



# School Business Law Update

TEL: 661.636.4830  
FAX: 661.636.4843  
E-mail: sls@kern.org  
www.schoolslegalservice.org

March 14, 2008

## *COURT RULES HOME SCHOOLING MAY NOT BE PROVIDED AT PRIVATE SCHOOLS*

California's Second District Court of Appeals, located in Los Angeles, published an opinion on February 28, 2008, that holds "home schooling" through a private school by parents who do not hold teaching credentials is not permitted in California. The Court did not define "home schooling" and, under the facts of this case, appeared to equate it with independent study. Looking at the compulsory education laws and the exemptions in the Education Code, the Court found that even when done in connection with a program offered by a private school, parental home schooling does not meet the requirements of the compulsory education laws unless one of the other exemptions applies. One holding of the decision is that private schools are not authorized to offer independent study. Home schooling by parents without credentials, even with observation by and testing at a private school, does not meet the requirements of any exemption from the compulsory education laws.

In the action, a private Christian school offered parents a home schooling program. In a dependency proceeding, a lawyer for three minor children requested the children be ordered to enroll in a public or private school rather than continue home schooling. The trial court declined to make the order, expressing the belief that parents of minor children have a constitutional right to home school their children. The Appellate Court called that belief a mistake of law.

This case indicates that regardless of the quality of the education being offered, California law does not authorize private schools to offer an independent study program. It is clear the Court felt that a student must not only be enrolled "in" a private school, but also had to "attend" the private school<sup>i</sup> to meet the private school exemption from compulsory education. The Court also found that even when under some observation by an educator, uncredentialed parents are not "tutors" under Education Code Section 48224, nor can they themselves be considered private schools under Section 48222 unless they actually meet the requirements of that exemption.

What the ruling does not affect is the validity of independent study courses offered by county offices of education and school districts. The opinion expressly notes those entities are authorized to offer independent study, but also notes the independent study ". . . purpose is to provide students with certain educational opportunities, such as education during travel, or individualized study in an area of interest or subject not currently available in the regular school curriculum." This statement of the Court's limited view of independent study is unfortunate and not aligned with the broader view taken by the California Department of Education, which indicated in a July 3, 2000, opinion letter that independent study is not intended to be an exemption from compulsory education but may properly be part of the education program offered by public schools as an alternative to classroom instruction.

Another area not impacted by the ruling is the authority of charter schools to offer home study, independent study, and distance or computer-based education. Charter schools are part of the public school system and, indeed, express statutory language defines each of these types of educational programs as "nonclassroom-based instruction" and authorizes funding of such programs upon approval.<sup>ii</sup> Interestingly, while Education Code Section 47612.5 considers these educational programs all to be "nonclassroom-based instruction," the section only obligates compliance with the independent study rules and regulations for charter school "independent study" programs.<sup>iii</sup> It would appear the

Legislature also considers home study, distance learning, and computer-based education all to be forms of independent study. It is widely accepted in the charter school community that the independent study rules apply to all nonclassroom-based programs.

A summary of reasons why independent study/home schooling charter schools are not impacted by the Court ruling includes:

1. Charter schools are part of the public school system.<sup>iv</sup>
2. California public schools, including charter schools, are authorized by law to offer alternatives to classroom-based educational programs, including independent study and home study programs, which may include instructional assistance by parents under the general supervision of fully credentialed professionals.<sup>v</sup>
3. Nonclassroom-based instruction authorized under law includes programs that offer independent study, home study, work study, and both distance and computer-based study.<sup>vi</sup>
4. Charter school independent study programs are obligated to meet the requirements of the California Education Code and California Code of Regulations applicable to independent study programs.<sup>vii</sup>
5. The California Department of Education approves the use of independent study conducted through the public schools as an alternative to classroom instruction.<sup>viii</sup>
6. Nonclassroom-based charter schools must have their educational programs approved for state funding by the California State Board of Education.
7. Charter schools, including nonclassroom-based programs, must provide highly qualified, credentialed teachers who typically meet directly with families who choose to home school. The level and extent of the face-to-face time with credentialed personnel depends on the particular educational program of the school, as adopted for an individual student. Charter nonclassroom-based educational programs typically use credentialed teachers, in partnership with home schooling families, to develop lesson plans calculated to fulfill the state standards and to jointly address the student's educational needs. Charter school teachers typically meet with families on a regular basis to provide direct support and accountability to meet state educational standards, and the student's progress is measured by the work satisfactorily completed, the time value of which is then qualified to count in the calculation of funding to be earned by reason of the student's enrollment in the school.
8. Charter schools are required to use instructional materials and curricula aligned with state standards.

We do not believe school districts or County Offices of Education have any obligation to oversee or pursue private schools which may be offering independent study programs of the sort rejected by this Court. We anticipate significant discussion of this issue in the remaining months of the election cycle.

If you have questions concerning this matter, feel free to contact me or the other members of our business practice group.

—Bill Hornback

*School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*

---

<sup>i</sup> *In re Rachel L.* opinion dated February 28, 2008, California Court of Appeal, Second District, Docket No. B192878, p. 3, indicating attendance in a public school is mandated unless “. . . the child is enrolled in a private full-time day school and actually attends that private school . . . .”

<sup>ii</sup> Education Code Section 47612.5(d)(1).

<sup>iii</sup> Education Code Section 47612.5(b) provides: “(b) Notwithstanding any other provision of law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent student shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

<sup>iv</sup> The private school in question in the case was not part of the public school system.

<sup>v</sup> The Court found the private school in question was not authorized to offer independent study. (*In re Rachel L.*, *supra*, pp. 13-14.)

<sup>vi</sup> Education Code Section 47612.5(d)(1)

<sup>vii</sup> 5 CCR Section 11700.1(c).

<sup>viii</sup> In 2000, the California Department of Education agreed that home schooling is not authorized in California but contrasted independent study programs from the concept of home schooling by noting that an independent study program “. . . is not an exemption from public school attendance, but an alternative to classroom instruction.” (July 3, 2000, letter from Department of Education Deputy General Counsel Carolyn Pirillo to Tom Reid of the CDE.)