as of January 1, 2018, is repealed, unless a later enacted statute,~~
15 ~~that becomes operative on or before January 1, 2018, deletes or~~
16 ~~extends the dates on which it becomes inoperative and is repealed.~~