

**ASSEMBLY BILL**

**No. 10**

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**Introduced by Assembly Members Ting, Bauer-Kahan,  
Boerner Horvath, Lorena Gonzalez, McCarty, Muratsuchi,  
O'Donnell, and Petrie-Norris**

December 7, 2020

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An act to amend Sections 43502, 43503, and 43504 of the Education Code, relating to pupil instruction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 10, as introduced, Ting. Pupil instruction: in-person instruction: distance learning.

(1) Existing law establishes a system of public elementary and secondary education in this state, and authorizes local educational agencies throughout the state to provide instruction to pupils in kindergarten and grades 1 to 12, inclusive. Existing law establishes procedures for the apportionment of state funds to these local educational agencies. Existing law, for purposes of calculating apportionments for the 2020–21 fiscal year, requires a local educational agency to offer in-person instruction and authorizes these agencies to offer distance learning, as specified.

This bill would specify that the requirement to provide in-person instruction applies when that instruction is allowed under state and county public health orders.

(2) Existing law establishes criteria for local educational agencies to offer distance learning for the 2020–21 school year, including as a result of an order or guidance from a state public health officer or local public

health officer, or for pupils who are medically fragile or would be put at risk by in-person instruction or who are self-quarantining.

This bill would specify that, between March 1, 2021, and June 30, 2021, distance learning is authorized on an agency-wide or schoolwide level as a result of an order from a state public health officer or a local public health officer requiring school campus closure. The bill would also include, in addition to pupils, certificated employees who are medically fragile or would be put at risk by in-person instruction or who are self-quarantining within the scope of this provision.

(3) Existing law requires local educational agencies to offer in-person instruction to the greatest extent possible and to develop written procedures for tiered reengagement strategies for all pupils who are absent from distance learning for more than 3 schooldays or 60% of the instructional days in a school week.

This bill would require local educational agencies to publicly adopt plans to offer in-person instruction within 2 weeks of public health orders allowing school campuses to be open. The bill would also require, on or before March 1, 2021, each local educational agency to implement the written procedures for the tiered reengagement strategies for all pupils who are absent from distance learning for more than 3 schooldays or 60% of the instructional days in a school week, as specified. The bill would also require local educational agencies to develop and implement written procedures for tiered reengagement strategies for all unduplicated pupils who are performing below grade level. Because these provisions would impose new duties on local educational agencies, they would create a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 43502 of the Education Code is amended to read:

43502. (a) For purposes of calculating apportionments for the 2020–21 fiscal year, a local educational agency shall offer ~~in-person instruction~~, *instruction when it is allowed under state and county public health orders*, and may offer distance learning, pursuant to the requirements of this part.

(b) (1) Notwithstanding Sections 41601, 42238.05 to 42238.053, inclusive, and 46010, for purposes of calculating apportionments for the 2020–21 fiscal year for a local educational agency, except for a local educational agency with apportionments calculated pursuant to Section 43505, the department shall use the average daily attendance in the 2019–20 fiscal year reported for both the second period and the annual period apportionment that included all full school months from July 1, 2019, to February 29, 2020, inclusive, and extended year average daily attendance attributed to the 2019–20 school year reported pursuant to Section 96 of Chapter 24 of the Statutes of 2020. Any positive adjustment to average daily attendance for the 2019–20 fiscal year in the second or annual period attendance report submitted to the Superintendent after August 17, 2020, shall be substantiated by concurrence from an independent auditor.

(2) The 2019–20 reported average daily attendance used for purposes of calculating apportionments pursuant to subdivision (d) of Section 42238.02 in the 2020–21 fiscal year shall exclude the average daily attendance resulting from pupils attending schools funded pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(3) The 2019–20 reported average daily attendance used for purposes of calculating apportionments in the 2020–21 fiscal year shall be adjusted for any loss or increase in average daily attendance due to a school district reorganization.

(4) If the Superintendent has been notified pursuant to Section 47604.32 that a charter school has ceased operation during or after the 2019–20 school year and did not provide any instruction in the 2020–21 school year, the Superintendent shall increase the average daily attendance determined pursuant to paragraph (1) for the sponsoring local educational agency, as defined in subdivision (i)

1 of Section 47632, by the average daily attendance sponsored by  
2 that local educational agency as reported by the charter school for  
3 the 2019–20 school year.

4 (c) For the 2020–21 fiscal year, a local educational agency shall  
5 satisfy the annual instructional day requirements described in  
6 Sections 41420, 46200.5, and 46208, and in Section 11960 of Title  
7 5 of the California Code of Regulations through in-person  
8 instruction or a combination of in-person instruction and distance  
9 learning pursuant to this part.

10 (d) (1) For the 2020–21 fiscal year, a local educational agency  
11 shall not be required to offer the annual instructional minutes that  
12 it would otherwise have offered pupils to meet the requirements  
13 of Sections 46201.5, 46207, and 47612.5, or the implementing  
14 regulations for those sections.

15 (2) For the 2020–21 fiscal year, a local educational agency shall  
16 not be required to offer the minimum instructional minutes in  
17 physical education required pursuant to Sections 51210, 51220,  
18 51222, and 51223.

19 (e) For the 2020–21 school year, instructional minutes shall be  
20 determined as follows:

21 (1) For in-person instruction, instructional minutes shall be  
22 based on time scheduled under the immediate physical supervision  
23 and control of an employee of the local educational agency who  
24 possesses a valid certification document, registered as required by  
25 law.

26 (2) For distance learning, instructional time shall be based on  
27 the time value of assignments as determined, and certified to, by  
28 an employee of the local educational agency who possesses a valid  
29 certification document, registered as required by law.

30 (3) For a combined day of instruction delivered through both  
31 in-person instruction and distance learning, time scheduled under  
32 the immediate supervision of an employee of the local educational  
33 agency who possesses a valid certification document can be  
34 combined with assignments made under the general supervision  
35 of an employee of the local educational agency who possesses a  
36 valid certification document as registered by law to meet the  
37 equivalent of a minimum day of instruction.

38 (f) For the 2020–21 school year, the process by which a local  
39 educational agency receives credit for a material decrease in  
40 average daily attendance for apportionment pursuant to Section

1 46392 due to an event described in Section 46392 that occurs  
2 during the 2020–21 fiscal year is suspended for all local educational  
3 agencies.

4 (g) Except for a local educational agency with apportionments  
5 calculated pursuant to Section 43505, for purposes of any  
6 calculations that would use average daily attendance, the  
7 Superintendent, consistent with subdivision (b), shall use the local  
8 educational agency’s average daily attendance in the 2019–20  
9 school year in place of its average daily attendance in the 2020–21  
10 school year.

11 (h) (1) For a divided charter school, where the restructured  
12 portion of the charter school is beginning instruction in the 2020–21  
13 school year, average daily attendance for the 2019–20 school year  
14 shall be provided by the original charter school in a format and  
15 according to a timeline prescribed by the Superintendent. The total  
16 average daily attendance attributable to the restructured and  
17 remaining portions of a divided charter school shall not exceed  
18 the total average daily attendance of the original charter school  
19 for the 2019–20 fiscal year and shall be used for purposes of any  
20 calculations for the affected charter schools that would use average  
21 daily attendance consistent with subdivision (b).

22 (2) The definitions in Section 47654 apply for purposes of this  
23 subdivision.

24 SEC. 2. Section 43503 of the Education Code is amended to  
25 read:

26 43503. (a) (1) For the 2020–21 school year, a local educational  
27 agency that offers distance learning shall comply with the  
28 requirements of subdivision (b).

29 (2) Distance learning may be offered under either of the  
30 following circumstances:

31 (A) ~~On~~ *From July 1, 2020, to February 28, 2021, inclusive, on*  
32 *a local educational agency or schoolwide level as a result of an*  
33 *order or guidance from a state public health officer or a local public*  
34 *health officer.*

35 (B) *From March 1, 2021, to June 30, 2021, inclusive, on a local*  
36 *educational agency or schoolwide level as a result of an order*  
37 *from a state public health officer or a local public health officer*  
38 *requiring campus closure.*

39 ~~(B)~~

1 (C) For pupils *and certificated employees* who are medically  
2 fragile or would be put at risk by in-person instruction, or who are  
3 self-quarantining because of exposure to COVID-19.

4 (b) Distance learning shall include all of the following:

5 (1) Confirmation or provision of access for all pupils to  
6 connectivity and devices adequate to participate in the educational  
7 program and complete assigned work.

8 (2) Content aligned to grade level standards that is provided at  
9 a level of quality and intellectual challenge substantially equivalent  
10 to in-person instruction.

11 (3) Academic and other supports designed to address the needs  
12 of pupils who are not performing at grade level, or need support  
13 in other areas, such as English learners, pupils with exceptional  
14 needs, pupils in foster care or experiencing homelessness, and  
15 pupils requiring mental health supports.

16 (4) Special education, related services, and any other services  
17 required by a pupil's individualized education program pursuant  
18 to Section 56341, including the requirements of subparagraph (A)  
19 of paragraph (9) of subdivision (a) of Section 56345, with  
20 accommodations necessary to ensure that individualized education  
21 program can be executed in a distance learning environment.

22 (5) Designated and integrated instruction in English language  
23 development pursuant to Section 11300 of Title 5 of the California  
24 Code of Regulations for English learners, including assessment of  
25 English language proficiency, support to access curriculum, the  
26 ability to reclassify as fully English proficient, and, as applicable,  
27 support for dual language learning.

28 (6) Daily live interaction with certificated employees and peers  
29 for purposes of instruction, progress monitoring, and maintaining  
30 school connectedness. This interaction may take the form of  
31 internet or telephonic communication, or by other means  
32 permissible under public health orders. If daily live interaction is  
33 not feasible as part of regular ~~instruction~~, *instruction for all pupils*,  
34 the governing board or body of the local educational agency shall  
35 develop, with parent and stakeholder input, an alternative plan for  
36 frequent live interaction that provides a comparable level of service  
37 and school ~~connectedness~~. *connectedness and prioritizes daily live*  
38 *interaction for pupils identified in the local educational agency's*  
39 *tiered reengagement plan.*

(c) Pursuant to Sections 49550 and 47613.5, school districts, county offices of education, and charter schools shall provide nutritionally adequate meals for pupils who are eligible for free and reduced-price meals, whether engaged in in-person instruction or distance learning, contingent upon the department receiving an approved waiver from the United States Department of Agriculture, for each day of the scheduled school year.

(d) (1) Notwithstanding Section 51512 or any other law, the prior consent of the teacher or the principal of a school is not required for the adoption or implementation of the use of synchronous or asynchronous video for purposes of distance learning provided pursuant to this section.

(2) Except as required by the local educational agency for purposes of distance learning provided pursuant to this section, no person may make, without the prior consent of the teacher and principal of the school, any audio, video, or digital recording of a local educational agency's live or synchronous distance learning instruction.

SEC. 3. Section 43504 of the Education Code is amended to read:

43504. (a) The compulsory education requirements described in Section 48200 continue to apply for the 2020–21 school year.

(b) A local educational agency shall offer in-person instruction to the greatest extent ~~possible~~. *possible, and shall publicly adopt a plan to offer in-person instruction within two weeks of the issuance of public health orders allowing school campuses to be open.*

(c) For the 2020–21 school year, for purposes of the requirement on school districts to offer 180 instructional days per school year pursuant to Section 46208 and the requirement on charter schools to offer 175 instructional days per school year pursuant to Section 11960 of Title 5 of the California Code of Regulations, an instructional day is a day in which all pupils are scheduled for the length of the day established by the governing board or body of the local educational agency in a classroom under the immediate supervision of a certificated employee or in distance learning that meets the minimum requirements described in this part. For purposes of this section, for charter schools, distance learning shall be provided by a certificated employee pursuant to the requirements of Sections 47605, 47605.4, and 47605.6.

(d) (1) Each local educational agency shall document daily participation for each pupil on each schoolday, in whole or in part, for which distance learning is provided. A pupil who does not participate in distance learning on a schoolday shall be documented as absent for that schoolday.

(2) For purposes of this section, daily participation may include, but is not limited to, evidence of participation in online activities, completion of regular assignments, completion of assessments, and contacts between employees of the local educational agency and pupils or parents or guardians.

(e) Each local educational agency shall ensure that a weekly engagement record is completed for each pupil documenting synchronous or asynchronous instruction for each whole or partial day of distance learning, verifying daily participation, and tracking assignments.

(f) (1) A pupil who does not participate daily in either in-person instruction pursuant to subdivision (b) or distance learning pursuant to subdivision (d) shall be deemed absent by the local educational agency. A local educational agency shall use documentation of the absence for purposes of reporting its chronic absenteeism rates in its local control and accountability plan.

(2) ~~Each~~ *On or before March 1, 2021, each* local educational agency shall develop *and implement* written procedures for tiered reengagement strategies for all pupils who are absent from distance learning for more than three schooldays or 60 percent of the instructional days in a school week. These procedures shall include, but are not limited to, verification of current contact information for each enrolled pupil, daily notification to parents or guardians of absences, a plan for outreach from the school to determine pupil ~~needs~~ *needs*, including connection with health and social services as necessary ~~and, when feasible,~~ *and* transitioning the pupil to ~~full-time~~ *a minimum of 50 percent of instructional minutes each week for in-person instruction. instruction no later than 30 days after pupil identification.*

(g) (1) Each school shall regularly communicate with parents and guardians regarding a pupil's academic progress.

(2) *On or before March 1, 2021, each local educational agency shall develop and implement written procedures for tiered reengagement strategies for all unduplicated pupils who are performing below grade level. These procedures shall include, but*



1 *are not limited to, verification of current contact information for*  
2 *each enrolled pupil, a plan for outreach from the school to*  
3 *determine pupil needs, including connection with health and social*  
4 *services as necessary, and offering the pupil either a minimum of*  
5 *50 percent of instructional minutes each instructional week for*  
6 *in-person instruction, or offering the pupil in-person instruction*  
7 *after the end of the academic calendar, no later than 30 days after*  
8 *pupil identification.*

9 (h) The Controller shall include instructions necessary to enforce  
10 the requirements of this section in the 2020–21 audit guide required  
11 by Section 14502.1.

12 (i) (1) For a school district or charter school that offers fewer  
13 than the instructional days required in subdivision (c), the  
14 Superintendent shall withhold from the local educational agency's  
15 local control funding formula grant apportionment for the prior  
16 year average daily attendance of each affected grade level, the sum  
17 of .0056 multiplied by that apportionment for each day less than  
18 what was required pursuant to this section.

19 (2) For a local educational agency that does not meet the  
20 requirements in subdivision (d), (e), or (f), the Superintendent shall  
21 withhold from the local educational agency's local control funding  
22 formula grant apportionment the percentage of days out of  
23 compliance multiplied by the derived value of average daily  
24 attendance, all multiplied by the average daily attendance of each  
25 affected grade level. For purposes of this paragraph, the percentage  
26 of days out of compliance is equivalent to the number of days out  
27 of compliance divided by the total number of instructional days  
28 required to be offered.

29 (3) A local educational agency that provides distance learning  
30 shall not be penalized for instruction provided before September  
31 1, 2020, that fails to meet the requirements of this section.

32 SEC. 4. If the Commission on State Mandates determines that  
33 this act contains costs mandated by the state, reimbursement to  
34 local agencies and school districts for those costs shall be made  
35 pursuant to Part 7 (commencing with Section 17500) of Division  
36 4 of Title 2 of the Government Code.

37 SEC. 5. This act is an urgency statute necessary for the  
38 immediate preservation of the public peace, health, or safety within  
39 the meaning of Article IV of the California Constitution and shall  
40 go into immediate effect. The facts constituting the necessity are:

1     In order to provide important guidance to local educational  
2     agencies about standards and procedures for implementing a return  
3     to in-person instruction for their pupils, it is necessary that this act  
4     take effect immediately.

O