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A Summary of Existing and Pending Law Involving Online Learning in California Public Schools

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A SUMMARY OF EXISTING AND PENDING LAW
INVOLVING ONLINE LEARNING
IN CALIFORNIA PUBLIC SCHOOLS

November 20, 2009

A. What is the relationship between distance learning, online learning, and online instruction?

Brief Answer

California law does not draw formal distinctions among distance learning, online learning, and online instruction. *Distance learning* is a broadly defined term that means technology-enabled learning in which the instructor and student are not at the same location. *Online learning* is learning from sources available on the Internet, including books, videos, lessons, and software. *Online instruction* is instruction between the instructor and the student via the Internet.

Distance learning is therefore broader than online learning and online instruction because it includes types of instruction other than those available through the Internet. Online learning is also broader than online instruction because it includes teaching through all Internet resources, while online instruction requires student-teacher communication.

Answer

Enacted in 1991, the California Distance Learning Policy defines distance learning as learning in which the instructor and student are in different locations and interact through the use of computer and communications technology. The policy states that 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.”¹ For instance, a teacher who delivers instruction from a county office of education to viewers via instructional television available to the public on a local cable channel, or streaming via the Internet on the instructional television network’s website, is engaging in distance learning.

Online learning is a component of the California Virtual Campus (CVC).² Enacted in 2008, the CVC is targeted at improving student academic performance in public schools through research-based innovations in teaching and learning. The statute sets forth definitions for online courses and online instruction. Online courses refer to online teaching, learning, research resources (e.g., books, course materials, video materials, interactive lessons), and professional development opportunities for educators. An example is students completing lessons provided on the Internet using a computer in a high school computer lab with a teacher supervising the classroom.

¹ Cal. Ed. Code § 51865.

² Cal. Ed. Code § 78910.10(b)(1)(A).

Online instruction is included in the definition of online courses and refers to online communication between the instructor and the student, either simultaneously or near-simultaneously.³ An example of simultaneous communication is all students in a class participating in a course discussion in a chat room. An example of near-simultaneous communication is a student emailing a teacher a question and the teacher responding at a later time.

In summary, California law creates an overlap between the definitions of distance learning, online learning, and online instruction. A distance learning provider may employ a broad range of technologies including video, audio, or any other instruction that relies on computer or communications technology, while online learning and online instruction take place over the Internet. Additionally, online learning encompasses learning through any number of resources on the Internet, while online instruction requires interaction between a student and instructor.

B. What law sets forth California’s general policy objectives for distance learning?

Brief Answer

The California Distance Learning Policy lists goals that should be achieved by distance learning programs and identifies certain high priority education needs.

Answer

The California Distance Learning Policy sets forth policy objectives for distance learning. Distance learning programs should achieve the following goals:

- Equity and quality in education.
- Diversity in the means of instruction to different learners.
- Efficiency and accountability.⁴

To the extent that funding is made available, a distance learning system should serve high priority education needs such as:

- Improved work force training for adults.
- Expanded adult education classes in English as a second language.
- Enhanced courses for high-risk pupils who would be likely to drop out of traditional classrooms.
- Expanded foreign language, math and science classes in rural and inner-city secondary schools.
- Expanded course offerings at community colleges.
- The establishment of staff development courses for public school teachers.⁵

³ Cal. Ed. Code § 78910.10(b)(2).

⁴ Cal. Ed. Code § 51865(b).

⁵ Cal. Ed. Code § 51865(c).

C. Which laws determine funding methods for online instruction?

Brief Answer

California public schools receive a large portion of their funding based on average daily attendance.⁶ Schools must meet instructional minute requirements to claim a day of attendance for funding purposes.⁷ Funding for online learning is based on the type of learning environment in which it is delivered. There are four types of learning environments: classroom-based, independent study,⁸ a combination of classroom-based and independent study, and online charter schools.⁹ Traditional public schools and charter schools are governed by different laws for the purposes of funding.

Answer

1. Classroom-Based

a. Traditional Public Schools

The California Education Code gives all school districts the authority to provide online classes.¹⁰ The method for computing average daily attendance for online classes is the same as for traditional classes.¹¹ Both are governed by California Education Code Section 46300(a), which provides:

In computing average daily attendance of a school district or county office of education, there shall be included the attendance of pupils while engaged in educational activities required of those pupils under the immediate supervision

⁶ Cal. Ed. Code § 14002.

⁷ Cal. Ed. Code §§ 46110-46180 set forth the minimum day requirements in minutes for all levels of public schooling. While there are numerous exceptions and conditions, the general thrust is to limit kindergarten to a minimum of 180 minutes and a maximum of 240 minutes per day exclusive of recess (265 minutes per day in a multitrack year-round school). The minimum school day for the first through third grades is 1230 minutes except in opportunities schools, classes, or programs. For grades four through eight, the minimum school day is 240 minutes, not counting lunch period and recesses. For junior and senior high schools, the minimum school day is 240 minutes. 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 junior college, the California State University, or the University of California. California limits the amount of time students can spend learning on the Internet. There also are minimum minutes specified for grade levels for charter schools. There are 36,000 minutes per year in kindergarten, 50,400 minutes in grades one through three, 54,000 minutes in grades four through eight, and 64,800 minutes in grades nine through twelve. These cannot be waived by either the State Board of Education or the Superintendent of Public Instruction. *See* Cal. Ed. Code § 47612.5(a)(1).

⁸ Cal. Ed. Code § 51745.

⁹ Cal. Ed. Code § 47612.5 (e); Cal. Admin. Code tit. 5, § 11963.5.

¹⁰ The State of Online Learning in California: A Look at Current K-12 Policies and Practices, September 2006, available at http://www.cudi.edu.mx/educacion/publicaciones/final_elearning.pdf, page 39.

¹¹ Letter dated 2001 from California Department of Education to county and district chief business officers clarifying attendance accounting for online courses. *See* Appendix D to The State of Online Learning in California: A Look at Current K-12 Policies and Practices, *supra* at 50-51. Letter also available at <http://www.cde.ca.gov/fg/sf/aa/onlineclasses.asp>.

and control of an employee of the district or county office who possesses a valid certification document, registered as required by law.

The code requires the online class to be an “educational activity” and the pupil to be “under the immediate supervision and control” of a certificated employee. In this setting, a daily period attendance form identical to that used in other class periods is the appropriate attendance accounting document.¹²

b. Charter Schools

Online learning that takes place in charter schools affects calculations of average daily attendance. For the purposes of funding a charter school, the law differentiates between classroom-based instruction and nonclassroom-based learning. Classroom-based instruction takes place when a certificated teacher is supervising the students and the students are completing required educational activities in a classroom at the school site.¹³ Nonclassroom-based instruction, which does not have to meet these requirements, includes distance and computer-based education.¹⁴ Because of concerns that nonclassroom-based charter schools should not be entitled to the same amount of state funding as classroom-based charter schools, the California Legislature reduced the state funding for these schools beginning in 2003-2004 and thereafter to not more than 70 percent of the amount a charter school would otherwise be entitled to, unless the State Board of Education decides that a greater or lesser amount is appropriate.¹⁵

For the purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school must take place at the school site.¹⁶ Online learning is included as long as it takes place in the classroom.¹⁷

¹² Letter from California Department of Education Clarifying Attendance Accounting for Online Courses, *supra*.

¹³ Cal. Ed. Code § 47612.5(e)(1); *see also* Cal. Admin. Code tit. 5, § 11963.

¹⁴ Cal. Ed. Code § 47612.5(d)(1).

¹⁵ Cal. Ed. Code § 47634.2(a)(4).

¹⁶ *Id.*; *see also* Cal. Admin. Code tit. 5, § 11963.

¹⁷ *See* Letter from California Department of Education Clarifying Attendance Accounting for Online Courses, *supra* (“The appropriate method of attendance accounting for such classes is dependent upon the instructional setting utilized, not on the curriculum itself.”).

c. Proposed Legislation

Assembly Bill No. 837 was introduced by Assemblymember Tom Torlakson (D-Antioch) in February 2009.¹⁸ The bill is currently in committee and is not expected to pass. Commencing in 2010-2011, AB 837 would provide that school districts and charter schools may claim one day of attendance toward average daily attendance when the following requirements are satisfied:¹⁹

- The pupil is in high school.
- The pupil is enrolled in one or more classroom-based courses and one or more online programs.
- The teacher of the online course is online and accessible on a daily basis, though the teacher's interaction with the student need not be simultaneous.

2. Independent Study

Online curriculum may also be presented through independent study.²⁰ These programs use independent study as an alternative instructional strategy to having students under the direct control of a certificated employee.²¹ Apportionment credit for independent study is made on the basis of the student's "product" (study or academic work), assessed by a competent, certificated employee of the district.²²

The California Department of Education recommends that districts opting to use the independent study strategy are advised to familiarize themselves with the independent study requirements.²³ The requirements are complex, and district compliance is rigorously audited pursuant to the California Education Code.²⁴

3. Part Classroom-Based Study and Part Independent Study

An individual student's online learning programs may consist of part classroom-based study and part independent study.²⁵ The law limits elementary and most secondary students to one day of apportionment credit in any calendar day.²⁶ District procedures must not allow classroom and independent study credits to exceed one day of apportionment credit per day of instruction.

¹⁸ AB No. 837, available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0801-0850/ab_837_bill_20090422_amended_asm_v97.pdf. AB 837 would add Section 46300.8 to the Education Code. The bill was last amended on April 22, 2009 and is currently active and under submission.

¹⁹ There are many more requirements. See the text of AB No. 837 for the complete list.

²⁰ Letter from California Department of Education Clarifying Attendance Accounting for Online Courses, *supra*. California Education Code Sections 51745-51749.3 govern independent study.

²¹ The State of Online Learning in California: A Look at Current K-12 Policies and Practices, *supra* at 39.

²² Letter from California Department of Education Clarifying Attendance Accounting for Online Courses, *supra*.

²³ *Id.*

²⁴ See Cal. Ed. Code § 41020.

²⁵ Letter from California Department of Education Clarifying Attendance Accounting for Online Courses, *supra*.

²⁶ Cal. Ed. Code § 46110 et seq.

In addition, if the student is scheduled for at least the minimum day (in most instances, 240 instructional minutes²⁷) of classroom-based study, then the attendance accounting for apportionment purposes can be determined solely from the classroom-based study, and any independent study need not be credited. The same reasoning applies if the predominant learning environment is independent study—the classroom-based study would not be credited.²⁸

4. Online Charter Schools

Under rules developed by the California Board of Education,²⁹ a virtual or online charter school is one in which at least 80 percent of teaching and student interaction occurs via the Internet.³⁰ Online charter schools may receive state funding of not more than 70 percent of the amount available to classroom-based charter schools if they adhere to the following, among other provisions:³¹

- Spend 80 percent or more of total revenues on instruction.
- Spend 40 percent or more of public revenues on certificated staff salaries and benefits.
- Have a pupil-teacher ratio equal or lower than 25:1 or equal to or lower than the pupil-teacher ratio in the largest school district in the county or counties in which the school operates.³²

In 2005, new regulations were created that allow online charter schools to avoid the pupil-teacher ratio provisions of the law if, among other requirements:

- 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 six in the other of these two rankings.”
- Instructional expenditures must comprise at least 85 percent of the overall school budget, and a substantial portion of these expenditures, at least 25 percent, must be spent on technology that directly benefits students and teachers and results in improved student achievement.
- Teachers must be provided with technology tools and print media, which includes a means of electronic communication for frequent student contact.
- All students must be provided with an individualized learning plan that is based on initial testing of the students and that is monitored either remotely or in person, by the teacher to evaluate student progress.
- All students must have access to a computer, Internet, printer, and monitor.

²⁷ Cal. Ed. Code §§ 46113, 46141.

²⁸ The State of Online Learning in California: A Look at Current K-12 Policies and Practices, *supra* at 39-40.

²⁹ Cal. Ed. Code § 47612.5(e)(2); *see also* Cal. Ed. Code § 47634.2(a)(4).

³⁰ Cal. Admin. Code tit. 5, § 11963.5.

³¹ For a list of Code of Education and Code of Regulations provisions relevant to funding determinations for nonclassroom-based instruction in charter schools, see California Department of Education, Nonclassroom-Based Instruction and Senate Bill 740, available at <http://www.cde.ca.gov/sp/cs/as/nclrbifunddet.asp>.

³² Cal. Admin. Code tit. 5, § 11963.4(a)(3).

- All students eligible for special education services must receive these services, and the charter school must recruit a student population with ethnic and racial representation similar to the counties served by the program.³³

D. What state programs have been created to facilitate technology-enabled learning?

This section will describe seven programs that have been established to facilitate technology based learning in California. Some of these programs will directly impact the future of online learning while others provide needed technology, training, or support for teachers and students.

1. Online Classroom Pilot Program

Established in 2004, the goal of the Online Classroom Pilot Program was to monitor and evaluate student participation in online 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 student access to advanced placement courses.³⁴ Forty schools with no more than five schools per district were chosen to participate.³⁵ The program was repealed in 2007.³⁶ Further legislation regarding this program is still pending.

The Executive Summary of the Online Classroom Program Report to the legislature stated that program benefits included:

[P]roviding schedule flexibility and equity of access, preparing students for success in the college environment, providing motivating technology-enriched curriculum that engaged every student in active and responsible learning, and embedding technology literacy with academic content.³⁷

However, the Executive Summary also noted funding and costs issues:

Successful implementation was slowed by lack of funds for start-up costs needed to successfully implement an online program. . . . Districts indicated that running

³³ Cal. Admin. Code tit. 5, § 11963.5.

³⁴ 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/ls/et/st/ab294.asp>.

³⁵ California Department of Education, Online Classroom Pilot Program, available at <http://www.cde.ca.gov/ls/et/st/ocpp.asp>.

³⁶ The sunset date of the Online Classroom Pilot Program was January 1, 2007, unless new legislation deleted or extended this date. See Online Classroom Pilot Program: AB 294, *supra*. In 2007, Assembly Bill 2547, a proposal to establish a new online classroom pilot program, failed. See Small School Districts' Association, Significant Failed Legislation, available at http://www.ssda.org/pages/uploaded_files/08%20failed%20leg.pdf. Additionally, the California Education Code provision providing for the Online Classroom Pilot Program was modified; now, only the definitions of "asynchronous interactive instructional program" and "Internet" remain. See Cal. Ed. Code § 51705.

³⁷ California Department of Education, Executive Summary: Online Classroom Pilot Program, available at <http://www.education.ca.gov/ls/et/st/ab294exesummary.asp>.

an online class was either about the same or more expensive than running a traditional class. An initial investment must be made for the necessary equipment, infrastructure, online content and training. Although the development cost will go down after initial implementation, there are recurring costs associated with online content delivery (as there are recurring costs with traditional content delivery).³⁸

The Orange Unified School District published a white paper describing their participation in the program and the functioning of their online courses.³⁹

2. The California Virtual Campus

The California Community Colleges Chancellor's Office established the California Virtual Campus (CVC) in July 1999 to support development and delivery of online learning in California community colleges.⁴⁰ On September 30, 2008, Governor Schwarzenegger approved Senate Bill 1437 which established the CVC in the California Education Code⁴¹ and broadened the CVC mission to include K-20 institutions.⁴² Under CVC, grant recipients are encouraged to collaborate with local educational agencies, community groups, and libraries to enhance learning through technology. Such efforts may include efforts to make online courses of study available across the state. As described on their website, the CVC manages five programs:

- *Enhanced Transfer Pilot Project.* Will create a range of shared online student services that allow students to enroll in online courses at multiple institutions, with coordinated articulation and transfer agreements into CSU, East Bay. These services will eventually include curriculum planning, transcript services, and career development.
- *California Accelerated Pathways (CAP) Program.* Focused on under-served and under-represented students, the program provides college credit online courses for eligible high school students, providing opportunities not available in local high schools.
- *ePortfolio California Project.* Provides online accounts for students to demonstrate learning accomplishments to potential employers, faculty at transfer institutions, and their peers. ePortfolios can also be used for institutional accreditation and assessment. As of 2009, 23 colleges, universities, and schools have joined this program.
- *K-20 California Educational Technology Collaborative.* Serves as the research and innovation arm of the CVC, bringing together representatives from K-20 institutions to pursue collaborative projects and share innovations across educational segments.

³⁸ *Id.*

³⁹ Online Learning: Orange LIVE! Learning Through Interactive Virtual Education! September 2007, available at <http://www.orangeusd.org/orangelive/whitepaper/pdf/whitepaper.pdf>.

⁴⁰ California Virtual Campus, available at http://www.cccetc.org/documents/take_ones/cvc.pdf.

⁴¹ Cal. Ed. Code § 78910.10.

⁴² See Office of the Governor, Press Release, 09/30/2008, available at <http://gov.ca.gov/index.php?/print-version/press-release/10701/>.

- *California Virtual Campus Catalog*. As of June 2009, the Catalog included 313 programs and some 8,400 courses from 168 institutions.⁴³ More than 7,500 of these were online courses.

3. California Technology Assistance Project

The California Technology Assistance Project (CTAP) is a statewide technical assistance program funded by the California Department of Education.⁴⁴ As stated on the CTAP website, it is intended to promote the effective use of technology in teaching, learning, and school administration. CTAP provides assistance to schools and districts based upon local needs in each of eleven regions in California.⁴⁵ The sunset date for the California Technology Assistance Project is January 1, 2014.⁴⁶

During the current year, CTAP regions are helping districts develop technology plans that meet the State Board of Education guidelines so that they may apply for federal funds available for technology as part of the No Child Left Behind legislation's Enhancing Education Through Technology program.⁴⁷

4. Educational Technology Staff Development Program

The Superintendent of Public Instruction allocates funds to school districts for the purpose of funding the Educational Technology Staff Development Program in grades 4 through 8.⁴⁸ To be eligible for the funds, a school district must certify that it has access to the Internet in all its classrooms for instructional purposes and a sufficient number of up-to-date computers or other devices in the classroom for Internet access. The purpose of the program is to provide staff development to teachers for using educational technology in instruction and related recordkeeping. Districts are to develop action plans showing how they will integrate training in educational technology with staff development and also involvement of parents and guardians enrolled in the district.

5. Digital High School Education Technology Grant Programs

The Digital High School Education Technology Grant Act of 1997 provides grants to school districts and county offices of education to further the legislative goal that "all high schools in the state become 'digital high schools'" by the end of the first year of the 21st century, and that these schools fully integrate computers, networks, training, and software to achieve computer literacy in all pupils and faculty and to improve academic achievement.⁴⁹ The objectives include providing school students with the computer skills to utilize courseware and related software and Internet search and retrieval tools, as well as to improve student

⁴³ See California Virtual Campus, CVC Course Catalog, available at <http://www.cvc.edu/students/courses>.

⁴⁴ Cal. Ed. Code §§ 51870-51874.

⁴⁵ California Technology Assistance Project, available at <http://www.myctap.org/index.php/about-ctap>.

⁴⁶ Cal. Ed. Code § 51874.

⁴⁷ California Technology Assistance Project, available at <http://www.myctap.org/index.php/about-ctap>.

⁴⁸ Cal. Ed. Code §§ 44730-44731.

⁴⁹ Cal. Ed. Code §§ 52250-52272.

achievement. The grant program includes a staff training and program evaluation component. Several other similar grant programs are included in the Education Code.⁵⁰

6. K-12 High Speed Network

The K-12 High Speed Network (K-12 HSN) is a state program funded by the California Department of Education.⁵¹ The K-12 HSN provides the California K-12 community with network connectivity, internet services, network diagnostic service, teaching and learning application coordination, and videoconferencing coordination and support. The mission of the California K-12 High Speed Network is to enable educators, students and staff across the state to have access to reliable high speed network which has the capacity to deliver high quality online resources to support teaching and learning and promote academic achievement.⁵²

7. California Emerging Technology Fund School2Home Program

The California Emerging Technology Fund (CETF) has been established as a non-profit corporation pursuant to orders from the California Public Utilities Commission in approving the mergers of SBC-AT&T and Verizon-MCI in 2005.⁵³ As a condition of approval of the mergers, AT&T and Verizon are required to contribute to CETF a total of \$60 million over 5 years “for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010.”⁵⁴

CETF is facilitating the development of a statewide initiative, called School2Home, set to launch in the fall of 2009.⁵⁵ School2Home will provide students in low-performing middle schools with affordable computers and broadband connections at home and to assist schools in integrating the use of technology into teaching and learning.⁵⁶ School2Home is a comprehensive program that will affect more than 500 low-performing middle schools and up to 400,000 students and families across California.⁵⁷

⁵⁰ See, e.g., the Education Technology Grant Program, Cal. Ed. Code §§ 52270 et seq.; see also the Education Technology Grant Act of 2002, Cal. Ed. Code §§ 52295.10 et seq.

⁵¹ Cal. Ed. Code § 11800.

⁵² What is the K-12 High Speed Network (K12HSN). available at <http://www.k12hsn.org/about>.

⁵³ California Emerging Technology Fund, History, available at <http://cetfund.org/aboutus/history>.

⁵⁴ California Emerging Technology Fund, California Public Utilities Commission Order: Transaction Will Benefit Californians, available at http://cetfund.org/files/cpuc_order_transaction_will_benefit_californians.pdf.

⁵⁵ See School2Home: Increasing Opportunity for California’s At Risk Middle-School Students, available at <http://www.childrepartnership.org/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=13696>.

⁵⁶ California Emerging Technology Fund, Digital Literacy Initiative, available at <http://cetfund.org/investments/initiative-digital-literacy>.

⁵⁷ School2Home: Increasing Opportunity for California’s At Risk Middle-School Students, *supra*.