

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON EDUCATION

Al Muratsuchi, Chair

AB 1348 (Bains) – As Amended March 11, 2025

SUBJECT: Average daily attendance: emergencies: immigration enforcement activity

SUMMARY: Adds immigration enforcement activities to the list of specified emergency situations a school district, county office of education (COE), or charter school may use to obtain approval of attendance and instructional time credit from the Superintendent of Public Instruction (SPI) when schools are kept open but experienced a material decrease in attendance. Specifically, **this bill:**

- 1) Adds immigration enforcement activities to the list of specified emergency situations a school district, COE, or charter school may use to obtain approval of attendance and instructional time credit from the SPI when schools are kept open but experience a material decrease in attendance.
- 2) Defines “immigration enforcement activity” to include any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.

EXISTING LAW:

- 1) States that it is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration statutes, equal rights and opportunities in the educational institutions of the state. (Education Code (EC) Section 200)
- 2) Provides funding to local educational agencies (LEAs) on the basis of average daily attendance (ADA). (EC 42238.05)
- 3) Allows school districts to claim the greater of current year, prior year, or three prior years’ ADA for apportionment purposes as a buffer against declining enrollment. (EC 42238.05)
- 4) Requires the SPI, for apportionment purposes, to credit a school district, COE, or charter school a material loss of ADA due to the following reasons, provided the loss has been established to the satisfaction of the SPI by affidavits of the members of the governing board or body of the LEA:
 - a) Fire;
 - b) Flood;
 - c) Impassable roads;

- d) Epidemic;
 - e) Earthquake;
 - f) The imminence of a major safety hazard as determined by the local law enforcement agency;
 - g) A strike involving transportation services to pupils provided by a non-school entity;
 - h) An order of any military officer of the United States or of the state to meet an emergency created by war, or of any civil officer of the United States, of the state, or of any county, city and county, or city authorized to issue that order to meet an emergency created by war, or because of other extraordinary conditions; or
 - i) Snowstorms. (EC 46392)
- 5) Allows LEAs unable to maintain schools for at least 180 days (for a school district or COE) or 175 days (for a charter school) due to various reasons such as fire, flood, earthquake, epidemic, emergencies declared by military or civil officers, teacher shortages, or teacher illness to receive the same state funding amount as if they had operated for the full required days. This is contingent upon satisfying certain conditions, including providing affidavits from relevant governing bodies and superintendents to justify the circumstances preventing the maintenance of schools. (EC 46392)
- 6) Requires, in the event of a state of emergency declared by the Governor in a county, the SPI to determine the length of the period during which ADA has been reduced by the state of emergency and prohibits the SPI from extending the period into the next fiscal year except upon a showing by a LEA, to the satisfaction of the SPI, that extending the period into the next fiscal year is essential to alleviate continued reductions in ADA attributable to the state of emergency. (EC 46392)
- 7) Requires, for affidavits submitted to the SPI for events occurring after September 1, 2021, but not on or before June 30, 2026, that resulted in a school closure or material decrease in attendance, a school district, COE, or charter school that provides an affidavit to the SPI, as specified, to certify that it has a plan for offering independent study to pupils. Requires the plan to comply with all of the following:
- a) Requires independent study to be offered to any pupil impacted by any of the specified conditions within 10 days of the first day of a school closure or material decrease in attendance. Requires pupils who are individuals with exceptional needs to receive the services identified in their individualized education programs (IEPs) and authorizes their participation in an independent study program;
 - b) Requires reopening for in-person instruction as soon as possible, unless prohibited under the direction of the local or state health officer; and
 - c) Requires plans to include information regarding establishing independent study master agreements in a reasonable amount of time. (EC 46393)

- 8) Requires affidavits submitted to the SPI for events occurring on or after July 1, 2026, that result in a school closure or material decrease in attendance, a school district, COE, or charter school that provides an affidavit to the SPI, to certify all of the following:
- a) It has a local governing board- or body-adopted comprehensive school safety plan in place meeting the requirements of the school safety plan, including an instructional continuity plan to establish communication with pupils and their families and provide instruction to pupils when in-person instruction is disrupted due to an emergency, as specified; and
 - b) Either of the following: it has offered pupil engagement and instruction consistent with the requirements of the instructional continuity plan, or if it has not offered pupil engagement and instruction consistent with the requirements of the instructional continuity plan due to extenuating circumstances, then requires the school district, COE, or charter school to describe the circumstances that prevented it from providing pupil engagement and instruction and describe what pupil engagement, services, and instruction it did provide to support its pupils during or immediately after the period of closure or material decrease in attendance. (EC 46393)
- 9) Requires a school district, COE, or charter school that is prevented from maintaining its schools during a fiscal year for at least 180 days for a school district or COE or 175 days for a charter school, or is required to operate sessions of shorter length than otherwise prescribed by law because of fire, flood, earthquake, snowstorm, or epidemic, or because of any order of any military officer of the United States or of the state to meet an emergency created by war, or of any civil officer of the United States, of the state, or of any county, city and county, or city authorized to issue that order to meet an emergency created by war, or because of other extraordinary conditions, or because of inability to secure or hold a teacher, or because of the illness of the teacher, established to the satisfaction of the SPI by the affidavits of the members of the governing board of the school district, the governing board of the COE, or the governing board or body of the charter school and of the county superintendent of schools, to receive the same apportionment from the State School Fund as it would have received had it not been so prevented from maintaining school for at least 180 full-length days for a school district or COE or 175 full-length days for a charter school. (EC 41422)
- 10) Requires the California Department of Education (CDE) to electronically distribute disaster preparedness educational materials and lesson plans that are currently available to school districts and COEs. Requires the CDE to ensure that the disaster preparedness materials are available in at least the three most dominant primary languages spoken by English learners in California, according to the language census. Requires the CDE to coordinate with the Governor's Office of Emergency Services (CALOES) to make sure that all materials are reviewed and updated annually. (EC 32282.5)
- 11) Requires a pupil's IEP to include a description of the means by which the IEP will be provided under emergency conditions, as specified, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. (EC 56345)

- 12) Define a decrease in attendance as material when at least 10% of the students who would normally attend a school do not attend on any one day. (California Code of Regulations, Title 5, Section 428).
- 13) Authorize, for the 2021-22 school year, school districts and COEs to be eligible for additional apportionment that met all of the following requirements:
- a) Require, by no later than November 1, 2021, offer an independent study program to all pupils, for the 2021–22 school year, consistent with the requirements of EC 51745, and provided the notification to parents and guardians of all enrolled pupils pursuant to paragraph (1) of subdivision (h) of EC 51747 and subparagraph (A) of paragraph (8) of subdivision (b) of EC 51749.6;
 - b) Require, by no later than November 1, 2021, adopt written policies for providing instruction to pupils through independent study, and have verifiable documentation substantiating the provision of opportunities for live interaction and synchronous instruction pursuant to EC 51745.5, if applicable, or the provision of activities or pupil work product of a pupil while out on independent study that is equivalent to in-person instruction pursuant to EC 51747 and 51749.5; and
 - c) Require, on or before November 1, 2022, a school district or COE to certify its compliance with (a) and (b) using a form the CDE is required provide for this purpose. Prohibits a school district or COE that does not certify compliance from receiving specified additional apportionment for the 2021–22. (EC 42238.023)
- 14) Requires the 2022–23 fiscal year Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting, the Controller to incorporate verification of compliance with the requirements specified in (13), which may include reviewing the local educational agency’s annual audit for the 2021–22 fiscal year to determine compliance with those requirements. (EC 42238.023)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “Allowing federal immigration activities to defund our schools is unacceptable. We must ensure that our schools remain safe and fully funded to serve students from all backgrounds. As we continue to grapple with the elimination of the sensitive places policy, AB 1361 is a reasonable step to hold our schools harmless.”

Key provisions of the bill. This bill would add immigration enforcement activities to the list of specified conditions a school district, COE, or charter school may use to obtain approval of attendance and instructional time credit from the SPI when schools are kept open but experienced a material decrease in attendance.

Current law provides that a school district, COE, or charter school may obtain approval of attendance and instructional time credit from the SPI due to a material decrease in attendance due, via a CDE form J-13A, to an order of any military officer of the United States or of the state to meet an emergency created by war, or of any civil officer of the United States, of the state, or

of any county, city and county, or city authorized to issue that order to meet an emergency created by war, or because of other extraordinary conditions. California public school apportionment is largely calculated based on student attendance, and unless a J-13A is submitted by a school district, COE, or charter school and granted by the CDE, their apportionment will be ratably reduced.

Since January 2025, some school districts report that student attendance has decreased due to the increased attention to immigration enforcement. Some schools report that families are not sending their children to school due to the fear that in doing so they may put themselves or family members at risk of encountering immigration enforcement personnel. It may be challenging to identify which students are not attending school due to fear of immigration enforcement, or due to the impact of an immigration enforcement order directed to specific students or their parents. If it is the former, a school district, COE, or charter school is authorized under current law to offer independent study to the student. This will have the dual benefit of both keeping the student and family engaged with school and related academic instruction, and schools may receive full apportionment for students participating in independent study.

CDE form J-13A. The Request for Allowance of Attendance Due to Emergency Conditions (Form J-13A) is used to obtain approval of attendance and instructional time credit in the event of an emergency when one or more schools were closed, when schools were kept open but experienced a material decrease in attendance, or when attendance records have been lost or destroyed. Current regulations define a decrease in attendance as material when at least 10% of the students who would normally attend a school do not attend on any one day (California Code of Regulations, Title 5, Section 428).

The CDE's approval of the Form J-13A, combined with other attendance records, serves to document the LEA compliance with instructional time laws and provide authority to maintain school for less than the required instructional days and minutes without incurring a fiscal penalty.

SB 153 (Committee on Budget and Fiscal Review), Chapter 38, Statutes of 2024, and AB 176 (Committee on Budget), Chapter 998, Statutes of 2024, made two significant changes to the Form J-13A submittal process in upcoming years.

- The requirement to include the Certification Form for Independent Study and a certified independent study plan with Form J-13A submissions will end on June 30, 2026; and
- In place of the independent study plan and certification process, starting July 1, 2026, LEAs will include an instructional continuity plan as part of their school safety plan. This plan must address how the LEA will continue to provide instruction to students affected by emergency events. Specifically, the plans are required to include a procedure to provide two-way communication with families and students within 5 days of the emergency event, and include a plan to provide in-person or remote instruction (via independent study) within 10 days of the emergency event.

Increased immigration enforcement activity. Since 1993, the Department of Homeland Security (DHS), formerly known as the Immigration and Naturalization Service, has had a policy to "attempt to avoid apprehension of persons and to tightly control investigative operations on

the premises of schools, places of worship, funerals and other religious ceremonies." In 2011, the DHS reaffirmed the policy of avoiding enforcement actions at "sensitive locations" such as schools and churches, unless exigent circumstances exist, a law enforcement action leads to a sensitive location, or prior approval is obtained.

A 2021 memo from the U.S. DHS reiterated guidance for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) in or near sensitive locations and included the following statement:

To the fullest extent possible, we should not take an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities. Such a location is referred to as a protected area.

The memo includes examples of protected areas, including "a school, such as a pre-school, primary or secondary school, vocational or trade school, or college or university." It also included "a place where children gather, such as a playground, recreation center, childcare center, before- or after-school care center, foster care facility, group home for children, or school bus stop."

A more recent communication from the U.S. Department of Justice was issued on January 21, 2025, which rescinded guidelines for ICE and CBP enforcement actions that prohibit law enforcement activity in or near so-called "sensitive areas." The memo notes that federal law prohibits state and local actors from resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests. A DHS spokesperson noted, "Criminals will no longer be able to hide in America's schools and churches to avoid arrest. The Trump Administration will not tie the hands of our brave law enforcement, and instead trusts them to use common sense."

Immigration status among California children and parents. Approximately 4.2 million children in California had at least one immigrant parent in 2017-18, according to the Urban Institute. Of these children, 93% are U.S. citizens. Over 1 million children in California have at least one undocumented parent.

Right to public education. The U.S. Supreme Court, in a 1982 decision, *Plyler v. Doe*, upheld the right of undocumented children to free public education. The lawsuit stemmed from a 1975 Texas law that authorized school districts to deny enrollment of children and withhold state funds for the education of children not legally admitted to the U.S. The Supreme Court argued that the denial of public education would be a violation of the U.S. Constitution's Fourteenth Amendment, which does not allow states to deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In 1994, Proposition 187 was a statewide initiative that would have prohibited public health, social services, and education to undocumented immigrants and would have required law enforcement, teachers, social service and health care workers to verify a person's immigration status. A federal judge found the initiative unconstitutional.

Recent school closure data. According to data provided by the CDE, there were 4,269 school closure requests submitted by LEAs from 2014-15 to 2022-23. As shown in the table below, the

total number of school closures reported increased dramatically beginning in 2016-17 due to the wildfires. The vast majority of these school closures lasted less than three days.

Emergency	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Weather	215	43	331	75	263	399	57	57	441
Other	22	27	70	57	17	6	7	21	60
Epidemic	5	2	7	8	14	10	3	76	32
Violence Threat	23	44	8	24	35	21	0	25	18
Wildfire	22	42	30	424	507	185	120	61	37
Power	32	46	26	28	42	20	44	45	35
TOTAL	319	204	472	616	878	641	231	285	623

Source: CDE

Independent study. Due to the growing number of public health emergencies and natural disasters that have impacted the state in recent years, there is an increased need for LEAs to provide continuity of academic instruction for students who are unable to attend in-person instruction during an emergency event. Current law requires LEAs to certify offering independent study within ten days of the first day of a school closure or material decrease in attendance. LEAs are encouraged to provide access to instruction and the opportunity to earn academic credit through independent study for students who are excluded from school (or absent), or when school is closed. However, independent study participation during these instances is for the purpose of academic credit only and would not generate attendance for apportionment. Providing independent study is crucial in mitigating the negative impact of lost learning time and supporting mental health. According to the CDE, LEAs can prepare for transitioning students to independent study during school closures through the following recommended best practices:

- Including independent study agreements in back-to-school paperwork provided for parents to sign ahead of time;
- Posting assignments and student academic resources online;
- Assigning laptops to all students;
- Developing emergency partnerships with neighboring LEAs; and
- Maintaining an online instructional platform.

These are best practices and would not preclude LEAs from providing other methods of instruction during closures where online options are limited (e.g. power outages).

Arguments in support. The California Association for Bilingual Education (CABE) writes, “CABE believes that California must lead the nation in its vigilant protection and support for the safety and well-being of California’s immigrant community who are already facing objectification and are beginning to face harassment and intimidation. Many fear separation from their families, despite their status as citizens or documented residents. Approximately 45% of children in our state have at least one immigrant parent. Additionally, 60% of children under

the age of five speak a language other than English at home, meaning California must create policies that are more purposeful in supporting its students.”

Recommended Committee Amendments. Staff recommends that the bill be amended as follows:

- In order to ensure that every effort is made for students to remain connected with school if they are absent due to immigration enforcement activities, require a school district, COE, or charter school that files a J-13A for immigration enforcement activities to do all of the following:
 - Offer an independent study program to all student, for the school year in which they submit the affidavit to the SPI, and provide specified notification to parents and guardians of all enrolled students;
 - Adopt written policies for providing instruction to students through independent study for the school year in which they submit the affidavit to the SPI, and have verifiable documentation substantiating the provision of opportunities for live interaction and synchronous instruction, or the provision of activities or student work product of a student while out on independent study that is equivalent to in-person instruction; and
 - Certify its compliance with the above using a CDE-developed form for this purpose. Require the CDE to make the form available by May 1, 2026. Require that a school district, COE, or charter school that does not certify compliance to not be eligible to submit an affidavit to the SPI.
- Require, for the 2026–27 fiscal year Guide for Annual Audits of K–12 LEAs and State Compliance Reporting, the Controller to incorporate verification of compliance with the above requirements, which may include reviewing the school district’s, COE’s, or charter school’s annual audit to determine compliance with those requirements.
- Exempt any documentation submitted by the SPI by a school district, COE, or charter school for this purpose to document an immigration enforcement activity is exempt from the California Public Records Act (Division 10 (commencing with Section 79200.000) of Title 1 of the Government Code).
- Sunset the authorization to apply for a J-13A for immigration enforcement activities as of June 30, 2029.

Related legislation. SB 153 (Committee on Budget and Fiscal Review), Chapter 38, Statutes of 2024, and amended by AB 176 (Committee on Budget), Chapter 998, Statutes of 2024, ends the requirement to include the Certification Form for Independent Study and a certified independent study plan with Form J-13A submissions on June 30, 2026; and in place of the independent study plan and certification process, starting July 1, 2026, require LEAs to include an instructional continuity plan as part of their school safety plan. Requires the plan to address how the LEA will continue to provide instruction to students affected by emergency events.

AB 1429 (Ochoa Bogh), Chapter 477, Statutes of 2024, adds snowstorms to the list of specified emergency situations a school district, COE, or charter school may use to obtain approval of attendance and instructional time credit from the SPI when one or more schools are closed, when schools are kept open but experienced a material decrease in attendance, or when attendance records are lost or destroyed.

SB 114 (Committee on Budget and Fiscal Review), Chapter 48, Statutes of 2023, made various changes to instructional time requirements and apportionment in response to the COVID-19 pandemic.

AB 167 (Committee on Budget), Chapter 252, Statutes of 2021, made various changes to instructional time requirements and apportionment in the 2021-22 school year in response to the COVID-19 pandemic.

AB 3120 (O'Donnell) of the 2019-20 Session would have required LEAs to be exempt from various instructional minute fiscal penalties if the LEA added instructional minutes to existing instructional days or if the LEA could demonstrate that it could not meet the instructional day requirements due to specified circumstances.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association for Bilingual Education (CABE)
California Charter Schools Association
CFT - a Union of Educators & Classified Professionals, AFT, AFL-CIO
Kern County Superintendent of Schools Office
Small School Districts Association

Opposition

None on file

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