

DECLARATION OF SUSAN GRAHAM

I, Susan Graham, declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. I am the mother of M.G., who is 10 years old and a student in [REDACTED] Unified School District ("District").

2. M.G. has been diagnosed with Down syndrome. He qualifies for special education under the category of intellectual disability and has an Individual Education Program ("IEP").

3. M.G. was able to participate successfully in a remote classroom. However, because of his disability, he requires accommodations and modifications to access educational materials.

4. M.G.'s last agreed to IEP is from October 2020 and places M.G. in a moderate to severe special day class, which is a classroom for special education students with more intensive needs. Due to Covid, his IEP was amended to allow for distance learning and he had remote access to all of his accommodations and services from March 2019-June 2021.

5. Sending M.G. back to school in-person is not an option because of the ongoing pandemic. M.G. is ten years old and is not yet eligible for the Covid-19 vaccine. M.G.'s disability, as well as ongoing respiratory issues, also puts him a high-risk category should he be exposed to Covid-19. I fear for M.G.'s health and safety if he returns to school in-person.

6. On or about August 25, 2021, I watched a webinar provided by the District regarding options for remote instruction. During the webinar, Dr. Rachel Heenan, Director of Special Education, described that because of a new California law, the District could only provide remote instruction through Independent Study or through Home Hospital. Dr. Heenan said that the majority of students with IEPs would not be admitted into Independent Study. She said that they are only offering general education curriculum in Independent Study. She also said that Home Hospital is only for students who are too sick to leave the house, and that only about forty students in the District would qualify.

7. I met with M.G.'s IEP team on September 8, 2021. The IEP Team told me that the only option for M.G. to continue remote instruction is through Independent Study, but that they were only offering a general education curriculum in Independent Study. The District told me that M.G. would not have any IEP services through Independent Study. The District implied that

1 if I wanted to place him in Independent Study, I would have to waive his rights to a free
2 appropriate public education.

3 8. The IEP Team said they would consider a placement in Home Hospital. They said
4 he would only get five hours of instruction per week and that he would not have any access to his
5 related special education services.

6 9. M.G. has been at home without any access to academic instruction for
7 approximately one month. On September 15, 2021, I began paying for a private tutor.

8 10. I believe that I am being forced to choose between keeping my child safe and
9 allowing him to receive an education.

10 I declare under penalty of perjury under the laws of the state of California that the
11 foregoing is true and correct. Executed this 16th day of September 2021 in [REDACTED],
12 California.

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14 /s/
15 Susan Graham
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DECLARATION OF NEELYN TONG

I, Neelyn Tong, declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. I am the mother of C [REDACTED] B [REDACTED] who is 13 years old and a student in [REDACTED] [REDACTED] ("District").
2. C [REDACTED] qualifies for special education under the category of intellectual disability and has medical diagnoses of Autism, [REDACTED], and [REDACTED].
3. C [REDACTED]'s last agreed to Individual Education Program ("IEP") is from January 2021 and places her in a special day class, which is a classroom for special education students.
4. C [REDACTED] was able to participate successfully in a remote classroom. Because of her disability, she requires accommodations and modifications to access educational materials.
5. Sending C [REDACTED] back to school in person is not an option. I worry about sending her back to school in person especially because of her health conditions. C [REDACTED] has [REDACTED], which is a weakness of one entire side of the body, and would be at a high risk of health complications if exposed to Covid-19.
6. The District held an Individual Education Program ("IEP") meeting on August 26, 2021. The District told me that they would not offer Independent Study. They said I would need to submit a doctor's note about why C [REDACTED] cannot go to school in person so that they could consider Home Hospital Instruction. They told me that C [REDACTED] would only get five minutes of instruction per day if someone were come to the home to provide academic instruction. They told me they are only prepared for in person learning.
7. I have emailed the District several times since the August 26, 2021 IEP meeting to request that my daughter receive distance learning and to request a prior written notice for the District's refusal to place my daughter in distance learning.
8. On September 7, 2021, Ms. Dana Zimpelman, C [REDACTED]'s special education Case Manager at the District, emailed me and indicated that I needed to first sign a release of information for the District to speak with C [REDACTED]'s doctor in order for the District to consider a distance learning option.
9. To date, the District has not provided a prior written notice regarding their refusal to provide C [REDACTED] a distance learning option.

10. My daughter has been without academic instruction for almost a month.

11. I believe I am be forced to choose between keeping my daughter safe or allowing her to get an education.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 16th day of September 2021 in [REDACTED], California.

Dated: 9/16/2021

DocuSigned by:

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NEELYN TONG

DECLARATION OF A.J.

I, A. J., declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. I am the Mother of E.E, who is 6 years old, and a kindergarten student in the [REDACTED] District.

2. E.E. is eligible for special education on the basis of Intellectual Disability.

3. E.E.'s last agreed-to IEP was convened in June of 2021. That IEP provided her with placement in a general education kindergarten classroom for the 2021-2022 school year with the support of a full-time individual behavioral aide, behavioral supervision, 4 hours a week of inclusion support services to facilitate her successful access to the general education environment, as well as speech and language therapy, both school and clinic-based occupational therapy, and adapted physical education.

4. Due to concerns about E.E.'s significant susceptibility to infection, I decided that I did not feel safe returning E.E. or her twin sister to school at the start of the fall 2021 semester because of the threat to their health posed by the ongoing pandemic.

5. Several weeks prior to the beginning of the school year, I received information about enrolling my children in the district's independent study program. I was able to enroll E.E.'s twin sister in the program.

6. When I attempted to enroll E.E., I was informed that because she had an IEP we needed to convene an Individual Education Program meeting in order to consider whether she could be placed in the district's independent study program.

7. That IEP meeting was convened on August 30, 2021, approximately 2 weeks after school had started. The IEP team determined that E.E. was not a student who could successfully access the independent study program due to her need for significant adult support.

8. At that meeting, district members of the IEP team informed me that both the behavioral support services and the inclusion support which were provided in E.E.'s current IEP would not be provided by the district to support her if she enrolled in the independent study program. I have observed my other daughter participating in the independent study program and I do not think E.E. could access that program at all without the services, supports, accommodations, and modifications that are provided in her IEP.

9. After district members of the IEP team told me that they could not give E.E. the individual supports that she would need to benefit from the independent study program, I asked what other options there were for E.E. to receive a program through distance learning. They told me that independent study was the only possible option for distance learning.

10. District members of the IEP team told me that I needed to enroll E.E. in the on-campus program because that was the location where the IEP team was offering her FAPE.

11. Although my typically developing daughter is being provided with a safe educational option through independent study, E.E. is not being offered an education that meets her needs while protecting her health. It seems discriminatory that the district doesn't have to take her individual needs into account and that they can get away with taking the position that I either have to bring her to campus or she doesn't get any educational program.

12. E.E. is still at home without any educational program even though school started a month ago.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 18 day of 2021 in [REDACTED] California.

/s/

A.J.

DECLARATION OF K.N.

I, K.N., declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. I am the Mother of L.N., who is 9 years, 8 months old. He is currently enrolled as a fourth-grade student in the [REDACTED] School District.

2. L.M. is eligible for special education on the bases of Other Health Impairment and Speech or Language Impairment.

3. L.M. was born prematurely at 25 weeks gestation. His immune system is severely compromised as a result of chronic lung disease resulting from his premature birth. L.M.'s vision is also significantly impaired as a result of retinopathy of prematurity.

4. During the 2020-2021 school year, L.M. was able to safely and effectively access his educational program through distance learning. Because of L.M.'s compromised immune system and respiratory disease, it has been necessary to take extraordinary precautions to keep him safe during the pandemic. Entering the 2021-2022 school year, I believed that L.M. would continue in a distance learning program due to the ongoing severity of the pandemic and the very severe risk it posed to L.M. individually.

5. I first became aware that distance learning would be delivered through independent study from [REDACTED] School District Superintendent Jill Baker's weekly video message on August 2, 2021. Dr. Baker spoke briefly about the independent study option and said that information would be forthcoming in the following weeks.

6. On August 9, 2021, Dr. Baker stated that in order to enroll in independent study parents should inquire with their school of enrollment once the schools opened later in the month.

7. On August 20, 2021, school office opened. The same day I received an email sent to all parents describing steps to take in order to enroll in independent study. The first step was to contact the School Counselor.

8. On August 23, 2021, I called the School Counselor for my son's school and left a message expressing interest in enrolling L.M. in independent study. He returned my call later that day and informed me that, because L.M. had an IEP, I should attend a virtual town hall meeting on August 25 that would provide information about independent study for students with

1 special needs.

2 9. On August 25, 2021, I attended the virtual town hall meeting. At that meeting the
3 families of students with special needs were told that their children were unlikely to qualify for
4 the independent study program. We were told that we had to request an IEP to see if our child
5 was an exception to the general rule that students with IEPs would not qualify for independent
6 study. We were also informed that none of the required IEPs would be held prior to school
7 starting and that the school had 30 days to convene the IEPs after the start of school.

8 10. On August 27, 2021, I emailed the School Counselor and the Resource Support
9 Teacher at L.M.'s school. In that email I requested that an IEP meeting be convened to discuss
10 how L.M. would be provided with instruction and assignments since he could not attend school
11 in person. I also reminded them that, due to his health conditions, L.M. was extremely high risk
12 from Covid-19. The Resource teacher replied to email my email with an offer to provide
13 services L.M. virtually as she had during the 2020-2021 school year. The School Counselor then
14 responded to that email, stating that special education students would not be able to receive
15 resource support or any other services if they were not attending school in person.

16 11. I sent a response to the Counselor's email asking when L.M. would be provided
17 with some assignments. The Counselor responded that he would forward my email to the special
18 education office. He called me later that day and stated that he had spoken with the special
19 education office and instructed me to obtain a note from L.M.'s pediatrician so that he could
20 obtain instruction and services through a home/hospital program.

21 12. I obtained the required letter from L.M.'s pediatrician on August 30, 2021.

22 13. The first day of school in [REDACTED] was August 31, 2021. On that day I
23 emailed a copy of the pediatrician's letter to the Counselor and the Resource Support teacher. I
24 received an email from the Resource teacher inviting me to an addendum IEP to set up
25 Home/Hospital services. On the afternoon of August 31, an addendum IEP meeting was
26 convened at which we began a discussion about the change, but district members of the team
27 were unsure how to document it. They stated that there was a meeting for special education
28 teachers scheduled for September 3, and that they would contact me afterwards to finalize the
document.

14. On September 3, 2021, the Resource teacher called me after having attended the

1 meeting. She stated that, even if L.M. did qualify for Home/Hospital he would not receive any
2 services as part of that program. The program consisted of 1 hour a day of instruction with no
3 additional services or supports. She also stated that she did not believe he would qualify because
4 she had been informed that Home/Hospital instruction was only for students who were going to
5 miss school temporarily, for up to 6 weeks. She stated that we needed to schedule an official IEP
6 at which L.M.'s offer of FAPE would have to be changed. She also stated that during the
7 meeting she had been informed that L.M. was expected to attend school in person until after the
8 IEP was held. While she acknowledged that it was not an option for him due to his health
conditions, she felt I should know that is what she was told.

9 15. On September 8, 2021, the Resource teacher emailed me and stated that I needed to
10 fill out additional forms which would be sent by the School Nurse, and that the Nurse would
11 decide if L.M. was eligible for the Home/Hospital program. I then received an email with the
12 forms from the Nurse which required me to go back to L.M.'s pediatrician to have them filled
13 out.

14 16. On September 9, 2021 I received an email from the District Director of Special
15 Education acknowledging my August 27, 2021 request that an IEP be convened, but not
16 proposing a date for such a meeting.

17 17. To date, no IEP has been convened. L.M. is still at home without any educational
18 program even though school started over three weeks ago.

19 I declare under penalty of perjury under the laws of the state of California that the
20 foregoing is true and correct. Executed this 19 day of 2021 in [REDACTED] California.

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22 /s/
K.N.

DECLARATION OF J.F.G.

I, J.F.G., declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. My husband [REDACTED] and I are the parents of thirteen-year-old triplets, B.F., T.F., and E.F., who attend school within the [REDACTED] Unified School District ("District") in [REDACTED], California. T.F is in the eighth grade, and B.F. and E.F are in the seventh grade. All three are eligible for Individualized Education Programs (IEPs) under the categories of autism and other health impairment (OHI).

2. We also have an adult daughter, [REDACTED], who has Down syndrome and resides in our home. [REDACTED] is immunocompromised and susceptible to illnesses that could be brought into the home.

3. B.F., T.F and E.F thrived during distance learning during the 2020-21 school year and made progress toward their IEP goals. Each had a 1:1 in the home and received all of their special education and related services, including speech and language and occupational therapy services, remotely.

4. During the summer of 2021, all three children received their related services on the school site.

5. Because of the ongoing pandemic, and the health concerns to my children and my household, sending my children back to school in person is not an option. I worry about sending them back to school in person especially because of rising COVID-19 cases in Los Angeles County due to the Delta Variant. My primary concern is our adult daughter Annie getting sick.

6. During the summer of 2021, I asked the District to allow my children to continue on distance learning. I wrote a letter directly to our Superintendent and Assistant Superintendent. The Assistant Superintendent responded that she believed the State Legislature was going to provide an Independent Study option for next year that might meet our needs. I later requested IEP meetings for children to place them into Independent Study.

7. B.F.'s IEP meeting occurred on August 17, 2021. I requested Independent Study

1 for academics in the home with 1:1 aide support and offered to bring Brady to the school site for
2 all of his related services. The District told me that they would consider my request and respond
3 in writing. A week later, the District denied my request and said that Independent Study was not
4 appropriate for Brady. In a Prior Written Notice dated August 24, 2021, the District did offer
5 cursory supports – 60 minutes per week of behavior support and 30 minutes per week on
6 inclusion support – pursuant to the Americans with Disabilities Act (ADA) and Section 504 of
7 the Rehabilitation Act. The notice explained that these minimum services were to “ensure Brady
8 has an equal opportunity to access the Independent Study program afforded to general education
9 students[.]”

10 8. T.F.’s IEP meeting was also on August 17, 2021, and ended with the same result.
11 The District denied my request for Independent Studies and offered the same services pursuant to
12 the ADA and Section 504.

13 9. E.F.’s IEP meeting was also that same day, August 17, 2021, and ended with the
14 same result as B.F.’s and T.F.’s.

15 10. The first day of school in the District was August 12, 2021.

16 11. Since school started, as a temporary alternative, my husband and I have been using
17 our health insurance to provide my children with the same in-home supports they received last
18 year from the District. We also purchased online curricula for our children to follow.

19 12. On September 8, 2021, we had an Alternative Dispute Resolution (ADR) meeting
20 with the District. We are currently negotiating confidential settlements that would allow B.F, T.F
21 and E.F to receive their special education and related services on Independent Study.

22 13. Although we will likely resolve our dispute with the District, we feel obligated to
23 share our story to help those that do not have the same advocacy resources that we do. My
24 husband and I are relatively savvy special education advocates – my husband is an attorney and
25 I serve as one of the [REDACTED] to the Community Advisory Committee (CAC) for
26 the [REDACTED] Special Education Local Plan Area (SELPA). In that role, I provide
27 support to the families of children of disabilities, especially our migrant and foster families.
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14. In all, my children have missed about a month of school while I worked with the District to set up independent study.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 16th day of September 2021, in [REDACTED] County, California.

/s/

J.F.G.

DECLARATION OF J.F.

I, J.F., declare and affirm and could so competently testify from firsthand knowledge if called as a witness:

1. I am the parent of two children with disabilities, A.N.F., age 10, and A.R.F., age 5, who attend school within the [REDACTED] ("District") in [REDACTED] [REDACTED], California.

2. A.N.F. is in 5th grade and is eligible for an Individualized Education Program (IEP) under the categories of autism and speech and language impairment.

3. A.R.F. is in kindergarten and is also eligible for an IEP under the categories of autism and speech and language impairment.

4. A.N.F. made great progress toward her speech goals during distance learning. She likes work packets because they help her know what her teachers expect of her.

5. A.R.F. is new to school this year and will require accommodations and modifications to access educational materials.

6. Because of the ongoing pandemic, and the health concerns to my children and my household, sending my children back to school in person is not an option. I worry about sending them back to school in person especially because of rising COVID-19 cases in [REDACTED] [REDACTED] due to the Delta Variant. As of this week, [REDACTED] [REDACTED] has the highest COVID-19 case rate of the 58 counties in California.¹

7. I am also concerned about sending my children to school because they are susceptible to illness. A.R.F. has needed steroids about 3 or 4 times in the past to deal with respiratory issues, and both of my children have historically been prone to secondary infections like pneumonia, bronchitis, and strep throat. I am also concerned because my children have behaviors related to autism that make it hard to keep a mask on and A.R.F. tends to lick and place objects in her mouth. Finally, both A.N.F. and A.R.F. are too young to be vaccinated.

8. On or around August 4, 2021, I asked the District to place my children at home on

¹ Jessica Skropanic, *Shasta's COVID-19 case rate is the highest of any California county*, REDDING RECORD SEARCHLIGHT, Sept. 15, 2021, available at <https://www.redding.com/story/news/2021/09/15/why-shasta-countys-covid-19-case-rate-highest-california/8340998002/>.

1 independent study until it was safer.

2 9. On August 10, 2021, the District provided a Prior Written Notice (PWN) in
3 response to my request for independent studies. The PWN explained that the District scheduled
4 IEP meetings for my daughters on August 18, 2021, to discuss my request.

5 10. On information and belief, the first day of school in the [REDACTED] School District
6 was August 16, 2021.

7 11. On August 17, 2021, I provided the District with signed letters from my daughters'
8 medical provider at [REDACTED] Health Center. Later that day the District cancelled the
9 IEP meetings. My daughters' case carrier explained that the District rescheduled so the Special
10 Education Director could attend.

11 12. It took until September 7, 2021, before the IEP team could meet with me to try to
12 enroll my children in independent study. In the meantime, my children were sitting at home
13 without any access to instruction.

14 13. Prior to the meetings, I provided an updated letter from my children's medical
15 provider. It explained in more detail how their autism-related behaviors and sensory issues put
16 them at risk for COVID-19.

17 14. I met with the District for A.N.F.'s IEP meeting the morning of September 7.

18 15. At the meeting, the District told me that they cannot serve AN.F. in independent
19 study because of her disability. The District told me she would have trouble comprehending
20 work packets and that it was not providing any remote speech services this year. It offered her
21 placement in-person at school.

22 16. I met with A.R.F.'s IEP team later the same day. The District told me that they
23 cannot serve A.R.F. in independent study because of her disability. The Special Education
24 Director explained that there is no synchronous instruction available for students with IEPs like
25 [REDACTED]. As with [REDACTED], the IEP team offered [REDACTED] placement in-person at school.

26 17. An attorney from Disability Rights California attended the IEP meetings with me. I
27 am still working with him to negotiate a resolution to my special education disputes with the
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1 District.

2 18. To date, I have not received a prior written notice from the District explaining why
3 in-person schooling is appropriate for my children.

4 19. In all, my children have missed about a month of school so far while I have been
5 working with the District to set up independent study programs.

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7 I declare under penalty of perjury under the laws of the state of California that the
8 foregoing is true and correct. Executed this 16th day of September, 2021, in [REDACTED],
9 California.

10 _____/s/_____

11 J.F.

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I, David W. German, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief. If called to testify in court on these matters, I could do so competently.

2. I am a Partner at Vanaman German LLP, a private law firm of 10 attorneys whose practice focuses exclusively on the rights of students with disabilities to a public education. I am licensed to practice law in California.

3. This declaration is submitted in support of the Systemic ADA Complaint against the State of California, the State Board of Education, and the California Department of Education which my firm is filing in conjunction with Disability Rights California.

4. Over 95% of my firm's clients are students or young adults with disabilities and their families.

5. In late July of 2021, we began receiving dozens of calls from new and former clients who were concerned about whether their child could continue receiving their education through distance learning. The majority of these clients wished for their children to continue receiving a distance learning program because of health concerns specifically related to their child's disability.

6. Upon receiving these inquiries I began speaking with other attorneys and investigating the cause of this change. I learned that AB 130, passed in early July 2021, had mandated that the only way for students to receive a distance learning program for the 2021-2022 school year was through Independent Study.

7. Independent Study was already present in the California Education Code. It is described as an instructional strategy for delivering California’s standards-based, grade-level content; not an alternative curriculum, and is designed to teach the knowledge and skills of the core curriculum. Cal. Educ. Code. § 51745(a)(3). Because Independent Study requires the ability to complete work independently, the law acknowledges that it may not be appropriate for many students with disabilities. Education Code section 51745(c) states that special education students

1 may not participate in independent study unless it is specified as an instructional method in their
2 individualized education program (IEP). Despite this acknowledgement that Independent Study
3 may be inappropriate for students with disabilities, AB 130 includes no provisions setting forth
4 how the needs of students with disabilities who cannot benefit from a program delivered through
5 Independent Studies, but who nevertheless require a distance learning program, should be met.
6 As AB 130 dictates that California school districts may only deliver distance learning programs
7 through Independent Study, and many students with disabilities cannot access the Independent
8 Study delivery model, the law effectively precludes a distance learning option for a large group
9 of students with disabilities.

10 8. Some of the problems caused by the effect of AB 130 on students with disabilities
11 about which I have personal knowledge are as follows:

12 A. Seemingly by design, all student with disabilities are missing several weeks
13 of school prior to having a chance to access Independent Study. Education Code
14 section 51745(c) states that special education students may not participate in
15 independent study unless it is specified as an instructional method in their
16 individualized education program (IEP). Although AB 130 was passed over a month
17 before most schools opened, most students with disabilities whose parents are seeking
18 a distance learning program have been forced to wait until several weeks after school
19 begins for an IEP to be convened.

20 B. In all but two cases of which I am aware, my clients have been provided
21 with no educational program or services while they wait for an IEP to be convened at
22 which Independent Study will be considered. Two of my clients were provided some
23 worksheets via email to do with their child during this waiting period but their child
24 received no instruction and no services while they waited for the IEP.

25 C. I have several clients whose IEP teams granted them Independent Study
26 when the IEP was finally convened. Some of these parents were unable to enroll their
27 students in Independent Studies for several weeks after the IEP team added it to their
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1 IEP because the Independent Studies program in their school district was so
2 overwhelmed. These students received no instruction while waiting for their
3 enrollment to be completed. Some families have found that, by the time their IEP
4 was held, their district's independent study program is at capacity and they are being
5 added to waitlists rather than provided with a program. Because their peers without
6 disabilities were able to enroll without waiting for an IEP, the requirement that an IEP
7 be held prior to allowing them access to the Independent Study program effectively
8 ensured that they would be last in line to access the program.

9 D. I represent one client with an IEP whose school district referred her to an
10 online charter school program as the means through which the district was
11 administering its Independent Study program. Although her parents spoke with
12 multiple people at the online program, each one informed them that they were unable
13 to accept a student with an IEP because they had no ability to provide the services and
14 supports they required. That student remains out of school with no program.

15 E. Many students with IEPs who have been offered the option of Independent
16 Study have been informed that in order to access it they must forego some or all of
17 the services set forth in their IEPs, such as individual behavioral aides, resource
18 teacher support, adapted physical education, occupational therapy, and speech and
19 language therapy. Despite the fact that many of their parents believe their child will
20 not be successful in Independent Study without support, most of them are accepting it
21 because they believe there is no other option to keep their child safe.

22 F. To my knowledge, no students on the alternate curriculum have been
23 offered Independent Study. I am personally aware of four students who have been
24 denied Independent Study on the basis that their IEP requires that they be provided
25 with instruction on an alternate curriculum. This denial appears to be anticipated by
26 the law: California Education Code section 51745(a)(3) provides that independent
27 study shall not be offered as an alternative curriculum, while Education Code section
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1 51747(a)(2) requires that all content be aligned to grade level standards.

2 G. Of the four students on the alternate curriculum for whom I have personal
3 knowledge about their attempt to obtain a distance learning program, one of the four
4 students was told their only option was to return to an on-campus program. That
5 student remains out of school with no program. The other three families were advised
6 to obtain doctor's notes allowing their child to be enrolled in Home/Hospital
7 instruction. In two of the three cases the students' doctors declined to sign the form
8 because it does not ask them to attest that the student is at heightened risk of
9 becoming ill, it asks them to attest that the student is currently unable to attend school
10 due to a severe illness, which is not the case. Both of those students remain out of
11 school and are receiving no educational program and none of the special education
12 service and supports set forth in their IEPs.

13 H. I have consulted with several families who have obtained notes from their
14 pediatrician to obtain home hospital instruction for their child, but who believe the
15 program it provides is inadequate and/or denies them supplemental services to their
16 child. Despite their belief that the program fails to meet their child's educational
17 needs, they have accepted the program to keep their child safe.

18 I. I represent two families whose children have attended the same non-public
19 school for many years. Both children were provided with a distance learning program
20 through the non-public school during the 2020-2021 school year. Both children have
21 been informed that AB 130 prohibits non-public schools from providing them their
22 program through distance learning for the 2021-2022 school year. Both students were
23 informed that the only way they could receive a distance learning program was
24 through a district Independent Study program. When their IEPs were convened, both
25 students were told that they did not qualify for Independent Study because of the
26 extent of their needs for special education support and services, and because they
27 were not independent learners. Neither student has been provided with an alternative
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1 to attending school in person. Neither student has received any educational program
2 or any of the services set forth in their IEP to date, approximately a month after the
3 school year began in their district.

4 J. I have reviewed a settlement agreement which a family was provided by a
5 local district through which the district offered to allow their child to receive
6 instruction through Independent Study only on the condition that her parents would
7 waive her right to the services set forth in her IEP.

8 9. Since my firm began receiving inquiries from parents of students with disabilities
9 about the changes created by AB 130 in July of 2021, my days have been dominated by
10 attempting to assist clients whose children have been negatively affected by this law. The
11 inevitably discriminatory affect of this legislation seems so obvious, and the law has resulted in
12 such a dramatically discriminatory denial of equal educational opportunity for so many students
13 with disabilities, that I am at a loss to understand how it has not been repealed. As it seems that
14 California's governmental entities will not acknowledge the damage this law is causing, I believe
15 that requesting intervention from the United States Department of Justice is an appropriate and
16 necessary step to stop this ongoing violation of the rights of California's students with disabilities.

17
18 I declare under penalty of perjury under the laws of the state of California that the
19 foregoing is true and correct.

20 Executed this 19th day of September 2021 in Los Angeles County, California.

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24 David W. German

25 Vanaman German LLP

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I, Lauren Lystrup, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief. If called to testify in court on these matters, I could do so competently.

2. I am employed as a Staff Attorney at Disability Rights California (“DRC”) in the Youth Practice Group. I am licensed to practice law in California.

3. This declaration is submitted in support of DRC's Systemic ADA Complaint against the State of California, the State Board of Education, and the California Department of Education.

4. DRC is California's Protection and Advocacy agency. DRC provides legal information, advice, and representation to people with disabilities in California.

5. In August 2021, DRC's Youth Practice Group saw a significant increase in calls from parents and guardians seeking legal advice and representation related to their student's education. Many of the August education cases relate to parents and legal guardians specifically concerned about sending their students with disabilities back to school in person and the limited options under AB 130. At DRC, our intake staff manage the initial interviews and provide families with information about their rights.

6. As a staff attorney, part of my responsibilities include following up with parents and guardians who need more assistance than our intake staff can provide. Since August, I have responded to calls from multiple parents with stories of school districts denying their students with Individualized Education Programs (“IEPs”) the opportunity to enroll in Independent Study under AB 130 unless they waived their rights under state and federal special education and disability laws. I also reviewed an additional two dozen intake from families who have been denied distance learning. I am directly representing three clients, Susan Gramah, Neelyn Tong, and M.H. in filing this civil rights complaint. We don’t have the capacity to represent even a fraction of the families affected by this new distance learning law. Our staff is overwhelmed and cannot represent all those who have called us about this issue.

1 7. Many of the parents I spoke with were frustrated that their student was in limbo,
2 waiting at home for a required, but yet-to-be scheduled IEP meeting, to discuss independent
3 study while the school continued to mark their student absent.

4 8. Some parents I spoke with already had an IEP meeting, but the school district
5 refused to make an offer of a free appropriate public education in a remote setting. School
6 districts are making only one offer of a free appropriate public education, which is in person,
7 even where a student did well in distance learning. Parents have expressed to me their dismay
8 and confusion that their child received all of their special education services and
9 accommodations in a remote setting in June, only to be told in August that their only option to
10 access their education is to send the student in person.

11 9. For some of those parents, the district offered to allow them to enroll in
12 Independent Study only on the condition that they waive their rights under state and federal
13 special education and disability laws, especially because the district would not provide access to
14 necessary services and accommodations remotely.

15 10. For some parents, the district also offered Home Hospital, but stated that the
16 student still would not have access to their special education services or accommodations.

17 11. For one family, the district denied Independent Study and offered to discuss
18 “alternatives” through the school district’s confidential Alternative Dispute Resolution process
19 where the parent was not allowed to bring an attorney. When the parent asked the district to
20 provide information about their “alternatives” to her in writing but the district did not respond.
21 The parent expressed to me feeling intimidated by the school district. The parent instead called
22 an IEP meeting, which will not take place for another two weeks, but the district told the parent
23 that their “alternatives” to independent study do not provide a free appropriate public education.
24 While some families have filed State Compliance Complaints, the State has a minimum of 60
25 days to investigate, and an additional 90 days if either party seeks reconsideration, which is too
26 long for a child to be out of school without any access to education. Families who cannot pay for
27 private services in the months it takes for a response from the State will be disproportionately
28

1 harmed.

2 12. Each of the three individuals I am representing in this Complaint are parents of
3 children with intellectual and developmental disabilities (“I/DD”). Children with I/DD who are
4 on an alternative curriculum are disproportionately harmed by the State shoehorning all students
5 who need remote instruction into Independent Study, where the State does not allow Independent
6 Study to be provided as an alternative curriculum. *See* Cal. Educ. Code Sec. 51745(a)(3).

7 13. I have spent a significant amount of hours listening to clients, researching, and
8 consulting with other attorneys to make sense of AB 130’s problematic restrictions on options
9 for students with disabilities.

10 14. I watched a virtual “Independent Study Community Meeting” presented by Long
11 Beach Unified School District (“LBUSD”) on or around September 10, 2021. In it, Dr. Rachel
12 Heenan, LBUSD Director of Special Education, presented on “What you should know about
13 special education if your child has an Individualized Education Program (IEP).” (posted online
14 September 2, 2021, last accessed September 19, 2021) (available online at:
15 <https://www.youtube.com/watch?v=Xjbbf6KUKzI>) (hereinafter, “LBUSD, Ind. Study
16 Meeting”).

17 15. Dr. Heenan stated that “when the legislators wrote this bill [AB 130] it’s almost as
18 if they forgot about the education code.” Dr. Heenan then referred to Cal. Educ. Code Section
19 51745 which states that a student with an IEP cannot participate in Independent Study unless
20 their IEP specifically allows for such participation. Referring to whether IEP teams would allow
21 students with disabilities to participate in Independent Study, Dr. Heenan stated: “For the
22 overwhelming majority of students, it’s probably the answer is: no, because of the additional
23 supports needed to provide the education for our students...like I said, it’s the majority, but there
24 might be some.” LBUSD, Independent Study Community Meeting, Minute 21:34- 23:14

25 16. In this public webinar, Dr. Heenan described the considerations that IEP teams
26 would make in deciding whether to offer Independent Study, including: “Can [the student]
27 follow a general education curriculum? Because the curriculum, remember this is not distance
28

1 learning and I can't stress that enough, is that the setting is not the special education teacher like
2 we had last year providing interaction and breakout rooms for students with disabilities. This will
3 be a general education teacher with general education curriculum." LBUSD, Ind. Study
4 Meeting, Minute 25:12- 25:34.

5 17. Dr. Heenan also described the option for Home Hospital, but also indicated that
6 this would not be an option for most disabled children. She stated it is "For students who we
7 consider medically fragile or those in our specialized healthcare program. If your child is
8 medically fragile, cannot be outside, cannot be in contact with another student, has a major
9 medical condition that would impede them from going outside, your child can access Home
10 Hospital instruction...There are about forty students in our district who probably would be
11 eligible for this setting as the child's medical needs must be so severe." LBUSD, Ind. Study
12 Meeting, Minute 28:08- 29:07.

13 18. According to the School Dashboard prepared by the California Department of
14 Education, LBUSD had 71,712 students, including 9,227 students with disabilities. See,
15 <https://www.caschooldashboard.org/reports/19647250000000/2020>. The forty students that
16 LBUSD believes would be eligible for home hospital is a vanishingly small percentage of these
17 students.

18 19. On September 2, 2021 CDE sent an invitation to school districts and other
19 stakeholders to participate in a Zoom meeting on September 7, 2021 about Independent Study as
20 part of an ongoing series of Independent study "Office Hours." I observed the presentation,
21 which was given by the Los Angeles County Office of Education (LACOE). LACOE provided
22 participants with an Independent Study "toolkit" which included an FAQ. Page 8 of the 10 page
23 PDF document included this question: "How can a very involved student in a self-contained
24 class requiring a one-on-one assistant "independently" be recommended for an independent study
25 program? The answer from LACOE was "The IEP team will need to make the determination.
26 However, the term "Independent Study" implies that a child will be able to complete the work
27 independently or with minimal adult help." A copy of this FAQ is Attachment A to this
28

1 declaration.

2 20. LACOE's Independent Study "toolkit" also included a document titled
3 "Independent Study Considerations for Students with Disabilities: Talking Points," directed to
4 LA County Superintendents. The document includes nine different considerations. Each of the
5 nine considerations point to CDE's Home & Hospital Instruction Program Summary. A copy of
6 the "Independent Study Considerations for Students with Disabilities: Talking Points" is
7 Attachment B to this declaration.

8 I declare under penalty of perjury under the laws of the state of California that the
9 foregoing is true and correct.

10 Executed this 20th day of September 2021 in San Mateo County, California.

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12 _____

13 Lauren Lystrup, Esq.
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EXHIBIT A



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

The following document has been created in response to questions posed by District Superintendents & Point of Contacts related to Independent Study. Assembly Bill 130 and Senate Bill 130 provides a pathway for students to participate in independent study for the 2021-2022 school year when in-person instruction would put the student's health at risk, as determined by the student's legal guardian. Local education agencies ("LEAs") are required to revise existing independent study policies and procedures to comply with changes in the law pursuant to AB/SB 130.

Course Requirements	
Question	Answer
Are LEA's required to offer current HS AP, Honors, and or CTE courses with IS?	EC 51749.5 states: Access to all courses offered by the LEA for graduation and approved as creditable under the A-G admissions criteria must be offered. This includes CTE and AP courses.
Can someone speak to the application of Dual Immersion Language and/or IB in an Independent Study setting.	Dual Immersion and IB programs are not required to be offered. Students receive the core grade level curriculum. Dual Immersion and IB would only be required IF all schools in your district offer those programs.
For high school students, do they have to have access to all AP courses via Independent Study or can they have access to honors level in the same subject area?	The provision of content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction. For high schools, this shall include access to all courses offered by the LEA for graduation and approved by the University of California or the California State University as creditable under the A-G admissions criteria.
Is there a minimum number of courses that a student needs to be enrolled in?	There is not a minimum number of courses that a student needs to be enrolled in. The total courses need to meet the minimum instructional daily requirements applicable to the LEA. Pupils enrolled in Independent Study courses shall be offered the minimum annual total equivalent instructional minutes pursuant to Sections 46200 to 46208, inclusive, and Section 47612.5.
Are the state minimums not valid this year?(1) For each fiscal year, offer, at a minimum, the following number of minutes of instruction:	The state minimum instructional minute requirements ARE valid this year. For each pupil, the combined equivalent daily instructional minutes for enrolled courses authorized by this section and enrolled courses authorized by all other laws and regulations shall meet the <i>minimum instructional day requirements</i> applicable to the local educational agency. Pupils enrolled in courses authorized by this section <i>shall be offered the minimum annual total equivalent instructional minutes</i> pursuant to Sections 46200 to 46208, inclusive, and Section 47612.5 [Ed. Code 51749.5 (a)(14)].
What are the live synchronous requirements? How long is a live teacher supposed to teach for?	TK-3 requires daily synchronous instruction; grades 4-12 require synchronous instruction at least weekly.



INDEPENDENT STUDY Frequently Asked Question (FAQ)

Independent Study (IS) Model	
Question	Answer
If we offer a new Independent Study program for high school that provides access to all courses, can we still maintain our course based program? Or, does our existing course based program have to change as well?	AB 130 requires districts to offer general independent study in 2021–22, but it does not require districts to provide course-based independent study in 2021–22 or in any school year. It continues to be optional. In addition, AB 130 aligns course-based independent study provisions in the Education Code to provisions for the general independent study program.
Does two-way interaction include emails and phone calls for parent outreach in regards to Independent Studies?	Live interaction and synchronous instruction are between the student and staff. Parent outreach does not meet these requirements.
Is the independent study program supposed to be up and running by the first day of school?	IS cannot begin until written policies are adopted by the governing board. Ideally, this would be before the first day of instruction.
If we are using an online platform to deliver Independent Study (synchronously and asynchronously), but that platform does not communicate with our Aeries SIS, how would you recommend that we document and record attendance in our SIS so that we are compliant and audit-ready.	The teacher of record should enter the attendance, engagement and progress records for the student.
Are there any restrictions or requirements with regards to hybrid learning? For instance, if a student wishes to be in the Independent Study program but also wishes to come to campus for (1) in person classes, e.g., band or orchestra class, (2) co-curricular/extra-curricular activities, e.g., to participate in athletic teams or clubs, are we required to allow this? Prohibited from allowing this? If a student can't come to campus for in-person learning due to health concerns, would those health concerns extend to all in-person activities? Or would it be on a case-by-case basis based on each individual student's reasons for requesting independent study?	Live interaction and synchronous instruction may be offered in-person, so a student participating in IS may attend classes on campus. According to the CDE, district policy and practice may not prevent students participating in IS from participating in sports or other activities.
If we are hiring one teacher to teach high School Independent Study, would the recommendation be to choose Traditional I.S. in order for that one teacher to be able to conduct synchronous learning/teaching requirements?	For 2021-2022, districts are required to provide IS as an educational alternative, but course-based IS is optional. Under a Course-based model, an appropriately credentialed teacher is required for each course the student is enrolled in.



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

Enrollment Requirements	
Question	Answer
Can a parent request IS virtually though they are currently residing outside of the district (long term) or out of the country by claiming that they are living elsewhere for the safety of their child?	Residency requirements for enrollment are still in place. You are not obligated to provide IS to students who are not enrolled in the district.
If families move due to health reasons, do we adhere to enrollment policy or can they be enrolled in IS?	Residency requirements for enrollment are still in place. You are not obligated to provide IS to students who are not enrolled in the district.
When does the timeline for the 30 day begin, if August 11th is the first day of school?	For 2021-2022, written agreements must be signed within 30-days of the student's first day of IS instruction.
I have a parent who moved out of the area and says they are homeless and wants IS- student also requires sped services I spoke with dad yesterday and explained the purpose of IS and the intensive needs of his kids... but he continued to insist that he doesn't have to agree with the IEP team and that he is still homeless (living in Texas)	A student experiencing homelessness has the right to remain in their school of origin, as requested by the parent and, if it is feasible. This student is also in SPED. The homeless liaison will need to work closely with the local special education team to see if Independent Study is appropriate for this special education student. In addition, the student is currently homeless outside of California. It is unclear if or when the student will be returning to the local vicinity based on what is shared in the question. In this case, it may be most appropriate to have the student attend school where the student is currently residing. Depending on when the student returns to California, school of origin rights may apply for a return to the local school district if the student is still experiencing homelessness at that time.
Do districts have to offer IS to students on permit? What if the permit is due to parents working in the area, yet IS is virtual?	For 2021-2022, districts are required to offer IS to meet the educational needs of students, including students on permit, regardless of the reason. However, districts will not receive apportionment for full-time IS of students who meet residency requirements because a parent/guardian is employed within district boundaries at least 10 hours a week (i.e., Allen Bill, Nanny Bill).

Instructional Minutes/Appportionment/ADA	
Question	Answer
As it relates to synchronous instruction, is there a requirement regarding the number of minutes per day?	The minimum for the combination of synchronous and asynchronous are TK-K 180, 1st - 3rd 230, 4th - 8th 240, and 9th -12th 240. AB 130 does not prescribe a specific number of minutes for synchronous instruction or live interaction.



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

Is there a minimum number of courses that a student needs to be enrolled in?	There is not a minimum number of courses that a student needs to be enrolled in. The total courses need to meet the minimum instructional daily requirements applicable to the LEA. Pupils enrolled in Independent Study courses shall be offered the minimum annual total equivalent instructional minutes pursuant to Sections 46200 to 46208, inclusive, and Section 47612.5.
What is the minimum number of daily minutes per grade level? Is it the same as we had last year? (Kinder 180, Grades 1-3 230 minutes, Grades 4-12 240 minutes)	The minimum for synchronous and asynchronous are TK/K: 180 minutes (<i>EC</i> Section 46117), Grades 1-3: 230 minutes (<i>EC</i> Section 46112), Grades 4-8: 240 minutes (<i>EC</i> Section 46113), Grades 9-12: 240 minutes (<i>EC</i> Section 46141).
If a high school student is taking 6 courses, are they required to receive daily synchronous instruction for each of those courses?	Grades 9-12 have a requirement of weekly synchronous instruction; no daily live interaction is required at the high school (grades 9-12) level.
The FAQ states that the daily minutes requirement is 240 minutes/day for grades 4-12. It also states that the annual minutes requirement is 54,000 for grades 4-8 and 64,800. 300 minutes per day are needed to get to 54,000 minutes per year, and 360 minutes per day are needed to get to 64,800 minutes per year. Does this mean that the daily minutes requirements are 240 or 300/360?	<p>For 2021-22 instructional time requirements revert back to the regulatory and statutory requirements in place prior to 2020-21. Instructional time requirements for school districts are as follows:</p> <p>Annual Day Requirement: 180 Days Annual Instructional Minutes: K 36,000 minutes, 1-3 50,400 minutes, 4-8 54,000 minutes, 9-12 64,800 minutes Minimum day: TK-K 180 minutes, 1-3 230 minutes, 4-12 240 minutes</p> <p>Note, the minimum school day requirement is in place as a means to determine if a day can be counted as a school day, NOT as a means to reach the annual instructional minutes. In order to qualify for ADA apportionment, a student must be scheduled for at least the statutory minimum day requirement for the grade level. The annual instructional minutes are based on the offering made available to all students, but not necessarily taken by all pupils.</p> <p>CDE is developing FAQs pertaining to 2021-22 instructional time and attendance accounting. Once available they will be linked here: https://www.cde.ca.gov/fg/aa/pa/instructionaltime.asp</p>
Has the 10% cap for IS in continuation school been increased?	The limit is still in place; however, if the continuation HS is over the 10% cap, students can be enrolled into another school of the district for 2021-22 Ind study
State law mandates that only 10% of a continuation high school population can be enrolled in Independent Study. Has that changed for this year with the passage of AB 130? I am the principal of our district's continuation program and a lot of our students are requesting Independent Study.	Not more than 10% of continuation high school students shall be eligible for apportionment credit for IS. Pregnant and parenting students are not included in the cap.



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

Will IS days for short term reset at each event for a student or be cumulative? The idea that if a student gets sent home for a second Quarantine a month after the first will we need to immediately put in place the over 15 day rules.	Tiered reengagement, live interaction and synchronous instruction, and five-day transition requirements apply to students who participate in IS for 15 or more schooldays in a school year. These requirements take effect on day 16 of IS, regardless of whether it is consecutive or cumulative.
Can you clarify when a teacher should document non-participation? I'm trying to figure how to guide my Independent Study teachers when say a student missed their scheduled live interaction time but completes all the other work.	An LEA must document students' participation in live interaction and synchronous instruction, as applicable by grade span, on each schoolday. A student who does not participate in IS on a schoolday is documented as nonparticipatory. The definition of live interaction in EC § 51745.5 is broad.
EC 51747 (g) (9) (F). Am I understanding that students can begin IS computer program, with a vendor that we choose to contract with, and not have a supervising teacher in place to provide synchronous instruction? It says we have to provide no later than 30 days after instruction. This would help us to begin on the first day of instruction.	Written master agreements are to be signed before the start of IS by the student, parent/guardian/caregiver, supervising teacher, and others with direct responsibility for providing assistance to the students. For 2021-2022 only, the written master agreement must be signed within 30 days of the start of instruction. However, the supervising teacher needs to be in place at the start of IS.
For grades 9-12, our LEA will be using APEX for IS. I understand the requirement is at minimum weekly instruction. Does the teacher need to provide weekly instruction in each class a student has weekly or does the teacher simply need to provide synchronous instruction at minimum once a week? Perhaps alternating subjects each day/week. It would be impossible for one teacher to be able to provide synchronous instruction in all subject matters.	The supervising teacher for traditional IS needs to provide opportunities for synchronous instruction at least weekly. However, the LEA may provide synchronous instruction more often. If, for example, the English teacher is the teacher of record, that person can provide instruction once a week, and other subject matter teachers can provide instruction other days of the week. For course-based IS, the teacher of record has to hold the appropriate credential. "Synchronous instruction" means classroom-style instruction or designated small group or one-on-one instruction delivered in person, or in the form of internet or telephonic communications, and involving live two-way communication between teacher and pupil. Synchronous instruction shall be provided by the teacher of record for that pupil pursuant to EC 51747.5.

Parent Engagement	
Question	Answer
Is there a sample template of the required notification that we can use?	Parent Letter Link Resources from Santa Cruz County Office of Education
If the teacher is unavailable to participate in the Independent Studies	The Principal or designee may attend the pre-enrollment conference and other conferences required for IS. However, the supervising teacher



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

pupil-parent-educator conference meeting, can the Principal or designee attend?	must attend pupil-parent-educator conferences after enrollment. EC § 51745.5 states that the pupil-parent-educator conference must include, “at minimum, all parties who signed the pupil’s written IS agreement....” Per EC § 51747, the written master agreement must be signed by the student, parent/guardian/caregiver, supervising teacher, and other staff with “direct responsibility for providing assistance to the pupil.”
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Teacher Requirements	
Question	Answer
Can we use APEX courses for high school independent study and our own teachers for teachers of record? If yes, can the Apex program grade coursework and the district teachers of record monitor attendance and progress/grades?	If the LEA is implementing a Traditional IS program, vendors such as APEX may be used to deliver the curriculum; however, students must be under the general supervision of a credentialed employee of the LEA (i.e. teacher of record). The teacher of record must provide the required weekly synchronous instruction and monitor the attendance, engagement and progress of the students.
At the secondary level, can one teacher be the IS teacher of record for all subject areas, or does the student need to have a teacher of record from each subject area? If the latter, is there a requirement for which teacher/which subject area(s) provide the weekly synchronous instruction	If the LEA is implementing a traditional IS program, there may be one teacher of record. The teacher of record must be an LEA employee who holds a valid credential or emergency credential; they must provide once weekly synchronous instruction. If using a course-based IS program, each course must be taught by an appropriately credentialed teacher; the weekly synchronous instruction requirement applies to each course the student is enrolled in.
Must high school IS teachers of record, who provide 30 min synch instruction each week, hold credentials matching the independent study coursework i.e. appropriate science credential w/ science course like Physics.	Credentialing: <u>Traditional IS</u> : Each IS pupil shall be under the general supervision of an employee with a valid certification or emergency credential; all valid credentials apply. <u>Course-Based IS</u> : Courses are taught under the general supervision of certificated employees who hold <i>the appropriate subject matter credential</i> pursuant to Section 44300 or 44865, or subdivision (l) of Section 47605, and are employed by the LEA at which the pupil is enrolled, or by an LEA that has a MOU to provide the instruction

Written Master Agreements	
Question	Answer
Will LACOE be providing a sample Written Agreement?	See LEA Toolkit for sample in English and Spanish
Can a school claim ADA if student work is turned in prior to the master agreement signature date but within the 30 day window?	This should be allowed, provided the work is submitted after the beginning date of Independent Study, and the school is able to produce



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

	a signed written master agreement signed within the 30-day timeline for auditing purposes. The 30-day timeline applies to 2021-2022 only.
Is the Written Master Agreement different from the Individual Learning Plan?	The Written Master Agreement includes all the required elements of AB 130 and is to be signed by the student, parent/guardian/caregiver, supervising teacher, and "all persons who have direct responsibility for providing assistance to the pupil" (EC 51747(g)(9)(A))The ILP is a part of the master agreement for each student
Does the meeting to explain the master agreement have to happen with a team for one student at a time? Or can we have counselors meet with a group of parents to explain and obtain signatures?	The pre-enrollment conference can be a group meeting, but the meeting to discuss the written master agreement should be conducted individually due to confidentiality.
When a Master Agreement is signed, do all parties have to be physically present or can the meeting take place virtually and electronic signatures be accepted?	The meeting can be held virtually, and electronic signatures are acceptable.

Written Policies

Question	Answer
We have an existing IS program. Our policy is not updated. Must we have an updated policy to receive ADA for our IS program before school begins or do we have a little time?	LACOE is seeking clarification regarding this issue from the CDE and the Department of Finance. LACOE recommends that districts update their existing independent study policies with the assistance of the LACOE policy checklist as well as CSBA's sample policy. Districts may convene a special meeting of their board to facilitate and expedite the adoption of the revised policies. This will ensure that districts adopt the required policy additions prior to the start of instruction in order to avoid having to address this issue during an audit by the State Controller and to assure apportionment for IS students.
Are you communicating that if our first day of instruction is August 9 and the Board approves the new policy on August 11 we would not be eligible for IS ADA?	LACOE is seeking clarification regarding this issue from the CDE and the Department of Finance. LACOE recommends that districts update their existing independent study policies with the assistance of the LACOE policy checklist as well as CSBA's sample policy. Districts may convene a special meeting of their board to facilitate and expedite the adoption of the revised policies. This will ensure that districts adopt the required policy additions prior to the start of instruction in order to avoid having to address this issue during an audit by the State Controller and to assure apportionment for IS students.



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

Are students who participate in Independent Studies for health related reasons allowed a work permit?	Students participating in IS due to health risks as determined by their parent/guardian/caregiver may be issued a work permit.
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Special Education	
Question	Answer
Can a school change or do an addendum for a student's IEP to allow for enrollment in IS? Can they do it without doing assessments to determine the change in LRE?	A student with a disability who requests IS will need to participate in an IEP meeting to determine if IS is FAPE/LRE for the student. An assessment is recommended if: The student is due for a re-assessment, the team cannot come to consensus on LRE where the student would receive education benefit (no data to support a decision), the parent requests one, and the teacher does not have any data to support why the student should not be in an IS program (the last year during the pandemic). IF the student's assessment is current (within a year), consider other data sources that can support (a)- the student participating in an IS program because they would receive education benefit OR (b)- the student would not receive education benefit in an IS program. Data is the key here.
Did I hear correctly the IEP's need to be completed prior to the start of school if they are coming to IS? What if they don't recommend it?	A student with a disability who requests IS will need to participate in an IEP meeting to determine if IS is FAPE/LRE for the student. IDEA 'trumps' Ed. Code in that an IEP must be held first as IS is a change of placement with a possible different offer of FAPE. If the IEP does not specifically provide for IS, the last offer of FAPE stands.
"IS would be considered the new offer of FAPE & must be owned" - in terms of not changing a student's offer of FAPE to full-time IS, does this imply that some related services may be decreased/minimized or foregone?	If DIS services are found to be needed through the IEP process, the team should discuss why and how those services would be delivered. (EX: speech and language, APE). It would also be highly recommended if DIS services were found to be a need that current assessments be done to determine if the need is still warranted.
How can a very involved student in a self-contained class requiring a one-on-one assistant "independently" be recommended for an independent study program?	The IEP team will need to make the determination. However, the term "Independent Study" implies that a child will be able to complete the work independently or with minimal adult help.
I am concerned that parents who do not agree that IS is not the best FAPE that they can then exit their child from SPED. How would this play out ?	Should the parent determine that they would like to exit their child from special education services, the LEA must comply.



INDEPENDENT STUDY

Frequently Asked Question (FAQ)

If the family is out of the state due to certain circumstances, can SAI still be provided by a CA credentialed Ed. Specialist?	Yes, as long as the family continues to reside in California and it is their primary residence.
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Other Requirements	
Question	Answer
We have a dependent charter high school. Does the charter have to offer IS? I have gotten mixed responses to this.	A school district is required to offer IS to all grade levels it serves. While the charter school itself is not required to offer the IS program, the district must provide this option or provide students with the option through an interdistrict permit or COE contract.
If a student that is attending based on a work hardship and is unable to attend daily in the synchronous instruction, will those students no longer qualify for Independent Studies?	Grades 9-12 requires opportunities for at least weekly synchronous instruction. Grades 4-8 require daily live interaction and at least weekly synchronous instruction. Live interaction can be measured in a variety of ways.
What is the annual instructional minute requirement?	K=36,000 minutes Grade 1-3=50,400 minutes Grades 4-8=54,000 minutes Grades 9-12=64,800 minutes
What are the class size requirements with IS?	Regarding class size, Staffing Ratios: Student-to-teacher ratios must not exceed the equivalent ratio seen in other educational options (i.e., in-person, classroom instruction (EC 51745.6)
Can students enroll in independent study at any time during the school year?	Yes. Nothing in the education code prevents a student from moving between both environments.
How do we cap IS programs due to limited personnel?	For the 2021-22 school year, districts must offer IS for all pupils whose health would be put at risk by in-person instruction, as determined by the parent or guardian of the pupil. This requirement can be met by the LEA directly or by entering into an interdistrict transfer agreement with another school district
How can my district get a waiver?	A waiver may only be granted under EC 51745(g) and requires that the district show BOTH that providing IS to its students would create a financial hardship AND the district is unable to come to an agreement with another LEA (School district or county office) to provide IS for its students. LACOE would ask that your district reach out to districts in the area to see if they would be able to provide IS to your students in 2021-22. Districts in LA and neighboring counties are eligible to serve your students in the next year for IS.



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INDEPENDENT STUDY

Frequently Asked Question (FAQ)

Can a student on IS participate in sports? What if they are on IS for health reasons?	Per CDE, District policy and practice may not prevent IS students from participating in sports. Any denial of that right or privilege is a prohibited form of discrimination. However, this guidance has not been updated since AB 130 was signed into law. Please see IS FAQs at https://www.cde.ca.gov/sp/eo/is/faq.asp#participation for additional information. Because the situation remains dynamic, districts are advised to stay informed of new developments as they occur and to adjust their policies and practices accordingly. LACOE will provide updates as well.
Do weekly work samples have to be kept???	EC § 51747(9)(B) states that signed written agreements, supplemental agreements, assignment records, work samples, and attendance records may be maintained as an electronic file. This implies that work samples must be kept. Written or computer-based evidence of engagement must be maintained. We contacted CDE for clarification.

EXHIBIT B



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Independent Study Considerations for Students with Disabilities

Talking Points

Audience: LA County Superintendents

LEA data from student, staff and parent/guardian feedback surrounding the effectiveness of ELD supports provided during distance learning can be applied to I.S. program curriculum. The information in this chart integrates distance learning best practices, resources and planning implications for Students with Disabilities (SWD) shared in the [LACOE's Planning Framework for the 2020-21 school year](#) (PDF) along with requirements of [AB 130](#).

Ed Code	Considerations	Resources
Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA	<i>-Students with IEPs do not qualify for IS without an IEP team meeting first to determine if IS is appropriate and the least restrictive environment.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home & Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.a sp Parental Rights on LACOE website English: https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec 2e-41aa-ae80-0671fbb5be30.pdf



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		Spanish: https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf
Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA	<i>-School administration cannot predetermine if IS is appropriate without an IEP team meeting being called to discuss if IS is appropriate and to determine the least restrictive environment.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home & Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramssummary.asp Parental Rights on LACOE website English: https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf Spanish: https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf
Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA	<i>-SWD needs to be seen and given every opportunity as a general education student, thus participation in an IS program for general education students is appropriate if the IEP team determines it is the least restrictive environment for the student to receive education benefit.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home n& Hospital Instruction Program Summary



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		<p>https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp</p> <p>Parental Rights on LACOE website</p> <p>English:</p> <p>https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf</p> <p>Spanish:</p> <p>https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf</p>
<p>Ed. Code 56026 & Ed. Code 51747 (c)(7)</p> <p>IDEA</p>	<p><i>-IS programs need to be tailored to the student and not the student tailored to the IS program, provisions and guidelines as outlined in IDEA. (An IEP team meeting needs to be held to determine Least Restrictive Environment).</i></p>	<p>Reauthorization of the IDEA 2004</p> <p>https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp</p> <p>CDE Home & Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp</p> <p>Parental Rights on LACOE website</p> <p>English:</p> <p>https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf</p> <p>Spanish:</p>



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Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA	<i>-If a SWD requests to participate in IS, then an IEP meeting needs to be held to address the needs of the student and if their needs can be met in the IS setting to receive educational benefit in the least restrictive environment.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home & Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp Parental Rights on LACOE website English: https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf Spanish: https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf
E.C56026 & Ed. Code 51747 (c)(7) IDEA	<i>-IS and IEP teams need to learn/understand/review the differences between, home instruction for SWD, home hospital instruction for SWD and IS for SWD to know which setting would best meet the student's needs.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home n& Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp



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		<p>Parental Rights on LACOE website</p> <p>English:</p> <p>https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf</p> <p>Spanish:</p> <p>https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf</p>
<p>Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA</p>	<p><i>-IEP team must comply with provisions detailed in IDEA regarding length of time, grade level and type of program, and the elapse between the time an independent study assignment is made and when it must be completed by the student as outlined in the students' IEP accommodations.</i></p>	<p>Reauthorization of the IDEA 2004</p> <p>https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp</p> <p>CDE Home n& Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp</p> <p>Parental Rights on LACOE website</p> <p>English:</p> <p>https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf</p> <p>Spanish:</p> <p>https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf</p>



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Ed. Code 56026 & Ed. Code 51747 (c)(7) IDEA	<i>-The IEP team must comply with provisions detailed in IDEA about the level of satisfactory progress and the number of missed assignments that will be allowed before an evaluation is used to determine if the student should remain in IS. As detailed in IDEA, the IEP team is compelled to determine the least restrictive environment for the student based on the students' educational needs.</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home n& Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp Parental Rights on LACOE website English: https://4.files.edl.io/e4fe/04/13/21/155046-b93068cc-ec2e-41aa-ae80-0671fbb5be30.pdf Spanish: https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf
Ed. Code 51747(f) IDEA	<i>-Plan to transition students who wish to return to in-person no later than 5 days is in conflict with IDEA</i>	Reauthorization of the IDEA 2004 https://www.cde.ca.gov/sp/se/lr/ideareathztn.asp CDE Home n& Hospital Instruction Program Summary https://www.cde.ca.gov/sp/eo/hh/hhprogramsummary.asp Parental Rights on LACOE website English:



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Spanish:

<https://4.files.edl.io/17c2/04/13/21/155326-2ebaf06f-0155-4822-ad99-ef89e81619aa.pdf>

DECLARATION OF NIDYA PAREDES

I, Nidya Paredes, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief. If called to testify in court on these matters, I could do so competently.

2. I am employed as a Supervising Clients' Rights Advocate with the Office of Clients' Rights Advocacy, Disability Rights California. I am duly licensed to practice law in California.

3. This declaration is submitted in support of Disability Rights California's Systemic ADA Complaint against the State of California, the State Board of Education, and the California Department of Education.

4. The Office of Clients' Rights Advocacy (OCRA) provides legal information, advice, and representation for various legal issues to regional center clients from all 21 regional centers throughout California.

5. OCRA uses a case management database to track all newly opened, active and closed cases. As a supervisor, I use our database to track caseloads and regularly run reports. In August 2021, OCRA saw a significant increase in calls from consumers seeking legal advice and representation related to their student's education. Compared to the month prior, OCRA staff across the state opened almost four times more education cases in August.

6. Many of the August education cases relate to parents and legal guardians specifically concerned about sending their students with disabilities back to school in person and the limited options under AB 130.

7. OCRA staff fielded calls from parents with stories of school districts denying their students with Individualized Education Plans the opportunity to enroll in Independent Study under AB 130 unless they waived their rights under state and federal special education and disability laws. Our staff reviewed copies of overbroad settlement agreements, effectively forcing parents to choose between a free appropriate public education and their student's safety and health.

8. Other parents called frustrated that their student was in limbo, waiting at home for a required, but yet-to-be scheduled IEP meeting, to discuss independent study while the school

1 continued to mark their student absent.

2 9. In Southern California, we heard from multiple monolingual Spanish-speaking
3 parents of students with disabilities enrolled in City of Angels, the Los Angeles Unified School
4 District's independent study school. Parents shared that they had not heard from the independent
5 study school for weeks, and their students were at home waiting to receive an education.

6 10. As a result of the overwhelming calls for assistance, our staff opened 169 education
7 cases in August 2021. By comparison, we opened 129 education cases in August 2020, which
8 was an unprecedented time in the history of education with the onset of distance learning due to
9 the pandemic.

10 11. OCRA attorneys and advocates alike continue to spend a significant amount of
11 hours listening to clients, researching, and consulting with one another to make sense of AB
12 130's problematic restrictions on options for students with disabilities.

13 12. Without a significant reform or repeal of AB 130, the calls will continue and we
14 anticipate they will transition into requests for legal representation at due process hearings as
15 parents move toward litigation.

16 I declare under penalty of perjury under the laws of the state of California that the
17 foregoing is true and correct. Executed this 16th day of September 2021 in Los Angeles,
18 California.

19 

20 Nidya Paredes, Esq.

DECLARATION OF CHERYL THEIS

I, Cheryl Theis, declare:

1. This declaration is made based upon my personal knowledge, and I am familiar with its contents. If called to testify, I could and would testify under oath to the facts set forth herein

2. I have worked as an education advocate in the Parent Training and Information Center (PTI) at the Disability Rights Education & Defense Fund (DREDF) since February 2007. The PTI is funded by the US Department of Education under Part D of the Individuals with Disabilities Education Act. The PTI provides free assistance to families and other stakeholders to help them understand their education rights, support their participation in special education processes at public schools, and resolve problems and disagreements. We provide training, technical assistance through phone and email, and referrals when needed. The PTI at DREDF is responsible for providing assistance across thirty California counties and handles an average of 1,000 calls from new families each year.

3. The PTI at DREDF consists of four education advocates, all parents of children with disabilities, who respond to calls and emails from families and other stakeholders seeking support in navigating educational decision making on behalf of children with disabilities. Each call or email is logged into a common database that is accessible to all advocates. Information collected includes caller and student names, demographic information, student disability, school and district, and a summary detailing the student's situation. Each advocate, including myself, reviews entries to reduce duplicative efforts and identify patterns in concerns. In situations where the education advocates identify significant educational challenges and the student or family is part of a highly vulnerable group¹ or there is a systemic issue at the school or district level, we sometimes accompany parents and caregivers to IEP and other meetings to assist them in meaningfully participating in the process.

¹ This includes students in foster or kinship care, low income families of color, homeless or refugee families, and parents and caregivers with Limited English Proficiency.

1 4. Since the 2021-2022 school year has started, a new issue for many parents relates
2 to whether and how students with disabilities can participate in Independent Study Programs
3 (ISPs). A substantial number of contacts to the PTI have been from parents who have
4 determined, as allowed under new state law Assembly Bill 130,² that their child cannot yet safely
5 attend school in person. The children we are hearing about include medically fragile children and
6 children with intellectual and developmental disabilities, including autism, behavioral issues, and
7 mental health disabilities. Some students require nursing and transportation supports which are
8 not available due to pandemic-related staffing shortages. Other students live with highly
9 vulnerable family members – elderly grandparents, immunocompromised family members, and
10 unvaccinated young children. We have also heard from parents of children with autism that
11 suffer sensory issues which make following social distancing and other safety protocols
12 challenging. Parents in all of these situations are struggling to find a placement for their student
13 with a disability that meets their student’s educational needs and keeps them safe from COVID-
14 19 and its effects. Parents have repeatedly raised concerns and asked questions about situations
15 where their student is denied access to virtual learning opportunities, requiring parents to choose
16 between risking their student’s health or forgoing special education services and supports.

17 5. In the majority of these situations, the student has not received any education
18 access at all while waiting for IEP meetings where the IEP team must consider whether an ISP
19 will provide the student with a Free Appropriate Public Education (FAPE). Such meetings can
20 take up to 30 days to schedule.³

21 6. Parents and stakeholders from across the state have described situations where
22 their student’s IEP team determines that independent studies is not an appropriate placement, the
23

24 ² Under AB 130, California legislation adopted in July 2021, distance learning as delivered during
25 the 2020-21 academic year is no longer funded, and the only option for students who cannot safely
26 attend school as determined by their parents is participation in the ISPs. While students without
27 disabilities can enroll in ISPs following an informational pupil-parent-educator conference, the
28 law permits students with disabilities to be placed in an ISP solely through the IEP process. This
means that students with disabilities can enroll in an ISP only if the IEP team determines that
independent studies is appropriate. Cal. Educ. Code §§ 51745–51749.6; Cal. Code of Regs., tit. 5
§§ 11700–11705.

³ Cal. Educ. Code §§ 56043(f)(2), 56344(a)

parent responds that the student cannot safely return to school, and the district holds firm in determining that independent studies will not be appropriate as long as the student is owed services. This leads parents towards giving up their student's right to a FAPE.

7. One parent caller gave up all special education services and FAPE in order to get independent studies for her son. Many parents in this situation have reached out to the PTI wondering if they too should waive all services to get independent studies given that there is no alternative for their student if they cannot safely attend school in person.

8. A parent of twins with disabilities was denied independent studies for both of her children. One child has autism and the other has behavior and anxiety issues. Both children were denied independent studies through their IEP meetings, despite doing well academically, mentally, and emotionally during distance learning the previous year. Both children have not been in school since August 12 and will continue to be held out until the IEP team and the parent can agree on a safer plan.

9. One high school student with a disability at Pittsburg Unified School District (PUSD) sought independent studies because her anxiety and depression were making it impossible for her to attend school. She had been much more successful with virtual school during the previous school year than she had been in the prior two years of in-person high school. Her IEP team denied the request because they believed she needed more support and the district did not offer any virtual academic services.

10. A DREDF legal fellow, advocating on behalf of the high school student, spoke with a PUSD program specialist after the IEP meeting to express his concern that the denial meant that it was likely that the student would get no education, because it was predictable that her anxiety would preclude her from attending school in person. The program specialist explained that the special education director ordered the team to make FAPE offers that staff knew parents would reject, with the expectation that parents and the director would have follow-up alternative dispute resolution meetings where the parents would be offered what they wanted in exchange for waiving FAPE. The student, parent, and advocate set up the follow-up meeting

1 with the special education director and were offered some virtual services in exchange for
2 waiving all claims.

3 11. The high school student, mother, and advocate considered asking for home and
4 hospital instruction, but ultimately the student's psychiatrist would not sign off because she
5 wanted the student to continue to attempt to be exposed to settings outside her house, even if this
6 meant more time not getting any access to education while she was unable to attend school in
7 person. This left the student with no alternatives to campus-based education.

8 12. The PTI has received reports that districts, including Oakland Unified School
9 District, are refusing to provide supports to students with IEPs that opt for independent studies.
10 The education advocates are hearing from community stakeholders in several districts that
11 district independent study programs are over enrolled, which may put pressure on the school and
12 special education team to reject independent studies as an appropriate placement.

13 13. Similarly, the PTI has learned that districts, including Oakland Unified School
14 District and West Contra Costa Unified School District, are unilaterally limiting home and
15 hospital instruction, a program intended to serve students with health or temporary disability
16 needs documented by a licensed healthcare provider or where the IEP determines that this is the
17 appropriate placement,⁴ to one hour per day of home instruction and one hour a week of speech
18 services. In California, five hours per week of home and hospital instruction is the minimum
19 floor of education services the district or charter must provide to an eligible student, but students
20 with disabilities must have decisions made based on their individualized need.

21 14. The PTI has also noticed a trend where families that have more resources or
22 access to attorneys are successfully securing funding from their districts to enroll their children
23 in private or non-public school settings where COVID-19 risks may be smaller. Some parents are
24 leaving districts to sign up for virtual charter schools. In all cases, parents are expressing to the
25 PTI that they feel that their child's rights to the services and supports identified in the IEP

26
27
28 ⁴ Cal. Educ. Code § 48206.3

1 document are compromised because they cannot safely attend in person school, and there is no
2 alternative that continues to provide their child a FAPE.

3 I declare under penalty of perjury under the laws of the state of California that the
4 foregoing is true and correct. Executed this 20th day of September 2021 in Berkeley, California.

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Cheryl Theis

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