

CSBA's Guide to School Closures in 2021–22



Following an unprecedented year in which students, educators and parents struggled to navigate the challenges of school closures and distance education, the state of California sent a clear signal that keeping students in the classroom would be a priority for the 2021–22 academic year. Assembly Bill 130 and the follow up AB 167 established independent study requirements and school closure procedures for local educational agencies to meet the goal of uninterrupted in-person instruction. Unfortunately, the process laid out in AB 130 has proven confusing in practical application. Even with the attempted clarification of AB 167, many LEAs have struggled with implementation in response to the surge of COVID-19 cases in both students and staff.

High absentee rates among students and staff result in a loss of instructional days, which, in turn, can affect apportionment and funding. Typically, when an emergency condition causes a school closure, reduction in attendance, or change in schedule preventing an LEA from complying with the minimum number of instructional days or minutes required by law, the LEA can use the J-13A waiver process to obtain approval of apportionment credit. During the normal waiver process, LEAs complete necessary paperwork after the fact so that they can properly document the circumstances and the number of instructional days missed. However, under AB 167, there are additional requirements to receive credit for emergency apportionment, and if the LEA

wants to receive apportionment credit for the days missed, it must take additional steps prior to closing any schools.

The following has been prepared as a helpful guide to provide a better understanding of what LEAs can do in response to the omicron surge in their community and the process that must be followed to close schools and receive apportionment credit when facing significant employee absences when there has been no state or local public health order closing schools.

INDEPENDENT STUDY MUST BE VOLUNTARY

For the 2021–22 school year, with limited exception, districts and county offices of education are required to offer independent study programs that give students the option to learn at home. Independent study encourages schools to keep classrooms open for in-person instruction while giving students the option to continue their education from home when their health might be put at risk by in-person instruction. Education Code 51747, as amended by AB 167, authorizes a district to receive apportionment credit for independent study for any student who is unable to attend in-person instruction due to a quarantine, pursuant to a local or state public health guidance for exposure to or infection with COVID, or due to a school closure for COVID.



When school closures are related to staffing shortages, there have been issues raised over whether independent study can be required. CDE has taken the position that independent study must still be offered as an option and not required during the closure. This position is consistent with the language in AB 167 that provides that independent study is an optional program that cannot be used to supplant in-person instruction and allow LEAs to close schools and return to distance learning. For additional information about independent study, see CSBA's Board Policy and Administrative Regulation 6158 - Independent Study.

MATERIAL DECREASE IN STUDENT ATTENDANCE

As COVID cases rise, schools will continue to experience high rates of absenteeism among the student population. Even when the omicron surge subsides, another variant or surge could arise. However, if an LEA wants to receive apportionment credit, student absences alone cannot be the cause of closing schools without a state of local health closure order. From Sept. 1, 2021, to June 30, 2022, LEAs cannot use the Form J-13A waiver process to receive credit for material decreases in attendance in the general student population that result from students being quarantined and unable to attend in-person instruction due to exposure to, or infection with, COVID. However, the J-13A waiver process may still be used to receive credit for material decreases in student attendance that occurred prior to Sept. 1, 2021. The J-13A waiver process may also be used in 2021–22 for decreases in student attendance for students in community day schools or students with exceptional needs whose individualized

education program does not specifically provide for participation in independent study regardless of the date of loss. In addition, LEAs should be prepared to file a J-13-A waiver for any loss in instructional minutes during the 2021–22 school year resulting from providing independent study, especially when schools are closed due to a staffing shortage.

MATERIAL DECREASE IN STAFFING

While decreases in student attendance from COVID generally do not qualify for J-13A waivers for the remainder of the 2021–22 school year, COVID impacts on staffing may allow LEAs to close schools. The J-13A application process can be used if the LEA is unable to provide in-person instruction to students due to staffing shortages as a result of staff quarantine due to exposure to, or infection with, COVID, or because of a local or state public health guidance, but only if the following criteria have been met:

1. The LEA has exhausted all options for obtaining staff coverage, including using all certificated staff and substitute teacher options to fill certificated positions and using all staff options to fill classified positions
2. The LEA has consulted with their county office of education
3. The LEA has consulted with the California Department of Education (CDE) in determining that staffing needs cannot be met through any option
4. The LEA has offered independent study to all eligible students during the school closure



If the LEA has not met the criteria, it cannot expect to receive an emergency apportionment if it closes schools. When school closure is not an option, LEAs should remind students and their parents/guardians of the available independent study opportunities and, if feasible, continue to maintain in-person instructional opportunities under the supervision of certificated staff for students who choose to not participate in independent study.

When school closures do become necessary, LEAs should follow the steps outlined below.

STEPS THAT MAY MITIGATE FUNDING LOSS IF CLOSURE BECOMES NECESSARY

1. Evaluate staffing shortages, predicted staffing shortages and availability of substitutes.

Discuss staffing concerns with labor partners and evaluate your district's need for extra assistance to mitigate staff absences. Also consider the difficulty of obtaining substitutes for needed positions. Be sure to utilize all certificated staff and substitute teacher options. Remember that Gov. Gavin Newsom's Jan. 11, 2022, Executive Order N-3-22 provides new flexibility for filing substitute teaching positions that may help you fill open positions.

2. Consult with your county office of education.

In order to receive state funding following the submission of a Form J-13A waiver, your district must have consulted with the COE prior to any school closure. Per AB 130, which amended Education Code

§ 41422, LEAs must consult with their COE "in determining that staffing needs [certificated and classified] cannot be met through any option."

Best practice tip: If necessary, clarify with your COE what constitutes a "consultation" under Education Code § 41422. If possible, confirm in writing that a consultation occurred.

3. Consult with the California Department of Education.

Section 19 of AB 167 amended Education Code Section 46392 to require consultation with both the CDE and the county office of education before LEAs can submit to CDE a Request for Allowance of Attendance Due to Emergency Conditions Form J-13A prompted by staffing shortages. For more information, please see the CDE's letter dated Jan. 12, 2022.

LEAs can sign up for CDE consultations using this form.

4. Request that your governing board prepare and sign affidavits.

AB 130 requires affidavits from governing boards outlining specific information to the satisfaction of the State Superintendent of Public Instruction (SPI) and the COE to receive average daily attendance credit when a school is closed due to COVID-related staffing shortages. Pursuant to Education Code Section 46392, the governing board affidavits must include statements that:



- I. The school district, county office of education or charter school is unable to provide in-person instruction to pupils due to staffing shortages as a result of staff quarantine due to exposure to, or infection with, COVID pursuant to local or state public health guidance.
- II. For certificated staff shortages, the school district, county office of education or charter school has exhausted all options for obtaining staff coverage, including using all certificated staff and substitute teacher options, and has consulted with their county office of education and the SPI in determining that staffing needs cannot be met through any option.
- III. For classified staff shortages, the school district, county office of education or charter school has exhausted all options for obtaining staff coverage, including using all staff options, and has consulted with their county office of education and the SPI in determining that staffing needs cannot be met through any option.

4. Determine whether to close schools.

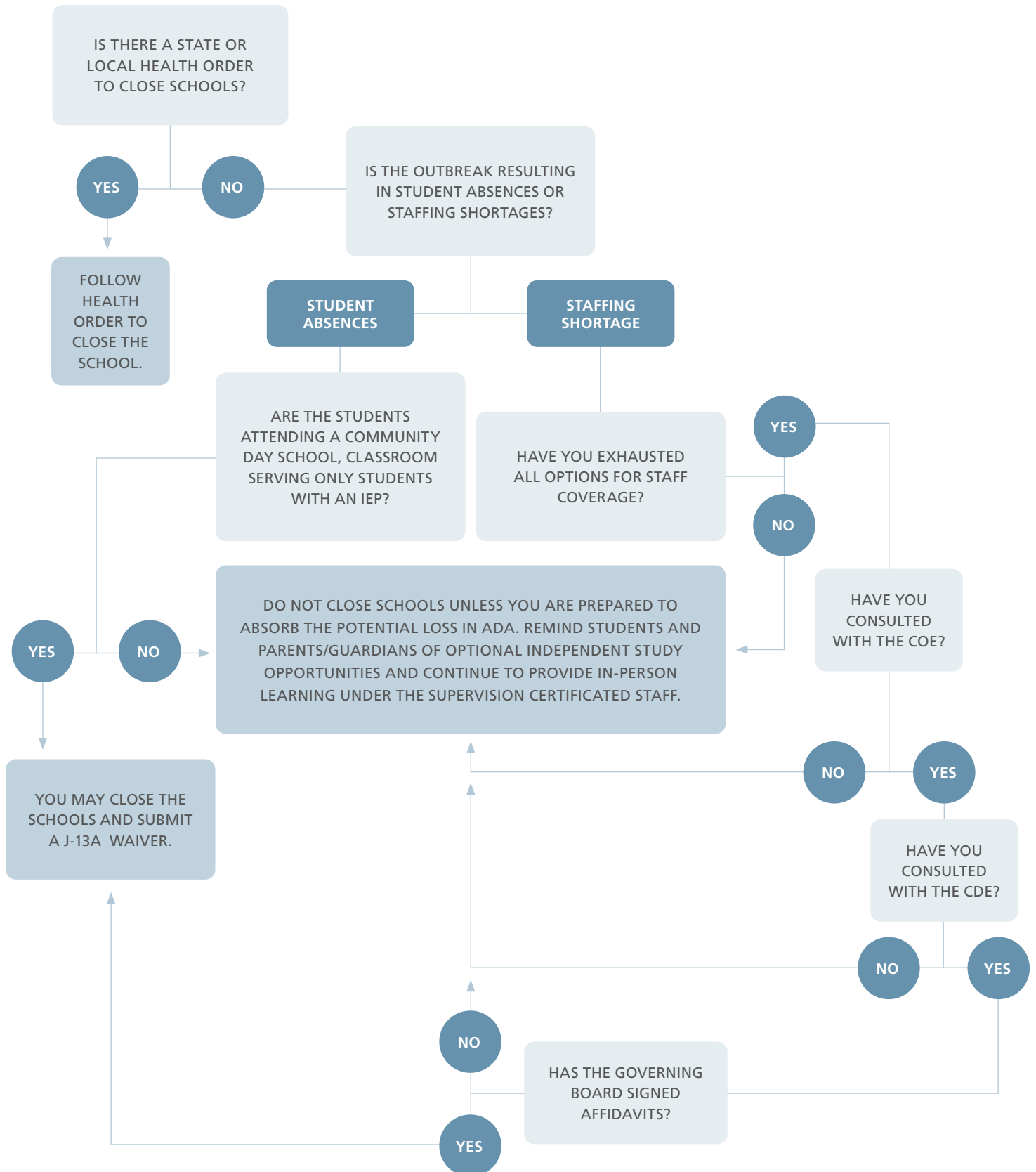
Follow any guidelines provided to you by CDE and the COE. If the LEA meets the requirements for a J-13A waiver and decides to close schools, it is important to provide all necessary information to the community in a clear and timely communication. Utilize communication channels to inform students, parents/guardians and staff of the closure — why is it happening, when will it be in effect and how will it impact students.

5. Complete Form J-13A waiver for the number of days your schools were closed.

At the end of your school closures, complete the necessary Form J-13A waiver for the number of days your schools were closed. Answers to frequently asked questions regarding Form J-13A submissions can be found on the CDE's [website](#).

Should you need further information, please contact legal@csba.org. If you wish to speak with a CSBA attorney to receive legal advice, please email legalservices@csba.org or visit our [webpage](#) to find out how you and your district can participate in CSBA's District and County Office of Education Legal Services Program.

Can you close school because of a COVID outbreak?





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