



May 25, 2021

The Honorable Gavin Newsom
Governor
State of California
State Capitol
Sacramento, CA 95814

The Honorable Toni Atkins
President Pro Tempore
California State Senate
State Capitol

The Honorable Anthony Rendon
Speaker
California State Assembly
State Capitol

The Honorable Nancy Skinner, Chair
Senate Budget Committee
State Capitol

The Honorable John Laird, Chair
Senate Budget Committee, Subcommittee #1
State Capitol

The Honorable Philip Ting, Chair
Assembly Budget Committee
State Capitol

The Honorable Kevin McCarty, Chair
Assembly Budget Committee, Subcommittee #2
State Capitol

Via email

Re: Recommendations to Preserve High-Quality Distance Learning Options in the Next Academic Year

We are grateful to the Administration for its bold and visionary proposal to invest in education in the May Revise. We believe that, generally speaking, the Administration's plan will advance education equity and make

significant and meaningful improvements for millions of students throughout the state. However, we have concerns about the plan to eliminate the current distance learning framework and to replace it with only in-person instruction or independent study. As we explain below, current independent study programs fall well short of the past year’s distance learning framework, and even with the additional requirements proposed in the May Revise, the independent study option will not fully satisfy the needs of families next year—particularly those families hardest hit by the pandemic.

Accordingly, we urge the legislature and Administration to maintain the programmatic components of the distance learning framework in SB 98 for one more academic year, with modifications to further improve the program, incorporating lessons learned from the past year.

As you are acutely aware, while the COVID-19 pandemic has impacted the entire state, it has impacted certain communities far more gravely than others. It is well-documented that California’s traditionally marginalized communities have been devastated by the pandemic. As the U.S. Center for Disease Control has acknowledged, “long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19.”ⁱ In California, Black and Latinx populations are dying at higher rates than other groups.ⁱⁱ For people ages 65 to 79, Latinx are 22% of the state’s population, but represent 44% of deaths from COVID-19.ⁱⁱⁱ According to the California Department of Public Health, Black people are dying from COVID-19 at twice the rate of white people.^{iv} Black and Latinx youth also are disproportionately likely to be infected by COVID-19.^v Similarly, communities with high poverty rates suffer from COVID-19 between two and three times the rates of wealthier areas.^{vi} Compounding the problem, Black and Latinx communities are currently receiving the vaccine at far lower rates than others.^{vii} Parents who are essential workers living in these communities highly impacted by COVID-19 face a significantly increased risk of contracting the virus.

Additionally, because of insidious misinformation about the COVID-19 virus and racial bias, Asian American and Pacific Islander communities nationwide and in California have suffered from a rash of hate crimes over the past year.^{viii} These communities have not only faced harassment, but also physical—and sometimes fatal—violence, further escalating tensions and trauma in their communities.^{ix} Some students have reported hesitation to return to school in the wake of increased concerns about discrimination against people of color and the absence of adequate supports for students of color on campuses.

Given these realities, it is unsurprising that many students, particularly those from low-income communities and communities of color, have been reluctant to return to school in person.^x By way of example, Latinx parents in Southern California with chronic diseases are particularly wary about sending their children back to school,^{xi} as are Asian and Asian American families in Sacramento.^{xii} A survey by the Los Angeles Unified School District showed that “38% of Black families, 30% of Latino families and 29% of Asian families preferred in-person learning, compared with 58% of white families.”^{xiii} In that district, by May 10, 2021, only 7% of high school students, 12% of middle school students, and 30% of elementary school students returned to campus for in-person instruction.^{xiv}

While we are optimistic that all communities will see marked improvements by the fall, we nonetheless are confident that it will remain unsafe for many students to return to in-person instruction next year. Certain communities will recover more slowly, and all communities likely will continue experiencing outbreaks. As such, the State must maintain a robust vehicle through which local educational agencies (“LEAs”) must offer distance learning. **We strongly believe that all students and families must have the opportunity to choose a high-quality distance learning option if they do not feel safe returning to school—no matter where they live in the state.**

The Administration’s Proposal to Offer Distance Learning Through Independent Study Is Insufficient to Serve All Students Effectively

Unfortunately, the independent study option proposed in the May Revise is not an adequate or appropriate distance learning option, particularly for the State’s most at-risk and marginalized families. Indeed, because their communities have demanded it, many Local Educational Agencies (“LEAs”) have already announced plans to offer distance learning to all families that prefer it, including West Contra Costa, Long Beach, Azusa, and Los Angeles, among others; the current proposal would reduce protections for students by allowing LEAs to offer lower quality programs than they were required to last year. While the Administration has attempted to address some of the deficiencies of independent study with its proposed trailer bill language, these policy proposals fall short for the following reasons:

- **Most fundamentally, the proposal does not ensure that all students and families who need distance learning may access it.** While LEAs *can* use independent study as a way to deliver distance learning, they are not required to do so. Additionally, even if a parent or guardian determines that a student’s health would be at risk in in-person instruction and asks the LEA for the independent study option, current law permits the LEA to override the parent or guardian’s decision.^{xv} LEAs should not have the discretion to refuse to offer a distance learning option to students who seek it, particularly those who are medically vulnerable or who live with medically vulnerable persons, whose Individualized Education Plans (“IEPs”) require distance learning, or who live in counties in the purple or red tiers, for example. Even beyond the pandemic, high-quality distance learning must be available for communities that experience natural disasters such as wildfires and earthquakes. Finally, the proposal does not eliminate the current restrictions on independent study for certain populations, including those attending opportunity or continuation schools, thereby restricting their ability to respond to outbreaks or other challenges.^{xvi}
- **The proposal does not ensure that students receive high-quality instruction and services.** The proposal promises content aligned to grade level standards that is substantially equivalent to in-person instruction. However, this requirement is similar to an existing requirement of independent study that, as described further below, has done little to protect students against significantly inferior curriculum.^{xvii} The trailer bill proposes other policy changes that could potentially improve the quality of independent study, such as daily live interaction and synchronous learning at least once per week (though the language is vague and confusing). However, those requirements do not create a level of quality that LEAs were required to provide during distance learning last year, nor do they adhere to the standards the State Board of Education has adopted for digital learning. The quality of independent study would be patently insufficient as currently proposed by the Governor because it requires less synchronous instruction than required during distance learning this year. Here are other concerns about quality and services in this model:
 - The CDE defines “daily live interaction” on its website and specifically notes that interaction only between a teacher and student is insufficient—rather, peers must be involved in the daily live interaction as well. Independent study, on the other hand, is designed for students to work one-on-one with teachers, with no peer interaction, and nothing in the Governor’s proposal alters that foundation of independent learning.
 - Unlike the current distance learning rules, independent study programs may be taught by any fully credentialed teacher; the teacher does not need to have a credential in the field of instruction for the assigned class unless it is an A-G class.^{xviii}
 - The proposal fails to adequately address the need for special populations of students to have access to specific services and support. For example, in the Digital Learning Integration and Standards Guidance adopted by the SBE, there is specific recognition that English learners need peer-assisted and small group learning opportunities and academic literacy support during content area instruction. Though the Governor’s proposal requires LEAs to state in independent study written agreements how they will serve the needs of English learners, it is difficult to comprehend how LEAs would actually provide these types of services and support through the independent study framework.

- Given the restrictions under current statute that A-G courses cannot be offered exclusively through independent study,^{xix} we have significant concerns that high school students and their families will be placed on a “non-college going” track. In contrast, UC and CSU will accept the completion of current A-G distance learning courses with certain criteria met. A full curriculum that is equivalent to in-person instruction and includes the ability to take and pass A-G college going courses should be the right of every high school student in the state, but this ability would be jeopardized by the independent study-only option.

Thus, this proposal forces families to make a difficult decision: compromise their safety to receive a high-quality education in-person or surrender to an obviously inferior education to maintain their mental and physical wellbeing.

- **The proposal’s enhanced data tracking and reporting are unlikely to result in any interventions by the State, even where needed.** For example, the biweekly data reports to the Department of Public Health could provide a basic overview of enrollment trends, but there is no requirement for disaggregation by student group; thus, this reporting has limited utility in alerting state leaders to positive or negative trends. Furthermore, the proposal offers transparency without accountability because DPH has no responsibility to take action even if alarming trends emerge. Relatedly, while the data reports to CDE on daily participation and weekly engagement appear promising, on closer inspection, they have limited value because of the lack of current capacity or commitment at CDE to monitor independent study. Indeed, existing law already created audit requirements that somewhat track the Governor’s proposed data reports.^{xx} However, it is unclear whether the CDE has ever actually reviewed audit data. Theoretically, ADA apportionment could be reduced based on deficiencies in audit data, but it is unclear whether CDE has ever taken such action. Additionally, to our knowledge, there are no publicly available reports on the outcomes of students in independent study, such as graduation rates and readiness for college or career. And while the legislature ordered an evaluation of independent study to be completed in 2019, that evaluation appears to have never been completed.^{xxi} Finally, the Governor’s proposal purports to create new requirements around engagement and written agreements but does not give teeth to those requirements by integrating them into existing audit requirements. As a whole, these data reporting provisions are unlikely to improve the existing independent study system, in which LEAs are required to be transparent but have limited technical assistance or accountability mechanisms in place.
- **The proposal does not mitigate the current deficiencies in student and parent/guardian understanding of the independent study process.** The proposal increases requirements for the independent study written agreement but does not adequately address the need for LEAs to have accessible, clear conversations with families about the framework of independent study. For example, the proposal still requires families to enter into a contract to pursue independent study, which traditionally has been a confusing and intimidating process, particularly for justice-involved youth, foster youth, and students experiencing homelessness. Further, there is no requirement that written agreements be written and explained in the primary language spoken by the family, making the process more onerous for families who are non-native English speakers. Additionally, there is only vague language suggesting LEAs should “expeditiously” transfer students back to in-person learning when appropriate, and no corresponding language allowing for expeditious transfer to distance learning should a student need it unexpectedly. Communication is particularly vital to maintaining placement stability and providing appropriate support for foster youth, as a foster youth's education rights holder (one who makes educational decisions) may not be their primary caregiver (who would most likely be providing supervision for independent study). These unmitigated challenges around family communication could also be particularly harmful in the case of individual quarantines or future outbreaks, when LEAs must facilitate speedy, yet well-informed, transitions for students who need the distance learning option.

The Independent Study Model Is an Inadequate and Flawed System that Should Not Be Expanded

The proposal to use independent study to provide distance learning will be ineffective because it builds upon a program that consistently fails to serve the needs of high-need students, including students of color, English learners, students with disabilities, and students impacted by foster care, homelessness, and the juvenile justice system. In fact, the independent study system has frequently been used as a means to push students out of traditional schools, and students who enroll in those programs become increasingly isolated from their peers, from supportive teachers, and from opportunities to engage in challenging, grade-level content. The independent study system desperately needs to be overhauled, but attempting to do so during pandemic recovery and to adapt it for an unintended purpose is neither an effective nor sustainable solution. For years, families and advocates have reported the following concerns with independent study.

Families have long felt coerced into signing independent study agreements for their children, even though such agreements are supposed to be voluntary. Families report that schools do not adequately explain the choice that families have in the matter and do not ensure that parents and students understand what an independent study program looks like in practice. This situation is worse when non-English speaking parents are given English-only independent study agreements to sign. Such practices enable schools to use independent study as a mechanism to push out students who, by their estimation, are not adequately performing or are unwelcome in a traditional setting. The data confirm that independent study is indeed used intentionally in the school push-out pipeline: one advocate reports working in a district where more than half of all students leaving court schools are directed to alternative school programs, including independent study programs.

Families and advocates have also expressed serious concerns about the quality of independent study programs. English learners, students with disabilities, and others who are behind in basic academic skills are not receiving the support they need to make adequate progress. For example, the structure of independent study - one-on-one weekly check-ins - does not allow for daily interactions with peers and teachers to support English language development, which is legally required. Further, it is counterintuitive to expect students who must build their basic skills to work independently; such students need more support, not less.

Students with disabilities fare especially poorly in independent programs. Under existing law, students with disabilities should not transfer to independent study unless their IEP teams endorse the transfer. In practice, however, advocates see IEP teams strip the services and accommodations from a student's IEP so that the student can enter an independent study program that cannot offer the individualized support they need. Parents may agree to such a transfer without fully understanding what impact independent study will have on their child's education trajectory. Parents have reported that, when they want to transfer their students back to a comprehensive setting, LEAs have resisted, requiring parents to advocate to replace the services their student should have had all along.

Recommendations

Accordingly, we urge the Legislature and Administration to continue the distance learning frameworks in SB 98 for at least one academic year. LEAs now have had one year of experience implementing them, and the provisions have provided a more robust framework for distance learning than that described in the Governor's May Revision. Still, to build on the lessons learned, we recommend that the Administration and Legislature improve the current distance learning model by:

1. Ensuring that all LEA plans for distance, hybrid, or in-person learning are developed in consultation with students, parents, and stakeholders and publicly reported through the LCAP or other processes.
2. Requiring LEAs to inform families, including students and parents/guardians/education rights holders, in their first language, about their options of distance, hybrid, or in-person learning, particularly during this transitional recovery phase, including requiring LEAs to inform parents, in writing and in their first language, about the minimum synchronous and asynchronous instructional time that a student will have as part of remote learning.

3. Requiring that LEAs have clear processes to both provide this information to families and provide meaningful opportunity for families to ask questions about the options before making decisions about enrollment and disenrollment in the various options for learning, and that these processes be explained in written form on LEA public websites.
4. Ensuring families retain the ability to change modalities if their circumstances change by, at a minimum, requiring that students be allowed to return to their school of origin at least once a quarter and by allowing students to immediately move to distance learning options should the student or family's health needs require it.
5. Aligning the framework with the Digital Learning Integration and Standards Guidance recently adopted by SBE.
6. Clarifying that remote learning will include daily live instruction that is based on interactions with teachers and other students. This includes specifying that synchronous instruction - including virtual classroom based instruction, designated small group, or one-on-one instruction for students that need targeted interventions - should constitute no less than 60 percent of the instructional minutes requirement for all grade levels and that asynchronous instruction should include, at a minimum, weekly designated office hours that are specifically designed to meet the needs of students and separately to meet the needs of guardians (e.g., one-on-one check-ins on student progress; technology support, which may require in person technical assistance). In addition, remove the provision that contacts between an employee and a parent/guardian count toward daily live interaction.
7. Importing the tiered reengagement structure for disengaged students from the May Revise proposal.
8. Strengthening the requirements of LEAs to provide directed services to address the specific needs of high-need student groups, including low-income students, students with disabilities, English learners, foster youth, system-involved youth, and youth experiencing homelessness. For example, LEAs should:
 - a. Provide adaptive devices, synchronous learning, and all required services for students with disabilities.
 - b. Provide all English learners with designated and integrated English language development instruction.
 - c. Coordinate with caregivers and education rights holders of youth in foster care, including those supervised by Probation, to ensure caregivers and those supervising distance learning in family-based or congregate care settings have the same information and knowledge about the student's needs.
9. Ensuring that all students in distance learning have the opportunity to connect to site-based resources such as counselors, social workers, nurses, psychologists, Foster Youth Services Coordinating Program coordinators at the county level and AB 490 Foster Youth Liaisons at the LEA level, McKinney-Vento liaisons, paraprofessionals, and others, and equal access to meal distribution, sports, extracurriculars, arts, and other essential programs.
10. Ensuring LEAs provide information about their plans to continue making in-person learning safe, fair, supportive, and equitable for all students, so that distance learning does not become the de facto option for students of color or others who experience discrimination and push-out from school. This includes but is not limited to supporting LEAs to provide staff with professional development in anti-racism, implicit bias, and instructional models such as the Universal Design for Learning framework, and implementing protections for students against unnecessary intervention by SARB panels and law enforcement.
11. Requiring districts to report both aggregated and subgroup information on distance learning attendance, engagement, and reengagement to the California Department of Education (CDE) by June 30, 2022 and requiring the CDE to provide a report to the legislature on this information by December 15, 2022.
12. Regardless of whether distance learning is provided through independent study, one component of the current independent study law/practice that we recommend augmenting is its audit requirements, especially the audit review of the time value of assignments. By requiring that auditors review the districts' assignment tracking data, we believe it would provide a greater assurance that students served in this modality are receiving a fuller education experience.

13. Requiring CDE to complete the independent study evaluation that was requested by the legislature and due for completion in 2019.

We reiterate our appreciation for the Administration’s commitment to equity in the May Revise. We are hopeful that the State will fully recover from the pandemic and will use the pandemic as an opportunity to strengthen its educational system to better support its highest-need students. But we are not there yet, and, during this transitional period, we urge the Administration and Legislature to ensure that families and communities that are not yet safe to return to school have access to an effective distance learning option. Please reach out to Kathy Sher (ksher@acluca.org), Samantha Tran (stran@childrennow.org), or Atasi Uppal (auppal@youthlaw.org) if you have any questions or would like to discuss these issues further.

Sincerely,

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Endnotes

ⁱ Ctr. for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups* (Feb. 12, 2021), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

ⁱⁱ Rong-Gong Lin II, *California Latino, Black residents hit even harder by coronavirus as white people see less danger*, L.A. TIMES (June 27, 2020), available at: <https://www.latimes.com/california/story/2020-06-27/california-latinos-black-people-hit-even-harder-by-coronavirus>.

ⁱⁱⁱ *Id.*

^{iv} Kuris Alexander, *Coronavirus appears twice as deadly for blacks as whites in California*, S.F. CHRONICLE (April 17, 2020), available at: <https://www.sfchronicle.com/health/article/Coronavirus-appears-twice-as-deadly-for-blacks-as-15206710.php>.

^v Linda Ha, *COVID-19 Impacts Kids from Black, Latino Community Disproportionately*, ABC-30 (Mar. 4, 2021), available at: <https://abc30.com/latino-children-covid-black-communities-of-color-demographics/10389567/>; Roni Caryn Rabin, *Why the Coronavirus More Often Strikes Children of Color*, N.Y. TIMES (Sept. 1, 2020), available at: <https://www.nytimes.com/2020/09/01/health/coronavirus-children-minorities.html>; Ctr. for Disease Control and Prevention, *COVID-19 Racial and Ethnic Health Disparities* (Dec. 10, 2020), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-deaths.html> (stating that “Hispanic or Latino, non-Hispanic Black, and non-Hispanic American Indian or Alaska Native people also have a disproportionate burden of COVID-19 deaths among specific age groups across the lifespan – children, youth, adults, and older adults”).

^{vi} Kaiser Health News, *High-Poverty Neighborhoods in California Are Bearing the Brunt of COVID’s Scourge*, U.S. NEWS & WORLD REP. (Dec. 16, 2020), available at: <https://www.usnews.com/news/health-news/articles/2020-12-16/high-poverty-neighborhoods-in-california-bear-the-brunt-of-covid-19>.

^{vii} Anabel Munoz, *SoCal groups hardest hit by the pandemic are lagging in receiving COVID-19 vaccine, data shows*, ABC7 NEWS (Feb. 3, 2021), available at: <https://abc7.com/people-of-color-southern-california-covid-19-vaccine-disparities/10260561/>.

^{viii} Sam Cabral, *Covid ‘hate crimes’ against Asian Americans on rise*, BBC News (May 21, 2021), available at: <https://www.bbc.com/news/world-us-canada-56218684>.

^{ix} Kristen Sze, et al., *San Francisco Bay Area Asian Americans share incidents of hate as violence surges in the community*, ABC7 News (Mar. 18, 2021), available at: <https://abc7news.com/asian-american-hate-crime-attack-violence-bay-area/10430414/>.

^x Howard Blume, *Less than a third of students likely to return to LAUSD campuses, survey shows*, L.A. TIMES (Mar. 22, 2021), available at: <https://www.latimes.com/california/story/2021-03-22/less-than-30-of-students-ready-to-return-to-laUSD-campuses-survey-shows>.

^{xi} Selene Rivera, *‘Our lives are hanging by a thread’: Latino parents with chronic diseases fear COVID-19 as schools reopen*, L.A. TIMES (Apr. 22, 2021), available at: <https://www.latimes.com/california/story/2021-04-22/latinos-chronic-illnesses-fear-covid-schools-reopen>.

^{xii} Sawsan Morrar, et al., *The stark racial disparity among students returning to Sacramento City Unified classrooms*, The Sacramento Bee (Apr. 12, 2021), available at: <https://www.sacbee.com/news/equity-lab/article250201690.html>.

^{xiii} Paloma Esquivel, *Parents struggle with a new dilemma: Is it safe to send kids back to school?*, L.A. TIMES (Mar. 19, 2021), available at: <https://www.latimes.com/california/story/2021-03-10/school-reopening-why-some-parents-reject-covid-return>.

^{xiv} Howard Blume, *Only 7% of LAUSD high school students return to reopened campuses, far less than expected*, L.A. TIMES (May 10, 2021), available at: <https://www.latimes.com/california/story/2021-05-10/only-7-of-l-a-high-schoolers-return-to-reopened-campuses>.

^{xv} See Cal. Educ. Code 51746; CCR 11700.

^{xvi} See Cal. Educ. Code 51745(6)(b) (not allowing more than 10% of students in an opportunity school or continuation high school to participate in independent study). Further, it is unclear how Cal. Educ. Code 51749.5(13)’s prohibition on LEAs not offering courses required for high school graduation or admissions to UC or CSU schools exclusively through independent study will operate if an entire school community must transition to distance learning due to an outbreak or natural disaster.

^{xvii} See Cal. Educ. Code 51749.5; CCR 11701.5.

^{xviii} See Cal. Educ. Code 51749.5; 44865.

^{xix} See Cal. Educ. Code 51749.5(13).

^{xx} See 5 CCR 11703.

^{xxi} See Cal. Educ. Code 51749.5(e).