**CALIFORNIA DEPARTMENT OF EDUCATION**

TONY THURMOND

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

# NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING INDEPENDENT STUDIES

Notice published June 16, 2023

**NOTICE IS HEREBY GIVEN** that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 9 a.m. on August 1, 2023, at 1430 N Street, Sacramento, California. Any interested person may participate in the public hearing via Zoom meeting by logging in per the following instructions:

* Click the following link or paste the link to the browser to join the webinar and enter the password:

<https://us02web.zoom.us/j/82554925016>

Meeting ID: 825 5492 5016
Passcode: 985603

* To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and password:

+1 669 219 2599 US (San Jose)
+1 213 338 8477 US (Los Angeles)

Meeting ID: 825 5492 5016
Passcode: 985603

For persons interested in participating in the public hearing via Zoom, you may test in advance whether your computer is compatible with Zoom by visiting the following links:

* Clicking on the test link: <https://zoom.us/test>
* For any issues regarding connecting with Zoom, go to<https://support.zoom.us/hc/en-us>for assistance.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

## REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in the public hearing on the proposed regulation, may request assistance by contacting Elvia González, Whole Child Division, 1430 N Street, Suite 4102, Sacramento, CA, 95814; telephone, 916-319-0277. It is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government Code Section 11346.6(a)(3) and (b), because some of these regulations pertain to special education, the following provisions also apply:

Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the CDE shall provide that person a narrative description of the additions to, and deletions from, the regulations. The description shall identify each addition to or deletion from the regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express language proposed to be added to or deleted from the regulations and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired.

The CDE shall provide the information described above within 10 business days, unless the CDE determines that compliance with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

Notwithstanding any other law, if information is provided to a requester as described above, the CDE shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The CDE shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on August 1, 2023. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

## AUTHORITY AND REFERENCE

Authority: Sections 51749.3, Education Code.

Reference: Sections 35293, 48200, 48663, 48916.1, 49067, 51013, 51050, 51745, 51745.5, 51746, 51747, 51747.5, 51748, 51749.5 and 51749.6, Education Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Independent study, codified in Education Code (EC) sections 51744–51749.6, is provided as an alternative instructional strategy. Independent study pupils work independently, according to a signed agreement and under the general supervision of a credentialed teacher or teachers. While independent study pupils follow the curriculum adopted by the local educational agency (LEA) and meet all graduation requirements, independent study offers flexibility to meet individual pupil needs, interests and styles of learning.

The CDE has provided key information and resources on independent study programs since the legislation was first authorized in 1990–1991. Independent study was initially intended to serve child actors, aspiring Olympic athletes and other pupils whose schedules precluded regular classroom attendance. The changing needs of pupils and families has resulted in an increase in independent study participation, and, commencing with the 2015–2016 school year, an alternative to the traditional independent study model was codified in ECsections 51749.5 and 51749.6. While the traditional independent study instructional delivery is based on a time value of assignments as determined by the supervising instructor, the newer course-based independent study instructional delivery is based on enrollment in a certified LEA course or courses with attendance earned if all course requirements are met and the pupil is making satisfactory progress. Course-based independent study is not included in the current regulations.

The unprecedented impacts of the Coronavirus pandemic required an immediate statewide pivot to support instructional continuity for pupils. Independent study became the primary vehicle used to provide families with an alternative to in-person instruction. Assembly Bill (AB) No. 130 (Stats. 2021, ch. 44), as amended by AB No. 167 (Stats. 2021, ch. 252), made substantive changes to independent study to clarify and strengthen pupil learning during quarantine.

Subsequently, AB No. 181 (Stats. 2022, ch. 52), as amended by AB No. 185 (Stats. 2022, ch 571), introduced additional changes to clarify independent study requirements and increase accountability for LEAs and pupils in fiscal year 2022–2023 and future years.

The objectives of these proposed regulations include: 1) fulfilling the statutory requirements for course-based independent study; 2) the Legislature’s directives in AB No. 130/167 and 181/185 mentioned above to align the regulations to current law; 3) to provide clarity to LEAs on the statutory requirements for efficient and consistent administration and implementation of independent study programs; and 4) to elevate the flexibility inherent in independent study to enable a robust instructional program that supports continuity in learning in this alternative instructional environment.

#### **Anticipated Benefits of the Proposed Regulation**

The proposed regulatory action furthers the mission of the SSPI which is to provide world-class education for all students, from early childhood to adulthood. Benefits of enacting the proposed regulations include aligning these title 5 regulations with the statutory changes for course-based independent study, with changes from AB No. 130 (as amended by AB No. 167) and with changes from AB No. 181 (as amended by AB No.185). The proposed amended regulations will further clarify statutory requirements that will support LEAs in the administration and implementation of their independent study programs and will elevate the flexibility inherent in independent study to enable a robust instructional program for the pupils participating in this alternative instructional strategy.

## Evaluation of Inconsistency/Incompatibility with Existing State Regulations

An evaluation of the proposed regulations has determined they are not inconsistent nor incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D). After conducting a review for any regulations that would relate to or affect this area, the SSPI has concluded that this is the only regulation that concerns Independent Study.

## DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SSPI has made the following initial determinations:

*Other statutory requirements*: There are no other matters prescribed by statute that are applicable to the specific state agency or to any specific regulations or class of regulations.

*Mandate on local agencies and school districts*: None

*Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code*:None

*Cost or savings to any state agency*:None

*Other non-discretionary costs or savings imposed on local agencies, including local educational agencies*:None

*Costs or savings in federal funding to the state*: None

*Effect on housing costs*: None

*Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other stat*es: None

*Cost impacts on a representative private person or businesses*: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

*Report required*: The proposed regulation does not require a report to be made.

*Effect on small businesses*: The proposed regulation would not have an effect on any small business because small businesses are not involved in the proposed regulation.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

***Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code Section 11346.5(a)(10):***

The SSPI concludes that it is unlikely that this proposed regulation will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

## Benefits of the Proposed Action: The proposed regulations will benefit pupils and families in California who are interested in a robust and high-quality educational alternative to in-person instruction and will further benefit LEAs in their administration and implementation of independent study programs guided by these proposed regulations. There is no anticipated benefit to the health and welfare of California residents, worker safety, or the State's environment.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the SSPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SSPI, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Elvia González, Education Programs Consultant
Whole Child Division,

California Department of Education
1430 N Street, Suite 4202, Sacramento, CA 95814
Telephone: 916-319-0277

Email: independentstudy@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator, or the backup analyst, Gerri White, at 916‑319‑0860. Both contacts may be reached by email at regulations@cde.ca.gov or by telephone at 916-319-0860.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND INFORMATION

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons (ISOR) and Fiscal and Economic Impact Statement (STD. 399). Th*ese* documents upon which the proposed action is based may be obtained upon request from the Regulations Coordinator.In addition, this Notice, the text of the proposed regulations and the ISOR may also be viewed on CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available to the public for at least 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations. The CDE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the Regulations Coordinator.

### ***AVAILABILITY OF DOCUMENTS ON THE INTERNET***

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed via CDE’s website at [http://www.cde.ca.gov/re/lr/rr/.](http://www.cde.ca.gov/re/lr/rr/%22%20%5Co%20%22California%20Department%20of%20Education%20Regulations%20Web%20Page)

03-17-2023 [California Department of Education]