



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

AB 167

The Good, The Bad, and The Questionable

A large, faint, light-colored compass rose graphic is centered in the background of the slide, with the words 'QUESTIONS' and 'ANSWERS' faintly visible in the background.

Presented by:

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YOUNG, MINNEY & CORR, LLP
SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

WWW.MYCHARTERLAW.COM

FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

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Partner

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Lisa Corr has represented charter schools for over eighteen years. Her primary focus has been in special education and the representation of charter schools in due process matters and in defense of Office of Civil Rights and California Department of Education complaints. Lisa also assists charter schools in day to day special education compliance, and negotiating agreements with special education providers and authorizers.

Lisa's legal representation also focuses on the developmental phase of charter schools, including assisting charter developers through the development of legally compliant charter petitions, successfully managing the charter authorization process and negotiating legal and fiscal agreements between charter schools and authorizers. Lisa assists charter school boards to develop effective and efficient governance practices, including assistance with strategic planning, legal compliance, and policy development. One of Lisa's unique practice areas is non-classroom based (independent study) charter school legal compliance.

Lisa has studied the often complicated intersection of independent study law and charter school law throughout the evolution of the Charter Schools Act, assisting charter schools in understanding both the technical legal rules and the best practices for implementation. Lisa also assists charter schools in the development and implementation of admissions policies and practice. Lastly, Lisa assists in general student services issues (e.g. student discipline, interpretation of child-custody agreements, and control of disruptive visitors on campus).

PRACTICE AREAS

Board Governance
Student Rights & Discipline
Special Education
Charter Development
Charter Defense
Independent Study

EDUCATION

- University of San Diego School of Law (J.D.)
- Hofstra University (B.A.)

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Janelle Ruley has been an ardent charter rights advocate since 2007 and has assisted in the establishment or continued operation of hundreds of charter schools. Janelle's primary focus is on charter development, renewal and revocation defense. She has represented charter schools in numerous venues, including before administrative agencies, the courts, school districts, county boards of education, and the State Board of Education.

In her daily practice, Janelle regularly counsels clients regarding charter development, charter petition appeals, charter material revisions, drafting MOUs, negotiations with granting agencies, compliance with public transparency laws and related policy development, as well as Local Control Funding Formula/LCAP issues, student admissions, lottery requirements and a wide range of safe school issues.

Janelle is a frequent presenter at CCSA-sponsored events, as well as the annual APLUS+ Conference.

PRACTICE AREAS

Board Governance
Charter Development
Charter Defense
Independent Study
Public Law
Student Rights & Discipline

EDUCATION

- University of the Pacific, McGeorge School of Law (J.D.)
- Dartmouth College (B.A.)

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THE CHARTER LAW FIRM

Disclaimer

- This webinar cannot substitute for personalized legal advice. Each board policy and master agreement for independent study will need to be individually tailored – no cookie cutter template is going to work this time around.
- Our advice is subject to change in this ever-evolving landscape. ****double check with your auditor!**
- As of the time of publication of these slides, the Governor has still not signed AB 167, but his signature is expected.
- During the webinar we will endeavor to answer questions as time permits. Please use the question box. We are planning to do a repeat of this session on **Wednesday, September 22 at noon** for those who have missed it and we plan on publishing a list of Q&A's after as well. Keep an eye out for an invite.
- Sign up for our legal alerts on our website to receive updated information on the topics discussed today: www.mycharterlaw.com.

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YM&C Firm Overview

- Partners have over 125 years of collective experience working with charter schools. Janelle and Lisa are each 1000 years old after reading this legislation.
- 35 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than half of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance

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Agenda



- **AB 167 Overview** – *let's just get it all out in the open*
- **The Good** – *yeah there's good stuff (ish)*
- **The Bad** – *I mean is anything all good?*
- **The Questionable** – *what parts are still subject to interpretation?*



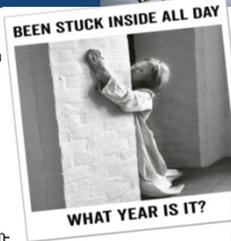
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Independent Study for Quarantined Students



Independent study is authorized for a pupil who is unable to attend in-person instruction due to a quarantine due to exposure to, or infection with, COVID-19, pursuant to local or state public health guidance.

For the 2021-22 school year, a classroom-based charter school that provides IS for quarantined pupils shall not attribute quarantine-based independent study ADA toward the percentage of ADA which would recharacterize the school as a nonclassroom-based charter school and thus shall not be required to submit a request for a funding determination as a result of providing independent study to quarantined pupils.



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Independent Study for Quarantined Students



The Good:

- There had been some concern at the State level that quarantined students could not participate in independent study because there is no "classroom option" available.
- Quarantine ADA does not turn a classroom-based charter school to a nonclassroom based charter school.

The Bad: In exchange for this clarification, an LEA is unable to file a J13 for emergency apportionment due to a material decrease in attendance due to student quarantines.

The Questionable: If a student is quarantined and on independent study and misses assignments and/or fails to make satisfactory educational progress, an evaluation is required to determine whether it is in the best interest of the pupil to remain in independent study. What if the answer is no?



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Independent Study for Quarantined Students



Did you know? *Students who participate in independent study are not subject to synchronous instruction/live interaction requirements and tiered reengagement strategies for independent study cumulatively less than fifteen school days in a school year. This is the same for students on quarantine who participate in independent study.*



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Synchronous Instruction and Live Interaction Opportunities



- **“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 the teacher and pupil. Synchronous instruction shall be provided by the **teacher of record** for that pupil pursuant to **Section 51747.5 or the certificated employee of the LEA providing instruction for course-based independent study.**
 - For Tk-3 opportunities must occur daily.
 - For 4-8 opportunities must occur weekly along with daily live interaction.
 - For 9-12 opportunities must occur weekly.



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Synchronous Instruction and Live Interaction Opportunities



- **“Live interaction”** means interaction between the pupil and local educational agency classified or certificated staff, and may include peers, provided for the purpose of maintaining school connectedness, including, but not limited to, wellness checks, progress monitoring, provision of services, and instruction. This interaction may take place in person, or in the form of internet or telephonic communication.
 - ✓ For grades 4-8 opportunities must occur daily.



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Synchronous Instruction and Live Interaction Opportunities



- **Documentation of Participation and Non-Participation:** an LEA must document each pupil's **participation in live interaction and synchronous instruction** on each school day for which these are provided as part of the independent study program. A pupil who does not participate in **scheduled lived interaction or synchronous instruction** shall be **documented as nonparticipatory** for that school day for purposes of **pupil participation reporting and tiered reengagement**.
- Applies at **day 15 (or more)** of a pupil's participation in independent study cumulatively in a school year **or at day 16 (or more) for independent study offered as part of an affidavit requesting emergency apportionment due to a material decrease of ADA or school closure.**



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Synchronous Instruction and Live Interaction Opportunities



The Good: The CDE appears to interpret "teacher of record" to include any certificated employee of the LEA.

The Bad: By requiring tracking of participation and now nonparticipation in synchronous instruction and live interaction, the concept of an "opportunity" seems more like a mandate.

Did you know? *Synchronous instruction and live interaction documentation is tracked separately from attendance. It would be possible for a student to fail to participate in any synchronous instruction or live interaction but still earn 100% attendance. Also, it is possible for a student to show up at all scheduled synchronous instruction and live interaction opportunities, but not earn 100% attendance.*



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Tiered Reengagement Strategies



- The Independent Study Board Policy must include tiered reengagement strategies for the following pupils:
- All pupils who are **not generating attendance for more than three (3) schooldays or 60 percent of the instructional days in a school week, or 10 percent of required minimum instructional time over four continuous weeks** of the Charter School's approved instructional calendar,
 - All pupils found **not participatory** pursuant to Education Code Section 51747.5 for more than the **greater of three schooldays or 60 percent of the scheduled days of synchronous instruction in a school month** as applicable by grade span,
 - Or pupils who are **in violation of the written agreement** pursuant to Education Code Section 51747(g).



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Tiered Reengagement Strategies

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These procedures shall include, but are not necessarily limited to, all of the following:

- **Verification of current contact information** for each enrolled pupil.
- **Notification to parents or guardians** of lack of participation **within one (1) school day of the recording of a non-attendance day or lack of participation.**
- **A plan for outreach** from the school to determine pupil needs, including connection with health and social services as necessary.
- **A clear standard for requiring a pupil-parent-educator conference (of all those who signed the written IS agreement)** to review a pupil's written agreement and reconsider the independent study program's impact on the pupil's achievement and well-being, consistent with the policies adopted pursuant to paragraph (4) of subdivision (g) of Education Code Section 51747



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Tiered Reengagement Strategies



Applies at **day 15 (or more)** of a pupil's participation in independent study cumulatively in a school year **or at day 16 (or more)** for independent study offered as part of an affidavit requesting emergency apportionment due to a material decrease of ADA or school closure.



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Tiered Reengagement Strategies



The Good: The one school day notice is triggered by the **recording of a non-attendance day or lack of participation** instead of triggered by the non-attendance itself.

The Bad: By requiring tiered reengagement strategies as a result of lack of participation in synchronous instruction, the concept of an "opportunity" seems more like a mandate. And requiring tiered reengagement strategies as a result of a lack of participation feels like a penalty.

Questionable: *Who is the individual in your organization who will tracking which pupils require tiered reengagement strategies? What does it mean to "violate the agreement"? How will you track documentation of implementation of the strategies? What does "scheduled days" of synchronous instruction mean?*



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Written Independent Study Agreements



For 2021-2022 only, an LEA must have a fully signed written independent study agreement for an independent study program of any length of time **no later than 30 days after the first day of instruction in an independent study program or October 15, whichever date comes later.** Any other year an LEA must have a fully signed independent study agreement prior to claiming any apportionment for independent study.



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Written Independent Study Agreements



The Good: Provides more time for independent study agreements for students who started independent study earlier in this year. Also allows for 30 days for any independent study which starts mid-year.

The Bad: No delay written into AB 167 for the board policy or any of the other strictly audited provisions of independent study law. No cushion to avoid audit exceptions for the other areas.

Questionable: The law does not dictate the level of detail of the independent study agreement and as a result, the samples that you can find vary greatly. I found myself questioning even the CDE template.



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Time Value Attendance Accounting



- Clarifies that an LEA may claim apportionment credit for independent study only to the extent of the **time value of pupil work products**, as personally judged in each instance by a certificated teacher **employed by the local educational agency**.
- **Did you know?** Based upon a 2004 CDE letter, Charter Schools have been held to a two-step attendance process for independent study?
<https://www.cde.ca.gov/sp/ch/csnbadaltr04.asp>



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Time Value Attendance Accounting



- o Ultimately, per the CDE letter, independent study attendance in charter schools shall be based upon the personal judgment of a certificated employee of the Charter School of the time value of the pupil work products **done on a scheduled school day**. Attendance is the lesser of:
 - ✓ Time Value of Pupil Work Products (personal judgement of certificated employee of the charter school)
 - ✓ Days the pupil engaged in educational activities required by the charter school on days when school is actually taught in their charter schools.



Time Value Attendance Accounting



The Good: I believe that this clarification is intended to support the ability of an LEA to use any certificated employee of the charter school to provide opportunities for synchronous instruction.

The Bad: This clarification would prevent a contracted teacher (i.e. a teacher from an online curriculum provider) from judging the time value of pupil work product b/c it is not clearly an employee.

Questionable: It is always a little unclear what we will see in the audit guide related to attendance accounting for independent study in charter schools. And different auditors will have different understanding of the requirements.



Clarification on Meeting Prior to Signing IS Agreement



Upon request of parent or guardian of a pupil, before signing an independent study agreement, an LEA shall conduct a pupil-parent-educator conference or other school meeting.

The Good: This clarification is a definite improvement as it clarifies that the meeting is only held upon request.

Did you know? School districts and county offices of education have an obligation to post a notice as to options to enroll in in-person instruction or independent study for 2021-22. Charter schools do not have the same required posting.



COVID-Related Staffing Shortages



- Education Code Section 41422: Protection for LEA's unable to offer the minimum instructional days due to COVID-related staffing shortages, after consultation with the County Office of Education and Superintendent of Public Instruction that all alternative staffing options have been exhausted.
- Education Code Section 46392-46393: Allows an LEA to apply for emergency apportionment protection (J-13) for charter school closures related to staffing shortages related to COVID-19 under specified conditions which includes consultation with the county office of education and the Superintendent of Public Instruction and exhaustion of all options for obtaining staff coverage.



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COVID-Related Staffing Shortages



- Removes emergency protections for other COVID related closures or material loss of ADA (including quarantine) (with exceptions for students with exceptional needs whose IEP does not provide for independent study).
- An affidavit seeking emergency apportionment requires a plan for independent study within 10 days of the first day of school closure or material decrease in attendance.
- Special education students receive the services in their IEP established under SB 98 (under the emergency circumstances provisions where in-person instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days.)



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COVID-Related Staffing Shortages



- **COVID related staffing shortage conditions:**
 - Unable to provide in-person instruction to pupils due to staffing shortages as a result of staff quarantine due to exposure to, or infection with, COVID-19 pursuant to local or state public health guidance
 - For **certificated staff shortages**, the school district, county office of education, or charter school has exhausted all options for obtaining staff coverage, including using all certificated staff and substitute teacher options, and has consulted with their county office of education and the Superintendent in determining that staffing needs cannot be met through any option.



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COVID-Related Staffing Shortages

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- o For **classified staff shortages**, the school district, county office of education, or charter school has exhausted all options for obtaining staff coverage, including using all staff options, and has consulted with their county office of education and the Superintendent in determining that staffing needs cannot be met through any option.
- **Substitute Teaching Assignment** – until July 1, 2022, may serve in a substitute teaching assignment aligned with their authorization, including for staff vacancies, for up to 60 cumulative days for any one assignment (up from 30).



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Grade Change Request for 2020-21



An LEA must accept a grade change request for a 2020-21 high school course to pass/no pass as long as the application is received by **October 1, 2021**, and may accept the grade change request after October 1, 2021.



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Extension of Audit Deadline



December 15, 2021 deadline for 2020-21 independent financial audit report extended to January 31, 2022.



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Takeaways and Random Thoughts



- If you want apportionment for quarantined students, independent study is the only option.
- You will likely want to do a short update of your IS policy to reflect the updated tiered reengagement strategies and to cover the possibility of using independent study in conjunction with an affidavit for emergency apportionment.
- The timeline for fully executed written independent study agreements has been extended. These agreements must align with the board policy.



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Takeaways and Random Thoughts



- If anything, the "clean up" triggers more documentation not less – now requiring documentation of "nonparticipation" in opportunities for synchronous instruction and live interaction and using that documentation to trigger tiered reengagement strategies.
- Highly recommend working with counsel but even more importantly your auditor as to your plan for documentation of independent study.



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Takeaways and Random Thoughts



- Course-based independent study might be an attractive option for consideration, particularly at the middle and high school levels.
 - Lighter tiered reengagement requirements
 - Far simpler attendance accounting based upon satisfactory progress and student meeting course requirements.
 - More paperwork up front and less on the back-end.
 - Proctored assessments required.
 - Continues to require synchronous instruction/live interaction



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Takeaways and Random Thoughts

IN CASE NO ONE HAS TOLD YOU THIS TODAY, YOU ARE AWESOME



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