

Digitally Enhanced Education in California



Education Codes and Administrative Codes of Governing Regulations Volume 2

**California Council on Science and Technology
May 2012**

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ACKNOWLEDGEMENTS

We would like to thank the S.D. Bechtel, Jr. Foundation for their contributions to the underwriting of this project. We would also like to thank Daniel Decillis, Diana Rude, Cal TAC and the numerous reviewers for their time and contributions.

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Cataloging Number in Publications Data Main Entry Under Title:

Digitally Enhanced Education in California:

Education Codes and Administrative Codes of Governing Regulations

Volume 2

May 2012

ISBN- 978-1-930117-58-7

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Table of Contents

Introduction	1
I. Overview: California's Policy Framework	4
II. Regulatory Structures and Policies for Delivery of Online and Virtual Education in California	5
III. Some Current Digital Education Programs in California	13
IV. Accountability and Digitally Enhanced Education	20
V. Statutory Barriers to Expansion of Digital Education in California	21
VI. Recommendations	22
Appendix A. Statutory or Regulatory Definitions of Key Terms in Online Education	24
Appendix B. Listing Of California’s Requirements For Independent Study Agreements	27
Appendix C. Laws Governing Petitions for Creation of Charter Schools	29
Appendix D. Prior Digital Education Programs	36
Appendix E. Pending State Legislation Concerning Online Learning	38
Appendix F. Professional Development, Instructional Materials and Electronic Communications Devices	40

Introduction

Digitally enhanced education is a broad term related to the use of technology in education, including everything from instructional materials (computers or other electronic devices in the classroom) to the use of online resources (digital libraries, virtual classrooms, etc.).

Volume 1 of this project provides an overview of digitally enhanced education in California, evaluations of the state's digital education policies and infrastructure by the Foundation for Excellence in Education and others, and assessments of how current practices in California and elsewhere align with what is known about successful digitally enhanced education programs.

This white paper (Volume 2) identifies and documents the major statutory and regulatory requirements governing California's use and applications of digital education for teaching and learning in K-12 schools in the 21st century. Major areas in the Education Code that touch on or frame digitally enhanced education, including funding (Average Daily Attendance (ADA) calculations), teacher licensure, instructional materials guidelines, charter school requirements, independent study rules and regulations, etc. will be described. In addition, this paper inventories major regulatory barriers that limit or restrict broad adoption of digital tools and networks both within and outside traditional classroom-based instruction. References to California law contained in this document are of the following three types:

- California Education Codes
- Title 5, California Codes of Regulations (offering administrative regulations/interpretations of state law)¹
- Letters from the California Department of Education issued in response to questions received regarding current law governing online education.

The primary limits to online learning in California stem from the California Education Code provisions governing digitally enhanced education (i.e. independent study and classroom-based and nonclassroom based instruction):

- Funding for average daily attendance based on “seat time.”
- Geographic restrictions governing online and distance learning
- Conflicting and unclear regulatory policy.
- Absence of statutory definitions of primary terms (i.e. “independent study)
- Weak or non-existent student learning outcome evaluation metrics for online learning

¹ <http://www.oal.ca.gov/ccr.htm>

² *California eLearning Framework*, California County Superintendents Educational Services Association, August

California's Distance Learning Policy, which articulates an overall philosophy and approach of open access and digitally enhanced education, is not reflected in either the regulation or operation of actual distance learning in the state. Instead, policies designed for brick-and-mortar charter schools and conventional independent study programs are applied to online and distance learning, with a priority given to "seat time" in a classroom setting rather than the actual instructional time delivered through digitally enhanced methods of teaching and learning. Digital Learning could help to connect/streamline these various requirements or be drowned in them.

Possible recommendations to rectify the situation follow and will form the basis for further discussion.

Possible Recommendations

Near-term

- Develop a state policy statement for digitally enhanced education that emphasizes that the goal is not simply one of laying technology over existing brick and mortar education, but rather an evolution of a comprehensive policy framework effectively integrating both traditional and digital education models in a manner that meets education and learning needs of students in the 21st century.
- Enact a clear policy in state law governing online and distance education in the State that removes overlapping and confusing policies governing distance learning, online and “blended learning.”
- Enact a model policy framework for California that provides a new set of regulations more appropriate for the 21st century including, but not limited to, removing current limitations to access of distance and online learning on a basis that is unrelated to the learning needs of students and the current educational disparities that exist across the state. Examples of these rules include geographic restrictions, “line of sight” requirements between a pupil and teacher, and funding restrictions that do not account for digital and online methods of instructional delivery.
- Remove geographic restrictions on delivery of authorized distance learning resources to California schools to enable and enhance the statutory goals of California’s Distance Learning Policy as contained in California Education Code Section 51865 including, but not limited to, educational equity, instructional quality, diversity among educational institutions and efficiency and accountability.
- Create ADA apportionment funding models in California that allow per-pupil funds to follow students for the purposes of instruction received, regardless of that instruction being delivered online from a virtual location or at a brick and mortar school site.

Mid-term

- Assess the need to eliminate the statutory cap governing the number of California charter schools authorized to be established in the State, as contained in California Education Code Section 47602.
- Revise the 25-1 pupil/teacher ratio for online and virtual charter schools and online independent study allowing student/teacher ratios that are appropriate in a virtual and online learning environment.
- Revise evaluation measures for online and virtual learning to be linked to individual mastery based on innovative pre- and post-assessments in addition to instructional “product” or course completion (i.e, a competency-based model making use of digital instructional tools that is aligned with Common Core Standards). (For California Common Core Standards, see <http://www.cde.ca.gov/ci/cc/> for Smarter Balanced Assessment Consortium, see <http://www.cde.ca.gov/ta/tg/sa/smarterbalanced.asp>)
- Revise California law to accommodate the need to allow adopted instructional materials (digital or otherwise) to be amended in a manner reflective of current scientific, technical and societal developments as appropriate, rather than being limited solely to current textbook adoption timelines.
- Restructure or revise the State’s K-12 funding system that results in placing both charter schools and school districts on the same funding model, i.e. through adoption of simple and transparent base general-purpose funds and other methods.

I. Overview: California's Policy Framework

An August 2011 report by the California County Superintendents Educational Services Association, *California e-Learning Framework*, notes that **education policy governing online and blended learning is “complicated in all states, but California has apparently decided that it must lead in this area, creating the most complicated, confusing and impenetrable set of policies in state.”**²

California state law does not draw formal distinctions among the categories of distance learning, online learning and online instruction. According to a November 2009 report (updated February 8, 2010) by the Center for Education Policy and Law, University of San Diego,³ “California law creates an overlap between the definitions of distance learning, online learning and online instruction.”

There are numerous sections of the California Education Code which pertain to digitally enhanced education either directly, e.g. through defining terms such as distance learning, or indirectly, e.g. through codes that *de facto* affect school districts' ability to fund digitally enhanced education, but do not specifically reference it. There are also sections of the California Code of Regulations that apply to digital education. Because virtual schools⁴ in California are created as charter schools, they are subject both to regulations specifically concerning virtual schools as well as those concerning charter schools in general.

On March 17, 2012, State Superintendent of Public Instruction Torlakson established the Education Technology Task Force comprised of 48 volunteers (the taskforce is made up of teachers, site administrators, district and county superintendents, technology administrators and education policy and research consultants) for purposes of gathering advice in an effort to update the California Education Technology Plan approved by the State Board of Education in 2005.⁵ This plan sets guidelines to ensure that “technology use is consistent with the State’s strategies for improving student academic achievement through the effective use of technology in classrooms throughout the State;” however, it does not have provisions for modifying the educational code or clarifying definitions or conflicts related to digitally enhanced education within the code.

² *California eLearning Framework*, California County Superintendents Educational Services Association, August 2011, page 64.

³ “A Summary of Existing and Pending Law Involving Online Learning in California Public Schools,” November 20, 2009 (Revised 2/8/10), Center for Education Policy and Law, University of San Diego, page 3.

⁴ For definitions of terms, see section I, “Defining Digital Education,” of Volume I.

⁵ See <http://www.cde.ca.gov/eo/in/et/index.asp>

II. Regulatory Structures and Policies for Delivery of Online and Virtual Education in California

Table 1 shows a summary of the statutory or regulatory definitions of key terms in online education. Table 2 is a summary of education codes dealing with independent study and Table 3 is a summary of codes dealing with virtual or online charter schools. The definition of terms is detailed in Appendix A. Appendix B gives a listing of California’s requirements for Independent Study Agreements, and Appendix C gives details on the requirements for forming a charter school. The following summaries are intended to give an idea of the range and complexity of codes and policies associated with digital education.

One of the biggest challenges for schools and districts will be the full implementation of the Common Core State Standards, including accompanying assessments. The new CCSS will cover English Language Arts, Mathematics, and Science with more subject matter areas likely to follow.⁶ California adopted the CCSS in August 2011.⁷ This gives California an opportunity to revisit the regulatory structures and education codes.

⁶ <http://www.corestandards.org/> The Common Core State Standards provide a consistent, clear understanding of what students are expected to learn, so teachers and parents know what they need to do to help them. The standards are designed to be robust and relevant to the real world, reflecting the knowledge and skills that our young people need for success in college and careers. With American students fully prepared for the future, our communities will be best positioned to compete successfully in the global economy.

⁷ <http://www.cde.ca.gov/ci/cc/>

Table 1. Statutory or Regulatory Definitions of Key Terms in Online Education - A full list of terms can be found in Appendix A

Key Terms in Online Education

Topic	Education Section	Description
Distance Learning	51865 (a)	Instruction in which the pupil and instructor are in different locations and interact through the use of computer and communications technology.
	51865, Subsection (c)	Distance learning should be developed to serve certain “high priority education needs.”
Online Learning	78910.10 (b) (1)	<ul style="list-style-type: none"> • Online teaching, learning, and research resources • Professional development opportunities • Online instruction
Independent Study	Title 5, Section 11700, Subsection (c)	An alternative to classroom instruction consistent with the district’s course of study.
Nonclassroom-based Instruction	47634.2	Independent study, home study, work-study, and distance and computer-based education.
Technology-based Materials	60010 (m) (1)	Technology based materials to mean basic or supplemental instructional materials designed for use by pupils and teachers as learning resources.
Blended (or hybrid) Learning	Note: no statutory definition of blended learning.	There are three types of online education delivery: <ul style="list-style-type: none"> • Asynchronous – teacher-student interaction that does not occur at the same time. • Synchronous – events that occur at the same time. • Blended (or hybrid) – Combines online learning with face-to-face instruction.

There are two central regulatory structures for delivery of online education in California including:

- Independent study, and
- Classroom-based and Nonclassroom-based instruction.

Generally, the difference between these two online delivery systems relates to the percentage of instructional time delivered through the Internet compared to instructional “seat” time delivered in the “line of sight” of a certified teacher in a classroom. To be considered nonclassroom-based instruction, at least 80% of instructional time must occur through the Internet. These delivery mechanisms and their governing authorities are outlined below in Tables 2 and 3.

Appendix B gives a listing of California’s requirements for Independent Study Agreements.

Table 2. Independent Study

Topic	Education Code or Title 5 Code of Regulations	Intent
Average Daily Attendance	51747.5 (b)	ADA apportionment funding for independent study is made on the basis of the “time value of student work products.”
	46300 (e) (1)	School districts shall include the attendance of pupils participating in independent study conducted for five or more consecutive school days.
	46300 (e) (2)	A pupil participating in independent study shall not be credited with more than one day of attendance per calendar day.
	51745 (a)	Independent study may be offered for the following purposes: <ul style="list-style-type: none"> • Special assignments • Individualized study in a particular area of interest or in a subject not currently available. • Individualized alternative education. • Continuing and special study during travel. • Volunteer community service activities.
	51745 (e)	No course required for high school graduation shall be offered exclusively through independent study.
Required Adoption of Written Independent Study Policies	51747	Local education agencies must first adopt and implement written specified policies adopted by the Superintendent of Public Instruction prior to becoming eligible for apportionments for the provision of independent study to pupils.
	46300.7 and 51747 (c) (8)	No ADA may be claimed from independent study until the written agreement is completed
	51748	Requires that each independent study student must be enrolled in a specified school of a school district or county office of education.
	Title 5, CCR 11702	Requires that curriculum and methods of study specified in an independent study agreement shall be consistent with district or county office of education policies and procedures.
Pupil/teacher Ratio Requirement for Independent Study	51745.6 (a)	The ratio of ADA for independent study pupils 18 years of age or less to school district full-time equivalent (FTE) certificated employees shall not exceed the ratio of pupils to full time certificated employees in all other programs in the school district.
	51745.6 (a)	The ratio of ADA for independent study pupils 18 years of age or less to <u>county office of education</u> certificated employees, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the ratio of pupils to full-time FTE certificated

		employees for all other educational programs operated by the high school or unified district with the largest ADA of pupils in that county.
	51745.6 (b)	Only those units of ADA for independent study that do not exceed the ratios defined in subsection (a) above shall be eligible for apportionment.
California Teaching and Certification Requirements for Online or Virtual Instruction	Title 5, CCR 11701.5	The Independent study option is to be substantially equivalent in quality and in quantity to classroom instruction.
	46300.7	Requires written permission from the parent or guardian prior to pupil participation in independent study. Written permission must include specifying actual dates of participation, methods of study and evaluation, and resources to be made available for the pupil through the program
	Title 5, CCR 11704	A “full time certificated employee” means an employee required to work a minimum of six-hour days and 175 days per fiscal year. Part time positions shall generate partial full-time equivalent (FTE).
	51747.5(a)	The independent study of each pupil must be coordinated and evaluated under the supervision of an employee of the district or county office who possesses a valid teacher certification document.
	51747.5(b)	Allows claims for independent study apportionment credit by school districts and county offices of education only to the extent of the time value of pupil or student work products, as personally judged in each instance by a certificated teacher.
Geographic restrictions	51747.3 (b)	Only pupils who reside in the county where the apportionment claim is reported, or who reside in an immediately adjacent county can claim ADA. (Applies to independent study in school districts, county offices of education, and charter schools)
	46300.2	Specifies the above geographic restrictions to school district ADA apportionment for both community school and independent study.
	51865 and 51865 (b)	Distance learning should be utilized by the state to achieve the following educational goal: Equity in education, which requires that every pupil, and every adult in the State have access to educational opportunities, regardless of where he or she lives. ⁸

Independent study is an instructional strategy that enables students to work independently according to a written agreement and under the general supervision of a credentialed teacher. Since most online education in the State is provided through independent study, most attendance for online instruction follows independent study rules and is based on completed student work products rather than time in the classroom or

⁸ Note: Geographic restrictions imposed by state law on online instruction conflicts with the California Distance Learning Policy contained in EC 51865.

time on task. According to the California Department of Education, approximately 128,000 students in California were participating in independent study as of 2008 - latest survey data available.

California Education Code Section **51747**, et seq. requires that the apportionment for ADA funding for independent study is made on the basis of the student's "product" (study or academic work), assessed by a competent, certified employee of the district is generated based on the teacher's determination of the time value of completed student work.

Students in independent study programs are included in the schools ADA count (see California Education Code **Section 46300 (e) (1)**), with some limitations. For instance, this section of law does not accommodate the fact that online instruction can occur without regard to time or place. A letter from the California Department of Education, School Fiscal Services Division dated April 24, 2001 titled "Attendance Accounting for Online Classes"⁹ comments on this section of law as follows:

"District procedures must prevent the claiming of any combination of classroom and independent study credits that would exceed one day of apportionment credit per day of instruction in the school's calendar. In addition, if the student is scheduled for at least the minimum day (in most instances, 240 minutes) of classroom-based study, then the attendance accounting for apportionment purposes can be determined solely from that predominant instructional setting." The April 24th letter also notes: **"The advent of new technologies presents fascinating opportunities for students to learn. When properly accounted for, the instructional time for online courses may be used in the calculations of instructional minutes and minimum day attendance."**

The above bolded reference refers to the fact that online education occurs without regard to time or place. The current limits on time value assessments based on student work product (EC 51745.5 (b)), and limits on ADA accrual to not more than one calendar day (EC 46300(e) (2)) may restrict ADA apportionment in an online learning environment without regard to actual instructional time received asynchronously between the teacher and the pupil.

⁹ Stirling, Janet, Director, School Fiscal Services Division, State Department of Education, "Attendance Accounting for Online Classes, April 24, 2001, See <http://www.cde.ca.gov/fg/sf/aa/onlineclasses.asp>

Table 3. Virtual (or Online) Charter Schools

Topic	Education Code or Title 5, California Code of Regulations (CCR)	Intent
Virtual or Online Charter School	47634.2, 47612.5	California law treats students at virtual charter schools, as independent-study students.
	Title 5, CCR 11963.5	Defines a virtual or on-line charter school as a school in which at least 80% of teaching and student interaction occurs via the Internet.
	Title 5, CCR 11963, subsection (a): Definition of Classroom Based Instruction	Classroom-based instruction in a charter school occurs only when all four of the following conditions are met: (1) The charter school's pupils are engaged in educational activities required of those pupils. (2) At least 80 percent of the instructional time is offered at the school site. (3) The school site is a facility that is used principally for classroom instruction. (4) Requires pupils be in attendance at the school site at least 80 percent of the instructional time.
	Title 5, CCR 11963, subsection (b): Definition of Classroom-Based Instruction	"School site" is defined by: <ul style="list-style-type: none"> • Facilities that are owned, rented, or leased by the charter school principally for classroom instruction; Facilities provided to the charter school by a school district pursuant to the "Proposition 39" requirements; or • Facilities provided to the charter school free-of-charge principally for classroom instruction pursuant to a written agreement
	47634.2	Requires the State Board of Education to adopt regulations governing funding determinations for nonclassroom-based instruction. ¹⁰
	47612.5 (c) (1)	Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.
	46300	In computing ADA pupils engaged in required educational activities shall be included.
	Title 5, CCR 11963.4(a)(3)	Nonclassroom-based independent study in charter schools must meet pupil-teacher ratio requirements of equal to or lower than 25-1, or equivalent to or lower than the pupil-teacher ratio for all other educational programs operated by the largest unified school district, as measured by ADA in the county or counties in which the charter school operates.
	47605	Teachers in charter schools shall hold an equivalent certification to that which a teacher in other public schools would be required to hold.

¹⁰ SB 740, Chapter 892, Statutes of 2001. http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0701-0750/sb_740_bill_20011014_chaptered.pdf

A **classroom-based charter school** is funded based on average daily attendance (ADA). ADA apportionment rules for classroom-based charter schools require that 80% of instructional time offered by the charter school must take place at the school site.

In contrast, a **virtual or online charter school**, referred to, as “nonclassroom-based” is a school in which at least 80 percent of teaching and student interaction occurs via the Internet.¹¹ To receive funding, a virtual charter school must spend 80% or more of its total revenue on instruction and must spend 40% or more of public revenues on certificated staff salaries and benefits. (See California Education Code Sections **47634.2** and **47612.5** and **SB 740 (O’Connell), Chapter 892, Statutes of 2001.**¹²) California law contains a long list provisions outlining the legal requirements, which must be met in creation of all State charter schools in California. These are described in Appendix C, Laws governing petitions for creation of Charter Schools.

Students at virtual charter schools are treated by California law as independent-study students, a designation that is accompanied by a series of strict regulations such as completed written independent study agreements (see Appendix B), and pupil-teacher ratio requirements which must be met. It should be noted here that **Title 5, Section 11963.5** of the California Code of Regulations (CCR) provides that nonclassroom-based virtual or on-line charter schools may receive approval for a funding determination with no maximum pupil-teacher ratio if a series of strict requirements are met .

According to the California Department of Education, Charter Schools CalE Facts,¹³ of the individual active charter schools, approximately 77% are classroom- or site-based, and the remainder are either partially or exclusively nonclassroom-based (independent study). According to the Charter Schools Division of the California Department of Education, of the current 983 active charter schools, 178 offer nonclassroom-based independent study and 48 offer a combination of independent study and classroom-based instruction

¹¹ California Code of Regulations, Title 5, Section 11963.5.

¹² SB 740, Chapter 892, Statutes of 2001. http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0701-0750/sb_740_bill_20011014_chaptered.pdf

¹³ California Department of Education Charter School CalEdFacts, see <http://www.cde.ca.gov/sp/cs/re/cefcharterschools.asp>

III. Some Current Digital Education Programs in California

The following programs are examples of the range and scope of digital education programs in California. Appendix C lists some prior digital education programs.

**California Virtual Campus: Education Code Section 78910.10(b)(1)(A)
(FY 2011-12 Funding Level: \$404,807.75)**

The California Virtual Campus (CVC) was originally established in July 1999 to support development and delivery of online learning in California Community Colleges. Though the CVC was initially established as a capacity-building tool for local community colleges, the CVC has evolved to build scalable system-wide resources and services.

In 2008, a measure by SB 1437 (Padilla), Chapter 718, established the California Virtual Campus in law and authorized its mission to include K-20 institutions.

According to the State Department of Education website, students are able to obtain degrees from many of the participating CVC campuses. CVC itself confers no degrees or certificates and, instead, serves as a “gateway to technology-mediated distance learning courses and programs from California institutions.”¹⁴

California Education Code Section **78910.10** authorizes the Board of Governors of the California Community Colleges, based on available funding, to partner with other educational entities and community-based organizations to enable joint efforts to use technology resources and Internet connectivity in the teaching and learning environment. (**Important note:** According to the California Community Colleges Chancellor’s Office, due to funding cuts in the California State Budget, this provision of law is not currently operable or funded.)

The California Virtual Campus originally consisted of five individual grants from the California Community Colleges Chancellor’s Office. Beginning in mid 2005, CVC funding was consolidated into a single grant, now administered by Butte College. The California Virtual Campus is a component of the Telecommunications and Technology Infrastructure Program (TTIP) funded through Proposition 98 dollars. TTIP is not part of the State’s Categorical Flexibility Program. As of the current proposed budget for 2012-13, the TTIP funding totals \$15,290,000. The Chancellor’s Office reports that the CVC portion of TTIP includes a catalogue of distance education courses provided by higher education institutions.¹⁵

¹⁴ California Virtual Campus, Frequently Asked Questions, <http://www.cvc.edu/help/faq/>

¹⁵ Discussion 3/15/12 with Technology, Research and Information Systems Division, Office of the Chancellor, California Community Colleges

**California Technology Assistance Project (CTAP)
(FY 2011-12 Funding Level: \$11,499,000)¹⁶**

The California Technology Assistance Project (CTAP) is a statewide technology assistance program funded by the California Department of Education (using Proposition 98 funds) intended to promote effective use of technology in teaching, learning and school administration.¹⁷ There are eleven CTAP regions in California. CTAP funds are allocated based on population levels within each county.

The enabling legislation, AB 1761 (Sweeney) Chapter 801, Statutes of 1998, established the California Technology Assistance Project comprised of regional consortia providing a statewide regional network of technical assistance as a support system to schools and districts in implementation of education technology across California (reference California Education Code **51871.**) Prior CTAP evaluations have shown CTAP has leveraged significant levels of Federal, private and foundation funding as well as in-kind donations from industry.

According to the California Legislative Analyst's office, as of February 2009, the statewide CTAP funding in the California State Budget has been incorporated as a categorical program subject to "flexibility" requirements, which give county offices of education flexibility in determining county-level priorities for use of categorical funds. This change has, in some counties, resulted in deep cuts in staffing and program resources across the eleven CTAP regions.

In its 2009-10 report, California Spending Plan, 2009-10, the Legislative Analyst reports:

"In addition to changes in spending, the February and July 2009 budget packages also made significant policy changes to loosen restrictions and give school districts more discretion in making spending decisions. The Analyst added: "...The State eliminated spending restrictions for a number of categorical programs, postponed the requirements that school districts purchase new textbooks, and allowed school districts to reduce the length of the school year."¹⁸

According to currently available information, CTAP spending in some regions has remained consistent, while in other regions, CTAP funding has been greatly reduced or eliminated, thereby creating an inequity of service within some regions of the state, especially in rural areas. This has occurred at a time when the need for these services has increased. As an

¹⁶ The funding amount reflects an approximately 19.8% fund reduction based on California State Budget Control Section 12.42. This control section reduced most FY 2011-12 Proposition 98 Categorical Flexibility Programs.

¹⁷ California Technology Assistance Project website: See <http://www.myctap.org/index.php/about-ctap>

¹⁸ California Legislative Analyst's 2009-10 California Spending Plan. See http://www.lao.ca.gov/2009/spend_plan/spending_plan_09-10.pdf

example, CTAP Region IV is no longer in operation. CTAP Region 1 is expected to close July 2012.¹⁹

SB 1637 (Torlakson), Chapter 530, Statutes of 2008, reauthorized the California Technology Assistance Project and extended its authority until January 2014.

As CTAP has, in recent years, been a major source of professional development support and funding in California, an assessment is recommended on the impact of fund reductions in CTAP regions on the region-by-region capacity for professional development resources across the State.

California Learning Resources Network (CLRN): Education Code 51872(b)

Note: CLRN is funded under Statewide Educational Technology Services

The California Learning Resources Network (CLRN) provides educators with “one-stop shop” for information to guide educators in the selection of supplemental electronic learning resources (software, video and Internet resources) aligned to State Board of Education common core standards and original academic content standards in six subject areas

CLRN also maintains an interactive web site providing information about electronic learning resources through an online searchable database.

In December 1999, the California Department of Education awarded the Statewide Education Technology Services (SETS) Learning Resource contract to the Stanislaus County Office of Education. Stanislaus County Office of Education currently serves as LEA for the California Learning Resource Network.

On May 1, 2012 CLRN completed a survey on online education in the state, using a total sample size of 1,634 districts and direct funded charter schools, 29% of those surveyed, or 483 districts and direct funded charter schools, have responded.

According to Brian Bridges, CLRN Director, preliminary tallied survey findings **based on the 29% survey response** are as follows:

- 45% of regular school districts offer online instruction, which is virtually the same percentage as charter schools “in spite of the difference in regulatory oversight and curriculum flexibility.”
- 32% of schools and districts are currently in the planning stages for implementing online instruction.
- More than 106,000 California K-12 students (from among the survey sample) are

¹⁹ Information from John Cradler, Computer Using Educators Advocacy Co-Chair, Memorandum to CCST dated 4/14/2012

learning online.

- 19,800 students are learning online in full time virtual charter schools or virtual traditional schools.
- 82,200 students participate in “blended learning” environments.
- E-Learning breakdowns by grade level:
 - 83% of e-learning occurs in grades 9 -12
 - 48% of e-learning occurs in grades 6 – 8
 - 27% of e-learning occurs in K-5

(Note: According to CLRN, “a surprising number of districts are creating their own programs – many of which use free content provided by the Khan Academy, sponsored by the Gates Foundation).”²⁰

Statewide Educational Technology Services (FY 2011 – 2012 Funding Level \$2,574,000)

Note: This program is included under categorical flexibility in accordance with the Budget Act of 2010, Chapter 712, Statutes of 2010.)

California Education Code Section **51872** enacted by SB 1254 (Soto), Chapter 482, Statutes of 2004, made provision for Statewide Educational Services (SETS) in the form of contracts awarded by the State Department of Education to meet local needs that “are better met on a statewide basis,” including: a) review of electronic learning resources, professional development for school administrators on integrating technology into all areas of educational programs; and b) requiring the State Superintendent to report annually in writing to the State Board of Education on the program’s costs and impact.

According to the State Department of Education website, SETS includes the following four SETS projects:²¹

1. Educator Technology Professional Development and Technology Planning services provided through “EdTechProfile,” a self-assessment tool allowing county, district and school administrators to gather information on their staff’s technology proficiency for use in supporting teaching and learning; and providing a system for managing and evaluating the impact of a technology professional development programs at the county, district or school level.
2. The California Learning Resource Network (described above) provides a one-stop shop for information sources for educators to identify supplemental electronic learning resources that meet local instructional needs and include implementation of California curriculum frameworks and standards.

²⁰ <http://brianbridges.org/>

²¹ Statewide Educational Technology Services (SETS) Summary, California Department of Education website: <http://www.cde.ca.gov/ls/et/rs/sets.asp>

3. The Professional Development for District and Site Administrators (TICAL) assists administrators to identify effective technology resources to meet day-to-day needs of their employment, whether they are site level principals or district superintendents.
4. Technical Support for Education in Schools (TechSETS) provides technical professionals in California schools with improved access to training, support and other resources (see www.techsets.org).

Professional development resources have also been available to K-12 teachers and administrators in recent years through CTAP and the K-12 High Speed Network, offering high-speed networks with capacity to deliver online resources to support teaching and learning.

According to a June 2009 report by REL West/West Ed. titled "Policy Impediments to Expanding Access for K-12 students to Online Courses in California:"

"There is no state requirement that online teachers receive any training in teaching online, even though the skills needed to teach online are not exactly the same as the skills needed to be a successful teacher in the classroom."²²

Another professional development resource issue is raised in an October 2011 report by the Center for the Future of Teaching and Learning report, *High Hopes-Few Opportunities: Strengthening Science Education in California*. The report notes: "California's elementary schools have very little infrastructure support needed to provide and strengthen science education. Among its findings, the report notes: "More than 85% of elementary school teachers have not received any science-related professional development in the last 3 years."²³

The K-12 High Speed Network (K12HSN)²⁴ (FY 2011-2012 Funding Level \$8,340,000)

(See K-12 High Speed Network website: <http://www.K12hsn.org/about/> and California Education Code Section **11800(a)(1)**). The K-12 High Speed Network (K12HSN) was established for the purpose of "enriching pupil educational experiences and improving pupil academic performance by providing high-speed, high-bandwidth Internet connectivity to the public school system as defined by Section 6 of Article IX of the California Constitution."

The K-12 High Speed Network supports the installation of high speed internet to county offices, districts and schools by funding local aggregation points in each county. These local aggregation

²² Policy impediments to expanding access to online courses, June 2009, REL West/WestEd., page 2. (See website: http://relwest.wested.org/system/memo_questions/21/attachments/original/Policy_20impediments_20to_20online_20learning_20June_202009_1_.pdf)

²³ "High Hopes-Few Opportunities: Strengthening Science Education in California," Center for the Future of Teaching and Learning, October 2011, page x.

²⁴ The K-12 High Speed Network, summarized in the following websites: see <http://www.K12hsn.org/about/> and <http://www.k12hsn.org/programs/>

points are called “node sites,” and they bring the connection close enough so that the local school district can cost-effectively connect to the node site.

The K12HSN is a state program funded by the California Department of Education working in conjunction with several other state initiatives to support technology for improved teaching and learning. K-12HSN administers K-12 participation in the California Research and Education Network (CaREN).²⁵ CaREN is a high-speed, high bandwidth statewide network of 14 Hub Sites and circuits linking to 73 K-12 Node Sites, 11 UC Node Sites, 24 CSU Node Sites, 111 community college Node sites as well as 6 Node Sites serving the three participating private universities. The Corporation for Education Network Initiatives (CENIC) annually pursues E-Rate discount funding for its connections to CaREN. E-Rate provides 20-90% discounts on approved telecommunications, Internet access and internal connection costs to eligible K-12 public schools and libraries.

According to K12HSN data, all 58 of the State’s County Offices of Education are connected to K12HSN; 844 of the total 955 school districts (86%) participate and 82% of individual schools (7794 of 9477 schools).

**University of California College Prep (UCCP)
(FY 2011-2012 Funding Level \$2,243,468)**

The University of California College Prep program (UCCP) is a state-led initiative operated by the University of California Santa Cruz and funded through the state academic preparation program. UCCP began in response to the lack of availability of Advanced Placement courses in many high schools across the state and currently offers a variety of high school courses and instruction, as well as open educational resources for California schools. In 2010-2011, UCCP provided 120 educational nonprofit partners with online curriculum with instruction and course credit. UCCP is working with the K-12 High Speed Network to distribute its courses at no cost to any California school through the Calxy website as of fall 2010, allowing small and rural schools access to online learning. Funding for 2011-12 was reduced by more than 21% from 2010-11 levels.

**The Education Technology K-12 Voucher Program
(Remaining Funds unredeemed as of April 2012: \$73,501,538)**

This program resulted from the Settlement Agreement between California consumers and Microsoft Corporation in *Microsoft Cases, J.C.C.P. No. 4106, Superior Court of California, County of San Francisco, Department 305*.

A separate fund (termed “cy pres fund”) was established with 66 2/3 percent of the difference between the Face Value of the Settlement (\$1.1 billion) and the amount of issued Consumer

²⁵ CaREN, a K-20 research and education network infrastructure is maintained by the Corporation for Education Network Initiatives (CENIC) on behalf of participating public and private educational institutions. See CaREN website: http://www.k12hsn.org/files/publications/Cutsheet/K12HSN_Benefits.pdf

Vouchers. The “cy pres” amount is in the form of 50 percent General Purpose Vouchers and 50 percent Specific Category Software Vouchers. To date there have been two “cy pres” funding releases, in the amounts of \$250 million (on September 16, 2006) and \$25.5 million (on November 15, 2010) respectively. According to the California Department of Education, the balance of the 2012 “cy pres” distribution is not yet known.

According to the California Department of Education website, “The vouchers made available are to be used to assist districts with implementing and supporting education technology that fosters effective teaching and promotes student achievement in eligible schools that serve students in grades kindergarten through twelfth grade.” The California Department of Education website states: “The Districts have until September 25, 2013 to redeem these vouchers.”²⁶

Professional Development (PD) services and Information Technology (IT) Support Services are also eligible for funding under the Education Technology K-12 Voucher Program.

²⁶ Ed Tech K-12 Voucher Program (Microsoft Settlement): FAQs, California Department of Education, www.cde.ca.gov/ls/et/st/documents/etvfaq.doc

IV. Accountability and Digitally Enhanced Education

As noted above, most online instruction in California's K-12 schools is considered to be independent study. The California Department of Education Independent Study website contains a description of evaluation criteria for Independent Study in California.²⁷

“Although evaluation is not specified in either the Education Code or the California Code of Regulations, Title 5, an annual evaluation and review of independent study by the local board of education is advisable...Some districts use advisory committees consisting of teachers, students, parents and community members to assist in the design and evaluation of independent study.”

However, California Education Code Section 58500 does describe criteria for design and evaluation of alternative schools (in which independent study is either one of, or the only instructional strategy). According to the California Department of Education, these statutory evaluation requirements for alternative schools are unfunded and, as a result, the SPI does not penalize noncompliance, although in the instances of independent study programs seeking a policy waiver, the absence of compliance with evaluation design rules would impact negatively on the waiver request.

The January 2011 report, The Rise of K-12 Blended Learning,²⁸ notes: “As policymakers open the gates for innovation by creating zones with increased autonomy, they must simultaneously hold providers accountable for results so the adoption of online learning leads to radically better outcomes for students.”

The International Association for K-12 Online Learning (iNACOL), in its February 2012 report, “Fast Facts About Online Learning,” reports that it has identified the following as top federal policy issues related to accountability and assessment for online learning:

- Enable accountability from the student-level up through individual student growth models that support student-centered, competency-based learning.
- Create new systems of assessments that support student-centered, personalized, competency-based learning. This includes formative, embedded, performance based, and validating assessments.
- Support a research agenda for high quality online education.
- Support human capital development through redesigned 21st century pre-service/in-service training for online and blended learning.
- Ensure reliable and ubiquitous student access to the Internet.

²⁷ See Chapter 13, Formats for Evaluation of Independent Study available at the following web link: <http://www.cde.ca.gov/sp/eo/is/documents/chapter13.pdf>

²⁸ Horn, Michael B., and Staker, Heather, The Rise of K-12 Blended Learning, Innosight Institute, January 2011. <http://www.innosightinstitute.org/innosight/wp-content/uploads/2011/01/The-Rise-of-K-12-Blended-Learning.pdf>

Current California policy on independent study does not align with these priorities.²⁹

V. Statutory Barriers to Expansion of Digital Education in California and Recommendations

The primary limits to online learning in California stem from the California Education Code provisions governing independent study, funding average daily attendance and residency requirements. The Distance Learning Policy (EC 51865), which articulates an overall philosophy and approach of open access and digitally enhanced education, does not directly affect the regulation or operation of actual distance learning in the state. Instead, policies designed for brick-and-mortar charter schools and conventional independent study programs are applied to distance learning. There have been attempts to address this discrepancy – notably through California Education Code 78910 (Online Learning) and CCR 11963 (nonclassroom-based instruction), but these are essentially patches with a limited scope.

Following are recommendations for changes in California law designed to facilitate the growth of digitally enhanced education in California. These recommendations are presented in order of importance, ease of implementation and timeliness considering the state’s current educational priorities and capacities. While not intending to be strictly prescriptive, these recommendations include recommendations for specific changes to law that are deemed to result in a positive step forward for California in the capacity to offer online and virtual education to K-12 students.

²⁹ See Volume 1, Section 2, Quality Control, “Digitally Enhanced Education in California” (CCST)

VI. Recommendations

Near-term

- Develop a state policy statement for digitally enhanced education that emphasizes that the goal is not simply one of laying technology over existing brick and mortar education, but rather an evolution of a comprehensive policy framework effectively integrating both traditional and digital education models in a manner that meets education and learning needs of students in the 21st century.
- Enact a clear policy in state law governing online and distance education in the State that removes overlapping and confusing policies governing distance learning, online and “blended learning.”
- Enact a model policy framework for California that provides a new set of regulations more appropriate for the 21st century including, but not limited to, removing current limitations to access of distance and online learning on a basis that is unrelated to the learning needs of students and the current educational disparities that exist across the state. Examples of these rules include geographic restrictions, “line of sight” requirements between a pupil and teacher, and funding restrictions that do not account for digital and online methods of instructional delivery.
- Remove geographic restrictions on delivery of authorized distance learning resources to California schools to enable and enhance the statutory goals of California’s Distance Learning Policy as contained in California Education Code Section 51865 including, but not limited to, educational equity, instructional quality, diversity among educational institutions and efficiency and accountability.
- Create ADA apportionment funding models in California that allow per-pupil funds to follow students for the purposes of instruction received, regardless of that instruction being delivered online from a virtual location or at a brick and mortar school site.

Mid-term

- Assess the need to eliminate the statutory cap governing the number of California charter schools authorized to be established in the State, as contained in California Education Code Section 47602.
- Revise the 25-1 pupil/teacher ratio for online and virtual charter schools and online independent study allowing student/teacher ratios that are appropriate in a virtual and online learning environment.
- Revise evaluation measures for online and virtual learning to be linked to individual mastery based on innovative pre- and post-assessments in addition to instructional “product” or course completion (i.e., a competency-based model making use of digital instructional tools that is aligned with Common Core Standards). (For California Common Core Standards, see <http://www.cde.ca.gov/ci/cc/> for Smarter Balanced Assessment Consortium, see <http://www.cde.ca.gov/ta/tg/sa/smarterbalanced.asp>)

- Revise California law to accommodate the need to allow adopted instructional materials (digital or otherwise) to be amended in a manner reflective of current scientific, technical and societal developments as appropriate, rather than being limited solely to current textbook adoption timelines.
- Restructure or revise the State's K-12 funding system that results in placing both charter schools and school districts on the same funding model, i.e. through adoption of simple and transparent base general-purpose funds and other methods.

Appendix A. Statutory or Regulatory Definitions of Key Terms in Online Education

California state law does not draw formal distinctions among the categories of distance learning, online learning and online instruction. According to a November 2009 report (updated February 8, 2010) by the Center for Education Policy and Law, University of San Diego,³⁰ “California law creates an overlap between the definitions of distance learning, online learning and online instruction.”

Distance Learning

California Education Code Section **51865 (a)**³¹: (Note: This Education Code section was added to State law in 1991.³²)

Defines “distance learning” as instruction in which the pupil and instructor are in different locations and interact through the use of computer and communications technology. Distance learning may include video or audio instruction in which the primary mode of communication between pupil and instructor is instructional television, video, telecourses, or any other instruction that relies on computer or communications technology.”

This Code Section, known as the “**California Distance Learning Policy**” has not been modified since it was enacted in 1991. It lays out goals for distance learning. These goals include educational equity, quality in education, diversity among educational institutions, and efficiency and accountability.

Education Code Section **51865, Subsection (c)** provides that distance learning should be developed to serve certain “high priority education needs,”³³ such as work force skills development; expansion of adult education classes in English as a Second Language; enhancing curriculum to meet the needs of high-risk pupils; expansion of course offerings in foreign languages; providing science and math to rural and inner-city schools unable to provide college preparatory courses; and establishment of staff development courses.

The “California Distance Learning Policy” constitutes an enabling vision of deployment of distance education not restricted by geography, seat time or “line of sight” rules between the teacher and the learner.

³⁰ “A Summary of Existing and Pending Law Involving Online Learning in California Public Schools,” November 20, 2009 (Revised 2/8/10), Center for Education Policy and Law, University of San Diego, page 3.

³¹ Education Code Section 51865 (a) See <http://leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=71741511960+0+0+0&WAIAction=retrieve>

³² SB 918 (Dills), Chapter 1011, Statutes of 1991, established the State’s current policy and definition regarding distance learning in California Law.

³³ California Education Code Section 51865 (c), Sections (1) – (6).

Online Learning

California Education Code Section **78910.10 (b) (1)**: (Note: This Education Code Section was added in 2008 by SB 1437 (Padilla), Chapter 718, Statutes of 2008, and is unchanged since that time. It should be noted that this definition applies to community colleges, although it is used to apply to K-12 online learning as well.)³⁴

“An online courses of study” means any of the following:

- Online teaching, learning, and research resources, including but not necessarily limited to, books, course materials, video materials, interactive lessons, tests, or software, the copyrights of which have expired, or have been released with an intellectual property license that permits their free use or repurposing by others without the permission of the original authors or creators of the leaning materials or resources.
- Professional development opportunities for formal and informal educators who desire to use the resources in subparagraph (A).
- Online instruction, defined as technology enabled online real time (synchronous) interaction between the instructor and the student, near time (asynchronous) interaction between the instructor and the student, or any combination thereof.³⁵

Independent Study

Although the term “independent study” is not defined in State law, Title 5, Section 11700, subsection (c) of the California Code of Regulations (CCR) defines Independent Study as **“an alternative to classroom instruction consistent with the district’s course of study.”**

Subsection (d) states that independent study is an optional educational alternative in which no pupil may be required to participate.

Independent Study is an instructional strategy that enables students to work independently according to a written agreement and under the general supervision of a credentialed teacher.

California Education Code Sections 51745, et seq. provide that the apportionment credit for independent study is made on the basis of the time value of a student’s product (i.e. study or academic work), assessed by a competent, certificated employee of the district.³⁶

Nonclassroom-based Instruction

Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work-study, and distance and computer-based education.

³⁴ SB 1437, Chapter 718, Statutes of 2008 established the current definition of online instruction. (Defines “online instruction” to mean: technology enabled online real time (synchronous) interaction between the instructor and the student, near time (asynchronous) interaction between the instructor and the student, or any combination thereof.)

³⁵ Ibid.

³⁶ Stirling, Janet, School Fiscal Services, State Department of Education, Memo dated April 24, 2001.
<http://www.cde.ca.gov/fg/sf/aa/onlineclasses.asp>

Funding for nonclassroom-based instruction in a charter school is subject to California Education Code Section **47634.2**. This section states:

“Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction, as defined by paragraph (2) of subdivision (d) of Section 46712. including funding provided on the basis of average daily attendance pursuant to Sections 47613.1, 47633, 47634 and 47664, shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for determination of funding for nonclassroom-based instruction; at a minimum the regulation shall specify that nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. “

The above section also requires the State Board to consider other factors including the amount of the charter school’s total budget expended on certificated employee salaries and benefits and on school sites, as defined in paragraph (3) of subdivision (d) of Section 46712.5, and the teacher to pupil ratio in the school.³⁷

Technology-based Materials

California Education Code Section **60010 (m) (1)**, added in 2009 by AB 1398 (Blumenfield, Chapter 293, defines technology based materials to mean basic or supplemental instructional materials designed for use by pupils and teachers as learning resources that require availability of electronic equipment in order to be used as a learning resource. Technology-based materials include, but are not limited to, software programs, videodisks, compact discs, optical disks, video and audiotapes, lesson plans and databases.

Blended (or hybrid) Learning

There is no statutory definition in the California Education Code defining blended or hybrid learning. According to an August 2011 report by the California County Superintendents Educational Services Association titled *California eLearning Framework*:³⁸

“Blended learning combines online learning with face-to-face instruction. It is becoming increasingly important as many school districts are adopting online learning for reasons other than the distance component – mostly because of the ability to use online instruction and resources to enhance learning opportunities and outcomes, and to personalize learning. In a single district, students may access online resources most often while sitting in a classroom, often with a teacher or paraprofessional either leading or assisting with instruction.”

³⁷ Section California Education Code Section 47634.2 regarding nonclassroom-based instruction funding in charter schools. (<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAIIdocID=7530474201+0+0+0&WAIAction=retrieve>)

³⁸ California eLearning Framework, California County Superintendents Educational Services Association, August 2011, p. 4. (See <http://chat.scoe.net/downloads/CA%20eLearning%20Framework.pdf>)

Appendix B. Listing Of California's Requirements For Independent Study Agreements³⁹

Independent Study Agreements must include the following: (Note: See Sample of a legally compliant Independent Study Written Agreement on California Department of Education website at <http://www.cde.ca.gov/sp/sp/eo/is/> [Revised 21-Dec-2011]).

1. General student data including the name, address, grade level, school of enrollment, program placement, and birth date of student. EC 51748, 51747.3(b), and 46300.1
2. The number of missed assignments (not consecutive missed assignments) that will require an evaluation of whether I.S. is an appropriate strategy for the student. EC 51747(c)(4)
3. A statement of the maximum length of time by grade level and type of program that may elapse between the date the assignment is made and the date the assignment is due. EC 51747(c)(4)
4. The inclusion of a statement that I.S. is an optional educational alternative in which no student is required to participate. EC 51747(c)(7), 5 CCR 11700(d)(2)(A)
5. A statement that instruction may be provided for a Section 48915 (expulsion) or 48917 (suspended expulsion) student through Independent Study only if the student has the continuous choice of classroom instruction. EC 51747(c)(7), 5 CCR 11700(d)(2)(B)
6. A statement of the number of course credits, or for elementary grades, other measures of academic accomplishment appropriate to the I.S. Agreement, to be attempted during the duration of the Agreement. EC 51747(c)(6)
7. The [learning] objectives for the course(s) and assignments attempted under the Agreement. EC 51747(c)(2)
8. The methods of study (i.e., the student activities selected by the supervising teacher that the student will complete in order to meet the course [learning] objectives. EC 51747(c)(2)
9. The specific resources, including instructional materials and personnel, which will be made available to the student. EC 51746 and 51747(c)(3)
10. The methods used to evaluate student work toward the [learning] objective(s). EC 51747(c)(2)
11. The manner in which the student will present his work product to the supervising teacher. EC 51747(c)(1)
12. The time when the student will report to the teacher. EC 51747(c)(1)
13. The frequency of the student's reporting to the teacher. EC 51747(c)(1)
14. The place/location/manner of the student's reporting to the teacher. EC 51747(c)(1)
15. The beginning and ending dates of the Agreement. EC 51747(c)(5)
16. Duration of an Agreement: (maximum one semester or one-half year in a school on a year-round calendar) e.g., month, and semester. EC 51747(c)(5)

³⁹ Source: California Department of Education, February 2012.

17. The Agreement is signed and dated prior to commencement of Independent Study by:
- a. Student
 - b. Parent, legal guardian, or caregiver for a minor (i.e., a student who is less than 18 years old, not legally emancipated)
 - c. Certificated supervising teacher
 - d. Other assisting person(s) directly responsible for providing assistance to the student. EC 51747(c)(8) and 46300.7.

For a complete listing of California law and codes of regulations governing independent study, see "Appendix A" available on the California Department of Education website:

<http://www.cde.ca.gov/sp/eo/is/documents/appendixa.pdf>

Specific Statutory Time Limits on Duration of Independent Study Agreements

(Note: Applies to both charter schools and school districts.)

California Education Code Section **51747(c) (5)** **limits the duration of an independent study agreement to either a maximum of one semester, or in the case of year-round schools, a maximum of one-half year.** Specifically, this Code Section states:

"The duration of the independent study agreement, including the beginning and ending dates for the pupil's participation in independent study under the agreement. No independent study agreement shall be valid for a period longer than one semester, or one-half year for a school on a year-round calendar." These agreements are renewable.

Appendix C. Charter Schools

1. Laws Governing Petitions for Creation of Charter Schools

California law contains a long list of provisions outlining the legal requirements, which must be met in the creation of all State charter schools in California.

As an example, Ed. Code Section **47605 (b)** states:

“The Governing Board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings specific to the particular petition, setting forth specific facts to support one or more of the following findings:

1. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3. The petition does not contain the number of signatures required by subdivision (a).
4. The petition does not contain an affirmation of each of the conditions described in (d).

California Education Code Section **47605 (b) (5)** also authorizes a petition to be denied if it does not contain a comprehensive description of the educational program of the school, identify who is to be educated at the charter school and what it means to be an “educated person” in the 21st century; including specifying the goals identified in the program will include objectives of enabling pupils to become self-motivated, competent and lifelong learners, and including a description of measurable pupil outcomes. This section also defines “pupil outcomes” to mean the extent to which all pupils of the school demonstrate that they have attained skills, knowledge and attitudes specified in the school’s educational program and the method by which pupil progress in meeting those outcomes is to be measured.

In addition, California Education Code Section **47605.6 (k)(1)** states:

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.⁴⁰

⁴⁰ California Education Code Section 47605.6 (k) (1).

2. Funding determinations for non-classroom based instruction in charter schools

The 2009 report by the University of San Diego, Center for Education Policy and Law, “A Summary of Existing and Pending Law Involving Online Learning in California Public Schools”⁴¹ notes: “However, if the bulk of learning (at a virtual charter school) takes place in a non-classroom based setting, then the funding formula changes, since these charters are subject to the law governing independent study.”

In this regard, Title 5, CCR **11963.2** states that charter schools may receive funding on the basis of ADA for pupils engaged in nonclassroom-based instruction. This California Code of Regulations (CCR) Section (based on EC 47634.2) requires the State Board of Education to adopt regulations for these funding determinations that, at a minimum, specify the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. The determination for funding is given on a percentage basis and the Superintendent is required to implement the funding determination by reducing the charter school’s reported average daily attendance by the determination for funding percentage specified by the State Board.

3. Geographic Restrictions on Charter Schools

California Education Code Section **51747.3 (b)** restricts charter schools, as well as community schools and independent study, to claiming apportionments based on average daily attendance for those pupils who are residents of the county in which the apportionment claim is reported or who are residents of a county immediately adjacent to the county from which the apportionment was claimed. **Title 5 CCR 11963.5**, requires that a virtual charter school must recruit a student body with a similar ethnic and racial makeup to the counties served by the school.

Note: The above provision is part of a long list of strictly prescribed requirements contained in **Title 5 CCR 19963.5** which must be met in order for a virtual charter school to exceed a student-teacher ratio greater than the 25:1 ratio (as required in traditional classrooms). (Note: See student-teacher ratio requirements below. For full text of this Title 5 Section, see page 33

As noted by *SHORT-CIRCUITED: The Challenges Facing the Online Learning Revolution in California*, “If a virtual charter school wanted to focus on helping low-performing, low-income students, who happen to be minorities, the demographic requirement might impede it from

⁴¹ A Summary of Existing and Pending Law Involving Online Learning in California Public Schools, University of San Diego, November 20, 2009, Revised February 8,, 2010.

doing so if the populations of the counties were, for example, mostly middle-class white children.⁴²

4. Provisions For, and Circumstances of, Waiver of Geographic Requirements on Charter Schools

California Education Code Section 47605.1 (g) provides that the “jurisdictional limitations (on charter schools) do not apply to a charter school that provides instruction exclusively in partnership with any of the following:

- The federal Workforce Investment Act of 1998 (29 USC Sec. 2801 et seq.)
- Federally affiliated Youth Build Programs
- Federal Job Corps training or instruction pursuant to a memorandum of understanding with the federal providers
- The California Conservation Corps pursuant to Sections 14507.5 or 14406 of the Public Resources Code.
- The instruction provided to juvenile court active pupils for individuals placed in a residential facility.

California law also provides for a “Statewide Benefit Exemption” from geographic requirements on charter schools.

California Education Code Section **47605.8** grants the authority for State Board of Education approval for a charter school to operate in multiple sites across the State provided the State Board has “made a finding, based on substantial evidence, that the proposed charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school districts or only one county.

Section **47605.8 (c)** authorizes the State Board of Education to enter into an agreement with a third party, at the charter school’s expense, to oversee, monitor and report on the operation of the state charter schools.

5. Annual Minute Requirements for Instruction at Charter Schools

California Education Code Section **47612.5 (a) (1)** specifies minimum annual minute requirements for grade levels in charter schools as follows:

- 36,000 minutes per year in kindergarten
- 50,400 minutes in grades one through three
- 54,000 minutes in grades four through eight
- 64,800 minutes in grades nine through twelve

⁴² Izumi, Lance, J.D.; Murray, Vicki E., Ph.D., *SHORT CIRCUITED: The Challenges Facing the Online Learning Revolution in California*, Pacific Research Institute, December 2010, p. 77.

California Education Code Section **47612.5 (a) (1)** specifies that the above minimum annual minute requirements cannot be waived by either the State Board of Education or the Superintendent of Public Instruction.

However, in traditional schools, California Education Code Sections **46110-46180** establish minimum day requirements for all levels of public schooling. Although there are some exceptions, generally California law limits kindergarten to a minimum of 180 minutes and maximum of 240 minutes per day exclusive of recess (265 minutes per day in a multi-track year-round school).

For first through third grades is 230 minutes except in opportunity schools, classes or programs. For grades four through eight, minimum school day is 240 minutes, not counting lunch period and recesses. For junior and senior high schools, minimum school day is 240 minutes; however the minimum is 180 minutes per day for eleventh and twelfth graders also taking courses on a part-time basis for academic credit at a community college, the California State University or University of California.⁴³

6. Attendance Accounting for ADA Apportionment for nonclassroom Instruction in charter schools related to time value assessments.

Article 5.5. Education Code Section 51747.5(b) limits the amount of apportionment credit that may be claimed for nonclassroom-based independent study.

In traditional schools (as opposed to charters), teachers assess the time value of nonclassroom based independent study work to determine the completion of at least the “minimum day” defined in law.

However, according the California Department of Education, in its clarifying letter dated December 2004 (referenced below) the minimum day of attendance defined in law for the grade level of the student does not apply to charter schools.⁴⁴ According to the California Department of Education, “ nonclassroom-based independent study teachers, therefore, have no statutory standards on which to base their time value calculations.” Title 5, Section 11960 defines “attendance” for use in funding determinations for charter school ADA, as occurring when charter school pupils are engaged in educational activities required of them by charter schools for days when school is taught, along with the added requirement that charter school pupils cannot generate more than one day of instruction per calendar day.

7. Statutory Cap on the Maximum Number of Charter Schools in the State

⁴³ See California Education Code 46146

⁴⁴ Reyes, Marta, Director, Charter Schools Division, and Hannan, Scott, Director, School Fiscal Services Division, California Department of Education, December 2004; <http://www.cde.ca.gov/sp/cs/as/csncbadaltr04.asp>

California Education Code Section **47602** places a cap on the number of charter schools that can be established in California.

Specifically, Section 47602 (a) states:

“In the 1998-99 school year, the maximum number of charter schools authorized to operate in this state shall be 250. In the 1999-2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 or Section 47605.8 and to each charter notice it receives pursuant to this part, based on the chronological order in which the notice is received...

According to the California Department of Education Charter Schools Division, there are currently 983 charter schools in California and 1,550 charter schools are authorized under the provisions of the statutory “cap”.

8. Laws Governing Pupil-teacher Ratio Requirements Charter Schools

Title 5, CCR Section 11704 requires the pupil-teacher ratio for charter schools cannot exceed 25:1 or the ratio for the unified school district with the greatest ADA in the county or counties with the greatest ADA in the county.

Strict (and often difficult to achieve) Criteria for Exemption from 25-1 Pupil/teacher Ratio Requirement for Nonclassroom-based Instruction. Charter schools offering nonclassroom-based instruction are authorized to elect to obtain a waiver of the 25:1 Pupil/Teacher ratio rule.

Specifically, Title 5, CCR **11963.5** provides that nonclassroom-based virtual or on-line charter schools may receive approval for a funding determination **with no maximum pupil-teacher ratio** if the charter school has and maintains an 8 or above Academic Performance Index (API) rank in either its statewide or similar schools ranking and has no less than a 6 in the other of these two rankings.

Funding determinations under these criteria are generally approved if the following conditions are met:

- The school has met overall and subgroup API growth targets.
- Instructional expenditures are at least 85 percent of the overall school budget.
- Computer-based instruction and assessment is provided for each student, including an on-line instructional management program.
- Teachers are provided with technology tools and print media, including staff development that provides for monitoring of student progress, as specified.

9. Strictly Prescribed Requirements for Obtaining Waiver of Pupil/teacher Ratio Rules for Independent Study in Charter Schools

(Note: This Title 5 Section pertains to charter schools only) Title 5 Section **11963.5** of the California Code of Regulations contains strict requirements on virtual or online charter schools which must be met in order to exceed a student-teacher ratio greater than the 25:1 pupil-teacher ratio required in traditional classrooms. These provisions include:

- Must maintain an 8 or above ranking on the state's Academic Performance Index in either its statewide or similar schools ranking and at least a ranking level of 6 in the other if these two rankings.
- Instructional expenditures must comprise at least 85 percent of the overall school budget and 25 percent of these expenditures must be spent on technology directly benefiting students and teachers and resulting in improved student achievement.
- Teachers must be provided with technology tools and print media, including a means of electronic communication enabling frequent student contact; and all students must have access to a computer, Internet, printer and monitor.
- All students must be provided an individualized learning plan based on initial student testing monitored by the teacher, either remotely or in person, to evaluate student progress.
- All students eligible for special education services must receive those services, and the charter school must recruit a population with ethnic and racial representation similar to that of the counties served by the program.

10. Charter School Facility Grant Program

This program is designed to provide assistance with facilities rent and lease costs for pupils in charter schools. Eligible schools can receive up to, but not more than \$750 per unit of ADA, as specified, to provide an amount not to exceed 75% of the annual facilities rent and lease costs for the charter school.

California Education Code Section **47614.5 (b)** states:

"In any fiscal year if the funds appropriated for purposes of this section by the Annual Budget Act, are insufficient to fund the approved amounts fully, the Superintendent shall apportion the available funds on a pro rata basis.

According to the California Legislative Analyst, the Charter School Facility Block Grant Program has not had to prorate funds in the past few years, despite growing demand, as it has been receiving significant augmentations resulting from AB 659 (Romero), Chapter 271, Statutes of 2008), which phased out the Year Round Schools Program over a five-year period and shifted funds to the Charter Schools Facility Block Grant Program.

The Department of Education’s website, Charter Schools CalEd Facts,⁴⁵ notes “approximately 370,000 students, or six percent of the public school student population” are enrolled in charter schools across the state.” According to the Charter School Development Center, It is not known how many of those charter schools serve students with either independent study or nonclassroom-based instruction.

⁴⁵ California Department of Education, “Charter Schools CalEdFacts,”
<http://www.cde.ca.gov/sp/cs/re/cefcharterschools.asp>

Appendix D. Prior Digital Education Programs

Online Classroom Pilot Program

Established in 2004 by AB 294 (Daucher), Chapter 429, Statutes of 2003, the goal of the Online Classroom Pilot Program was to monitor and evaluate student participation in online asynchronous interactive instructional programs. The purpose was to utilize technology to help address issues of equity of access such as providing courses in hard-to-staff subject areas, meeting the needs of diverse learners, and providing study access to advanced placement courses.⁴⁶ No funding was attached to this legislation. The California Department of Education (CDE) accepted 40 school sites from 11 districts for the Online Classroom Pilot Program.

AB 294 limited eligibility to high schools and required a school district to submit to the California Department of Education (CDE) information verifying the time a teacher and a pupil spend online and related activities in which a pupil is involved. The measure also required the Superintendent of Public Instruction to convene a working group to assess the online classroom pilot project and the fiscal costs of offering instruction through online classroom programs. AB 294 contained a sunset clause, ending the Online Classroom Pilot Program on January 1, 2007.⁴⁷

In a CDE status report on this program it was noted that 63 teachers and over 1,700 students participated in the program and made the following three recommendations:

- Expand the program to allow more interested districts to participate.
- Remove the limitation of allowing only 15% of the school's student population to enroll in online courses; and
- Allocate appropriate funding to relieve the cost burden associated with start-up costs for an online program that meets diverse student needs.

Despite these recommendations, the program was not extended past its sunset date of January 1, 2007. (Note: The required CDE report to the Legislature on the AB 294 program is no longer available on the CDE website.)

⁴⁶ California Department of Education: Report to the Legislature: Online Classroom Pilot Program available at <http://www.cde.ca.gov/ls/et/st/ab294legisrpt.asp>; California Department of Education, Online Classroom Pilot Program: AB 294, available at <http://www.cde.ca.gov/1s/et/st/ab294.asp>. (Note: Report currently not available online. Contact Department of Education.)

⁴⁷ AB 294 (Daucher), Chapter 429, Statutes of 2003. http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0251-0300/ab_294_bill_20030922_chaptered.pdf

According to a published article by the CDE containing anecdotal evidence of the result of this program,⁴⁸ the following is a brief sampling of school and district feedback:

- Clovis Unified (120 students participated and enrolled in 5 online classes:
 - The online environment allowed students the ability to make up a previously failed class, to take an extra class and to ameliorate scheduling conflicts.
- Los Angeles Unified School District:
 - 729 students enrolled in Los Angeles Virtual Academy (LAVA)
 - LAUSD values its participation in the State's Online Learning Pilot. The students and teachers in the program have made great progress as they interact in this new learning environment.

⁴⁸ Hinkson, Joyce, Ed.D., Consultant, California Department of Education, Article: "Spotlight on Technology: Online Classroom Pilot Program, AB 294," Fall 2005, [Data Bus](#).

Appendix E. Pending State Legislation Concerning Online Learning (Status as of May 1, 2012)

AB 644 (Blumenfield/Atkins) – As amended on March 8, 2012 of the 2012 Legislative Session, this bill provides, commencing with the 2014-15 school year, that school districts, county offices of education and charter schools offering online courses may claim attendance counting toward ADA on the basis of a pupil’s attendance in an online course or courses. (Status: Assembly Education Committee)

AB 1790 (Hagman) – Requires textbook publishers or manufacturers submitting instructional materials for adoption by the State Board of Education or the governing board of a school district to ensure the instructional material is available in both print and digital formats. **AB 1790** also requires the governing board of a school district to provide a pupil with that digital copy of an adopted instructional material if the pupil owns a compatible electronic reader device and requests a digital copy. (Status: Senate Education Committee)

SB 1154 (Walters) - Requires a publisher or manufacturer of K-12 instructional materials to provide, at no cost, an electronic copy of instructional materials that a district board purchases in a hardbound format, and authorizes the district board to electronically reproduce, for instructional use only, an electronic copy as provided by the publisher. In addition **SB 1154** authorizes a district board to enter into an agreement with a program improvement local education agency through which the board may share the electronically produced material. (Status: Senate Education Committee: 4/25/12: Passed as Amended and to Senate Second Reading)

SB 1328 (De Leon), relating to postsecondary education, requires a publisher of textbooks or other instructional material to provide submit information about the instructional material in a specified format to the Multimedia Educational Resource for Learning and Online Teaching (MERLOT) Program of the California State University. (Status: Senate Appropriations Committee)

SB 1052 (Steinberg), relating to postsecondary education, would, among its provisions, do the following: 1) Express legislative findings and declarations on the rising costs of college and university textbooks; 2) Add provisions to the Donahoe Higher Education Act to establish the California Open Resources Council; 3) Require the Council to determine a list of the 50 most widely taken lower division courses in the public postsecondary segments; and 4) Establish a competitive request-for-proposal process in which faculty, publishers and other interested parties would apply for funds to produce, in 2013, 50 high-quality, affordable, digital open source textbooks and related materials, meeting specified requirements. (Status: Senate Appropriations)

SB 1053 (Steinberg), relating to postsecondary education, would do the following: 1) Express legislative findings and declarations on the rising costs of college and university textbooks; 2) Add provisions to the Donahoe Higher Education Act establishing the California Digital Open

Source Library under the joint administration of the three higher education segments for purposes of housing open source instructional materials, to be made available through a Web-based medium, at little or no cost to students, faculty and staff. (Status: Senate Appropriations)

California Student Bill of Rights Initiative (#11-0062), approved for circulation as an initiative on the November 2012 state ballot – contains various provisions relating to K-12 online instruction, including, but not limited to, authorizing school districts, county offices of education and charter schools to claim average daily attendance (ADA) for students participating in online courses. (Status: Pending)
(See CCST document, “Digitally Enhanced Education in California, Volume 1” for further information.)

Appendix F. Professional Development, Instructional Materials and Electronic Communications Devices

1. Teacher Training and Professional Development

California law does not distinguish between California certification requirements for teachers in traditional “brick and mortar” classrooms from those teaching in online or virtual environments. Numerous educator preparation programs are offered by California institutions, including colleges, universities, school districts, county offices of education and other entities. Providers must be authorized and approved by the California Commission on Teacher Credentialing.

SB 2042 (Alpert), Chapter 548, Statutes of 1998, enacted various changes to the laws governing the qualifications and processes for obtaining a California teaching credential. Among those requirements, SB 2042 requires all multiple and single subject teacher preparation programs to include a Teaching Performance Assessment (TPA). According to the CalTPA website (tpa@ctc.ca.gov), “the TPA assures teacher candidates have the knowledge, skills, and abilities required of a beginning teacher in California public schools.” TPA is based on the California Standards for the Teaching Profession, as exemplified in the Teaching Performance Expectations (TPE’s) for beginning teachers. SB 2042 (Alpert) contained the current set of state-adopted teacher preparation programs standards.

In early 2012, the Commission on Teacher Credentialing created a “Teacher Preparation Advisory Panel (TAP) 2012, whose purpose will be to review the content, structure and requirements for California teacher preparation and licensure to ensure responsiveness to conditions of K-12 teaching and learning in California schools in the 21st Century. The Panel will provide recommendations to the Commission for its consideration in late 2012. The work of this panel will include a variety of teacher preparation topics, including the question of “whether online teaching should be incorporated into the set of knowledge, skills and abilities that preliminary general education teacher preparation programs should develop in candidates” (see Commission on Teacher Credentialing Item IH, December 2011⁴⁹). To date, although online education is an optional subject in some teaching preparation programs, most opportunities for California teachers to train in the use of distance learning technologies have been through professional development. Budget pressures have resulted in either defunding some professional development programs or shifting these programs to block grants, e.g. the Professional Development Block Grant. In February 2009, the Professional Development Block Grant totaling \$218 million, Professional Development Institutes for Math and English (\$45 million) and the Certificated Staff Mentoring Programs (\$9 million) were incorporated as programs subject to “categorical flexibility” requirements, meaning that counties and districts have control over allocation of funds among these programs and may cut funding if it is needed for other areas. Professional development programs now vulnerable to

⁴⁹ <http://www.ctc.ca.gov/commission/agendas/2011-12/2011-12-1H.pdf>

these cuts include the Certificated Staff Mentoring Program for Teachers (created by California Education Code Section **44560**), which encourages excellent and experienced teachers to teach in “staff priority schools” and assist teacher interns and beginning teachers during their induction and first years of teaching.

2. Instructional Materials

Digital resources fall under the general category of instructional materials in California.

California Education Code Section **60010(h)** defines “instructional materials” as all materials designed for use by pupils and their teachers as a learning resource, helping pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may include textbooks, technology-based materials, other educational materials, and tests.

California Education Code Section **60200** requires the State Board of Education to adopt at least five basic instructional materials for use in kindergarten and grades 1 -8 in the following six categories: 1) language arts; 2) mathematics; 3) Science; (4) Social Science; 5) Bilingual or bicultural subjects; and 6) any other subject, discipline or interdisciplinary areas the state board determines are necessary or desirable.

Section 60200 further specifies that for first five categories listed above (i.e. Categories 1 – 5), instructional materials may be submitted for adoption not less than two times every six years and in any of the categories listed in Category 6, not less than two times every eight years. According to the Office of the Legislative Analyst,⁵⁰ “the entire instructional materials adoption process was suspended for seven (7) years in February 2009 (until the 2015-16 school year) as part of provisions under K-12 Categorical Flexibility, per California Education Code Section **60200.7**.”

The LAO also notes that prior to the instructional materials adoption suspension, new science instructional materials were to be adopted in 2012. If the adoption returns and continues as planned, it would still take several years for frameworks to be developed and new materials to be approved. This pace is not conducive to incorporating any digital materials into the curriculum.

California law also contains restrictive limitations on timelines allowed to accommodate revisions by publishers of instructional materials. Specifically, **Title 5, CCR 9517(k)** states:

(k) Except as described in Sections 9528 and 9529, publishers shall not change or modify instructional materials after the date specified in the Schedule of Significant Events for delivery of instructional materials to IMRs, CREs and LRDCs. Instructional materials changed or modified after this delivery date shall be disqualified from consideration in the adoption unless the SBE approves the changes or modifications.

⁵⁰ Communication with Principal Fiscal and Policy Analyst, Edward Cabral, Office of Legislative Analyst, March 19, 2012

Title 5, CCR 9529 states:

9529 (a) – Upon written request by a publisher, the CDE may approve a new edition of an adopted instructional material to replace the original adopted edition, provided that:

- Changes contained in the new edition are so minimal that both the new edition and the original adopted edition may be used together in a classroom environment. No additional content may be included in the new edition.
- All changes comply with the social content standards set forth in the publication entitled *Standards for Evaluating Instructional Materials for Social Content, 2000*, as referenced in Section 9518 above. The price of the new edition is equal to, or lower than, the price of the original adopted edition.

3. Use of Electronic Communication Devices (ECD's) in Education

According to the Center for Education Policy and Law, University of San Diego, “The California Legislature has recognized that all pupils enrolled in the state public school system have the inalienable right to attend classes on school campuses that are safe, secure, and peaceful.”

“Acts of bullying, cyberbullying and sexting are distracting and potentially terrifying forms of mistreatment that disrupt both a student’s ability to learn and a school’s ability to education its students in a safe environment”⁵¹ (reference Education Code Sections 48901.5 and 48900(r)).

⁵¹ “Suggested School District Policy: Student Misuse of Electronic Communication Devices,” Center for Education Policy and Law, September 2011, University of San Diego.