

CSBA Sample Board Policy

Philosophy, Goals, Objectives, and Comprehensive Plans

BP 0420.42(a)

CHARTER SCHOOL RENEWAL

Note: **The following policy is optional.** When the term of a charter granted by the Governing Board pursuant to Education Code 47605 (see BP/AR 0420.4 – Charter School Authorization) is due to expire, the charter school must submit a petition for renewal to the Board in accordance with Education Code 47607, as amended by AB 1505 (Ch. 486, Statutes of 2019), and Education Code 47607.2, as added by AB 1505.

For a charter that was granted by the State Board of Education (SBE) on appeal after being denied by the district, the renewal petition must first be submitted to the district board that denied the charter, pursuant to Education Code 47605. A petition for the renewal of a charter that was originally granted by the County Board of Education on appeal after being denied by the district must be submitted directly to the County Board as the chartering authority pursuant to 5 CCR 11966.5.

The Governing Board believes that the ongoing operation of a charter school should be dependent on the school's effectiveness in achieving its mission and goals for student learning and other student outcomes. Whenever a charter school submits a petition for renewal of its charter, the Board shall review the petition thoroughly and in a timely manner, **consistent with the timelines set out in the Education Code.** The Board shall consider renewal petitions only of charters originally authorized by the Board itself or by the State Board of Education (SBE) on appeal after initial denial by the Board.

(cf. 0420.4 - Charter School Authorization)

(cf. 0420.41 - Charter School Oversight)

(cf. 0420.43 - Charter School Revocation)

(cf. 0500 - Accountability)

The Board shall deny the renewal petition of any charter school operated as or by a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization. (Education Code 47604)

When a charter school, concurrently with its renewal petition, proposes to expand operations to one or more additional sites or grade levels, the charter school shall request a material revision to its charter. The material revision may be made only with the approval of the Board and in accordance with the standards and criteria in Education Code 47605 for material revisions. (Education Code 47607)

Note: The following **optional** paragraph may be revised to reflect district timelines for the submission of charter renewal petitions. Education Code 47605, as amended by AB 1505 and AB 1595 (Ch. 543, Statutes of 2019), requires that the Board grant or deny the renewal petition within 90 days of receiving the petition; see section entitled "Timelines for Board Action" below. However, it is recommended that charter schools submit their petition sufficiently early (e.g., as much as nine months before the term of the charter is due to expire) so that, in the event that the Board denies the renewal, the charter school may be able to appeal to the County Board and then to SBE and, if the school closes, to allow students of the charter school to transfer to another school.

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CHARTER SCHOOL RENEWAL (continued)

The Board recommends that a charter school submit its petition for renewal to the Board sufficiently early before the expiration of the term of the charter to allow the Board's deliberations and decision on the renewal petition to be completed with minimal disruption to the charter school's educational program in the renewal year.

The petition for renewal shall include a reasonably comprehensive description of how the charter school has met all new charter school requirements enacted into law after the charter was originally granted or last renewed. (Education Code 47607; 5 CCR 11966.4)

Criteria for Granting or Denying Renewal

Note: **AB 1505 amended** Education Code 47607 and **added Education Code 47607.2 to revise the criteria for granting or denying charter renewals and to** authorize different lengths of renewals for high-performing, middle-performing, and low-performing charter schools.

Pursuant to Education Code 47607, charter renewals are subject to the same standards and criteria as initial charter authorizations as specified in Education Code 47605, except that the Board may not deny the renewal of an existing charter school based on a finding that (1) the district has a negative or qualified interim certification and is not positioned to absorb the fiscal impact of the proposed charter school or (2) the charter school is unlikely to serve the interests of the entire community in which the school will be located (i.e., the school would substantially undermine or duplicate existing district services or programs). However, these two criteria may be used to deny a proposed expansion of an existing charter school. **See AR 0420.4 - Charter School Authorization for more information regarding the standards and criteria for initial charter authorizations and renewals.**

Renewals shall be governed by the same standards and criteria that apply to new charter petitions as set forth in Education Code 47605. However, a charter renewal shall not be denied based on the fiscal impact of the charter school on the district or a finding that the charter school is unlikely to serve the interests of the entire community in which the school is located, as described in Education Code 47605. (Education Code 47607)

The signature requirement for charter authorization petitions is not applicable to petitions for renewal. (Education Code 47607)

Note: Pursuant to Education Code 47607.2, the review of the charter school's **academic** performance must be based on "verified data" **from assessments and other indicators approved by SBE. defined as data that are derived from nationally recognized, valid, peer reviewed, and reliable sources that are externally produced and include measures of postsecondary outcomes. SBE is required to identify, by January 1, 2021, a list of valid and reliable assessments that must be used by the Board for this purpose. Until such a list is available, a charter school under consideration for renewal may present data consistent with the definition of "verified data." In November 2020, SBE approved a list of valid and reliable indicators of academic progress and postsecondary outcomes that may be used to demonstrate a charter school's academic performance. Such indicators are available on CDE's web site.**

CHARTER SCHOOL RENEWAL (continued)

In determining whether to grant a charter renewal, the Board shall review both schoolwide performance and the performance of numerically significant student subgroups on the state and local indicators included in the California School Dashboard, giving greater weight to performance on measurements of academic performance. If the Dashboard indicators are not yet available for the most recently completed academic year before renewal, the Board shall consider verifiable data provided by the charter school related to the Dashboard indicators, such as data from the California Assessment of Student Performance and Progress, or any successor system, for the most recent academic year. **The Board shall only consider data from sources adopted by SBE.** (Education Code 47607, 47607.2)

Following the Board's review, a renewal of the charter petition may be granted in accordance with a three-tiered system based on school performance, as follows:

Note: Pursuant to Education Code 47607, as amended by SB 98 (Ch. 24, Statutes of 2020), the criteria described in item #1 below may be achieved for two of the three years immediately preceding the renewal, rather than for the two consecutive years immediately preceding the renewal, if the two consecutive years immediately preceding the renewal include the 2019-20 school year.

I. **Renewal of Five to Seven Years**

- a. **A renewal shall be granted for a period of five to seven years to a charter school that is not eligible for technical assistance pursuant to Education Code 47607.3 shall be granted renewal for a period of five to seven years when, and that, for two consecutive years immediately preceding the renewal, or for two of the three years immediately preceding the renewal for any renewal submitted in the 2020-21 or 2021-22 school year, the charter school achieved either of the following: (Education Code 47607)**
 - (1) Received the two highest performance levels schoolwide on all the state indicators included in the Dashboard for which the charter school receives performance levels, **provided the charter school has schoolwide performance levels on at least two measurements of academic performance per year in each of the two years**
 - (2) For all measurements of academic performance, received performance levels schoolwide that are the same or higher than the state average and, for a majority of numerically significant student subgroups performing statewide below the state average in each respective year, received performance levels that are higher than the state average, **provided that the charter school has performance levels on at least two measurements of academic performance for at least two subgroups**

CHARTER SCHOOL RENEWAL (continued)

- b. **If the charter school satisfies the above criteria, it shall only be required to update the renewal petition to include a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed and, as necessary, to reflect the current program offered by the charter school. (Education Code 47607)**

2. Renewal of Five Years

- a. A renewal shall be granted for five years if clear and convincing evidence, demonstrated by verified data, shows either of the following: (Education Code 47607.2)
- (1) Measurable increases in academic achievement, as defined by at least one year's progress for each year in school
 - (2) Strong postsecondary outcomes, as defined by college enrollment, persistence, and completion rates equal to similar peers
- b. For any such charter school, the Board may deny the renewal petition upon making written factual findings that the charter school failed to meet or make sufficient progress toward meeting standards that provide a benefit to students at the school, that the closure of the charter school is in the best interest of students, and that the Board's decision provided greater weight to performance on measurements of academic performance. (Education Code 47607.2)

Note: Education Code 47607.2, as amended by SB 98, authorizes the Board to deny renewal of a charter if the criteria described in item #3 below apply in two of the three years immediately preceding the renewal, rather than for two consecutive years immediately preceding the renewal, if the two consecutive years immediately preceding the renewal include the 2019-20 school year.

3. Denial/ ~~with Option for~~ Two-Year Renewal

- a. The Board shall generally not renew a charter if, for two consecutive years immediately preceding the renewal decision, **or for two of the three years immediately preceding the renewal for any renewal submitted in the 2020-21 or 2021-22 school year**, either of the following applies: (Education Code 47607.2)
- (1) The charter school has received the two lowest performance levels schoolwide on all the state indicators included in the Dashboard for which it receives performance levels, **provided the charter school has schoolwide performance levels on at least two measurements of academic performance per year in each of the two years**

CHARTER SCHOOL RENEWAL (continued)

- (2) For all measurements of academic performance, the charter school has received performance levels schoolwide that are the same or lower than the state average and, for a majority of numerically significant student subgroups performing statewide below the state average in each respective year, received performance levels that are lower than the state average-, **provided that the charter school has performance levels on at least two measurements of academic performance for at least two subgroups**
- b. However, the Board may grant a two-year renewal to any such charter school if the Board makes written factual findings, setting forth specific facts to support the findings, that: **(Education Code 47607.2)**
- (1) The charter school is taking meaningful steps to address the underlying cause(s) of low performance, and those steps are reflected, or will be reflected, in a written plan adopted by the governing body of the charter school.
- (2) There is clear and convincing evidence, demonstrated by verified data, showing achievement of the criteria specified in item #2a above

In addition to all the grounds stated above for denial of a charter renewal, the Board may deny renewal of a charter upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors or a finding that the school is not serving all students who wish to attend. When denying a charter renewal for either of these reasons, the Board shall provide the charter school at least 30 days' notice of the alleged violation and a reasonable opportunity to cure the violation, including the submission of a proposed corrective action plan. **The Board may deny the renewal shall be denied if the Board finds either that for these reasons only upon a finding that either** the corrective action proposed by the charter school has been unsuccessful or that the violations are sufficiently severe and pervasive as to render a corrective action plan unviable. Any finding that a school is not serving all students who wish to attend shall specifically identify the evidence supporting the finding. (Education Code 47607)

Note: Charter schools that serve high-risk students may qualify for the state's Dashboard Alternative School Status (DASS) program, which uses modified methods of measurement for accountability indicators when appropriate. Charter schools that participate in the DASS are subject to the following criteria specified in Education Code **47607 46607, as amended by AB 1505.**

A charter school that **is eligible qualifies** for the state's Dashboard Alternative School Status shall not be subject to any of the above criteria. Instead, in determining whether to grant a

CHARTER SCHOOL RENEWAL (continued)

charter renewal for such a charter school, the Board shall consider, in addition to the charter school's performance on the state and local indicators included in the Dashboard, the charter school's performance on alternative metrics applicable to the charter school based on the student population served. The Board shall meet with the charter school during the first year of the charter school's term to mutually agree to discuss alternative metrics to be considered and shall notify the charter school of the alternative metrics to be used within 30 days of this meeting. The Board may deny a charter renewal only upon making written findings, setting forth specific facts to support the findings, that the closure of the charter school is in the best interest of students. (Education Code 47607)

Timelines for Board Action

Note: State law does not expressly provide a timeline for a public hearing on the renewal petition or for the Board's final decision on the renewal. However, pursuant to Education Code 47607, renewals are generally subject to the same standards and criteria applicable to initial charter authorizations, as specified in Education Code 47605. **As amended by AB 1505 and AB 1595, Education Code 47605 extends the timeline for the hearing for a charter petition from 30 to 60 days of the receipt of the petition. In addition, Education Code 47605 defines receipt of the petition as the date that the petitioner submits the petition to the district, and requires the Board to publish staff recommendations regarding the petition at least 15 days prior to the hearing at which the Board will grant or deny the petition.** The following section reflects the timelines established for initial charter authorizations.

Within 60 days of receiving the renewal petition, the Board shall hold a public hearing to review documentation submitted by the charter school, **determine the level of support for the petition**, and obtain public input. A petition is deemed received on the day the petitioner submits a petition to the district office, along with a signed certification that the petitioner deems the petition to be complete. (Education Code 47605)

The Board shall either grant or deny the charter renewal within 90 days of receiving the petition **or within 120 days with the consent of both the petitioner and the Board. The date may be extended by an additional 30 days if both the petitioner and the Board agree to the extension.** (Education Code 47605)

At least 15 days before the public hearing at which the Board will grant or deny the charter petition, the Board shall publish all staff recommendations and recommended findings regarding the petition. During the public hearing, petitioners shall have equal time and opportunity to present evidence and testimony to respond to the staff recommendations and findings. (Education Code 47605)

If the Board fails to make a written factual finding when required for denial of the petition pursuant to the section "Criteria for Granting or Denying Renewal" above within the required time period, the absence of a written factual finding shall be deemed an approval of the renewal petition. (5 CCR 11966.4)

106

CHARTER SCHOOL RENEWAL (continued)

The Superintendent or designee shall provide notification to CDE, within 10 calendar days of the Board's action, whenever a renewal of the charter is granted or denied. (Education Code 47604.32; 5 CCR 11962.1)

If the Board denies a renewal petition, the charter school may submit its application for renewal to the County Board within 30 days of the Board's written factual findings supporting the denial. (Education Code 47605, 47607.5)

School Closure

If a charter is not renewed and the charter school ceases operation, ~~the Board and/or the charter school shall implement~~ the school closure procedures specified in the charter in accordance with Education Code 47605 and 5 CCR 11962 **shall be implemented.** (Education Code ~~47603.32~~ **47604.32, 47605**)

Legal Reference:

EDUCATION CODE

47600-47616.7 Charter Schools Act of 1992

52052 Definition of numerically significant student subgroup

56145-56146 Special education services in charter schools

60600-60649 Assessment of academic achievement

CODE OF REGULATIONS, TITLE 5

~~11960-11969 Charter schools~~

11962-11962.1 Definitions

11966.4 Submission of charter renewal petition

11966.5 Charter petitions that have not been renewed; submission to county board of education

UNITED STATES CODE, TITLE 20

7223-7225 Charter schools

Management Resources:

CSBA PUBLICATIONS

The Role of the Charter School Authorizer, Online Course

Charter Schools: A Guide for Governance Teams, rev. 2016

WEB SITES

CSBA: <http://www.csba.org>

California Charter Authorizing Professionals: <https://calauthorizers.org>

California Charter Schools Association: <http://www.calcharters.org> <https://www.ccsa.org>

California Department of Education, Charter Schools: <http://www.cde.ca.gov/sp/esch>

National Association of Charter School Authorizers: <http://www.charterauthorizers.org>

<https://www.qualitycharters.org>

U.S. Department of Education: <http://www.ed.gov>

(10/18 3/20) 3/21

Policy Reference UPDATE Service

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3110(a)

TRANSFER OF FUNDS

Note: Education Code 41010 and 42600 requires districts to expend funds in accordance with the classification of expenditures included in their adopted budget and in the California School Accounting Manual. However, in certain limited circumstances, the Governing Board may approve interfund borrowing or the transfer of money between funds. The following policy may be revised to reflect district practice. The following optional policy may be revised to reflect district practice.

The Governing Board recognizes its responsibility to monitor the district's fiscal practices to ensure accountability regarding the expenditure of public funds and compliance with legal requirements.

(cf. 0460 - Local Control and Accountability Plan)
(cf. 3100 - Budget)
(cf. 3400 - Management of District Assets/Accounts)
(cf. 3460 - Financial Reports and Accountability)

Note: Education Code 42600 requires the district to expend funds in accordance with the classification of expenditures included in its adopted budget. However, other provisions of state law provide exceptions under which money may be transferred from one fund or account to another, as reflected in items #1-5 below:

AB 97 (Ch. 47, Statutes of 2013) repealed Education Code 17583 which provided a process for the transfer of excess local funds in the deferred maintenance fund to any other expenditure classifications whenever state funds for deferred maintenance are insufficient to fully match local funds.

AB 97 also repealed Education Code 42605, which provided temporary flexibility for specified "Tier 3" categorical programs, and redirects the funding for those categorical programs into the local control funding formula (LCFF) (Education Code 42238.01-42238.07). The supplemental and concentration grant portions of the LCFF may be used for any schoolwide or districtwide educational purpose in accordance with state regulations to be adopted by January 31, 2014, with the goal of increasing or improving services for students who are eligible for free and reduced-price meals, English learners, and foster youth; see BP/AR 0460 - Local Control and Accountability Plan and BP/AR 3100 - Budget.

The total amount budgeted by the district for each major classification of expenditures, as listed in the California Department of Education's budget forms, shall be the maximum amount which the district may expend for that classification for the school year. (Education Code 42600)

However, when it is in the best interest of the district, the Board may:

1. At any time, adopt a written resolution providing for transfers from the designated fund balance or the unappropriated fund balance to any expenditure classification or between classifications. The resolution shall be filed with the County Superintendent of Schools and the **C**ounty **A**uditor. (Education Code 42600)

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TRANSFER OF FUNDS (continued)

(cf. 9323.2 - Actions by the Board)

2. Direct the temporary transfer of monies held in any district fund or account to another fund or account as necessary for the payment of obligations. Such borrowing shall occur only when the fund or account receiving the money will earn sufficient income during the current fiscal year to repay the amount transferred. No more than 75 percent of the maximum amount held in any fund or account during the current fiscal year may be transferred. Amounts transferred shall be repaid in the same fiscal year, or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. (Education Code 42603)

Note: Education Code 42603.1, as added by SB 98 (Ch. 23, Statutes of 2020), adds the following authorization for the temporary transfer of funds for the 2020-21 and 2021-22 fiscal years, if the state defers any payments owed to districts.

For the 2020-21 and 2021-22 fiscal years only, if the state defers any payments owed to districts, the Board may direct the temporary transfer of up to 85 percent of the maximum amount held in any fund or account during the current fiscal year for the payment of obligations. Such borrowing shall occur only when the fund or account receiving the money will earn sufficient income during the current fiscal year to repay the amount transferred. Prior to exercising this authority, the Board shall hold a public hearing and adopt a resolution authorizing such transfer. (Education Code 42603.1)

Note: Pursuant to Education Code 42601, the district, with the approval of the Governing Board, may identify and request that the County Superintendent of Schools make transfers at the close of a school year in order to permit the payment of district obligations incurred during that school year, as provided in item #3 below. For elementary school districts with average daily attendance (ADA) of 900 or less, high school districts with ADA of 300 or less, or unified districts with ADA of 1,500 or less, the County Superintendent may identify and make the transfers, with the consent of the Board.

3. At the close of a school year, request that the County Superintendent make transfers between the designated fund balance or the unappropriated fund balance and any expenditure classification(s), or balance any expenditure classifications of the district budget as necessary for the payment of obligations incurred during that school year. (Education Code 42601)
4. ~~Specify amounts to be transferred by the county auditor and treasurer from the district's general fund to the special reserve fund during the fiscal year. If any special reserve funds that are maintained for purposes other than capital outlay or other purposes pursuant to Education Code 42842 if monies in the special reserve fund are not actually encumbered for ongoing expenses, the Board may transfer those~~

TRANSFER OF FUNDS (continued)

monies into the general fund for the general operating purposes of the district. If any monies remain in the special reserve fund at the conclusion of a project, the Board may **submit a, by-written request to the County Superintendent, Auditor, and Treasurer; to discontinue the special reserve fund and** transfer those monies to the district's general fund. (Education Code 42841-42843)

5. Transfer monies between other funds or accounts when authorized by law.

*Legal Reference:*EDUCATION CODE

78 Definition, governing board

5200 Districts governed by boards of education

16095 Transfer of district funds to district state school building fund

41010 California School Accounting Manual

41301 Section A state school fund allocation schedule

42125 Designated and unappropriated fund balances

42238-42251 Apportionments to districts, especially:

42238.01-42238.07 Local control funding formula

42600 District budget limitation on expenditure

42601 Transfers between funds to permit payment of obligations at close of year

42603 **Temporary Transfer of monies held in any fund or account to another fund; repayment****42603.1 Temporary transfer of monies held in any fund or account to another fund; state deferrals; fiscal years 2020-21 and 2021-22**

42840-42843 Special reserve fund

52616.4 Expenditures from adult education fund

*Management Resources:***CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS****California School Accounting Manual**WEB SITESCSBA: <http://www.csba.org>California Department of Education: <http://www.cde.ca.gov>Fiscal Crisis and Management Assistance Team: <http://www.fcmat.org>

(11/11 10/13) 3/21

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3230(a)

FEDERAL GRANT FUNDS

Note: All grants awarded by the federal government, including formula grants (e.g., Title I funding, Part B of the Individuals with Disabilities Education Act) and discretionary grants, are subject to the requirements contained in the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called "Uniform Guidance"), as specified in 2 CFR 200.0-200.521 and Appendices I-XII. **2 CCR 200.109 requires that the Uniform Guidance be reviewed every five years. Revisions to the Uniform Guidance (85 Fed. Reg. 49506), effective November 12, 2020, address the information that grant recipients are required to report, implement relevant statutory requirements, and clarify existing requirements.**

~~The Uniform Guidance, adopted in December 2014, includes new provisions but primarily consolidates guidance from earlier OMB circulars.~~

~~Pursuant to 2 CFR 200.110, the Uniform Guidance applies to all new and continuing grant awards made on or after December 26, 2014, except that, as amended by 82 Fed. Reg. 94, districts may choose to delay implementation of the new procurement standards until July 1, 2018 or such later date as may be approved in the Uniform Guidance. See the accompanying administrative regulation for optional language accepting the delayed implementation.~~

Pursuant to 2 CFR 200.302, 200.318, and 200.319, the district is **mandated** to adopt written procedures related to procurement, conflict of interest, cash management, payments, and allowable costs. In addition to the following policy, it is recommended that districts maintain a detailed administrative regulation or procedures manual addressing the mandated components.

The Governing Board recognizes the district's responsibility to maintain fiscal integrity and transparency in the use of all funds awarded through federal grants. The district shall comply with all requirements detailed in any grant agreement with an awarding agency and with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards specified in 2 CFR 200.0-200.521 and any stricter state laws and district policy.

Any goods or services purchased with federal funds shall be reasonable in cost and necessary for the proper and efficient performance or administration of the program.

The Superintendent or designee shall ensure that the district's financial management systems and procedures provide for the following: (2 CFR 200.302)

1. Identification in district accounts of each federal award received and expended and the federal program under which it was received

(cf. 3100 - Budget)

FEDERAL GRANT FUNDS (continued)

2. Accurate, current, and complete disclosure of the financial and performance results of each federal award or program in accordance with the reporting requirements of 2 CFR ~~200.327 and~~ 200.328 and 200.329

(cf. 3460 - Financial Reports and Accountability)

3. Records and supporting documentation that adequately identify the source and application of funds for federally funded activities, including information pertaining to federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income, and interest

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

4. Effective controls over and accountability for all funds, property, and other assets and assurance that all assets are used solely for authorized purposes
5. Comparison of actual expenditures with budgeted amounts for each federal award
6. Written procedures to implement provisions governing payments as specified in 2 CFR 200.305
7. Written procedures for determining the allowability of costs in accordance with 2 CFR 200.400-200.475 and the terms and conditions of the federal grant award

(cf. 3400 - Management of District Assets/Accounts)

The Superintendent or designee shall develop and implement appropriate internal control processes to reasonably assure that transactions are properly executed, recorded, and accounted for so that the district can prepare reliable financial statements and federal reports, maintain accountability over assets, and demonstrate compliance with federal laws, regulations, and conditions of the federal award. (2 CFR 200.61, 200.62, 200.303)

Equipment purchased with federal funds shall be properly inventoried and adequately maintained to safeguard against loss, damage, or theft of the property.

(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)

(cf. 3440 - Inventories)

(cf. 3512 - Equipment)

All staff involved in the administration or implementation of programs and activities supported by federal funds shall receive information and training on the allowable use of federal funds, purchasing procedures, and reporting processes commensurate with their duties.

FEDERAL GRANT FUNDS (continued)*(cf. 4131 - Staff Development)**(cf. 4231 - Staff Development)**(cf. 4331 - Staff Development)*

Note: Pursuant to 2 CFR 200.328 and 200.329, districts must submit **financial and** performance reports at the interval required by the awarding agency, which shall be at least annually but no more often than quarterly except in unusual circumstances. **Status reports due annually must be submitted no later than 90 calendar days after the reporting period, and reports due quarterly or semi-annually must be submitted no later than 30 calendar days after the reporting period. As amended by 85 Fed. Reg. 49506, 2 CFR 200.329 increases the time period for submitting final performance reports from 90 to 120 days after the performance end date.** The district may request an extension of the due date for any performance report for justifiable reasons.

In addition, the California Department of Education (CDE) is required under Education Code 64001 to monitor districts' compliance with legal requirements for federal categorical programs. This monitoring is accomplished through the Federal Program Monitoring process, which is based on a combination of data and document reviews and on-site visits. For further information, see the CDE's website and BP 6190 - Evaluation of the Instructional Program.

The district shall submit **financial and** performance reports to the awarding agency in accordance with the schedule and indicators required for that federal grant by law and the awarding agency. As required, such reports may include a comparison of actual accomplishments to the objectives of the federal award, the relationship between financial data and performance accomplishments, the reasons that established goals were not met if applicable, cost information to demonstrate cost-effective practices, analysis and explanation of any cost overruns or high unit costs, and other relevant information. The final performance report shall be submitted ~~within 90~~ **no later than 120 calendar** days after the ending date of the grant. (2 CFR 200.301, 200.328, **200.329**)

*(cf. 0500 - Accountability)**(cf. 6190 - Evaluation of the Instructional Program)**Legal Reference: (see next page)*

FEDERAL GRANT FUNDS (continued)

Legal Reference:

EDUCATION CODE

42122-42129 Budget requirements

64001 School plan for student achievement, consolidated application programs

CODE OF FEDERAL REGULATIONS, TITLE 2

180.220 Amount of contract subject to suspension and debarment rules

200.0-200.521 Federal uniform grant guidance, especially:

200.1-200.99 Definitions

200.100-200.113 General provisions

200.317-200.326 Procurement standards

200.327-200.329 Monitoring and reporting

200.333-200.337 Record retention

200.400-200.475 Cost principles

200.500-200.521 Audit requirements

CODE OF FEDERAL REGULATIONS, TITLE 34

76.730-76.731 Records related to federal grant programs

CODE OF FEDERAL REGULATIONS, TITLE 48

2.101 Federal acquisition regulation; definitions

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Department of Education Audit Guide

California School Accounting Manual

EDUCATION AUDIT APPEALS PANEL PUBLICATIONS

Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Questions and Answers Regarding 2 CFR Part 200, March 17, 2016

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

Education Audit Appeals Panel: <http://www.eaap.ca.gov>

Office of Management and Budget, Uniform Guidance: https://www.whitehouse.gov/omb/grants_docs

State Controller's Office: <http://www.sco.ca.gov>

System for Award Management (SAM): <http://www.sam.gov/SAMportal/SAM/###>

U.S. Department of Education: <http://www.ed.gov>

U.S. Government Accountability Office: <http://www.gao.gov>

(9/16) 3/21

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3230(a)

FEDERAL GRANT FUNDS

Note: The following administrative regulation reflects the major requirements of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called "Uniform Guidance"), as specified in 2 CFR 200.0-200.521 and Appendices I-XII, as amended by 85 Fed. Reg. 49506. **The Uniform Guidance which governs the use of federal formula and discretionary grant funds awarded to districts all grants awarded by the federal government, including formula grants (e.g., Title I funding, Part B of the Individuals with Disabilities Education Act) and discretionary grants.** Pursuant to 2 CFR 200.302, 200.318, and 200.319, the district is mandated to adopt written procedures related to procurement, conflict of interest, cash management, payments, and allowable costs.

Pursuant to Public Contract Code 20111, as amended by SB 544 (Ch. 395, Statutes of 2017), clarifies that districts participating in a federally funded child nutrition program, such as the National School Lunch and/or Breakfast Program, must comply with the federal procurement standards of 2 CFR 200.318-200.326.

The requirements of the Uniform Guidance are extensive and are not fully covered in the following administrative regulation. It is recommended that the district expand the following regulation and/or maintain a comprehensive procedures manual which contains internal controls and grant management standards used by the district to ensure the lawful expenditure of federal funds, including, but not limited to, procedures and protocols for cash management, procurement, inventory management, allowability of expenditures, "time and effort" reporting by personnel, and record retention.

To ensure the lawful expenditure of any federal formula or discretionary grant funds awarded to the district, the Superintendent or designee shall comply with the requirements of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the "Uniform Guidance"), as contained in 2 CFR 200.0-200.521 and Appendices I-XII.

Allowable Costs

Note: 2 CFR 200.302 **mandates** that districts develop written procedures for determining the allowability of costs in accordance with 2 CFR 200.400-200.475 and the terms and conditions of the federal grant award. Districts may revise this section or their detailed procedures manual to reflect those requirements.

Prior to obligating or spending any federal grant funds, the Superintendent or designee shall determine whether a proposed purchase is an allowable expenditure in accordance with 2 CFR 200.400-200.475 and the terms and conditions of the award. **He/she The Superintendent or designee** shall also determine whether the expense is a direct or indirect cost as defined in 2 CFR 200.413 and 200.414 and, if the purchase will benefit other programs not included in the grant award, the appropriate share to be allocated to the federal grant.

(cf. 3350 - Travel Expenses)



FEDERAL GRANT FUNDS (continued)

Note: Pursuant to Education Code 42126, which requires the Superintendent of Public Instruction to prescribe a uniform format for district budgets, districts are required to use the Standardized Account Code Structure (SACS). SACS ensures that districts meet state and federal reporting guidelines and comply with generally accepted accounting principles prescribed by the Governmental Accounting Standards Board. The California Department of Education's California School Accounting Manual provides guidance regarding coding of revenues and expenditures and reflects the Uniform Guidance.

The Superintendent or designee shall review and approve all transactions involving federal grant funds and shall ensure the proper coding of expenditures consistent with the California School Accounting Manual.

(cf. 3300 - Expenditures and Purchases)
(cf. 3314 - Payment for Goods and Services)

Period of Performance

Note: Pursuant to 2 CFR ~~200.343~~ **200.344**, any federal funds that are not obligated or paid within the appropriate timeframes must be returned to the awarding agency. Thus, districts should closely monitor spending throughout the grant cycle.

As amended by 85 Fed. Reg. 49506, 2 CFR 200.344 increases the number of days for districts to liquidate all financial obligations from 90 days to 120 days.

All obligations of federal funds shall occur on or between the beginning and ending dates of the grant project and shall be paid no later than **90 120 calendar** days after the end of the funding period, unless specifically authorized by the grant award to be carried over beyond the initial term of the grant. (2 CFR 200.77, 200.308, 200.309, ~~200.343~~**200.344**)

Procurement

Note: ~~2 CFR 200.110, as amended by 82 Fed. Reg. 22609, authorizes districts to delay implementation of the procurement standards in the Uniform Guidance (2 CFR 200.317-200.326) until July 1, 2018 or such later date as may be approved in the Uniform Guidance. Districts that choose to delay implementation are mandated by 2 CFR 200.110 to document this decision in their procurement policies and should revise the following paragraph accordingly. Districts are required to comply with the procurement standards specified in 2 CFR 200.317-200.327 as well as state laws pertaining to bidding and procurement.~~

2 CFR 200.322, as added by 85 Fed. Reg. 49506, requires districts, to the extent practicable under a federal award, to give preference to the purchase, acquisition, or use of goods, products, or materials from the United States.

When procuring goods and services with a federal grant, the Superintendent or designee shall comply with the standards contained in 2 CFR 200.317-~~200.326~~ **200.327** and Appendix II of Part 200, ~~or~~ **and** with any applicable state **bidding or procurement** law or district policy that is more restrictive.

FEDERAL GRANT FUNDS (continued)

As appropriate to encourage greater economy and efficiency, the Superintendent or designee shall avoid acquisition of unnecessary or duplicative items, give consideration to consolidating or breaking out procurements, analyze lease versus purchase alternatives, consider entering into an interagency agreement for procurement of common or shared goods and services, and/or use federal excess or surplus property. (2 CFR 200.318)

Note: 2 CFR 200.318 **mandates** that districts have written procedures that address all applicable laws regarding the use of federal grant funds in procurement transactions. The U.S. Department of Education's (USDOE) Questions and Answers Regarding 2 CFR Part 200 clarifies that such procedures must address issues related to the bid process (e.g., source evaluation, protests, and claims) **since 2 CFR 200.318 provides that the district is solely responsible for settlement of all contractual and administrative issues arising out of the procurement process.**

The following list reflects major requirements contained in the Uniform Guidance. Districts may revise the following list or the district's comprehensive procedures manual to include additional detail, such as a description of the documents that will be used (e.g., purchase order, requisition), staff responsibilities, and the process for soliciting and receiving bids.

The procurement of goods or services with federal funds shall be conducted in a manner that provides full and open competition in accordance with state laws and district regulations and the following requirements:

Note: 2 CFR 200.67 **and 200.320** permits districts to establish simplified procurement procedures for "micro-purchases," as described in item #1 below. Pursuant to 2 CFR 200.320, **districts are responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and district procurement procedures. Pursuant to 2 CFR 200.320, as amended by 85 Fed. Reg. 49506, and 48 CFR 2.101, the threshold for such purchases is \$3,500 cannot exceed \$10,000 except as otherwise specified, and will be periodically adjusted for inflation. However, pursuant to 2 CFR 200.320, as amended, a district may be eligible to establish a micro-purchase threshold up to \$50,000 on an annual basis if the district is able to self-certify that it may do so, with documentation of one of the following criteria: (1) the district's qualification as a low-risk auditee in accordance with 2 CFR 200.520; (2) an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or (3) a higher threshold consistent with state law. Districts may establish a threshold higher than \$50,000 with approval of the appropriate federal agency. Item #1 may be revised to reflect the threshold established by the district.**

Use of the simplified procedures requires that the district determine the price to be "reasonable." According to the USDOE's Questions and Answers Regarding 2 CFR Part 200, a documented review of web sites would meet this requirement.

As amended, 2 CFR 200.320 increases the "small purchases" limit under the Uniform Guidance (item #2 below) **is \$150,000 to \$250,000 in accordance with 48 CFR 2.101.** However, the more restrictive California bid limits in Public Contract Code 20111 and district procurement policies must be applied to define the "small purchase" requirements.

Any purchases above the California bid limits **(see BP/AR 3311 - Bids)** must follow California law. **See BP/AR 3311 - Bids for more information regarding bids and bid limits.**

FEDERAL GRANT FUNDS (continued)

1. Any purchase of supplies or services that does not exceed the "micro-purchase" threshold **specified in established by the district in accordance with** 48 CFR 2.101 may be awarded without soliciting competitive quotes, provided that the district considers the price to be reasonable and maintains written evidence of this reasonableness in the record of all micro-purchases. (2 CFR 200.67, 200.320)
2. For any purchase that exceeds the micro-purchase threshold but is less than the bid limit required by Public Contract Code 20111, the Superintendent or designee shall utilize "small-purchase" procedures that include obtaining price or rate quotes from an adequate number of qualified sources. (2 CFR 200.320)
3. Contracts for goods or services over the bid limits required by Public Contract Code 20111 shall be awarded pursuant to California law and AR 3311 - Bids, unless exempt from bidding under the law.

(cf. 3311 - Bids)

4. If a purchase is exempt from bidding and the district's solicitation is by a request for proposals, the award may be made by either a fixed-price or cost-reimbursement type contract awarded to the entity whose proposal is most advantageous to the program, with price and other factors considered. (2 CFR 200.320)

(cf. 3312 - Contracts)

5. Procurement by noncompetitive proposals (sole sourcing) may be used only when the item is available exclusively from a single source, the need or emergency will not permit a delay resulting from competitive solicitation, the awarding agency expressly authorizes sole sourcing in response to the district's request, and/or competition is determined inadequate after solicitation of a number of sources. (2 CFR 200.320)
6. Time and materials type contracts may be used only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. *Time and materials type contract* means a contract for which the cost is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general administrative expenses, and profit. (**2 CFR 200.328-200.318**)

Note: 2 CFR **200.213-200.214** restricts districts from procuring goods or services from entities that have been **debarred**, suspended, or otherwise excluded from participation in federal assistance programs or activities. Districts may require certification of eligibility from the vendor or use the federal System for Award Management website to determine whether a particular entity has been excluded.

FEDERAL GRANT FUNDS (continued)

For any purchase of \$25,000 or more, the Superintendent or designee shall verify that any vendor which is used to procure goods or services is not excluded or disqualified by the federal government. (2 CFR 180.220, **200.213-200.214**)

Note: 2 CFR 200.319 **mandates** that districts have written procedures for procurement transactions that include the following components.

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description shall avoid detailed product specifications to the extent possible, but may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or not economical to make a clear and accurate description of the technical requirements, a brand name or equivalent description may be used to define the performance or other salient requirements of procurement, clearly stating the specific features of the named brand which must be met by offers. In addition, every solicitation shall identify all requirements which the offer must fulfill and any other factors to be used in evaluating bids or proposals. (2 CFR 200.319)

The Superintendent or designee shall maintain sufficient records to document the procurement, including, but not limited to, the rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and the basis for the contract price. (2 CFR 200.318)

The Superintendent or designee shall ensure that all contracts for purchases using federal grant funds contain the applicable contract provisions described in Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. (2 CFR **200.326-200.327**)

Capital Expenditures

Note: 2 CFR 200.313 and 200.439 require a district receiving federal grant funds to obtain prior written approval from the awarding agency before incurring the cost of a capital expenditure, as defined in 2 CFR 200.12 and 200.13. See AR 3512 - Equipment for further information about requirements related to equipment purchased with federal funds, including labeling, maintenance, and inventory of the equipment and continued use of the equipment after the program ceases to be supported by federal funds.

The Superintendent or designee shall obtain prior written approval from the awarding agency before using federal funds to make capital expenditures, including the acquisition of land, facilities, equipment, and intellectual property and expenditures to make additions,

FEDERAL GRANT FUNDS (continued)

improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR ~~200.12, 200.13, 200.20, 200.33, 200.48, 200.58, 200.89~~, 200.313, 200.439)

Conflict of Interest

Note: 2 CFR 200.318 **mandates** that districts maintain written standards of conduct covering conflicts of interest and the ~~performance actions~~ of employees engaged in the selection, award, and administration of contracts. **The district's standards of conduct must also provide for disciplinary actions to be applied when officers, employees, or representatives of the district violate conflict of interest standards. The district should revise this section or its detailed procedures manual to reflect district practice.**

No Governing Board members, district employees, ~~or~~ **and other** district representatives shall **not** participate in the selection, award, or administration of a contract supported by federal funds if ~~he/she has~~ **they have** a real or apparent conflict of interest, such as when ~~he/she~~ **they** or a member of ~~his/her~~ **their** immediate family, ~~his/her~~ **their** partner, or an organization which employs or is about to employ any of them has a financial **or other** interest in or a tangible personal benefit from a firm considered for a contract. Such persons are prohibited from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or subcontractors unless the gift is an unsolicited item of nominal value. (2 CFR 200.318)

Employees engaged in the selection, award, and administration of contracts shall also comply with BB 9270 - Conflict of Interest.

(cf. 9270 - Conflict of Interest)

Persons involved in the selection, award, or administration of a contract supported by federal funds shall be subject to discipline for any violation of conflict of interest standards. (2 CFR 200.318)

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 4218.1 - Dismissal/Suspension/Disciplinary Action (Merit System))

Cash Management

Note: Pursuant to 2 CFR 200.302, districts are **mandated** to develop written procedures to implement the requirements of 2 CFR 200.305.

The Superintendent or designee shall ensure the district's compliance with 2 CFR 200.305 pertaining to payments and cash management, including compliance with applicable methods and procedures that minimize the time elapsing between the transfer of funds to the district and the district's disbursement of funds. (2 CFR 200.305)

FEDERAL GRANT FUNDS (continued)

Note: Pursuant to 2 CFR 200.305, a district may be paid in advance by the awarding agency if it maintains written procedures that minimize the time elapsing between the transfer of funds and disbursement by the district as well as financial management systems that meet the standards for fund control and accountability as established in the Uniform Guidance.

When authorized by law, the district may receive advance payments of federal grant funds, limited to the minimum amounts needed and timed in accordance with the actual immediate cash requirements of the district for carrying out the purpose of the program or project. Except under specified conditions, the district shall maintain the advance payments in an interest-bearing account. The district shall remit interest earned on the advanced payment to the awarding agency on an annual basis, but may retain interest amounts specified in 2 CFR 200.305 for administrative expenses. (2 CFR 200.305)

When required by the awarding agency, the district shall instead submit a request for reimbursement of actual expenses incurred. The district may also request reimbursement as an alternative to receiving advance payments. (2 CFR 200.305)

The Superintendent or designee shall maintain source documentation supporting the expenditure of federal funds, such as invoices, time sheets, payroll stubs, or other appropriate documentation.

Personnel

Note: In order to charge staff compensation as an allowable expense of federal grant funds pursuant to 2 CFR 200.430, employees must document the amount of time they spend on grant activities supported by federal funds. These documents, known as "time and effort" records, are used to charge the costs of personnel compensation to federal grants. It is recommended that the district's administrative regulation reflect district practice for documenting time and effort, such as the type of documentation maintained, signature requirements, how often certifications will be completed, and review of the records by a supervisor.

All district employees who are paid in full or in part with federal funds, **including employees whose salary is paid with state or local funds but is used to meet a required match or in-kind contribution to a federal program,** shall document the amount of time they spend on grant activities. **Such records shall be incorporated into the official records of the district and shall be subject to a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated in accordance with 2 CFR 200.430.** (2 CFR 200.430)

Salaries and wages of employees whose salary is paid with state or local funds but are used to meet a cost-sharing or matching requirement of the federal grant shall be documented in the same manner as salaries and wages claimed for reimbursement under a federal grant. (2 CFR 200.430)

FEDERAL GRANT FUNDS (continued)**Records**

Except as otherwise provided in 2 CFR ~~200.333~~ 200.334, or where state law or district policy requires a longer retention period, financial records, supporting documents, statistical records, and all other district records related to a federal award shall be retained for a period of three years from the date of submission of the final expenditure report or, for a federal award that is renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. (2 CFR ~~200.333~~ 200.334)

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Audits

Note: Pursuant to 2 CFR 200.501, districts that expend \$750,000 or more in federal grant funds during a fiscal year must have a single audit conducted in accordance with 2 CFR 200.514, unless it chooses to have a program-specific audit conducted in accordance with 2 CFR 200.507. Districts that expend more than \$50 million in federal funds are subject to the requirements specified in 2 CFR 200.513. District audits are also subject to the requirements in Education Code 41020, the state Education Audit Appeal Panel's Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, and the California Department of Education Audit Guide. See BP/AR 3460 - Financial Reports and Accountability for further information about audit requirements.

Pursuant to 2 CFR 200.501, districts that expend less than \$750,000 in federal grant funds per fiscal year are exempt from federal audit requirements but must make records available for review or audit by the awarding agency, the pass-through entity, and U.S. Government Accountability Office. Such districts may delete the following section.

Whenever the district expends \$750,000 or more in federal grant funds during a fiscal year, it shall arrange for either a single audit or a program-specific audit in accordance with 2 CFR 200.507 or 200.514. (2 CFR 200.501)

The Superintendent or designee shall ensure that the audit meets the requirements specified in 2 CFR 200.500-200.521.

Specified records pertaining to the audit of federal funds expended by the district shall be transmitted to the clearinghouse designated by the federal Office of Management and Budget and shall be made available for public inspection. Such records shall be transmitted within 30 days after receipt of the auditor's report or within nine months after the end of the audit period, whichever is sooner, unless a longer period is agreed to in advance by the federal agency or a different period is specified in a program-specific audit guide. (2 CFR 200.512)

105

FEDERAL GRANT FUNDS (continued)

In the event that the audit identifies any deficiency, the Superintendent or designee shall promptly act to either correct the identified deficiency, produce recommended improvements, or demonstrate that the audit finding is invalid or does not warrant action. (2 CFR 200.26, 200.508, 200.511)

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3311.2(a)

LEASE-LEASEBACK CONTRACTS

Note: The following administrative regulation addresses construction financing contracts that are commonly described as "lease-leaseback" contracts. Education Code 17406, as amended by AB 2316 (Ch. 521, Statutes of 2016), no longer permits the selection of a lease-leaseback contractor without advertising, and instead requires districts to use a comprehensive "best value" selection process. Education Code 17406, as amended, mandates that any district choosing to award a lease-leaseback contract adopt and publish procedures and guidelines for evaluating the qualifications of proposers that ensure the fair and impartial selection of the "best value" for the district. In addition, for any project that will involve the use of preconstruction services, the request for sealed proposals must require proposers to include the fee to perform the preconstruction services as part of their sealed proposal to the district. Such procedures and guidelines must include, at a minimum, the provisions specified in Education Code 17406 as reflected in the following regulation.

The lease-leaseback financing method should only be used in coordination with competent technical consultants and legal counsel to ensure all legal requirements are met.

The district may lease currently owned district property to any person, firm, or corporation for a minimum of \$1 per year for a term not to exceed 99 years, as long as the lease requires the person, firm, or corporation to construct a building or buildings on the property for the district's use during the lease and the property and building(s) will vest in the district at the expiration of the lease ("lease-leaseback"). (Education Code 17403, 17406)

(cf. 3280 - Sale or Lease of District-Owned Real Property)

(cf. 3312 - Contracts)

Before the district enters into such a lease or agreement, it shall have available a site upon which a building may be constructed for use by the district, shall have complied with requirements related to the selection and approval of sites, and shall have prepared and adopted plans and specifications for the building that have been approved in accordance with Education Code 17280-17316. (Education Code 17402)

(cf. 7150 - Site Selection and Development)

Procedures for Awarding the Contract

Note: The following optional paragraph may be revised to reflect district practice. Pursuant to Education Code 17417, the Governing Board must adopt a resolution of intent to enter into a lease or agreement related to real property and buildings to be used by the district. However, pursuant to Education Code 17406, Education Code 17417 is not applicable to lease-leaseback agreements. As a best practice, the district may choose to adopt such a resolution for lease-leaseback contracts in order to inform the public and prospective proposers of the available site and the procedures for awarding the contract.

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LEASE-LEASEBACK CONTRACTS (continued)

The district's intent to enter into a lease-leaseback contract may be described in a resolution adopted by the Governing Board which includes, but is not be limited to, a description of the available site and the building to be constructed, the amount and term of the lease, and where to obtain information about the procedures for submitting a proposal.

Any lease-leaseback contract shall be awarded through a competitive "best value" procurement process whereby a person, firm, or corporation is selected on the basis of objective criteria for evaluating the qualifications of proposers, with the resulting selection representing the best combination of price and qualifications. **To make this determination, the district shall use the following procedures:** (Education Code 17400, 17406)

To make this determination, the district shall use the following procedures: (Education Code 17406; Public Contract Code 2600)

1. **Request for Sealed Proposals:** The Superintendent or designee shall prepare a request for sealed proposals which shall include:
 - a. An estimate of the project's price
 - b. A clear, precise description of any preconstruction services that may be required and the facilities to be constructed
 - c. The key elements of the contract to be awarded
 - d. A description of the format that proposals shall follow and the elements they shall contain
 - e. The standards the district will use in evaluating proposals and the qualifications of the proposers, including:
 - (1) Relevant experience
 - (2) Safety record
 - (3) Price proposal, including, at the district's discretion, either a lump-sum price for the contract to be awarded or the proposer's proposed fee to perform the services requested, including the proposer's proposed fee to perform preconstruction services or any other work related to the facilities to be constructed, as requested by the district

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LEASE-LEASEBACK CONTRACTS (continued)

- (4) Whether each criterion will be evaluated on a pass-fail basis or will be scored as part of the "best value" score, and whether proposers must achieve any minimum qualification score for award of the contract
 - (5) For each scored criterion, the methodology and rating or weighting system that will be used by the district in evaluating the criterion, including the weight assigned to the criterion and any minimum acceptable score
 - (6) Other factors established by the district
- f. The date on which proposals are due
 - g. The timetable the district will follow in reviewing and evaluating proposals

Note: Public Contract Code 2600, as amended by AB 2311 (Ch. 347, Statutes of 2020), adds a requirement to include in all bid documents and construction contracts, when applicable, a notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603. Pursuant to Education Code 17407.5, lease-leaseback contracts are subject to such requirements. See the section "Skilled and Trained Workforce" below for additional requirements.

- h. A statement that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603**
2. **Notice:** At least 10 days before the date for receipt of the proposals, the Superintendent or designee shall give notice of the request for sealed proposals using both of the following methods:
- a. Providing notice at least once a week for two weeks in a local newspaper of general circulation pursuant to Public Contract Code 20112
 - b. Providing notice in a trade paper of general circulation published in the county where the project is located

Note: The following paragraph is optional and may be revised to reflect district practice.

The Superintendent or designee also may post the notice on the district's web site or through an electronic portal.

Note: Pursuant to Education Code 17406, the prequalification requirements for contracts that meet the criteria specified in Public Contract Code 20111.6 are also applicable to lease-leaseback contracts. Education Code 17406 requires prequalification for such projects irrespective of whether or not they are funded locally or through state sources.

LEASE-LEASEBACK CONTRACTS (continued)

3. **Prequalification:** A proposer shall be prequalified in accordance with Public Contract Code 20111.6(b)-(m) in order to submit a proposal. Any electrical, mechanical, and plumbing subcontractors shall be subject to the same prequalification requirements.

(cf. 3311 - Bids)

4. ~~Evaluation Criteria: The request for sealed proposals shall identify all criteria that the district will consider in evaluating the proposals and qualifications of the proposers, including relevant experience, safety record, price proposal, and other factors specified by the district. The price proposal shall include, at the district's discretion, either a lump sum price for the contract to be awarded or the proposer's proposed fee to perform the services requested, including the proposer's proposed fee to perform preconstruction services or any other work related to the facilities to be constructed, as requested by the district.~~

~~The request for sealed proposals shall specify whether each criterion will be evaluated on a pass-fail basis or will be scored as part of the "best value" score, and whether proposers must achieve any minimum qualification score for award of the contract. For each scored criterion, the district shall identify the methodology and rating or weighting system that will be used by the district in evaluating the criterion, including the weight assigned to the criterion and any minimum acceptable score.~~

- 5.4. **Evaluation of Proposals:** All proposals received shall be reviewed to determine whether they meet the format requirements and the standards specified in the request for sealed proposals. The district shall evaluate the qualifications of the proposers based solely upon the criteria and evaluation methodology set forth in the request for sealed proposals, and shall assign a best value score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the district.

- 6.5. **Award of Contract:** The award of the contract shall be made by the **Governing Board** to the responsive proposer whose proposal is determined, in writing by the Board, to be the best value to the district.

If the selected proposer refuses or fails to execute the tendered contract, the Board may award the contract to the proposer with the second highest best value score, if deemed in the best interest of the district. If that proposer then refuses or fails to execute the tendered contract, the Board may award the contract to the proposer with the third highest best value score.

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LEASE-LEASEBACK CONTRACTS (continued)

Upon issuance of a contract award, the district shall publicly announce its award, identifying the entity to which the award is made, along with a statement regarding the basis of the award. The statement regarding the contract award and the contract file shall provide sufficient information to satisfy an external audit.

- 7.6. Rejection of Proposals:** At its discretion, the Board may reject all proposals and request new proposals.

~~Prior to entering into a lease-leaseback agreement, the Superintendent or designee shall have on file the contractor's enforceable commitment that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. (Education Code 17407.5)~~

Any lease-leaseback agreement shall be reviewed by the district's legal counsel to ensure that all required terms, including a lease term that provides for the district's occupancy of the building or improved property during the lease and an appropriate financing component, are included in the agreement.

Skilled and Trained Workforce

Note: Education Code 17407.5 requires the district to obtain an enforcement commitment that the contractor will comply with the requirements to use a skilled and trained workforce, as defined, in accordance with Public Contract Code 2600-2603. Pursuant to Public Contract Code 2600.5, as added by AB 2311, failure to provide the notice described in item #1h above does not excuse the district from the requirement to obtain an enforceable commitment that a contractor or other entity will use a skilled and trained workforce to complete a contract or project.

~~Prior to entering into a lease-leaseback agreement, the Superintendent or designee shall have on file the contractor's enforceable commitment that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence of compliance on a monthly basis during the performance of the project or contract. (Education Code 17407.5; Public Contract Code 2602)~~

Skilled and trained workforce means that all the workers performing the work are either skilled journeypersons or apprentices registered in a state-approved apprenticeship program. At least 60 percent of the skilled journeypersons employed to perform the work shall be graduates of an apprenticeship program for the applicable occupation or at least 60 percent of the hours worked by skilled journeypersons shall be performed by

LEASE-LEASEBACK CONTRACTS (continued)

graduates of an apprenticeship program, with the exception of certain occupations specified in Public Contract Code 2601 which are subject to a 30 percent threshold. (Public Contract Code 2601)

If the contractor fails to provide the monthly report demonstrating compliance with the skilled and trained workforce requirements or provides an incomplete report, the district shall withhold further payments until a complete report is provided. If a report does not demonstrate compliance with the skilled and trained workforce requirements, the district shall withhold further payments until the contractor provides a sufficient plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. In addition, the district shall forward to the Labor Commissioner a copy of the monthly report, any plan to achieve compliance, and the district's response to that plan. (Public Contract Code 2602)

(cf. 9124 - Attorney)

Legal Reference:

EDUCATION CODE

17280-17316 Construction of school buildings; approvals

17400-17429 Leasing property, especially:

17400 Definitions

17403 Term of lease or agreement

17406 Lease-leaseback contract

17407.5 Use of a skilled and trained workforce

PUBLIC CONTRACT CODE

2600-2603 Skilled and trained workforce requirements

20111.6 Prequalification procedures

20112 Notices

COURT DECISIONS

***McGee v. Balfour Beatty Construction, LLC, et al.* (4/12/16, No. B262850) (2016) 247 Cal. App. 4th 235**

***Davis v. Fresno Unified School District*, (2015) 237 Cal.App.4th 261**

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>

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MS

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3311.3(a)

DESIGN-BUILD CONTRACTS

Note: As an alternative to the more traditional design-bid-build process (see BP/AR 3311 - Bids) or a lease-leaseback process (see AR 3311.2 - Lease-Leaseback Contracts), the district may enter into a design-build contract for a public works project in excess of \$1 million pursuant to Education Code 17250.10-17250.55. As defined by Education Code 17250.15, "design-build" means a project delivery process in which both the design and construction of a project are procured from a single entity. Education Code 17250.15 and 17250.25 provide that such contracts may be awarded to either the low bid or best value, as defined. Pursuant to Education Code 17250.50 and 17250.55, this authority applies to bid requests issued on or after July 1, 2016 and will be repealed January 1, 2025 unless legislation is enacted to delete or extend that date.

The Governing Board may approve a contract with a single entity for both design and construction of any school facility in excess of \$1,000,000, awarding the contract to either the low bid or the best value as determined by evaluation of objective criteria. (Education Code 17250.20)

(cf. 3311 - Bids)

(cf. 3312 - Contracts)

(cf. 7110 - Facilities Master Plan)

(cf. 7140 - Architectural and Engineering Services)

Design-build documents shall not include provisions for long-term project operations, but may include operations during a training or transition period. (Education Code 17250.25)

Procedures for Awarding the Contract

The procurement process for design-build projects shall be as follows: (Education Code 17250.25, 17250.35; **Public Contract Code 2600**)

1. **Performance Specifications:** The district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but are not limited to:
 - a. The size, type, and desired design character of the project
 - b. Performance specifications that cover the quality of materials, equipment, and workmanship
 - c. Preliminary plans or building layouts
 - d. Any other information deemed necessary to describe adequately the district's needs

DESIGN-BUILD CONTRACTS (continued)

The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

2. **Prequalification:** The district shall prepare and issue a request for qualifications in order to prequalify, or develop a short list of, the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but is not limited to, all of the following elements:
 - a. Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the district to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the district to inform interested parties of the contracting opportunity
 - b. Significant factors that the district reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price-related factors
 - c. A standard template request for statements of qualifications prepared by the district, which shall contain all of the information required pursuant to Education Code 17250.25

Note: Public Contract Code 2600, as amended by AB 2311 (Ch. 347, Statutes of 2020), adds a requirement to include in all bid documents and construction contracts, when applicable, a notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603. Pursuant to Education Code 17250.25, design-build contracts are subject to such requirements.

- d. **A notice that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603**

The district also may identify specific types of subcontractors that must be included in the statement of qualifications and proposal.

~~A design build entity shall not be prequalified or short listed unless the entity provides an enforceable commitment to the district that the entity and its subcontractors at every tier will use a skilled and trained workforce, as defined in Education Code 17250.25, to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence of compliance on a monthly basis during the performance of the project or contract.~~

DESIGN-BUILD CONTRACTS (continued)

3. **Request for Proposals:** The district shall prepare a request for proposals (RFP) that invites prequalified or short-listed entities to submit competitive sealed proposals in a manner prescribed by the district. The RFP shall include the information identified in items #2a, and 2b, and 2d above and the relative importance or weight assigned to each of the factors. If the district uses a best value selection method for a project, the district may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the district shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the district to ensure that any discussions or negotiations are conducted in good faith.
4. **Selection Based on Low Bid:** For those projects utilizing low bid as the final selection method, the bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and the contract shall be awarded to the lowest responsible bidder.
5. **Selection Based on Best Value:** For those projects utilizing best value as a selection method, the following procedures shall be used:
 - a. Competitive proposals shall be evaluated using only the criteria and selection procedures specifically identified in the request for proposals. Criteria shall be weighted as deemed appropriate by the district and shall, at a minimum, include price, unless a stipulated sum is specified; technical design and construction experience; and life-cycle costs over 15 or more years.
 - b. Following any discussions or negotiations with responsive proposers and completion of the evaluation process, the responsive proposers shall be ranked on a determination of value provided, provided that no more than three proposers are required to be ranked.
 - c. The contract shall be awarded to the responsible entity whose proposal is determined by the district to have offered the best value to the public.
 - d. The district shall publicly announce the contract award, identifying the entity to which the award is made and the basis of the award. This statement and the contract file shall provide sufficient information to satisfy an external audit.

Skilled and Trained Workforce

Note: Education Code 17250.25 requires the district to obtain an enforceable commitment that the contractor will comply with the requirements to use a skilled and trained workforce, as defined, in accordance with Public Contract Code 2600-2603. Pursuant to Public Contract Code 2600.5, as

DESIGN-BUILD CONTRACTS (continued)

added by AB 2311, failure to provide the notice described in items #2d and 3 above does not excuse the district from the requirement to obtain an enforceable commitment that a contractor or other entity will use a skilled and trained workforce to complete a contract or project.

A design-build entity shall not be prequalified or short-listed unless the entity provides an enforceable commitment to the district that the entity and its subcontractors at every tier will use a skilled and trained workforce, as defined in Education Code 17250.25, to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence of compliance on a monthly basis during the performance of the project or contract. (Education Code 17250.25; Public Contract Code 2602)

***Skilled and trained workforce* means that all the workers performing the work are either skilled journeypersons or apprentices registered in a state-approved apprenticeship program. At least 60 percent of the skilled journeypersons employed to perform the work shall be graduates of an apprenticeship program for the applicable occupation or at least 60 percent of the hours worked by skilled journeypersons shall be performed by graduates of an apprenticeship program, with the exception of certain occupations specified in Public Contract Code 2601 which are subject to a 30 percent threshold. (Public Contract Code 2601)**

If the contractor fails to provide the monthly report demonstrating compliance with the skilled and trained workforce requirements or provides an incomplete report, the district shall withhold further payments until a complete report is provided. If a report does not demonstrate compliance with the skilled and trained workforce requirements, the district shall withhold further payments until the contractor provides a sufficient plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. In addition, the district shall forward to the Labor Commissioner a copy of the monthly report, any plan to achieve compliance, and the district's response to that plan. (Public Contract Code 2602)

Legal Reference: (see next page)

DESIGN-BUILD CONTRACTS (continued)

Legal Reference:

EDUCATION CODE

17250.10-17250.55 *Design-build contracts*

PUBLIC CONTRACT CODE

2600-2603 *Skilled and trained workforce requirements*

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>

California Department of Education, Facilities: <http://www.cde.ca.gov/ls/fa>

CSBA Sample Board Policy

Business and Noninstructional Operations

AR 3320(a)

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Note: The Government Claims Act (Government Code 810-996.6) sets forth prelitigation requirements and deadlines for claims against public entities, including school districts. In City of Stockton v. Superior Court, the California Supreme Court held that the claim requirements in Government Code 900-915.4 also apply to claims for breach of contract. **For any cause of action that is excepted from the Government Claims Act pursuant to Government Code 905 but has its claim presentation procedure specified in another statute or regulation, such as childhood sexual abuse-assault, a claim must be presented in accordance with that statute or regulation. For any cause of action that is excepted from the Government Claims Act pursuant to Government Code 905 but is not governed by any procedure in another statute or regulation, the district may establish its own claim presentation procedure in accordance with Government Code 935. The district should consult legal counsel as necessary if questions arise regarding the proper procedure.**

Because a district's insurance carrier or joint powers authority (JPA) may require the district to comply with certain claims management conditions as part of the district's contractual coverage obligation, it is strongly recommended that this administrative regulation be reviewed for consistency with any applicable conditions of coverage. A district's failure to follow those contractual conditions may result in a loss of coverage benefits. The district's risk manager and legal counsel should also be consulted, as appropriate.

~~Pursuant to Government Code 935, district claims procedures may include a requirement that a claim be presented and acted upon in accordance with those procedures as a prerequisite to a lawsuit. Failure to include such a requirement may subject the district to increased liability.~~

Any claim against the district for money or damages shall be filed and acted upon in accordance with the Government Claims Act (Government Code 810-996.6) or other applicable law. Claims that are specifically excepted from the Government Claims Act by Government Code 905 and are not governed by any other statute or regulation may be filed and acted upon in accordance with district-established procedures pursuant to Government Code 935.

Note: Pursuant to Government Code 935, **district claims procedures established by the district may include a requirement that a claim be presented and acted upon in accordance with those procedures as a prerequisite to the filing of a lawsuit against the district. Failure to include such a requirement may subject the district to increased liability. The following paragraph extends this requirement to claims filed under other statutes and may be revised to reflect district practice.**

Unless otherwise provided by law, **prior to filing a lawsuit against the district for money or damages, a written claim shall be filed presented to and acted upon by the Governing Board in accordance with the following administrative regulation such procedures prior to filing a lawsuit against the district for money or damages.**

MB

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Time Limitations

Note: Items #1-4 below ~~list reflect~~ **timelines for presenting claims in relation to different causes of action**, pursuant to the Government Claims Act and other applicable statutes. ~~Pursuant to Government Code 935, the district's authority to adopt local claim presentation procedures for causes of action which are excepted from the Government Claims Act by Government Code 905 is not applicable to those excepted causes of action which have their claim presentation procedures specified in other statutes or regulations, such as childhood sexual abuse.~~

~~Rather, claims for childhood sexual abuse are governed by the timelines and procedures specified in Code of Civil Procedure 340.1.~~

The following time limitations apply to **the presentation of claims for money or damages** against the district:

- 3.1. Claims for money or damages** relating to a cause of action for death or for injury to a person, personal property, or growing crops shall be presented to the Board not later than six months after the accrual of the cause of action. (Government Code 911.2)
- 4.2. Claims for money or damages** relating to any other cause of action **subject to the Government Claims Act** shall be filed not later than one year after the accrual of the cause of action. (Government Code 911.2)

Note: ~~Rather, c~~Claims for childhood sexual ~~abuse~~ **assault** are governed by the timelines and procedures specified in Code of Civil Procedure 340.1. **Pursuant to Code of Civil Procedure 340.1, the time limit for beginning an action for recovery of damages suffered as a result of childhood sexual assault is 22 years from the date the plaintiff attains age 18 or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after age 18 was caused by sexual assault, whichever is later. A claim may be filed on or after the plaintiff's 40th birthday only if the plaintiff files certificates of merit by an attorney and a licensed mental health practitioner selected by the plaintiff setting forth the facts which support the declaration.**

- 4.3. Claims for money or damages** relating to childhood sexual ~~abuse~~ **assault or any and** other causes of action **which are** specifically excepted from the Government Claims Act by Government Code 905 ~~and for which~~ **but are subject to a claims presentation procedure in another** a statute or regulation ~~provides a claims presentation procedure~~ shall be ~~filed~~ **presented to the Board** in accordance with the applicable governing statute or regulation. (Government Code 905, ~~935~~)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
(cf. 5141.4 - Child Abuse Prevention and Reporting)

Note: ~~Pursuant to Government Code 935, a district may establish its own procedure for the presentation of those claims which are excluded from the Government Claims Act as specified in Government Code 905 and which are not governed by any other applicable statutes or regulations. Optional item #24 below is for~~

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

use by any district whose board has chosen to exercise the authority in Government Code 935 to establish district procedures for such claims; see its own procedure for the presentation of claims which are excluded from the Government Claims Act by Government Code 905 and which are not governed by any other applicable statute or regulation. See the accompanying Board policy. Item #2 provides six months as the time limitation for filing such claims, which is consistent with the requirement in Pursuant to Government Code 935, that the district's procedure cannot require a shorter time for presentation of a claim than the time specified in Government Code 911.2. However, the Governing Board has the discretion to adopt a more flexible time limitation and may increase the amount of time allowed for filing such claims. If the Board adopts a more flexible time limitation, item #24 should be revised accordingly.

If a claimant misses a deadline for a claim required to be submitted in accordance with item #2 or #3 below, the claimant may present an application to present a late claim pursuant to Government Code 911.4; see section below entitled "Late Claims."

- 2.4. In accordance with the Governing Board's authority pursuant to Government Code 935, claims for money or damages which relate to a Claims relating to any cause of action which is specifically excepted from the Government Claims Act by Government Code 905 and which are but is not governed by any other claim presentation statute or regulation shall be filed presented to the Board within the time limits specified in items #1 and 2 above, depending on the applicable cause of action. not later than six months after the accrual of the cause of action. (Government Code 905-911.2, 935)
3. Claims for money or damages relating to a cause of action for death or for injury to a person, personal property, or growing crops shall be presented to the Board not later than six months after the accrual of the cause of action. (Government Code 911.2)
4. Claims for money or damages relating to any other cause of action shall be filed not later than one year after the accrual of the cause of action. (Government Code 911.2)

Receipt of Claims

A claim, any amendment thereto, or an application to present a late claim shall be deemed presented and received when delivered to the district office or deposited in a post office, mailbox, sub-post office, substation, mail chute, or other similar facility maintained by the U.S. government, in a sealed envelope properly addressed to the district office with postage paid, or when otherwise actually received in the district office or by the Board secretary or clerk. (Government Code 915, 915.2)

Note: Government Code 915, as amended by SB 1473 (Ch. 371, Statutes of 2020), authorizes a claim, amendment to a claim, or application for a late claim to be submitted through electronic means, if so authorized by a Board resolution. In practice, such electronic means involve online completion of a fillable form and/or transmission by email. The following paragraph may be revised to specify the electronic means authorized by the district. If the Board has not adopted a resolution authorizing electronic submission, the district should delete the following paragraph.

MS

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Pursuant to Government Code 915.4, as amended by SB 1473, if the Board authorizes electronic submission, then any notice required of the district in response to a claim, amendment, or application for a late claim must be sent to the electronic address from which the district received the claim or application, unless the claimant or applicant specified an alternative electronic address for that purpose.

Also see the sections "Notice of Claim Insufficiency," "Late Claims," and "Action on Claims" below.

A claim may be submitted electronically in the manner specified by the Superintendent or designee. (Government Code 915, 915.2)

Note: In most circumstances, a district's insurance provider or JPA is responsible for claims management, including investigating, defending, and managing a district's response to a claim presented under the Government Claims Act. The following paragraph requires the Superintendent or designee to immediately forward any claims received to the district's JPA or insurance provider in order to help ensure compliance with any conditions of coverage.

Upon receipt of a claim against the district pursuant to the Government Claims Act, the Superintendent or designee shall promptly provide written notice to the district's joint powers authority or insurance carrier in accordance with the applicable conditions of coverage.

Review of Contents of the Claim

Note: Most JPAs and insurance carriers provide a claim form. The person submitting the claim need not use the claim form provided by the district but, pursuant to Government Code 910 and 910.2, the claim must contain a signature and all the information listed below.

The Superintendent or designee shall review any claim received to ensure that the claim contains all of the following information as specified in Government Code 910 and 910.2:

1. The name and post office address of the claimant
2. The post office address to which the person presenting the claim desires notices to be sent
3. The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted
4. A general description of the indebtedness, obligation, injury, damage, or loss incurred insofar as it may be known at the time of presentation of the claim
5. The name(s) of the district employee(s) causing the injury, damage, or loss, if known

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

~~For claims under items #2 and #3 in the section "Time Limitations" above, any person who presents a claim later than six months after the accrual of the cause of action shall present, along with the claim, an application to present a late claim. When a claim that is required to be presented not later than six months after the accrual of the cause of action, as specified in the section "Time Limitations" above, is not presented within that time, an application to present a late claim may be presented to the Board, in the manner specified in Government Code 915 and 915.2, within a reasonable time not to exceed~~ Such claim and the application to present a late claim shall be presented not later than one year after the accrual of the cause of action. **The application shall include the proposed claim and shall state the reason for the delay in presenting the claim.** (Government Code ~~905,~~ 911.4, **915, 915.2**)

Note: If the claim is presented late and is not accompanied by an application to present a late claim, the Board or its agent should notify the claimant that "no action" was taken because the claim was presented late. If the Board were to state that the claim was "rejected," this would indicate that the Board had accepted the filing of the late claim and taken action to reject it.

If the claim is presented late and is not accompanied by an application to present a late claim, the Board or its designee may, within 45 days, give written notice that the claim was not presented timely and that it is being returned without further action. (Government Code 911.3)

The Board shall grant or deny the application to present a late claim within 45 days after it is presented. This 45-day period may be extended by written agreement of the claimant and the Board provided that such agreement is made before the expiration of the 45-day period. (Government Code 911.6)

The Board shall grant the application to present a late claim where one or more of the following conditions are applicable: (Government Code 911.6)

1. The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the district was not prejudiced in its defense regarding the claim by the claimant's failure to present the claim within the time limit.
2. The person who sustained the alleged injury, damage, or loss was a minor during all of the time specified for presentation of the claim.
3. The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified for presentation of the claim and the disability was the reason the person failed to present the claim.
4. The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified for the presentation of the claim.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

6. The amount claimed if it totals less than \$10,000, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, the dollar amount shall not be included in the claim and the claimant shall indicate whether the claim is a limited civil case of \$25,000 or less.
7. The signature of the claimant or the person acting on the claimant's behalf

Notice of Claim Insufficiency

Note: Pursuant to Government Code 910.8, if a claim is found insufficient, the district must notify the claimant of the defects or omission in the claim. Government Code 915.4, as amended by SB 1473, authorizes such notice to be personally delivered or mailed or, if the Board has adopted a resolution authorizing electronic submission of claims (see section "Receipt of Claims" above), then any notice of claim insufficiency must be sent to the electronic address from which the claim was sent unless the claimant specifies an alternative electronic address for that purpose.

Pursuant to Government Code 911, if the district, or the JPA or insurance carrier acting on the district's behalf, fails to give notice that the claim is insufficient, as specified below, then the district may not later raise that issue as a defense to the claim.

If a claim is found insufficient or not to satisfy the form requirements under Government Code 910 and 910.2, the Board or its designee shall, within 20 days of receipt of the claim, personally deliver or mail to the claimant, at the address stated in the claim or application, provide a notice in the manner specified in Government Code 915.4 that states the particular defects or omission in the claim. (Government Code 910.8, 915.4)

Note: Districts should be cautious before rejecting a claim because of insufficiency of information and consult legal counsel and/or the district's JPA or insurance provider, as appropriate. Courts have held that a claim is sufficient as long as enough information is disclosed to allow the district to adequately conduct an investigation of the claim's merits.

The Board shall not act upon the claim until at least 15 days after such notice is given. (Government Code 910.8)

Amendment to Claims

Within the time limits provided in the section "Time Limitations" above or prior to final action by the Board, whichever is later, a claim may be amended if, as amended, it relates to the same transaction or occurrence which gave rise to the original claim. (Government Code 910.6)

Late Claims

Note: The reference to item #2 in the following paragraph should be deleted if the district has not established district procedures pursuant to Government Code 935 for claims that are specifically exempted in Government Code 905 or adopted a time limitation that is not less than one year (see the accompanying Board policy and item #2 in the section "Time Limitations" above).

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

If the application to present a late claim is denied, the claimant shall be given notice in substantially the same form as set forth in Government Code 911.8 **and in the manner specified in Government Code 915.4.** (Government Code 911.8, **915.4**)

If the Board does not take action on the application to present a late claim within 45 days, the application shall be deemed to have been denied on the 45th day unless the time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement. (Government Code 911.6)

Action on Claims

Note: Pursuant to Government Code 945.6, if the Board formally acts to reject a claim and provides notice of such rejection, the claimant has only six months from the rejection to initiate a lawsuit. If the Board takes no action or fails to provide written notice rejecting the claim, the claimant then has two years to initiate a suit against the district. The notice of rejection must comply with the notification requirements of Government Code 913 unless the claim has no address on it.

Although the Board takes final action on claims as specified below, such action is based on the evaluation of the claim by the district's insurance provider or JPA.

Within 45 days after the presentation or amendment of a claim, the Board shall take action on the claim. This time limit may be extended by written agreement between the district and the claimant before the expiration of the 45-day period. If the 45-day period has expired, the time limit may be extended if legal action has not commenced or been barred by legal limitations. (Government Code 912.4)

The Board may act on the claim in one of the following ways: (Government Code 912.4, 912.6)

1. If the Board finds that the claim is not a proper charge against the district, the claim shall be rejected.
2. If the Board finds that the claim is a proper charge against the district and is for an amount justly due, the claim shall be allowed.
3. If the Board finds that the claim is a proper charge against the district but is for an amount greater than is justly due, the Board shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
4. If legal liability of the district or the amount justly due is disputed, the Board may reject or compromise the claim.
5. If the Board takes no action on the claim, the claim shall be deemed rejected.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

If the Board allows the claim in whole or in part or compromises the claim and the claimant accepts the amount allowed or offered to settle the claim, the Board may require the claimant to accept it in settlement of the entire claim. (Government Code 912.6)

The Board or its designee shall transmit to the claimant written notice of action taken or of inaction which is deemed rejection. The notice shall be in the form set forth in Government Code 913 **and shall be provided in the manner specified in Government Code 915.4. and shall either be personally delivered or mailed to the address stated in the claim or application.** (Government Code 913, 915.4)

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NBS

CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3452(a)

STUDENT ACTIVITY FUNDS

Note: Pursuant to Education Code 48930, the Governing Board may approve the formation of associated student body organizations (ASBs), **which are composed entirely of students and are subject to the Board's control and regulation.** Generally, there are two types of ASBs. ASBs in high schools and middle schools are **called referred to as "organized ASBs"** since the students, organizing their activities around student clubs and/or a student council, have primary responsibility for the ASB, with the assistance, **oversight, and co-approval of an district-employed advisor.** In elementary schools, ~~the~~ **ASBs are considered to be is "unorganized"** because there is no student council and the principal or designee usually oversees the fundraising and spending decisions, with more limited involvement from the students.

~~Unlike parent teacher associations or other school-connected organizations,~~ **ASBs, which are subject to the Board's control and regulation pursuant to Education Code 48930,** are legally considered part of the district. **In contrast, booster clubs, education foundations, parent-teacher associations, and other parent-run organizations operate independently of the district.** See BP /AR 1230 - School-Connected Organizations. **Districts with questions regarding the distinction between an ASB and a school-connected organization should consult legal counsel.**

The following **optional** policy may be modified to reflect district practice.

The Governing Board recognizes that student organizations can provide students with an opportunity to conduct worthwhile cocurricular activities **beyond those provided by the district and can also while helping students learn about effective financial practices and develop leadership and management skills.** To that end, **the Board may approve the formation of associated student body organizations which are composed entirely of students, operate under the oversight of the principal or other district-employed advisor, and are subject to the control and regulation of the Board.** **Student organizations** may raise and spend funds to support activities that promote the general welfare, morale, and educational experiences of the student body.

(cf. 1230 - School Connected Organizations)

(cf. 3260 - Fees and Charges)

(cf. 5000 - Concepts and Roles)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.5 - Student Organizations and Equal Access)

Fund Raising Events Fundraising

Note: Education Code 48932 requires the Board to approve a student organization's fundraising events and to determine whether ~~such~~ **fundraising activities that are held on school property during school hours** will interfere with the normal conduct of the schools. The following paragraph provides for the Board to delegate the review and approval of ASB fundraising events to the Superintendent or designee and should be modified to reflect district practice.

AB

STUDENT ACTIVITY FUNDS (continued)

Education Code 49431 and 49431.5 limit the number of fund-raising events and types of food that may be sold on school grounds, see BP/AR 3550 - Other Food Sales. For a list of activities that may be prohibited on school grounds because of safety concerns, see AR 5142 - Safety. **For information regarding online fundraising, see BP 3290 - Gifts, Grants and Bequests.**

At the beginning of each school year, each principal or designee shall submit to the Superintendent or designee a list of the **fund-raising fundraising** events that each student organization proposes to hold that year. The Superintendent or designee shall review the proposed events and determine whether the events contribute to the educational experience and **are not in do not** conflict with or detract from the school's educational program. When reviewing proposed events, the Superintendent or designee shall consider the effects of the activities on student health and safety, evaluate the risk of liability to the district, and ensure that the proposed activities are in compliance with law, Board policy, and administrative regulation.

(cf. 1321 - Solicitation of Funds from and by Students)

(cf. 3290 - Gifts, Grants and Bequests)

(cf. 3530 - Risk Management/Insurance)

(cf. 3554 - Other Food Sales)

(cf. 5030 - Student Wellness)

(cf. 5142 - Safety)

(cf. 5143 - Insurance)

Note: Education Code 49431, 49431.2, and 49431.5 prescribe the types of foods and beverages that may be sold on school grounds—~~limit the number of and restrict when fundraising events that involve the sale of noncompliant foods and beverages on school grounds may occur.~~ and types of food that may be sold on school grounds. See BP/AR 3550 3554 - Other Food Sales.

Fundraising events that involve the sale of food and/or beverages shall comply with applicable state and/or federal nutrition standards and BP/AR 3554 - Other Food Sales. If the fundraising event involves the sale of noncompliant food and/or beverages, it shall not take place from midnight until at least one-half hour after the end of the school day, or not be conducted on school premises.

(cf. 3554 - Other Food Sales)

Management and Reporting of Funds

Note: Education Code 48937 requires the district to provide for the supervision of all funds raised by any student body organization or student organization using the name of the school. The acceptable investment and use of such funds are detailed in Education Code 48933, 48934, and 48936. The Fiscal Crisis & and Management Assistance Team (FCMAT) has developed the Associated Student Body Accounting Manual, Fraud Prevention Guide and Desk Reference, available on its web site, to outline the district's fiscal and managerial responsibilities relative to these funds.

STUDENT ACTIVITY FUNDS (continued)

Student body funds shall be managed in accordance with law, **regulations, Board policies,** and sound business procedures designed to encourage the largest possible educational return to students without sacrificing the security of funds.

The Superintendent or designee shall develop internal control procedures to safeguard the organization's assets, promote the success of **fund-raising fundraising** ventures, provide reliable financial information, **protect employees and volunteers from accusations of impropriety,** and reduce the risk **and promote the detection** of fraud and abuse. These procedures shall detail the oversight of activities and funds including, but not limited to, the appropriate role and provision of training for staff and students, parameters for events on campus, appropriate and prohibited uses of funds, and accounting and record-keeping processes, including procedures for handling questionable expenditures.

(cf. 3400 - Management of District Assets/Accounts)

The principal or designee shall be responsible for the proper conduct of all student organization financial activities. The budget adopted by the student body organization should serve as the financial plan for the school year and shall be submitted to the Superintendent or designee at the beginning of each school year. The Superintendent or designee shall **monitor the budget and** periodically review the organization's use of funds to ensure compliance with the district's internal control procedures.

Funds derived from the student body shall be **expended disbursed** according to procedures established by the student organization. All **expenditures disbursements** must be approved by a Board-designated **employee or** official, the certificated employee who is the **designated** student organization advisor, and a student organization representative. (Education Code 48933)

Note: The following paragraph is optional. 5 CCR 4922 and 34 CFR 106.41 require districts to ensure that the district's athletic program provides equivalent opportunities for both sexes. The factors that districts must consider when determining whether equivalent opportunities are being provided include, but are not limited to, the provision of necessary funds, equipment, supplies, and travel allowances. See AR 6145.2 - Athletic Competition.

ok When student body funds are expended for equipment, supplies, or activities that support the district's athletic program, the Superintendent or designee shall ensure that the expenditures are aligned with the district's commitment to provide equitable opportunities for males and females.

(cf. 6145.2 - Athletic Competition)

Note: Pursuant to Governmental Accounting Standards Board (GASB) Statement 84, if the district has administrative or direct financial involvement with the ASB's assets, as defined, the student activity fund may be considered a governmental fund subject to accounting and financial reporting

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STUDENT ACTIVITY FUNDS (continued)

within the district's funds. FCMAT's Fiscal Alert: GASB 84 and its Impact on Associated Student Body Accounts clarifies that, under state law, the district's considerable administrative involvement in both organized and unorganized ASBs means that ASBs will typically be considered governmental activities, rather than fiduciary responsibilities of the district. As such, ASB accounts should be reported in either a special reserve fund or the general fund. For further information see GASB 84, GASB's Implementation Guide No. 2019-2, Fiduciary Activities, and FCMAT's Fiscal Alert: GASB 84 and its Impact on Associated Student Body Accounts. Districts are encouraged to consult legal counsel in the determination of whether its ASB(s) are fiduciary or nonfiduciary in order to properly report the accounts.

Because of the district's administrative and/or direct financial involvement in the assets of the student organization, the student activity fund shall be reported within the district's fund in accordance with Governmental Accounting Standards Board Statement 84.

Note: Because **an the** ASB is an entity of the district, ASB funds are reviewed as part of the annual audit of the district conducted pursuant to Education Code 41020, as specified below.

The Board shall provide an annual audit of student **organization** accounts by a certified public accountant or licensed public accountant. The cost of the audit shall be paid from district funds. (Education Code 41020)

(cf. 3460 - Financial Reports and Accountability)

Legal Reference: (see next page)

STUDENT ACTIVITY FUNDS (continued)

Legal Reference:

EDUCATION CODE

- 35182.5 Non-nutritious foods and beverages, vending machines
- 35564 Funds, obligations of the student body
- 41020 Requirement for annual audit
- 48930-48938 Student body organization
- 49431 Sale of food and beverages, elementary school
- 49431.2 Sale of food, middle and high schools**
- 49431.5 Sale of food and beverages, elementary, middle, and high schools
- 51520 School premise, prohibited solicitations
- 51521 ~~Fund-raising~~ Fundraising projects

CODE OF REGULATIONS, TITLE 5

- 4922 Nondiscrimination in intramural, interscholastic, and club activities**
- 15500 Food sales, elementary schools
- 15501 Food sales, middle high schools and junior high schools

CODE OF FEDERAL REGULATIONS, TITLE 34

- 106.41 Nondiscrimination in athletic programs**

COURT DECISIONS

- Prince v. Jacoby, (2002) 303 F.3d 1074

Management Resources:

FISCAL CRISIS MANAGEMENT & ASSISTANCE TEAM PUBLICATIONS

- Fiscal Alert: GASB 84 and Its Impact on Associated Student Body Accounts, May 2020**
- Associated Student Body Accounting Manual, Fraud Prevention Guide and Desk Reference, 20015**

GOVERNMENTAL ACCOUNTING STANDARDS BOARD PUBLICATIONS

- Implementation Guide No. 2019-2, Fiduciary Activities, June 2019**
- Statement No. 84, January 2017**

WEB SITES

- California Department of Education: <http://www.cde.ca.gov>
- Fiscal Crisis Management & Assistance Team: <http://www.fcmat.org>
- Governmental Accounting Standards Board: www.gasb.org**

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N/A. Delete - N/A
No Police or security dept
e SOV

CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3515.3(a)

DISTRICT POLICE/SECURITY DEPARTMENT

Note: Education Code 38000 authorizes the **Governing** Board to establish a **district** police or security department and to employ personnel to ensure the safety of district students and staff and the security of district real and personal property. ~~The following optional policy may be revised as desired, including appropriate modifications to indicate whether the district has a "police" or "security" department. However, as amended by SB 98 (Ch. 24, Statutes of 2020), Education Code 38000 expresses legislative intent to encourage districts to redirect resources currently allocated to district police departments or to contracts with local law enforcement into student support services (e.g., mental health services) and professional development on cultural competency and restorative justice, if found to be a more appropriate use of resources based on student and school needs.~~

~~This policy and accompanying administrative regulation are for use by districts that choose to establish a district police or security department and may be revised to reflect district practice, including appropriate modifications to indicate whether the district has a "police" or "security" department. Pursuant to Government Code 7286, district police departments are required to establish policy on the use of force. See the section "Conduct of Officers" below and in the accompanying administrative regulation.~~

~~Districts that elect not to establish a police or security department, but instead contract with local law enforcement, should consider additional training requirements for any contracted peace officers to include, but not be limited to, professional development focused on cultural competency, restorative justice, and adolescent development as applied in public schools.~~

To help **ensure protect** the safety of district students and staff and the security of district property, the Governing Board shall maintain a district police or security department. **The Board commits to providing a positive school climate, mental health services, other student support services, and restorative justice practices to resolve conflicts and reduce law enforcement interactions with students.**

- (cf. 0450 - Comprehensive Safety Plan)*
- (cf. 1250 - Visitors/Outsiders)*
- (cf. 3515 - Campus Security)*
- (cf. 3515.2 - Disruptions)*
- (cf. 3515.5 - Sex Offender Notification)*
- (cf. 3516.2 - Bomb Threats)*
- (cf. 5131.4 - Student Disturbances)*
- (cf. 5131.5 - Vandalism and Graffiti)*
- (cf. 5131.6 - Alcohol and Other Drugs)*
- (cf. 5131.7 - Weapons and Dangerous Instruments)*
- (cf. 5136 - Gangs)*
- (cf. 5141.5 - Mental Health)***
- (cf. 5142.1 - Identification and Reporting of Missing Children)*
- (cf. 5145.11 - Questioning and Apprehension by Law Enforcement)*
- (cf. 5145.12 - Search and Seizure)*

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

The Superintendent or designee shall provide training to staff regarding the role of district police or security officers and the appropriate circumstances for contacting such officers.

Note: Pursuant to Penal Code 13651, as added by AB 846 (Ch. 322, Statutes of 2020), entities that employ peace officers are required to review the job description that is used in recruitment and hiring and make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving while de-emphasizing the paramilitary aspects of the job.

In addition, the U.S. Department of Education's Guiding Principles: A Resource Guide for Improving School Climate and Discipline recommends that educators, rather than police or security officers, should handle student discipline issues.

Duties of district police officers or security officers shall be delineated in a job description developed by the Superintendent or designee. **Such duties shall focus on collaborative problem solving and, when circumstances warrant intervention with students, the use of positive and restorative approaches in accordance with Penal Code 1365. Job duties shall not include the handling of routine student disciplinary matters.**

(cf. 4158/4258/4358 - Employee Security)

(cf. 4200 - Classified Personnel)

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

Note: The district may select either or both options below depending on whether it has a "security" and/or "police" department.

OPTION 1: (Security Department)

Persons employed or assigned as school security officers shall serve as watchpersons, security guards, or patrolpersons on or about district premises to protect persons or property, prevent the theft or unlawful taking of district property, or report unlawful activity to the district and local law enforcement agencies. (Education Code 38001.5)

When district security officers are unable to perform their duties because of an emergency, including, but not be limited to, war, epidemic, fire, flood, or work stoppage, or when the emergency necessitates additional security services, the Board may contract with a private licensed security agency. In such cases, the Board shall make a specific finding that an emergency exists and shall include this finding in the Board minutes. (Education Code 38005)

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

OPTION 2: (Police Department)

Persons employed as members of the district police department, when appointed and duly sworn, are peace officers for the purposes of carrying out their duties pursuant to Penal Code 830.32. (Education Code 38001)

Note: AB 1436 (Ch. 292, Statutes of 2003) amended Education Code 35021.5 to delete the requirement that a school police reserve officer corps consist of unpaid volunteers. However, Education Code 35021.5 continues to express legislative intent that districts be allowed to use volunteer reserve officers to the extent necessary to provide a safe and secure school environment. The following optional paragraph is for use by districts that **have a police department and** choose to establish a reserve officer corps, and may be revised to reflect district practice. Education Code 35021.5 expresses legislative intent that districts be allowed to use volunteer reserve officers to the extent necessary to provide a safe and secure school environment.

The district's police department may be supplemented by a school police reserve officer corps, which may include unpaid volunteer reserve police officers. For the duration of their specific assignment, school police reserve officers shall have the same powers and duties as other school police officers. (Education Code 35021.5; Penal Code 830.6)

(cf. 1240 - Volunteer Assistance)

Conduct of Officers

The Board expects district police or security officers to cooperate and regularly communicate with local law enforcement agencies, and to work collaboratively with other district staff and community members to develop long-term, proactive approaches that address the conditions affecting school safety.

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

District police or security officers shall conduct themselves in ways that promote goodwill and cooperation on the part of students, district staff, and the general public. **District police or security officers shall not discriminate against or treat any person differently on the basis race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.**

(cf. 0410 - Nondiscrimination in District Programs and Activities)

District police or security officers shall not solicit or collect information or documents

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

regarding the citizenship or immigration status of students or their family members or provide assistance with immigration enforcement at district schools, except as may be required by state and/or federal law. (Education Code 234.7)

(cf. 5145.13 - Response to Immigration Enforcement)

Note: Pursuant to Government Code 7286, district police departments are required to adopt a policy by January 1, 2021 that provides a minimum standard on the use of force. See the accompanying administrative regulation for information about the required components of such policy.

Whenever possible, district police or security officers shall use tactics such as de-escalation techniques to mitigate the use of force. The district police department shall maintain and make accessible to the public a policy on the use of force in accordance with Government Code 7286 and consistent with district policy and administrative regulation. Officers shall periodically receive training regarding applicable district policies and the guidelines from the Commission on Peace Officer Standards and Training.

Firearms Equipment

Note: Penal Code 626.9 exempts peace officers from the Gun Free Schools Act, which prohibits the possession of a firearm on school grounds. Pursuant to Penal Code 830.32, the Board may determine whether or not its police officers will carry firearms. Education Code 38001.5 implies that security officers also may or may not be permitted to carry firearms.

OPTION 1: The Board authorizes district police or security officers to carry firearms in accordance with law, Board policy, and administrative regulations.

(cf. 3515.7 - Firearms on School Grounds)

OPTION 2: District police or security officers shall not carry firearms.

Note: The following paragraph may be used by all districts that maintain a police department.

The district police department shall be eligible to receive surplus military equipment pursuant to 10 USC 2576a only if, at a regularly scheduled public Board meeting, the Board approves the acquisition of such equipment after providing parents/guardians and members of the public an opportunity to comment on the proposed acquisition. The Board shall provide a detailed description of the function and purpose of the surplus military equipment, identify safe and secure storage for the equipment, and ensure that district police officers have adequate training in the safe use and handling of the equipment to be received. (Education Code 38004.5)

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

Records

District police or security officers shall not have access to student records, nor release student information to another person, agency, or organization, without written permission from the parent/guardian or adult student, unless specifically allowed or required by state or federal law. (Education Code 49076; 34 CFR 99.1)

(cf. 5125 - Student Records)

Records created and maintained by the district police or security department for a law enforcement purpose are not considered disclosable student records under the Family Educational Rights and Privacy Act. (34 CFR 99.3)

Legal Reference:

EDUCATION CODE

234.7 Student protections relating to immigration and citizenship status

35021.5 School police reserve corps

38000-38005 Security and police departments

39672 School peace officers, fingerprinting

45122.1 Classified employees, conviction of a violent or serious felony

45133.5 School police department, work schedule

49076 Student records

49079 Notification to teacher; student who has engaged in acts constituting grounds for suspension or expulsion

BUSINESS AND PROFESSIONS CODE

7583-7583.46 Private patrol operators

FAMILY CODE

6240-6274 Emergency protective orders

GOVERNMENT CODE

3300-3312 Public safety officers, rights and protections

7286-7286.5 Law enforcement use of force policies

8597-8598 Peace officers

12525.2 Reports of incidents involving peace officers

PENAL CODE

290.45 Sex offenders, authority of peace officers

626.9 Gun Free School Zone Act

646.91 Emergency protective order for stalking

830-832.9 Peace officers, especially:

830.32 School district and community college police

830.6 Reserve police officers, powers and duties

832 Course of training prescribed by Commission on Peace Officer Standards and Training

832.2 School peace officers; training

832.7 Disclosure of personnel files in criminal or civil proceedings

Legal Reference continued: (see next page)

DISTRICT POLICE/SECURITY DEPARTMENT (continued)

Legal Reference: (continued)

PENAL CODE (continued)

832.15-832.16 Notice of prohibition against possession of firearm

836 Peace officers; warrants

12028.5 Taking custody of weapons

13510-13519.9-10 Standards for recruitment and training

13651 Peace officers, job descriptions

13700-13702 Response to domestic violence

WELFARE AND INSTITUTIONS CODE

707 List of crimes

828-828.1 Disclosure of information re minors by law enforcement agency

UNITED STATES CODE, TITLE 10

2576a Surplus military equipment

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy Act

COURT DECISIONS

San Diego Police Officers Association et al. v. City of San Diego Civil Service Commission et al.
(2002) 104 Cal.App.4th 275 (2002)

Management Resources:

CDE PUBLICATIONS

Safe Schools: A Planning Guide for Action, 2002

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING PUBLICATIONS

POST Use of Force Standards and Guidelines, November 2020

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Guiding Principles: A Resource Guide for Improving School Climate and Discipline, 2014

WEB SITES

Commission on Peace Officer Standards and Training: <http://www.post.ca.gov>

California Attorney General's Office: <http://www.oag.ca.gov>

*California Department of Education, Safe Schools and Violence Prevention Office:
<http://www.cde.ca.gov/ss>*

Attorney General's Office, Crime and Violence Prevention Center: <http://www.safestate.org>

Commission on Peace Officer Standards and Training: <http://www.post.ca.gov>

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3515.3(a)

DISTRICT POLICE/SECURITY DEPARTMENT

Note: The following regulation is for use by districts whose Governing Board has established a police or security department pursuant to Education Code 38000. Districts should revise the following optional regulation to reflect whether the district has a "police" or "security" department as authorized by Education Code 38000.

To be employed as district police or security officers, persons shall meet all the requirements for classified personnel in addition to specialized requirements as described below.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)
(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)
(cf. 4211 - Recruitment and Selection)
(cf. 4212 - Appointment and Conditions of Employment)
(cf. 4215 - Evaluation/Supervision)

Chief of Police/Chief of Security

The district police or security department shall be supervised by a chief of police or chief of security designated by the Superintendent and working under the Superintendent's direction. (Education Code 38000)

Note: Pursuant to Education Code 38000, the Board must set minimum qualifications for employment of the police chief or security chief, including but not limited to the qualifications described in the following paragraph. The district may expand the following paragraph to specify additional qualifications if desired.

Qualifications for the position of police or security chief include, but are not limited to, prior employment as a peace officer or completion of a peace officer training course approved by the Commission on Peace Officer Standards and Training (POST). The police or security chief shall comply with this requirement within one year of initial employment in this position by the district. (Education Code 38000)

Qualifications of Security Officers

Note: The following section is for use by districts that employ security officers pursuant to Education Code 38000 and 38001.5.

Every A person employed as a school security officer shall: (Education Code 38001.5)

1. Under the conditions described in Education Code 38001.5, submit fingerprints to the district copies of his/her fingerprints on forms or electronically, as prescribed by the Department of Justice

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

2. Be determined to be a person not prohibited from employment by a school district pursuant to Education Code 44237 or 45122.1

(cf. 3515.6 - Criminal Background Checks for Contractors)

(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)

(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)

(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)

Note: Item #3 below is for use by districts that authorize security officers to carry firearms; see **BP 3515.3** the accompanying Board policy. Pursuant to Penal Code 832.15-832.16, after receiving an applicant's or employee's fingerprints, the Department of Justice will notify the district as to whether the individual is prohibited from possessing a firearm.

3. Be determined by the Department of Justice to be a person who is not prohibited from possessing a firearm ~~(Education Code 38001.5)~~

Note: Education Code 38001.5 requires security officers employed by the district to complete the training described below. Effective July 1, 2021, Education Code 38001.5 extends the training requirement to include security officers who work 20 hours per week or less. Education Code 38001.5 also requires that the district provide the training during regular work hours unless otherwise negotiated with the employee's exclusive representative. Districts that have otherwise negotiated this provision should modify the following paragraph accordingly.

The district shall provide each ~~Each employee who works more than 20 hours a week as a school security officer,~~ **during the employee's regular working hours, shall complete a course of training developed by the Bureau of Security and Investigative Services of the Department of Consumer Affairs in consultation with the Commission on Peace Officer Standards and Training POST.** (Education Code 38001.5)

Note: The following paragraph is for use by districts that ~~require school~~ **authorize** security officers to carry a firearms; ~~while performing their duties. see the accompanying Board policy.~~

School security officers **who carry a firearm while performing their duties** shall additionally satisfy the training requirements of Penal Code 832. (Education Code 38001.5)

Qualifications of Police Officers

Note: The following section is for use by districts that employ police officers pursuant to Education Code 38000 and 38001.

Before exercising the powers of a peace officer, district police officers shall satisfactorily complete an introductory course of training prescribed ~~by the Commission on Peace Officer Standards and Training~~ **POST** and shall pass the ~~commission's~~ **POST** examination. (Penal Code 832, 832.3)

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

If a **A** person **who** has passed this examination more than three years before being employed as a peace officer, or has a break in service of three or more years, **he/she** shall be required to pass the examination before beginning duties as a district police officer, unless **he/she meets criteria required by law exempted pursuant to Penal Code 832.** (Penal Code 832)

Note: Pursuant to Penal Code 832.3, within two years of the date of first employment, district police officers must complete specialized training on the unique safety needs of a school environment. As a best practice, it is recommended that district police officers complete such specialized training prior to beginning employment with the district. Districts may revise the following paragraph to reflect district practice.

Within a reasonable time but not to exceed two years of the date of first employment, police officers shall complete supplementary specialized training approved by POST on the unique safety needs of a school environment. (Penal Code 832.3)

Note: The following paragraph may be expanded to include other trainings provided by the district.

The Superintendent or designee may provide district police officers with additional training in other public safety skills, including but not limited to first aid, rescue, cardiopulmonary resuscitation, emergency medical technician training, juvenile procedures and specialized safety equipment. (Education Code 38002)

(cf. 4119.43/4219.43/4319.43 - Universal Precautions)
(cf. 4231 - Staff Development)
(cf. 5141 - Health Care and Emergencies)

Note: The following paragraph is for use by districts **whose Boards that** have established a school police reserve corps as authorized by Education Code 35021.5 and 38000; see **BP 3515.3 the accompanying Board policy.** AB 1436 (Ch. 292, Statutes of 2003) amended Education Code 35021.5 to delete the requirement that such a reserve corps be unpaid volunteers.

School police reserve officers shall complete a course of training directly related to the role of school police reserve officers as prescribed in Penal Code 832.2. (Education Code 35021.5)

Equipment

Each district police or security officer shall wear a badge bearing the name of the district, carry an identification card bearing **his/her** a photograph and signature and the signature of the Superintendent, and carry any other identification data required by local law enforcement agencies. (Education Code 38003)

Note: Pursuant to Education Code 38003, the cost for the above items must be borne by the district. **If a uniform is not required, If the district does not require officers to wear a uniform,** the word "uniforms" should be deleted from the following paragraph.

105

DISTRICT POLICE/SECURITY DEPARTMENT (continued)

The district shall bear the cost of all required uniforms, equipment, identification badges, and cards. (Education Code 38003)

The **Board district** may provide and maintain motor vehicles for use by police or security department staff. When operated by a district officer in the performance of **his/her the officer's** duties, any vehicle is an authorized emergency vehicle and may be equipped and operated as such, as provided by the Vehicle Code. (Education Code 38004)

Use of Force

Note: Government Code 7286.5, as added by AB 1196 (Ch. 324, Statutes of 2020), prohibits a law enforcement agency from authorizing the use of carotid restraints or choke holds, as defined.

District police or security officers shall not use a carotid restraint or choke hold involving the application of pressure to a person's neck, trachea, or windpipe. (Government Code 7286.5)

Note: Pursuant to Government Code 7286, district police departments are required to adopt policy on the use of force. Penal Code 13519.10 requires the Commission on Peace Officer Standards and Training (POST) to develop uniform, minimum guidelines for use in the development of local policies. These guidelines are contained in POST Use of Force Standards and Guidelines, available on the POST web site.

Districts may expand the following section to include the policy adopted by the district police department. Districts whose officers do not carry firearms should delete or revise items #4-5 and 17 below.

The district police department shall maintain a policy, consistent with guidelines provided by POST, that provides a minimum standard on the use of force and includes all of the following: (Government Code 7286; Penal Code 13519.10)

- 1. A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible**
- 2. A requirement that officers only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance**
- 3. A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer**

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

4. **Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person**
5. **A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm**
6. **Procedures for disclosing public records in accordance with Penal Code 832.7**
7. **Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents**
8. **A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed**
9. **Comprehensive and specific guidelines regarding approved methods and devices available for the application of force**
10. **An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased**
11. **Comprehensive and specific guidelines for the application of deadly force**
12. **Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Government Code 12525.2**
13. **The role of supervisors in the review of use of force applications**
14. **A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so**
15. **Training standards and requirements relating to demonstrated knowledge and understanding of the district's use of force policy by officers, investigators, and supervisors**

105

DISTRICT POLICE/SECURITY DEPARTMENT (continued)

16. **Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities**
17. **Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted**
18. **Factors for evaluating and reviewing all use of force incidents**
19. **Minimum training and course titles required to meet the objectives in the use of force policy**
20. **A requirement for the regular review and updating of the policy to reflect developing practices and procedures**

Note: The following paragraph is optional.

The district prohibits retaliation against an officer or other district employee who reports a suspected violation of this policy by another officer.

Personnel Files

Note: The following section is for use by districts that have established a police department and may be adapted for use by districts that have established a security department.

Before any record containing an adverse comment is placed in a **district** police officer's personnel file, **he/she the employee** shall read and sign the record indicating **he/she is aware awareness** of the comment. The **police** officer shall have 30 days to file a written response, which shall be attached to the adverse comment. (Government Code 3305-3306)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

A police officer may inspect **his/her the** personnel file during usual business hours with no loss of compensation. If the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted and shall describe the reasons supporting those corrections or deletions. Within 30 days of the request, the Superintendent or designee shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. The Superintendent or designee shall state in writing the reasons for refusing any request. (Government Code 3306.5)

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DISTRICT POLICE/SECURITY DEPARTMENT (continued)

Disciplinary Action

Note: The following section is for use by districts that have established a "police" department. When a district police officer is under disciplinary investigation, Government Code 3300 provides the officer with the right to receive copies of any reports or complaints made by investigators or other persons, except those that are confidential. The court in San Diego Police Officers Association et al. v. City of San Diego Civil Service Commission et al. ruled that personnel records of a public safety officer cannot be disclosed at public disciplinary appeal hearings without the officer's consent.

Any investigation of a district police officer that could lead to punitive action shall be conducted in accordance with Government Code 3303-3304.

If the Superintendent or designee decides to impose discipline following investigation and any predisciplinary response or procedure, ~~he/she shall notify~~ the police officer **shall be notified** in writing within 30 days of the decision, including the date that the discipline shall be imposed. (Government Code 3304)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Note: Pursuant to Government Code 3304.5, an administrative appeal initiated by a police officer shall be conducted in accordance with district rules and procedures. Districts should consult legal counsel prior to initiating discipline against a police officer or whenever an investigation is undertaken.

Any appeal by a police officer shall be conducted in accordance with Board policy and administrative regulation. (Government Code 3304.5)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3600(a)

CONSULTANTS

The Governing Board authorizes the use of consultants and other independent contractors to provide expert professional advice or specialized technical or training services which are not needed on a continuing basis and which cannot be provided by district staff because of limitations of time, experience, or knowledge. Individuals, firms, or organizations employed as independent contractors may assist management with decisions and/or project development related to financial, economic, accounting, engineering, legal, administrative, instructional, or other matters.

(cf. 3551 - Food Service Operations/Cafeteria Fund)

Note: Labor Code 2750.3 2775, as added by AB § 2257 (Ch. 296-38, Statutes of 2019-2020), recodifies is a **recodification** of the three-part "ABC" test established in Dynamex Operations West, Inc. v. Superior Court of Los Angeles to determine whether a person providing services for remuneration should be classified as an employee or an independent contractor. Although Labor Code 2750.3 does not explicitly state whether it applies to public agencies, CSBA recommends that districts adhere to its provisions.

AB 5 also amended Unemployment Insurance Code 606.5 and 621 to incorporate the three part ABC test from the Dynamex decision. Since public school employers are subject to certain provisions in the Unemployment Insurance Code, districts should apply the three part ABC test to determine a worker's eligibility for unemployment benefits.

Pursuant to Labor Code 2750.3 2775, a person is considered to be an independent contractor rather than an employee if the person (1) is free from the control and direction of the district in connection with the performance of the work, (2) performs work that is outside the usual course of providing educational services, (i.e. services provided by the person's own independent business and not services that ordinarily would be performed by district employees), and (3) is customarily engaged in an independently established trade, occupation, or business.

Labor Code 2750.3 establishes exceptions to the use of the three part ABC test, including (1) when a person's status as an employee or independent contractor is defined by the Labor Code, Unemployment Insurance Code, or an applicable wage order of the Industrial Welfare Commission; (2) when a court rules that the three part test cannot be applied to a particular context; or (3) when specifically exempted within Labor Code 2750.3. Under the second and third scenarios, the determination of whether a person is an employee or independent contractor is then made pursuant to the court's decision in S.G. Borello & Sons, Inc. v. Department of Industrial Relations, which made employment status a fact-dependent ruling based on the extent to which the employer had a right to control the work that was being done. Tutors are potentially exempted from the three part test in Labor Code 2750.3 if they develop and teach their own curriculum, but not if they teach a curriculum created by a public school or contract with a public school through a referral company.

As this area of law is complex and may alter the legal and financial obligations of the district to particular workers (e.g., eligibility for workers compensation, unemployment and disability insurance benefits, and district health and welfare benefits), legal counsel should be consulted when questions arise regarding the status of those who provide services to the district for remuneration.

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CONSULTANTS (continued)

As part of the contract process, the Superintendent or designee shall determine that the individual, firm, or organization is properly classified as an independent contractor.

A person, ~~firm, or organization~~ **providing labor or services for remuneration** shall be considered an employee rather than an independent contractor unless the district is able to demonstrate that all of the following conditions have been met: (Labor Code ~~2750.3-2775~~)

1. The person ~~or entity~~ is free from the control and direction of the district in connection with the performance of the work.
2. The person ~~or entity~~ is performing work that is outside the usual course of the district providing educational services.
3. The person ~~or entity~~ is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed.

Note: Labor Code ~~2750.3-2775-2785~~, as added by AB 2257 and amended by AB 323 (Ch. 341, Statutes of 2020), establishes exceptions to the use of the three-part ABC test, including (1) when a person's status as an employee or independent contractor is **defined expressly made** by the Labor Code, Unemployment Insurance Code, or an applicable wage order of the Industrial Welfare Commission, **in which case the status remains in effect for purposes set forth in those provisions**; (2) when a court rules that the three-part test cannot be applied to a particular context; or (3) when specifically exempted **from the three-part test by within** Labor Code ~~2750.3-2776-2785~~. Under the second and third scenarios, **with the exception of exemptions pursuant to Labor Code 2779**, the determination of whether a person is an employee or independent contractor is ~~then~~ made pursuant to the court's decision in S.G. Borello & Sons, Inc. v. Department of Industrial Relations, which ~~made~~ **found** employment status to be a fact-dependent ruling based on the extent to which the employer had a right to control the work that was being done. **Pursuant to Labor Code 2776, the rule in Borello applies to "business-to-business" exceptions (including when a sole proprietor or business entity contracts to provide services to a public agency) when specified conditions are met. Additionally, tutors are potentially excepted from the three-part test in Labor Code 2750.3-2775 if they develop and teach their own curriculum, but not if they teach a curriculum created by a public school or contract with a public school through a referral company.**

Specific statutory exceptions to this analysis for the determination of whether a person, firm, or organization is an independent contractor may apply. (Labor Code 2750.3) The determination of whether an individual acting as a sole proprietor or a firm or other business organization is an independent contractor shall be made in accordance with Labor Code 2775-2785, as applicable.

All consultant contracts shall be brought to the Board for approval.

(cf. 3311 - Bids)

(cf. 3312 - Contracts)

(cf. 4132/4232/4332 - Publication or Creation of Materials)

MS

CONSULTANTS (continued)

Note: Government Code 12940, as amended by AB 3364 (Ch. 36, Statutes of 2020), changes the term "military and veteran status" to "veteran or military status."

All qualified independent contractors shall be accorded equal opportunity for contracts regardless of actual or perceived race, **ethnicity**, color, national origin, ancestry, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, **military and veteran or military** status, sex, sexual orientation, gender, gender identity, gender expression, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. (Education Code 220; Government Code 12940)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 0415 - Equity)

(cf. 4030 - Nondiscrimination in Employment)

Independent contractors shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend approval of the contract.

Any consultant hired by the district who is subject to the filing requirements in the district's conflict of interest code shall file a Statement of Economic Interests within the time period required by law. (Government Code 87302)

(cf. 9270 - Conflict of Interest)

When employees of a public university, county office of education, or other public agency serve as consultants or independent contractors in other capacities for the district, they shall certify as part of the agreement that they will not receive salary or remuneration other than vacation pay from any other public agency for the specific days when they work for the district.

Note: Pursuant to Government Code 12940, certain protections afforded to employees are extended to independent contractors; see BP/AR 4030 - Nondiscrimination in Employment. Government Code 12940 also provides that the district may be held liable for sexual harassment committed against employees by nonemployees, including independent contractors, if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The Board prohibits the harassment of an independent contractor by any district employee or by any other person with whom the independent contractor comes in contact during the course of employment with the district. Additionally, the Board prohibits the harassment of a district employee by an independent contractor. Any complaint of harassment shall be investigated and resolved in accordance with applicable district complaint procedures. (Government Code 12940)

MS

CONSULTANTS (continued)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

(cf. 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures)

Legal Reference:

EDUCATION CODE

220 Prohibition of discrimination

10400-10407 Cooperative improvement programs

17596 Limit on continuing contracts

35010 Control of districts; prescription and enforcement of rules

35172 Promotional activities

35204 Contract with attorney

44925 Part-time readers employed as independent contractors

45103 Classified service in districts not incorporating the merit system

45103.5 Contracts for food service consulting services

45134-45135 Employment of retired classified employee

45256 Merit system districts; classified service; positions established for professional experts on a temporary basis

GOVERNMENT CODE

12940 Unlawful employment practices

53060 Contract for special services and advice

82019 Designated employee; **definition**

87302 Conflict of interest code

LABOR CODE

~~2750.3-2775-2787 ABC three part test: employees and independent contractors~~ **Worker status: employees**

UNEMPLOYMENT INSURANCE CODE

606.5 Determination of employment status

621 **Employer and eEmployee defined**

CODE OF REGULATIONS, TITLE 2

18700.3 Consultant

COURT DECISIONS

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal. 5th 903

S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341

(10/96 12/19) 3/21

CSBA Sample Exhibit

All Personnel

E 4112.9(a)

4212.9

EMPLOYEE NOTIFICATIONS

4312.9

Note: The following exhibit lists notices which the law requires be provided to employees. See the referenced Board policy, administrative regulation, or Board bylaw for further information about related program and notice requirements.

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
I. To All Employees			
At the beginning of school year or upon employment	Education Code 231.5; Government Code 12950	AR 4119.11 4219.11 4319.11	The district's policy on sexual harassment, legal remedies, complaints
Annually to all employees, and 72 hours before pesticide application	Education Code 17612	AR 3514.2	Use of pesticide product, active ingredients, Internet address to access information on pesticides
To all employees, pPrior to implementing year-round schedule	Education Code 37616	BP 6117	Public hearing on year-round program
To all employees, pPrior to implementing alternative schedule	Education Code 46162	BP 6112	Public hearing on alternative schedule in secondary grades
Annually to all employees	Education Code 49013; 5 CCR 4622	AR 1312.3 BP 0460 BP 3260	Uniform complaint procedures, appeals, civil law remedies, coordinator, complaints about student fees and local control and accountability plan
Annually to all employees	Education Code 49414	AR 5141.21	Request for volunteers to be trained to administer epinephrine auto-injectors
At least once per year	Education Code 49414.3	AR 5141.21	Request for volunteers to be trained to administer opioid antagonist
To all employees	Government Code 1126	BP 4136 4236 4336	Prohibition of activities that are inconsistent, incompatible, in conflict with, or inimical to duties; discipline; appeal

MB

E 4112.9(b)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
I. To All Employees (continued)			
To all employees	Government Code 8355; 41 USC 8102; 34 CFR 84.205, 84.210	BP 4020 BP 4159 4259 4359	District's drug- and alcohol-free workplace; actions to be taken if violated; available employee assistance programs
Upon employment	Government Code 21029	None	Right to purchase PERS service credit for military service performed prior to public employment
Upon placement of automated external defibrillator (AED) in school, and annually thereafter	Health and Safety Code 1797.196	AR 5141	Proper use of AED; location of all AEDs on campus, sudden cardiac arrest, school's emergency response plan
To all employees, if the district receives Tobacco-Use Prevention Education funds	Health and Safety Code 104420	AR 3513.3	District's tobacco-free schools policy and enforcement procedures
Annually to all employees, or more frequently if there is new information	Health and Safety Code 120875, 120880	BP 4119.43 4219.43 4319.43	AIDS and hepatitis B, including methods to prevent exposure
To new employees upon hire and other employees upon request, in districts with 25 or more employees	Labor Code 230.1	AR 4161.2 4261.2 4361.2	Rights pursuant to Labor Code 230-230.1 pertaining to leaves and accommodations for victims of crime or abuse
To all employees, with each paycheck	Labor Code 246	AR 4161.1 4361.1 AR 4261.1	Amount of sick leave available
Upon hire, in employee handbook, and upon request for parental leave	Labor Code 1034	BP 4033	The district's policy on lactation accommodation
To covered employees and former employees	Labor Code 2800.2	AR 4154 4254 4354	Availability of COBRA/ Cal-COBRA continuation and conversion coverage; statement encouraging careful examination of options before declining coverage

E 4112.9(c)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
I. To All Employees (continued)			
To employees participating in a flexible spending account	Labor Code 2810.7	None	Deadline to withdraw funds from account before the end of the plan year
To every new employee, either at the time employee is hired or by end of first pay period	Labor Code 3551	AR 4157.1 4257.1 4357.1	Workers' compensation benefits, how to obtain medical care, role of primary physician, form for reporting personal physician/chiropractor
Within one day of receiving notice of potential exposure to COVID-19, to employees who were on the premises during the infectious period, the exclusive representative, and the employer of subcontracted employees as applicable	Labor Code 6409.6	AR 4157 4257 4357	Potential exposure to COVID-19; benefits to which employees may be entitled; available leave options; protection against discrimination and retaliation; district's disinfection and safety plan
Prior to beginning employment	Penal Code 11165.7, 11166.5	AR 5141.4	Status as a mandated reporter of child abuse, reporting obligations, confidentiality rights, copy of law
Upon employment, and when employee goes on leave for specified reasons	Unemployment Insurance Code 2613	AR 4154 4254 4354	Disability insurance rights and benefits
To all employees and job applicants	2 CCR 11023; 34 CFR 104.8, 106.9	BP 0410 AR 4030	District's policy on nondiscrimination and related complaint procedures
To all employees via employee handbook, or to each new employee	2 CCR 11091, 11095; 29 CFR 825.300	AR 4161.8 4261.8 4361.8	Benefits through Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA); obligation to provide 30 days' notice of need for leave when possible
To all employees	8 CCR 3203	AR 4157 4257 4357	The right and procedure to access the injury and illness prevention program

E 4112.9(d)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
I. To All Employees (continued)			
To all employees	34 CFR 106.8	AR 4119.11 4219.11 4319.11	Nondiscrimination on the basis of sex; contact information for district's Title IX Coordinator; referral of inquiries to Title IX Coordinator and/or Office for Civil Rights
Annually to all employees	40 CFR 763.84, 763.93	AR 3514	Availability of asbestos management plan; inspections, response actions, post-response actions planned or in progress
II. To Certificated Employees			
To eligible certificated employees in a timely manner, and to part-time and substitute certificated employees within 30 days of hire	Education Code 22455.5	AR 4121	Criteria for membership in retirement system; right to elect membership at any time
Upon employment of a retired certificated individual	Education Code 22461	AR 4117.14 4317.14	Postretirement earnings limitation or employment restriction; monthly report of compensation
To certificated employees	Education Code 35171	AR 4115 BP 4315	District regulations related to performance evaluations
30 days before last day of school year for instructional staff, or by June 30 for noninstructional certificated staff, in any year in which employee is evaluated	Education Code 44663	AR 4115	Copy of employee's evaluation
To a certificated employee with unsatisfactory evaluation, once per year for probationary employee or at least once every other year for permanent employee	Education Code 44664	AR 4115	Notice and description of the unsatisfactory performance

E 4112.9(e)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
II. To Certificated Employees (continued)			
By May 30, if district issues reemployment notices to certificated employees	Education Code 44842	AR 4112.1	Request that the employee notify district of intent to remain in service next year
To certificated probationary and temporary certificated employees upon employment, and to nonpermanent employees and every July thereafter in July of each school year	Education Code 44916	AR 4112.1 AR 4121	Employment status and salary
To probationary employee, by March 15	Education Code 44929.21, 44929.23, 44948.5	BP 4116	Whether or not employee is reelected for next school year
When certificated employee is subject to disciplinary action for cause, at any time of year or, for charge of unsatisfactory performance, during instructional year	Education Code 44934, 44934.1, 44936	BP 4118 AR 4118	Notice of charges, procedures, and employee rights; intent to dismiss or suspend 30 days after notice
To certificated employee charged with unprofessional conduct, at least 45 days prior to suspension/ dismissal notice	Education Code 44938	BP 4118	Notice of deficiency and opportunity to correct
To certificated employee charged with unsatisfactory performance, at least 90 days prior to suspension/dismissal notice or prior to last quarter of school year	Education Code 44938	BP 4118	Notice of deficiency and opportunity to correct
To certificated employee charged with mandatory leave of absence offense, within 10 days of entry of judgment in proceedings	Education Code 44940.5	AR 4118	Notice of intent to dismiss 30 days from notice unless employee demands hearing
To probationary employees 30 days prior to dismissal during school year, but not later than March 15 for a second-year probationary employees	Education Code 44948.3	AR 4118	Reasons for dismissal and opportunity to appeal

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E 4112.9(f)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
II. To Certificated Employees (continued)			
By March 15 when necessary to reduce certificated personnel, with final notice by May 15	Education Code 44949, 44955	BP 4117.3	Reasons for personnel reduction and employees' right to hearing; final notice of Board decision re: termination
On or before June 30, Before the end of the school year to temporary employee who served 75 percent of school year but will be released	Education Code 44954	BP 4121	District's decision not to reelect employee for following school year
To teacher, when a student engages in or is reasonably suspected of specified acts	Education Code 49079	AR 4158 4258 4358	Student has committed specified act that constitutes ground for suspension or expulsion
To certificated employee upon change in employment status due to alleged misconduct or while allegation is pending	5 CCR 80303	AR 4117.7 4317.7	Contents of state regulation re: report to Commission on Teacher Credentialing
III. To Classified Employees			
When classified employee is subject to disciplinary action for cause, in nonmerit district	Education Code 45113	AR 4218	Notice of charges, right to hearing, timeline for requesting hearing
To classified employees at At least 60 days prior to layoff, or by April 29 for specially funded program that expires at end of school year	Education Code 45117	AR 4217.3	Notice of layoff and reemployment rights
To classified employees at Upon employment and upon each change in classification	Education Code 45169	AR 4212	Employee's class specification, salary data, assignment or work location, duty hours, prescribed workweek
To classified permanent employee whose leave is exhausted	Education Code 45192, 45195	AR 4261.1 AR 4261.11	Exhaustion of leave, opportunity to request additional leave

103

E 4112.9(g)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
III. To Classified Employees (continued)			
To school bus drivers and school activity bus drivers prior to expiration of specified documents	13 CCR 1234	AR 3542	Expiration date of driver's license, driver's certificate and medical certificate; need to renew
To school bus drivers and school activity bus drivers upon employment and at least once per year thereafter	13 CCR 2480	AR 3542	Limitations on vehicle idling; consequences of not complying
To school bus drivers, prior to district drug testing program and thereafter upon employment	49 CFR 382.113, 382.601	AR 4112.42 4212.42 4312.42	Explanation of federal requirements for drug testing program and district's policy
To school bus drivers, prior to operating school bus	49 CFR 382.303	AR 4112.42 4212.42 4312.42	Post-accident information, procedures, and instructions
IV. To Administrative/Supervisory Personnel			
To superintendent, deputy, associate, or assistant superintendent or senior manager of classified service, at least 45 days before expiration of contract	Education Code 35031	BP 2121 BP 4312.1	Decision not to reelect or reemploy upon expiration of contract or term
Upon request by administrative or supervisory employee transferred to teaching position	Education Code 44896	AR 4313.2	Statement of the reasons for the release of reassignment
By March 15 to employee who may be released/reassigned the following school year	Education Code 44951	AR 4313.2	Notice that employee may be released or reassigned the following school year
V. To Individual Employees Under Special Circumstances			
In the event of a breach of security of district records, to affected employees	Civil Code 1798.29	BP 3580	Types of records affected, date of breach, description of incident, and, as applicable, contact information for credit reporting agencies

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E 4112.9(h)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
V. To Individual Employees Under Special Circumstances (continued)			
Prior to placing derogatory information in personnel file	Education Code 44031	AR 4112.6 4212.6 4312.6	Notice of derogatory information, opportunity to review and comment
To employees who volunteer to administer epinephrine auto-injector	Education Code 49414	AR 5141.21	Defense and indemnification from civil liability by the district
To district police officer, within 30 days of decision to impose discipline	Government Code 3304	AR 3515.3	Decision to impose discipline, including the date that discipline will be imposed
To employees returning from military leave of absence, within 30 days of return	Government Code 20997	AR 4161.5 4261.5 4361.5	Right to receive PERS service credit for military service; application form
24 hours before Board meets in closed session to hear complaints or charges against employee	Government Code 54957	BB 9321	Employee's right to have complaints/charges heard in open session
When taking disciplinary action against employee for disclosure of confidential information	Government Code 54963	BP 4119.23 4219.23 4319.23	Law prohibiting disclosure of confidential information obtained in closed session
Within one working day of work-related injury or victimization of crime	Labor Code 3553, 5401	AR 4157.1 4257.1 4357.1	Potential eligibility for workers' compensation benefits, claim form
When adverse employment action is based on DOJ criminal history information or subsequent arrest notification	Penal Code 11105, 11105.2	AR 4112.5 4212.5 4312.5	Copy of DOJ notification
To any employee with exposure to blood or other potentially infectious materials, upon initial employment and at least annually thereafter	8 CCR 3204	AR 4119.42 4219.42 4319.42	The existence, location, and availability of exposure and medical records; person responsible for maintaining and providing access to records; right to access records

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E 4112.9(i)
4212.9
4312.9

EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
V. To Individual Employees Under Special Circumstances (continued)			
To any employee assigned to a work area where hazardous chemicals are present, upon initial assignment and upon new exposure situation	8 CCR 5191	AR 3514.1	Location and availability of chemical hygiene plan, exposure limits, signs and symptoms of exposure, location of reference material
To any employee who may be exposed to hazardous substances in the work area, upon initial assignment and when new hazard is introduced into work area	8 CCR 5194	AR 3514.1	Any presence of hazardous substances in the work area, location and availability of hazard communication program, new material safety data sheet, employee rights
To employee eligible for military leave	38 USC 4334	AR 4161.5 4261.5 4361.5	Notice of rights, benefits, and obligations under military leave
Within five days of employee's request for FMLA leave, receipt of supporting information, or district's knowledge that the requested leave may qualify as FMLA leave	29 CFR 825.300; 2 CCR 11049, 11091	AR 4161.8 4261.8 4361.8	Designation of leave as FMLA or non-FMLA; if not eligible, reason not eligible; requirement to use paid leave; any requirement for fitness-for-duty certification; any subsequent changes in designation notice
Whenever notice of eligibility for FMLA is provided to employee	29 CFR 825.300	AR 4161.8 4261.8 4361.8	Rights and responsibilities re: use of FMLA; consequences of failure to meet obligations

(3/20 5/20) 3/21

MB

CSBA Sample Administrative Regulation

All Personnel

AR 4161.2(a)

4261.2

PERSONAL LEAVES

4361.2

Note: The following administrative regulation is subject to collective bargaining agreements.

Personal leaves granted to district employees shall be used as permitted in this administrative regulation, other Board-approved policy or district regulation, or applicable collective bargaining agreement.

Note: **As provided in the following paragraph,** Family Code 297.5 extends to registered domestic partners the same rights that are available under state law to spouses. Thus, any reference to an employee's spouse throughout this administrative regulation also applies to a registered domestic partner, even if not expressly stated in the applicable state codes (e.g., Education Code, Military and Veterans Code). Districts should consult legal counsel if a question arises as to leave provisions relative to an employee's domestic partner.

For the purpose of any personal leave offered pursuant to state law, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (Family Code 297.5)

Whenever possible, employees shall request personal leaves in advance and prepare suitable instructions, including lesson plans as applicable, for a substitute employee.

(cf. 4121 - Temporary/Substitute Personnel)

Bereavement

Note: Education Code 44985 and 45194 allow the Governing Board to expand the class of relatives listed below and enlarge the benefits provided by law. The following two paragraphs may be revised to reflect district practice.

Employees are entitled to a leave of up to three days, or five days if out-of-state travel is required, upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)

(cf. 4161/4261/4361 - Leaves)

Members of the immediate family include: (Education Code 44985, 45194)

1. The mother, father, grandmother, grandfather, or grandchild of the employee or of the employee's spouse
2. The employee's spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister

AR 4161.2(b)
4261.2
4361.2

PERSONAL LEAVES (continued)

3. Any relative living in the employee's immediate household

At the employee's request, bereavement leave may be extended under personal necessity leave provisions as provided in the section "Personal Necessity" below. (Education Code 44981, 45207)

Personal Necessity

Note: Employees may use a maximum of seven days of accumulated personal illness/injury leave (sick leave) for reasons of personal necessity pursuant to Education Code 44981 (certificated employees) and 45207 (classified employees). Pursuant to Education Code 44981 and 45207, a higher maximum may be set for certificated and/or classified employees in their collective bargaining agreement or by Board resolution for classified employees who are not covered by a collective bargaining agreement. Districts that have established a maximum that is higher than seven days should modify the following paragraph accordingly.

Education Code 45207 clarifies that provisions pertaining to personal necessity leave also apply to districts that have adopted the merit system for classified employees in accordance with Education Code 45240-45320.

Employees may use a maximum of seven days of their accrued personal illness/injury leave (sick leave) during each school year for reasons of personal necessity. (Education Code 44981, 45207)

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Acceptable reasons for the use of personal necessity leave include:

1. Death of a member of the employee's immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)
2. An accident involving the employee or **his/her the employee's** property, or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)

Note: Pursuant to Education Code 44981, provides that a certificated employee may use personal necessity leave for the serious illness of a member of his/her the employee's immediate family. The Board may extend these provisions to classified employees under the authority granted to the Board by Education Code 45207. Districts are cautioned to consult legal counsel regarding any interaction of Education Code provisions with Labor Code 233, 245.5, and 246.5, as amended by AB 1522 (Ch. 319, Statutes of 2014), which allow the use of sick leave for the need of the employee or his/her family member for the diagnosis, care, or treatment of an existing health condition or for preventive care and which **expand include in** the definition of "family member" to include a registered domestic partner, grandparent, and sibling. See AR 4161.1/4361.1 - Personal Illness/Injury Leave and AR 4261.1 - Personal Illness/Injury Leave.

AR 4161.2(c)
4261.2
4361.2

PERSONAL LEAVES (continued)

Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for federal and state provisions related to leaves for the birth, adoption, or foster placement of a new child; the care of a seriously ill child, parent, or spouse/registered domestic partner; or the employee's own serious health condition.

3. Illness, preventive care, or other need of a member of the employee's family, as defined in Labor Code 245.5 (Education Code 44981; Labor Code 246.5)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

Note: Education Code 45207 provides that classified employees may use sick leave for required court appearances, as provided in item #4 below. Circumstances under which employees may take time off, with pay, for court appearances are described in the section on "Legal Duties" below.

4. A classified employee's appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or other order (Education Code 45207)

Note: Items #5 and #6 are **optional** and may be deleted or modified to reflect district practice.

5. Fire, flood, or other immediate danger to the home of the employee
6. Personal business of a serious nature which the employee cannot disregard

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, personal necessity leave shall not be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether **or not** a request reflects personal necessity.

Note: The following paragraph is **optional**. The district is prohibited from requiring employees to obtain advance permission prior to taking leaves in certain situations. Pursuant to Education Code 44981 and 45207, the district may not require advance permission for leaves taken by classified employees for the reasons specified in items #1-2 above and by certificated employees for the reasons specified in items #1-3 above. In addition, Labor Code 246.5 requires an employer to grant paid sick leave "upon the oral or written request of an employee." According to the Department of Industrial Relations, employers may not require advance notice when the need for the leave was unforeseeable, as in the case of unanticipated illness or a medical emergency.

Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for requirements pertaining to requests for leaves that qualify under the federal Family and Medical Leave Act (29 USC 2601-2654) or the California Family Rights Act (Government Code 12945.1-12945.2), including provisions that allow employees to provide notice as soon as practicable when 30-day advance notice is not practicable due to lack of knowledge of the date the leave will be needed, a change in circumstances, or a medical emergency.

MB

AR 4161.2(d)
4261.2
4361.2

PERSONAL LEAVES (continued)

Advance permission shall not be required of an employee in any case involving the death of a member of the employee's immediate family, an accident involving the employee's person or property or the person or property of a member of **his/her the employee's** immediate family, or the illness, preventive care, or other need of a member of the employee's family. (Education Code 44981, 45207)

For any leave that is planned, or where the need for leave is foreseeable, an employee shall notify the Superintendent or designee in advance. In all other circumstances, the employee shall notify the Superintendent or designee of the need for the leave as soon as practicable.

Note: Education Code 44981 and 45207 **mandate** the adoption of regulations requiring proof of personal necessity and prescribing the manner of the required proof. The following paragraph may be revised to specify the manner of proof required by the district.

After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed district absence form to **his/her the employee's** immediate supervisor.

Legal Duties

Note: Pursuant to Education Code 44037, it is unlawful for the district or personnel commission to (1) adopt any rule, regulation, or policy that encourages employees to seek exemption from jury duty; (2) directly or indirectly solicit or suggest to any employee that **he/she the employee** seek exemption from jury duty; or (3) discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of **his/her the employee's** service on a jury panel. However, the Board or personnel commission may establish a rule providing that only a percentage of district staff, which shall not be less than two percent, shall be granted such leave with pay at any one time. The following section may be revised to reflect district practice.

Labor Code 230 prohibits the discharge of or discrimination or retaliation against an employee for taking time off for the activities specified in items #1-2 below.

An employee may take time off work in order to: (Labor Code 230)

1. Serve on an inquest jury or trial jury
2. Comply with a subpoena or other court order to appear as a witness

Notices, summons, and subpoenas for court appearances shall be submitted to the district office when requesting leave.

A classified employee called for jury duty shall be granted leave with pay up to the amount of the difference between **his/her the employee's** regular earnings and any amount received for jury fees. (Education Code 44037)

MS

PERSONAL LEAVES (continued)

Note: The following **optional** paragraph is for use by districts that choose to provide leave of absence with pay for certificated employees called for jury duty, as authorized by Education Code 44036. Districts that do not grant such leave should delete this paragraph.

A certificated employee who is called for jury duty also shall be granted leave with pay up to the difference between **his/her the employee's** regular earnings and any jury fees **he/she** received.

Note: The following paragraph is **optional**. Education Code 44036 allows the Board, at its discretion, to provide paid leaves for employees to appear in court as witnesses other than as litigants or to respond to orders from another governmental jurisdiction. Districts that do not grant such leave should delete this paragraph.

An employee shall be granted leave with pay to appear in court as a witness other than a litigant or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such an employee shall receive the difference between **his/her the employee's** regular earnings and any witness fees **he/she** received.

Leaves for Crime Victims **for Judicial Proceedings**

Note: Labor Code 230.2 prohibits a district from taking adverse employment action against an employee who takes leave as described below.

An employee may be absent from work in order to attend judicial proceedings related to a crime when **he/she the employee** is a victim, or an immediate family member, registered domestic partner, or child of a registered domestic partner of a victim, of any of the following crimes: (Labor Code 230.2)

1. A violent felony as defined in Penal Code 667.5(c)
2. A serious felony as defined in Penal Code 1192.7(c)
3. A felony provision of law proscribing theft or embezzlement

Note: Pursuant to Labor Code 230.2, employees may use any of the types of leave listed in the following paragraph, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of an employee.

For these purposes, the employee may use vacation, personal leave, personal illness/injury leave, unpaid leave, or compensatory time off that is otherwise available to the employee. (Labor Code 230.2)

MB

PERSONAL LEAVES (continued)

Prior to taking time off, an employee shall give ~~his/her supervisor~~ **the Superintendent or designee** a copy of the notice of each scheduled proceeding that is provided by the responsible agency, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employee shall, within a reasonable time after the absence, provide documentation evidencing the judicial proceeding from the court or government agency setting the hearing, the district attorney or prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim. (Labor Code 230.2)

The district shall keep confidential any records pertaining to the employee's absence from work by reason of this leave. (Labor Code 230.2)

Leaves for Victims of ~~Domestic Violence, Sexual Assault and Stalking~~ **Crime or Abuse**

Note: Labor Code 230 and 230.1 allow employees **who are victims of domestic violence, sexual assault, or stalking** to use their available vacation, personal leave, or compensatory time off for the purposes described in items #1-5 below and prohibit a district from taking adverse employment action against an employee for taking leave for any of those purposes. **Pursuant to Labor Code 230.1, items #2-5 apply to districts with 25 or more employees.**

As amended by AB 2992 (Ch. 224, Statutes of 2020), Labor Code 230 and 230.1 expand these provisions to include employees who are victims of a crime that caused physical injury, or mental injury with a threat of physical injury, and employees whose immediate family member is deceased as the direct result of a crime.

An employee who is a victim of domestic violence, sexual assault, or stalking, **who is a victim of a crime that caused physical injury or that caused mental injury with a threat of physical injury, or whose immediate family member, as defined, is deceased as the direct result of a crime as defined by law** may use vacation, sick leave, personal leave, or compensatory time off that is otherwise available to ~~him/her~~ **the employee** ~~under the terms of his/her employment~~ to attend to the following activities: (Labor Code 230, 230.1, 246.5)

1. Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or ~~his/her~~ **the employee's** child
2. Seek medical attention for injuries caused by ~~domestic violence, sexual assault, or stalking~~ **crime or abuse**
3. Obtain services from a domestic violence shelter, program, ~~or~~ **rape crisis center, or victim services organization or agency** as a result of ~~domestic violence, sexual assault, or stalking~~ **the crime or abuse**

PERSONAL LEAVES (continued)

4. Obtain psychological counseling or mental health services related to an experience of domestic violence, sexual assault, or stalking crime or abuse
5. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking crime or abuse, including temporary or permanent relocation

Note: Pursuant to Labor Code 230, as amended by AB 2992, the following certification may include documentation from a victim advocate (defined as an individual, whether paid or serving as a volunteer, who provides services to victims under the auspices or supervision of an agency or organization that has a documented record of providing services to victims, a court, or a law enforcement or prosecution agency) or any other form of documentation that reasonably verifies that the crime or abuse occurred, including, but not limited to, a written statement signed by the employee or by an individual acting on the employee's behalf.

Prior to taking time off, an employee shall give reasonable notice to his/her supervisor the Superintendent or designee, unless advance notice is not feasible. When an unscheduled absence occurs, the employee shall provide, within a reasonable period of time, certification of the absence in the form of any of the following: (Labor Code 230, 230.1)

1. A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking
2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, the crime or abuse, or other evidence from the court or prosecuting attorney that the employee has appeared in court
3. Documentation from a domestic violence or sexual assault counselor as defined in Evidence Code 1037.1 or 1035.2, licensed medical professional or health care provider, victim advocate, or counselor that the employee was undergoing treatment or receiving services for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking the crime or abuse
4. Any other form of documentation that reasonably verifies that the crime or abuse occurred, including, but not limited to, a written statement signed by the employee or by an individual acting on the employee's behalf certifying that the absence is for a purpose authorized under Labor Code 230 or 230.1

The district shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230, 230.1)

AR 4161.2(h)
4261.2
4361.2

PERSONAL LEAVES (continued)

Note: Pursuant to Labor Code 230.1, districts with 25 or more employees are required to notify their employees of their rights under Labor Code 230 and 230.1. The district may use a form developed by the Labor Commissioner for this purpose, available on the web site of the Department of Industrial Relations, or may develop its own form that is substantially similar in content and clarity to the Labor Commissioner's form. As amended by AB 2992, Labor Code 230.1 requires the Labor Commissioner to revise the form by January 1, 2022. Until that form is revised, the district should update its form to reflect current law.

The Superintendent or designee shall inform employees of their rights pursuant to Labor Code 230 and 230.1 using a form developed by the Labor Commissioner or a substantially similar form developed by the district. Such information shall be provided to new employees upon hire and to other employees upon request. (Labor Code 230.1)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Personal Leave for Child-Related Activities

Note: Pursuant to Labor Code 230.8, the following section applies to any district employing 25 or more employees at the same location. A district with fewer than 25 employees at the same location may use or delete this section at its discretion. ~~SB 579 (Ch. 802, Statutes of 2015) amended Labor Code 230.8 to expand the purposes of leave for child-related activities to include enrolling or reenrolling a child in a school or with a licensed child care provider and addressing a school or child care emergency, as defined.~~

Pursuant to Labor Code 230.8, an employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated against for using the leave is entitled to reinstatement and reimbursement for lost wages and benefits, and an employer who willfully refuses to rehire, promote, or otherwise reinstate such an employee is subject to a civil penalty equal to three times the amount of the lost wages and benefits.

Any employee who is a parent/guardian of one or more children of an age to attend any of grades K-12 or a program offered by a licensed child care provider may use up to 40 hours of personal leave, vacation, or compensatory time off each school year in order to: (Labor Code 230.8)

1. Find, enroll, or reenroll **his/her** a child in a school or with a licensed child care provider or to participate in activities of the school or child care provider, provided the employee gives reasonable advance notice of the absence. Time off for this purpose shall not exceed eight hours in any calendar month.
2. Address a school or child care emergency, provided the employee gives notice. An emergency exists when the child cannot remain in school or with a child care provider due to one of the following circumstances:



PERSONAL LEAVES (continued)

- a. A request by the school or child care provider that the child be picked up
- b. An attendance policy, excluding planned holidays, that prohibits the child from attending or requires that the child be picked up from the school or child care provider
- c. Behavioral or discipline problems
- d. Closure or unexpected unavailability of the school or child care provider, excluding planned holidays
- e. A natural disaster, including, but not limited to, fire, earthquake, or flood

(cf. 5148 - Child Care and Development)

Note: SB 579 (Ch. 802, Statutes of 2015) amended Labor Code 230.8 to expand the definition of "parent" to add a stepparent, foster parent, or person who stands in loco parentis to the child.

For purposes of this leave, *parent/guardian* includes a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to a child. (Labor Code 230.8)

Note: Labor Code 230.8 provides that the employee may use time off without pay to the extent the district makes it available. The following **optional** paragraph may be revised to reflect district practice.

In lieu of using vacation, personal leave, or compensatory time off, eligible employees may take unpaid leave for this purpose.

If two or more parents/guardians of a child are employed at the same work site, this leave shall be allowed for the parent/guardian who first gives notice to the district. Simultaneous absence by another parent/guardian of the child may be granted by the Superintendent or designee. (Labor Code 230.8)

Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed child care provider that **he/she the employee** engaged in permitted child-related activities on a specific date and at a particular time. (Labor Code 230.8)

Service on Education Boards and Committees

Upon request, a certificated employee shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education board, commission,

AR 4161.2(j)
4261.2
4361.2

PERSONAL LEAVES (continued)

committee, or group authorized by Education Code 44987.3 provided that all of the following conditions are met: (Education Code 44987.3)

1. The service is performed within the state.
2. The board, commission, organization, or group informs the district in writing of the service.
3. The board, commission, organization, or group agrees, prior to the service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.

Employee Organization Activities

Note: The following **optional** section may be deleted by any district whose collective bargaining agreements expressly provide for a paid leave of absence for participation in the activities described in this section.

Education Code 44987 and 45210 provide that certificated and classified employees may take time off without loss of compensation to serve as elected officers of their local, statewide, or national employee organization. Following the district's payment to the employee for the leave of absence, the employee organization must reimburse the district within 10 days after receiving the district's certification of payment of compensation to the employee. This leave of absence is in addition to the release time granted to representatives of an employee organization pursuant to Government Code 3543.1.

Upon request, any certificated or classified employee shall be granted a leave of absence without loss of compensation to serve as an elected officer of a district employee organization or any statewide or national employee organization with which the employee organization is affiliated. The leave shall include, but is not limited to, absence for purposes of attending periodic, stated, special, or regular meetings of the body of the organization. (Education Code 44987, 45210)

(cf. 4140/4240/4340 - Bargaining Units)

(cf. 4143/4243 - Negotiations)

Note: Education Code 45210 requires districts to grant a paid leave of absence to a reasonable number of classified employees serving as unelected members of the employee organization or a statewide or national public employee organization when the employee attends "important organizational activities authorized by the public employee organization." Compensation must include the required retirement fund contributions. The employee will continue to earn full service credit during the leave and must pay member contributions as specified. The maximum amount of service credit an employee may earn cannot exceed 12 years. Education Code 45210 also requires that an employee organization provide reasonable notification to the district when requesting a leave of absence without loss of compensation for an employee.

AR 4161.2(k)
4261.2
4361.2

PERSONAL LEAVES (continued)

Upon request of an employee organization in the district or its state or national affiliate, a reasonable number of unelected classified employees shall be granted a leave of absence without loss of compensation for the purpose of attending important organizational activities authorized by the organization. The employee organization shall provide reasonable notification to the Superintendent or designee when requesting a leave of absence for employees for this purpose. (Education Code 45210)

When leave is granted for any of the above purposes, the employee organization shall reimburse the district within 10 days after receiving the district's certification of payment of compensation to the employee. (Education Code 44987, 45210)

Religious Leave

Note: The following **optional** section is for use by any district that chooses to grant religious leave and may be revised to reflect district practice. A district that does not grant such leave should delete this section. However, the district should consult legal counsel before denying a request for religious leave since the Constitution requires districts to provide "reasonable accommodation" to employee religious practices.

The Superintendent or designee may grant an employee up to three days of leave per year for religious purposes, provided that the leave is requested in advance and that it does not cause additional district expenditures, the neglect of assigned duties, or any other unreasonable hardship on the district.

Note: The following **optional** paragraph reflects the California Supreme Court's interpretation of Article 1, Section 8 of the California Constitution as stated in Rankin v. Commission on Professional Competence.

The Superintendent or designee shall deduct the cost of hiring a substitute, when required, from the wages of the employee who takes religious leave.

No employee shall be discriminated against for using this leave or any additional days of unpaid leave granted for religious observances at the discretion of the Superintendent or designee.

Spouse on Leave from Military Deployment

Note: Military and Veterans Code 395.10 requires any district with 25 or more employees to allow up to 10 days of unpaid leave to an employee whose spouse is on leave from military deployment. A district with fewer than 25 employees may use the following section at its discretion. In addition, 29 USC 2612 authorizes an employee to take up to 26 work weeks of unpaid military caregiver leave or up to 12 weeks of "exigency" leave during a single 12-month period, as determined by the district; see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

AR 4161.2(I)
4261.2
4361.2

PERSONAL LEAVES (continued)

An employee who works an average of 20 hours or more per week and whose spouse is a member of the United States Armed Forces, National Guard, or reserves may take up to 10 days of unpaid leave during a period that **his/her the employee's** spouse is on leave from deployment during a military conflict, as defined in Military and Veterans Code 395.10. (Military and Veterans Code 395.10)

Within two business days of receiving official notice that **his/her the employee's** spouse will be on leave from deployment, the employee shall provide the Superintendent or designee with notice of **his/her the** intention to take the leave. The employee shall submit written documentation certifying that **his/her the employee's** spouse will be on leave from deployment during the time that the leave is requested. (Military and Veterans Code 395.10)

Leave for Emergency Duty

Note: Labor Code 230.3 prohibits a district from discharging or discriminating against an employee who takes time off to perform emergency duty as specified below. Labor Code 230.3 defines emergency rescue personnel as a member of a federal, state, local, or private fire department or agency, as well as a sheriff or police department.

An employee may take time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel. (Labor Code 230.3)

Note: Pursuant to Labor Code 230.4, a district with 50 or more employees must grant an employee who is a volunteer firefighter, reserve peace officer, or emergency rescue personnel a leave of absence for up to 14 days per calendar year for training purposes. A district with fewer than 50 employees may use or delete this paragraph at its discretion.

Any employee who performs duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel shall be permitted to take temporary leaves of absence, not to exceed an aggregate total of 14 days per calendar year, for the purpose of engaging in fire, law enforcement, or emergency rescue training. (Labor Code 230.4)

Civil Air Patrol Leave

Note: Labor Code 1500-1507 require a district with more than 15 employees to provide at least 10 days of unpaid leave per year, beyond any leave otherwise available to employees, to employees who volunteer with the Civil Air Patrol and are directed to respond to an emergency operational mission, as provided below. Labor Code 1503 specifies that a district may not require an employee to first exhaust all accrued vacation, personal, sick, or any other available leave in order to use Civil Air Patrol leave.

If the district chooses to offer more than 10 days of such leave per year or to provide paid leave, it should modify the following paragraph accordingly. A district with 15 or fewer employees may use or delete this section at its discretion.

MB

AR 4161.2(m)
4261.2
4361.2

PERSONAL LEAVES (continued)

An employee may take up to 10 days of unpaid leave per calendar year, beyond any leave otherwise available to ~~him/her~~ **the employee**, to respond to an emergency operational mission of the California Civil Air Patrol, provided that the employee has been employed by the district for at least a 90-day period immediately preceding the leave. Such leaves shall not exceed three days for a single mission, unless an extension is granted by the governmental entity authorizing the mission and is approved by the Superintendent or designee. (Labor Code 1501, 1503)

The employee shall give the district as much advance notice as possible of the intended dates of the leave. The Superintendent or designee may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave and may deny the leave if the employee fails to provide the required certification. (Labor Code 1503)

Legal Reference:

EDUCATION CODE

- 44036-44037 *Leaves of absence for judicial and official appearances*
- 44963 *Power to grant leaves of absence (certificated)*
- 44981 *Leave of absence for personal necessity (certificated)*
- 44985 *Leave of absence due to death in immediate family (certificated)*
- 44987 *Service as officer of employee organization (certificated)*
- 44987.3 *Leave of absence to serve on certain boards, commissions, etc.*
- 45190 *Leaves of absence and vacations (classified)*
- 45194 *Bereavement leave of absence (classified)*
- 45198 *Effect of provisions authorizing leaves of absence*
- 45207 *Personal necessity (classified)*
- 45210 *Service as officer of employee organization (classified)*
- 45240-45320 *Merit system, classified employees*

EVIDENCE CODE

- 1035.2 *Sex assault counselor; definition*
- 1037.1 *Domestic violence counselor; definition*

FAMILY CODE

- 297-297.5 *Registered domestic partner rights, protections, and benefits*

GOVERNMENT CODE

- 3543.1 *Release time for representatives of employee organizations*
- 12945.1-12945.2 *California Family Rights Act*

LABOR CODE

- 230-230.2 *Leave for victims of domestic violence, sexual assault, or specified felonies*
- 230.3 *Leave for emergency personnel*
- 230.4 *Leave for volunteer firefighters*
- 230.8 *Leave to visit child's school*
- 233 *Illness of child, parent, spouse, domestic partner or domestic partner's child*
- 234 *Absence control policy*
- 246.5 *Paid sick days, purposes for use*
- 1500-1507 *Civil Air Patrol leave*

Legal Reference continued: (see next page)

AB

AR 4161.2(n)
4261.2
4361.2

PERSONAL LEAVES (continued)

Legal Reference: (continued)

MILITARY AND VETERANS CODE

395.10 *Leave when spouse on leave from military deployment*

PENAL CODE

667.5 *Violent felony, defined*

1192.7 *Serious felony, defined*

CALIFORNIA CONSTITUTION

Article 1, Section 8 *Religious discrimination*

UNITED STATES CODE, TITLE 29

2601-2654 *Family and Medical Leave Act*

UNITED STATES CODE, TITLE 42

2000d-2000d-7 *Title VII, Civil Rights Act of 1964*

COURT DECISIONS

Rankin v. Commission on Professional Competence, (1988) 24 Cal.3d 167

PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

Berkeley Council of Classified Employees v. Berkeley Unified School District, (2008) PERB Decision No. 1954

Management Resources:

WEB SITES

California Department of Industrial Relations: <http://www.dir.ca.gov>

California Federation of Teachers: <http://www.cft.org>

California School Employees Association: <http://www.csea.com>

California Teachers Association: <http://www.cta.org>

Public Employment Relations Board: <http://www.perb.ca.gov>

(12/14 3/16) 3/21

CSBA Sample Administrative Regulation

All Personnel

AR 4161.8(a)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE

Note: The following **optional** administrative regulation addresses mandatory subjects of bargaining. The laws referenced in this regulation provide minimum amounts of leave which the district must grant its employees if more generous benefits are not provided as part of its collective bargaining agreement. Any covered subject that is already addressed in the district's collective bargaining agreements should be deleted from this administrative regulation.

Both federal and state law provide for family care and medical leave (29 USC 2601-2654, the Family and Medical Leave Act of 1993 (FMLA), and Government Code 12945.1-12945.2, the California Family Rights Act (CFRA)). However, these laws do not always provide identical rights or operate in the same manner. For example, pregnancy as a "serious health condition" is covered under FMLA but not under CFRA. Instead, under **California state** law, an employee who is disabled due to pregnancy, childbirth, or a related medical condition is entitled to pregnancy disability leave (PDL) pursuant to Government Code 12945. Where there is a difference between state and federal law, the law that grants the greatest benefits generally controls. In those situations, legal counsel should be consulted as needed.

As amended by AB 1556 (Ch. 799, Statutes of 2017), Government Code 12945 and 12945.2 delete references to females with regard to pregnancy disability leave and clarify that all employees are protected against pregnancy discrimination regardless of their gender identity.

The district shall not deny any eligible employee the right to family care, **or medical leave, or pregnancy disability leave (PDL) pursuant to the Family and Medical Leave Act (FMLA); or the California Family Rights Act (CFRA), or leave for pregnancy disability pursuant to California Pregnancy Disability Leave (PDL), or the Fair Employment and Housing Act (FEHA) nor restrain or interfere with the employee's exercise of such right. In addition, the district shall not interfere with, restrain, or deny the exercise of an employee's right to any such leave, nor shall the district discharge, an employee or discriminate against, or retaliate against an employee him/her for taking such leave, or for his/her opposition to or challenge of opposing or challenging any unlawful district employment practice in relation to any of these laws, or for his/her involvement being involved in any related inquiry or proceeding.** (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4033 - Lactation Accommodation)

Definitions

The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.

Note: Government Code 12945.2, as amended by SB 1383 (Ch. 86, Statutes of 2020), includes a child of a registered domestic partner in the definition of "child" for purposes of CFRA leave.

FAMILY CARE AND MEDICAL LEAVE (continued)

Child ~~(son or daughter)~~ means a biological, adopted, or foster child; a stepchild; a legal ward; or a **child person** to whom the employee stands in *loco parentis*, ~~as long as the child is under 18 years of age or an adult dependent child.~~ **For purposes of CFRA leave, child also includes a child of a registered domestic partner.** (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

Eligible employee, for FMLA and CFRA purposes, means an employee who has been employed with the district for at least 12 months and who has at least 1,250 hours of service with the district ~~during the previous 12-month period~~ **during the 12 months immediately preceding the leave.** However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.110)

***Eligible family member* means an employee's child, parent, or spouse. For purposes of leave to care for a family member with a serious health condition pursuant to CFRA, eligible family member includes an employee's child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.** (Government Code 12945.2; 2 CCR 11087; 29 USC 2612)

Employee disabled by pregnancy means an employee whose health care provider states that the employee is: (2 CCR 11035)

1. Unable because of pregnancy to perform any one or more of the essential functions of the job or to perform any of them without undue risk to the employee or other persons or to the pregnancy's successful completion
2. Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss or end of pregnancy, or any other pregnancy-related condition

Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in *loco parentis* to the employee when the employee was a child. *Parent* does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

Note: For purposes of CFRA leave, Government Code 12945.2, as amended by SB 1383, includes an employee's grandparent, grandchild, sibling, and registered domestic partner with a serious health condition as one for whom an employee may take family care and medical leave.

FAMILY CARE AND MEDICAL LEAVE (continued)

Serious health condition means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or **an eligible family member of the employee** ~~his/her child, parent, or spouse~~, that involves either ~~of the following~~ **inpatient care or continuing treatment, including treatment for substance abuse, as follows:** (Government Code 12945.2; 2 CCR 11087, 11097; 29 USC 2611, **2612**; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity

A person is considered an inpatient when **formally admitted to** a health care facility ~~formally admits him/her to the facility~~ with the expectation **of that he/she will remaining** overnight and occupying a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

Incapacity means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
 - a. A period of incapacity of more than three consecutive full days
 - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
 - c. Any period of incapacity due to pregnancy or for prenatal care under FMLA
 - d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
 - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage ~~or~~. **For purposes of CFRA leave, spouse also includes** a registered domestic partner within the meaning of Family Code 297-297.5. (Family Code 297, 297.5, 300; 2 CCR 11087; 29 CFR 825.122)

FAMILY CARE AND MEDICAL LEAVE (continued)

Eligibility

Note: Pursuant to Government Code 12945.2 and 29 USC 2611-2612, **require** a district **is required** to grant family care and medical leave to an eligible employee for any of the reasons stated below. These requirements **generally** apply to **all public agencies regardless of the number of employees.** ~~circumstances where the district employs 50 or more employees within 75 miles of the worksite where the employee requesting the leave is employed.~~

Government Code 12945.6, as added by SB 63 (Ch. 686, Statutes of 2017), extends the right to parental leave to an eligible employee who is not covered by FMLA or CFRA when the district employs 20-49 employees within 75 miles of the worksite where the employee requesting the leave is employed.

The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2, 12945.6; 29 USC 2612; 29 CFR 825.112, **825.126, 825.127**)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. To care for ~~the employee's child, parent, or spouse~~ **the employee's eligible family member** with a serious health condition
3. The employee's own serious health condition that makes **the employee him/her** unable to perform one or more essential **job** functions of ~~his/her~~ **the position**

Note: Pursuant to 29 CFR 825.126, FMLA military family leave is available to any eligible employee for a qualifying exigency while the employee's spouse, ~~son, daughter~~ **child**, or parent who is a military member is on covered active duty during deployment to a foreign country. **Government Code 12945.2, as amended by SB 1383, provides exigency leave under CFRA for an employee whose registered domestic partner is on active duty.** For requirements related to qualifying exigency leave, see the section "Military Family Leave Resulting from Qualifying Exigencies" below.

4. Any qualifying exigency arising out of the fact that the employee's spouse, child, ~~or parent,~~ **or, for CFRA leave only, a registered domestic partner,** is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)

Note: Pursuant to 29 CFR 825.127, military caregiver leave is available to any eligible employee who is a family member of a covered servicemember with a serious injury or illness. For requirements related to military caregiver leave, see the section on "Military Caregiver Leave" below.

5. To care for a covered servicemember with a serious injury or illness if the covered servicemember is the employee's spouse, child, parent, or next of kin, as defined

115

AR 4161.8(e)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

Note: Under federal law, pregnancy as a "serious health condition" is covered as part of FMLA leave. However, disability due to pregnancy is explicitly excluded from coverage under CFRA (2 CCR 11093). Instead, pursuant to Government Code 12926 and 12945, any California employee who is "disabled because of pregnancy, childbirth, or related medical conditions" is entitled to unpaid PDL of up to four months if the employer has five or more employees. Therefore, such an employee is entitled to up to four months of PDL and an additional 12 weeks of CFRA leave following the birth of the child.

Additionally, pursuant to 2 CCR 11037, PDL is not subject to eligibility requirements for other FMLA and CFRA leaves, such as minimum hours worked or length of service.

In addition, the district shall grant PDL to any employee who is disabled by pregnancy, childbirth, or other related medical condition. (Government Code 12945; 2 CCR 11037)

Terms of Leave

Note: Leaves common to CFRA and FMLA run concurrently so that total leave to which an employee is entitled would be 12 work weeks. **However, when they do not run concurrently, an employee may be eligible for up to 12 work weeks under both CFRA and FMLA, for a total of 24 work weeks.**

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. **In circumstances where the leaves do not run concurrently under the law, the employee may take up to 12 work weeks for both CFRA and FMLA, for a total of 24 work weeks.** (Government Code 12945.2; 29 USC 2612)

Note: To determine the 12-month period in which the leave entitlement occurs, the district may use any of the methods identified in 29 CFR 825.200 and specified in options #1-4 below. However, a district may choose not to use any of these options and may instead choose some other fixed 12-month period. **Whichever option is selected, it must be applied uniformly to all employees.** If the district fails to select a method for calculating the 12-month period, the method that provides the most beneficial outcome for the employee will be used. Pursuant to 2 CCR 11090, if the district decides to change the calculation method, it must provide at least 60 days' notice to all employees.

OPTION 1: This 12-month period shall coincide with the calendar year. (29 CFR 825.200)

✓ **OPTION 2:** This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

OPTION 3: This 12-month period shall be measured forward from the date the employee's first family care and medical leave begins. (29 CFR 825.200)

AR 4161.8(f)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

OPTION 4: This 12-month period shall be a rolling period measured backward from the date an employee uses any family care and medical leave, as defined in 29 CFR 825.200. (29 CFR 825.200)

Note: 2 CCR 11042 clarifies that the four months of PDL to which an employee is entitled means the number of days or hours that the employee would normally work within the four calendar months. **For employees who work 40 hours per week, PDL leave is defined as 17-1/3 weeks, 122 days, or 693 hours.**

In addition, any employee who is disabled by pregnancy, childbirth, or other related condition shall be entitled to PDL for the period of the disability not to exceed four months. For a part-time employee, the four months shall be calculated on a proportional basis. (Government Code 12945; 2 CCR 11042)

Note: While leaves common to CFRA and FMLA run concurrently, PDL is separate and distinct from CFRA leave. Consequently, pursuant to 2 CCR 11046, an employee who is "disabled by pregnancy" may be entitled to up to four months of PDL, followed by 12 work weeks of CFRA leave for the birth of the child (baby bonding). Determining which leaves run concurrently is a complex endeavor and districts should consult legal counsel as needed.

PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of a child or to bond with or care for the child. (Government Code 12945, 12945.2; 2 CCR 11046, 11093)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. (2 CCR 11090; 29 USC 2612)

Note: **Government Code 12945.6, which limited the amount of leave related to the birth or placement of a child to a combined total of 12 work weeks when both parents work for the district, was repealed by SB 1383, thereby allowing both parents to take up to 12 work weeks of leave for this purpose. Although 29 USC 2612 allows the district to limit the aggregate number of work weeks of leave to which two parents may be entitled when both parents work for the district, such leave is covered under both FMLA and CFRA and state law prevails since it provides greater rights to employees. The following optional paragraph is for use by districts that choose to limit family care and medical leave related to the birth or placement of a child to a total of 12 work weeks when both parents work for the district, as authorized by Government Code 12945.2 and 12945.6. However, pursuant to 2 CCR 11088, such limit on employees' entitlement to family care and medical leave for any other qualifying purpose is prohibited.**

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 work weeks.



AR 4161.8(g)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

Each eligible employee shall be granted up to 12 work weeks for family care and medical leave related to the birth or placement of a child, regardless of whether both parents of the child work for the district. This restriction shall apply regardless of the legal status of both parents' relationship. (Government Code 12945.2, 12945.6; 2 CCR 11088; 29 USC 2612)

Use/Substitution of Paid Leave

Note: The district may require employees (Option 1) or employees may elect (Option 2) to use paid leave during an otherwise unpaid portion of CFRA or FMLA leave or PDL. Pursuant to 2 CCR 11044 and 11092, the district may only require an employee to use sick leave if the leave is for the employee's own serious health condition or for PDL, unless mutually agreed to by the district and the employee. The district and employee may also negotiate for the employee's use of any paid or unpaid time off instead of using the employee's CFRA leave.

OPTION 1: An employee shall use his/her accrued vacation leave, other accrued time off, and any other paid time off negotiated with the district for any otherwise unpaid FMLA or CFRA leave not involving his/her own serious health condition. For PDL, CFRA, or FMLA leave due to an employee's own serious health condition, the employee shall use accrued sick leave and may use accrued vacation leave and other paid time off at his/her option. During any otherwise unpaid period of FMLA or CFRA leave, except leave for an employee's own serious health condition, an employee shall use accrued paid leave, including, but not limited to, vacation leave, personal leave, or family leave. If the leave is for the employee's own serious health condition, the employee shall use accrued paid leave, including but not limited to, vacation leave, personal leave, or sick leave. During an unpaid period of PDL, the employee shall use any accrued sick leave and may elect to use any vacation time or other accrued personal time off. (Government Code 12945, 12945.2, 12945.6; 2 CCR 11044, 11092; 29 USC 2612)

OPTION 2: During the any otherwise unpaid period of PDL or any FMLA or CFRA leave, the employee may elect to use his/her accrued vacation leave, accrued sick leave, or any other paid time off negotiated with the district that the employee he/she is eligible to use. If the leave is for the employee's own serious health condition or PDL, the employee may also elect to use accrued sick leave during the period of leave. (Government Code 12945, 12945.2, 12945.6; 2 CCR 11044; 11092; 29 USC 2612)

Note: The following paragraph is for use with either option above.

The district and employee may also negotiate for the employee's come to agreement regarding the use of any additional paid or unpaid time off instead of using the employee's CFRA leave. (2 CCR 11092)



FAMILY CARE AND MEDICAL LEAVE (continued)

(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4161/4261/4361 - Leaves)
(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or **his/her child, parent, or spouse eligible family member** may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district shall limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave provided it is not to be greater than one hour. (**Government Code 12945.2**; 2 CCR 11042, 11090; 29 USC 2612)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Note: Pursuant to 2 CCR 11090, the minimum duration of CFRA parental leave for the birth, adoption, or foster care placement of a child is generally two weeks. However, the district must grant a request for CFRA leave of less than two weeks duration on any two occasions and may grant additional requests.

The basic minimum duration of leave for the birth, adoption, or foster care placement of a child shall be two weeks. However, the district shall grant a request for such leave of less than two weeks on any two occasions. (2 CCR 11090; 29 USC 2612)

The district may require an employee to transfer temporarily to an available alternative position under any of the following circumstances: (2 CCR 11041, 11090; 29 USC 2612)

1. The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment for the employee or family member.

Note: Pursuant to 2 CCR 11041, the district must accommodate the transfer request of a pregnant employee to the same extent that it accommodates transfer requests for other temporarily disabled employees.

2. A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.
3. The district agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child.

AR 4161.8(i)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

The alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 11041, 11090; 29 USC 2612)

Request for Leave

Note: Pursuant to 2 CCR 11050 and 11091, an employee is required to notify the district of the need to take PDL or family care and medical leave. The employee must provide at least verbal notice sufficient to make the district aware that the employee needs qualifying leave, and the anticipated timing and duration of the leave. However, the employee does not need to assert rights under CFRA or FMLA or even mention CFRA or FMLA to meet the notice requirement, but must state the reason the leave is needed. If there is a question about whether leave is FMLA/CFRA qualifying or if the district is considering denying CFRA leave based on an employee's refusal to provide further information, legal counsel should be consulted.

The district shall consider an employee's request for PDL or family care and medical leave only if the employee provides at least verbal notice sufficient to make the district aware of the need to take the leave and the anticipated timing and duration of the leave. (2 CCR 11050, 11091)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, **the employee he/she** must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

The district shall respond to requests for leave as soon as practicable, but no later than five business days after receiving the employee's request. (2 CCR 11091)

Note: Both 29 CFR 825.300 and 2 CCR 11091 require the district to provide an employee with notice of the designation of leave as either qualifying for CFRA or FMLA protection. See section entitled "Notifications" below for further requirements of this "designation notice" as well as other required notifications.

Pursuant to 2 CCR 11091, an employee has the obligation to respond to questions designed to determine whether an absence is potentially CFRA qualifying. If the district is unable to determine whether requested leave is CFRA qualifying because of employee's refusal to respond to its inquiries, the employee may be denied CFRA protection.

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of

FAMILY CARE AND MEDICAL LEAVE (continued)

such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the district is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

Note: Pursuant to 2 CCR 11091, the district may require an employee to provide at least 30 days advance notice of the need for family care and medical leave, if the need is foreseeable. If the district requires such advance notice from employees, then the district's notification of FMLA/CFRA rights must so specify; see section below entitled "Notifications."

Pursuant to 2 CCR 11050, an employee requesting PDL is required to provide the district at least 30 days advance notice if the need for PDL is foreseeable.

When an employee is able to foresee the need for PDL or family care and medical leave at least 30 days in advance of the leave, the employee shall provide the district with at least 30 days advance notice before the leave. When the 30 days' notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial of leave. (2 CCR 11050, 11091)

In all instances, the employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 11050, 11091)

Certification of Health Condition

Note: The following **optional** section is for use by districts that require an employee to submit a medical certification of the need for ~~leave along with the request for PDL or~~ family care and medical leave for ~~his/her~~ **an employee's own serious health condition or to care for a-the employee's eligible family member child, parent, or spouse** with a serious health condition. In order to help avoid claims of discrimination, the district should generally treat all **such** employees uniformly; thus, districts using this section should request a medical certification from all **such** employees.

Districts requiring written medical certification from employees ~~who request reasonable accommodation, transfer, or disability leave because of pregnancy~~ may develop their own form, utilize one provided by the employee's health care provider, or use the form provided in 2 CCR ~~11050 or 11097, as applicable.~~

Within five business days of an employee's request for family care and medical leave for ~~his/her own or his/her child's, parent's, or spouse's~~ **the serious health condition of the employee or an eligible family member**, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon

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FAMILY CARE AND MEDICAL LEAVE (continued)

receiving the district's request, the employee shall provide the certification within 15 **calendar** days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR **11087**, 11091; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)

1. The date on which the serious health condition began
2. The probable duration of the condition

Note: Item #3 below addresses an eligible employee's request for leave to care for **his/her child, parent, or spouse-an eligible family member**. In such a case, 2 CCR 11087 provides that the health care provider's certification need not identify the serious health condition involved. **The U.S. Department of Labor (DOL) provides a form, Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act, that districts may use for this purpose to avoid unauthorized disclosure of the serious health condition.**

3. If the employee is requesting leave to care for **a child, parent, or spouse an eligible family member** with a serious health condition, both of the following:
 - a. Statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of **the child, parent, or spouse the eligible family member** during a period of the treatment or supervision
 - b. Estimated amount of time the health care provider believes the employee needs to care for the **child, parent, or spouse-eligible family member**
4. If the employee is requesting leave because of **the employee's his/her** own serious health condition, a statement that due to the serious health condition, **the employee he/she** is unable to work at all or is unable to perform one or more essential **job functions of the position of his/her job**
5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

FAMILY CARE AND MEDICAL LEAVE (continued)

Note: Government Code 12940 and other provisions of the California Genetic Information Nondiscrimination Act of 2011 prohibit an employer from requesting or requiring genetic information of employees or family members of employees unless specifically authorized by law making a non-job related inquiry into an employee's genetic information. A district which believes that an employee's leave may require obtaining this information should consult with legal counsel.

The Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011. (Government Code 12940)

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

If the Superintendent or designee ~~doubts~~ has a good faith objective reason to doubt the validity of a certification that accompanies a request for leave for the employee's own serious health condition, the Superintendent or designee he/she may require the employee to obtain a second opinion from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the district, again at district expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 2 CCR 11091; 29 USC 2613)

Certification for PDL

Note: The following optional section is for use by districts that require an employee to submit a medical certification of the need for leave along with the request for PDL. Districts requiring written medical certification from employees who request reasonable accommodation, transfer, or disability leave because of pregnancy may develop their own form, utilize one provided by the employee's health care provider, or use the form provided in 2 CCR 11050 or 11097, as applicable.

For PDL, ~~the~~ Superintendent or designee shall request that ~~the~~ an employee who is requesting PDL provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The

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AR 4161.8(m)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

Superintendent or designee may request certification at some later date if **the Superintendent or designee he/she** has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

For PDL that is foreseeable and for which at least 30 days' notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 **calendar** days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 11050)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because the employee is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 11050)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 11050; 29 USC 2613)

Note: ~~Government Code 12940 and other provisions of the California Genetic Information Nondiscrimination Act of 2011 prohibit employers from requesting or requiring genetic information of employees or family members of employees unless specifically authorized by law. A district which believes that an employee's leave may require obtaining this information should consult with legal counsel.~~

~~The Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011.~~

Release to Return to Work

Note: The following **optional** section is for use by districts that choose to require a return-to-work certification and may be modified to list the specific positions for which certification is required. Pursuant to 2 CCR 11091, the district may require an employee to submit a return-to-work certification from **the employee's his/her** health provider, stating that **the employee he/she** is able to return to work. However, this requirement may only be made if the district has a uniformly applied practice of requiring such releases when employees return to work after illness, injury, or disability, **the any** fitness-for-duty examination is job related and consistent with business necessity, and the practice is not forbidden by its collective bargaining agreement. 2 CCR 11050 has similar requirements when an employee is returning to work after PDL.

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AR 4161.8(n)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

Pursuant to 29 CFR 825.312, when the health care provider certifies that the employee is able to resume work, the district may also require the health care provider to address the employee's ability to perform the essential functions of the job. If such a requirement is imposed, then the district must provide the employee with a list of the **employee's essential job functions of his/her job** with the "designation notice"; see section entitled "Notifications" below.

Upon expiration of an employee's PDL or family care and medical leave taken for **the employee's his/her own serious health condition**, the employee shall present certification from the health care provider **of the employee's ability that he/she able** to resume work. The certification shall address the employee's ability to perform the essential **job functions of his/her job the position**.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

Rights to Reinstatement

Note: Pursuant to Government Code 12945.2, 2 CCR 11043 and 11089, and 29 USC 2614, an employee on PDL or family care and medical leave has the right to be reinstated to the same or a comparable position **upon when he/she returns** from such leave. However, such an employee has no greater right to reinstatement or other benefits than **the employee he/she would have if he/she had been continuously employed employment had been continuous**. In addition, in certain situations described below, the district may be relieved of the obligation to reinstate an employee. **As amended by SB 1383, Government Code 12945.2 eliminates the district's authority to deny reinstatement of a "key employee" in certain situations.**

~~The process for determining whether an employee is a "key employee" to whom the guarantee of reinstatement would not apply requires a detailed analysis and specific notifications to the employee. Legal counsel should be consulted if the district intends to deny leave or reinstatement.~~

Upon granting an employee's request for PDL or FMLA/CFRA leave, the Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 11043, 11089; 29 USC 2614)

~~However, the district may refuse to reinstate an employee returning from FMLA or CFRA leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 2 CCR 11089; 29 USC 2614)~~

- ~~1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.~~
- ~~2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.~~

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AR 4161.8(o)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

The district may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee. (2 CCR 11089; 29 CFR 825.216)

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 11043)

Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, he/she the employee shall maintain his/her employee status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 2 CCR 11092; 29 USC 2614)

Note: Pursuant to 2 CCR 11044 and 11092, the time that the district maintains and pays for group health coverage during PDL shall not be used to meet its obligation to pay for 12 weeks of group health coverage during leave taken under CFRA, even where the district designates the PDL as FMLA or CFRA leave. The entitlements to employer-paid group health coverage during PDL and during CFRA are two separate and distinct entitlements.

For up to a maximum of four months for PDL and 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before the employee he/she took the leave. The employee shall reimburse the district for premiums paid during the leave if the employee he/she fails to return to district employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's his/her control. (Government Code 12945.2; 2 CCR 11044, 11092; 29 USC 2614; 29 CFR 825.213)

(cf. 4154/4254/4354 - Health and Welfare Benefits)

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FAMILY CARE AND MEDICAL LEAVE (continued)

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall not make plan payments for an employee during any unpaid portion of the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 11044, 11092)

Military Family Leave Resulting from Qualifying Exigencies

Note: The following **optional** section reflects 29 USC 2611 and 2612 which authorize an eligible employee to take up to 12 work weeks of unpaid FMLA leave to attend to an "exigency" arising out of the fact that the employee's spouse, child, or parent is on active duty or on call to active duty status in the National Guard or Reserves, or is a member of the regular Armed Forces on deployment to a foreign country. **Pursuant to Government Code 12945.2, as amended by SB 1383, an employee may take unpaid leave under CFRA to attend to an exigency involving the employee's registered domestic partner.**

Pursuant to 29 CFR 825.200, an employee is entitled to 12 work weeks of qualifying exigency leave during each 12-month period established by the district; see section entitled "Terms of Leave" above. According to **the U.S. Department of Labor's (DOL) DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers**, an employee may take all 12 weeks of **his/her** FMLA leave entitlement as a qualifying exigency leave or take a combination of the 12 weeks of leave for both qualifying exigency leave and other FMLA leave, such as leave for a serious health condition.

Because CFRA does not cover similar leave, CFRA leave is not exhausted when utilizing military family leave.

An eligible employee may take up to 12 work weeks of unpaid FMLA/**CFRA** leave, during each 12-month period established by the district in the section entitled "Terms of Leave" above, for one or more qualifying exigencies while **his/her** **the employee's** child, parent, ~~or~~ spouse, **or, for purposes of CFRA leave, registered domestic partner**, who is a military member is on covered active duty or on call to covered active duty status. (**Government Code 12945.2**; 29 USC 2612; 29 CFR 825.126)

Covered active duty means, **for members of the Regular Armed forces**, duty during the deployment of a member of the regular Armed Forces to a foreign country ~~or~~ **and, for members of the Reserve components of the Armed forces**, duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law. **Deployment to a foreign county includes deployment to international waters.** (29 USC 2611; 29 CFR 825.126)

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FAMILY CARE AND MEDICAL LEAVE (continued)

Note: Pursuant to 29 CFR 825.126, a "qualifying exigency" may include "any other events" agreed to by the district and the employee. As an example of such other event, DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers and the California Department of Human Resources' Questions and Answers - Military Family Leave - FMLA list leave to spend time with the military member either prior to or post deployment or to attend to household emergencies that would normally have been handled by the military member.

Qualifying exigencies include time needed to: (29 CFR 825.126)

1. Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of call or order of short notice deployment
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status
3. Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. Make or update financial and legal arrangements to address a military member's absence
5. Attend counseling provided by someone other than a health care provider
6. Spend time (up to 15 **calendar** days of leave per instance) with a military member who is on short-term, temporary, rest and recuperation leave during deployment
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. Address any other event that the employee and district agree is a qualifying exigency

The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

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FAMILY CARE AND MEDICAL LEAVE (continued)

Note: The district may require the employee to provide certification of the qualifying exigency containing the information specified in 29 CFR 825.309. A form has been developed by DOL for this purpose and is available on its web site.

The following paragraph is **optional** and should be deleted by those districts that do not require such documentation. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request certification from all employees requesting such leave.

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)

Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to use paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in the section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regards to FMLA/CFRA leave is also applicable to qualified exigency leave.

During the period of qualified exigency leave, the district's rule regarding an employee's use of **his/her** accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Military Caregiver Leave

Note: 29 USC 2612 and 29 CFR 825.127 authorize an eligible employee to take up to 26 work weeks of unpaid military caregiver leave, as defined below, during a single 12-month period. ~~As is the case with other FMLA leaves, only districts that employ at least 50 employees within 75 miles of the worksite where the employee requesting the leave is employed are required to grant the military caregiver leave; see the section entitled "Eligibility" above.~~ According to DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, if an employee does not use the entire 26-week entitlement in a single 12-month period, unused weeks cannot be carried over into another 12-month period. However, the employee may qualify for nonmilitary FMLA leave.

The district shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, **son, daughter-child**, parent, or

FAMILY CARE AND MEDICAL LEAVE (continued)

next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness
2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran

Note: Unlike the provisions for other FMLA/CFRA leave, 29 CFR 825.127 places no age limit on the definition of "~~son or daughter~~ child," as detailed below. In addition, 29 CFR 825.127 defines "next of kin" of a covered servicemember in relation to military caregiver leave.

~~Son or daughter~~ **Child** of a covered servicemember means the **covered servicemember's** biological, adopted, or foster child, stepchild, legal ward, or a child ~~of any age~~ for whom the covered servicemember stood in *loco parentis*, **and who is of any age**. (29 CFR 825.127)

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in *loco parentis* to the covered servicemember (except "parents in law"). (29 CFR 825.127)

Next of kin means the nearest blood relative to the covered servicemember, **other than the spouse, parent, son, or daughter or child, unless or as** designated in writing by the covered servicemember. (29 USC 2611, 2612; **29 CFR 825.127**)

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

Note: 29 USC 2611 defines "serious injury or illness" for active members of the Armed Forces and for *veterans*, as provided below. Pursuant to 29 CFR 825.127, one of the four conditions listed in item #2 below must be present for a veteran's injury or illness to qualify as a "serious injury or illness" for the purpose of this leave.

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FAMILY CARE AND MEDICAL LEAVE (continued)

The following paragraph is **optional**. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request a medical certification from all employees requesting such leave.

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

Note: Pursuant to 29 CFR 825.127, an employee may take up to a total of 26 work weeks of leave for both regular FMLA and military caregiver leave during the 12-month leave entitlement period. However, the employee may not take more than 12 weeks for regular FMLA leave. For example, according to DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of military caregiver leave, but could not take 16 weeks to care for a newborn and 10 weeks of military caregiver leave. If the leave qualifies as both military caregiver leave and leave to care for a family member with a serious health condition, 29 CFR 825.127 specifies that the district must first designate the leave as military caregiver leave.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other **family care and medical** leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to substitute paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regard to FMLA/CFRA leave is also applicable to military caregiver leave.

During the period of military caregiver leave, the district's rule regarding an employee's use of ~~his/her~~ accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Notifications

Note: Both 29 CFR 825.300 and 2 CCR 11095 require employers to provide general notification to employees of their rights under the FMLA/CFRA as well as specific notifications when an employee has requested leave, as detailed below. 2 CCR 11049 contains similar notice requirements for PDL purposes. Samples of notices which describe an employee's rights are available on the web sites of the California Department of Fair Employment and Housing and the DOL.

FAMILY CARE AND MEDICAL LEAVE (continued)

Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
 - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered **the servicemember** ~~him/her~~ unable to perform the duties of **the servicemember's** ~~his/her~~ office, grade, rank, or rating
 - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
 - c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to **the servicemember's** ~~his/her~~ military service or that would do so but for treatment received by the veteran
 - d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

Note: As is the case for other types of FMLA/CFRA leave, 29 CFR 825.302 **and 825.303** requires the employee, when the need for the leave is foreseeable, to provide 30 days advance notice to the district before the leave is to begin.

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

Note: 29 CFR 825.310 authorizes the district to require employees to provide certification of the need for the leave, which is to be completed by an authorized health care provider of the covered servicemember.

MB

AR 4161.8(w)
4261.8
4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

Note: Item #3b below is for use by districts that require medical certification to the effect that the employee is able to resume work. See the section entitled "Release to Return to Work" above.

- b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
- c. The employee's right to use paid leave, whether the district will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
- d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
- ~~e. The employee's status as a "key employee" if applicable, potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial~~
- f.e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
- g.f. The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave

Any time the information provided in the above notice changes, the Superintendent or designee shall, within five business days of his/her receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

- 4. **Designation Notice:** When the Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, he/she shall, within five business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (2 CCR 11091; 29 CFR 825.300)

FAMILY CARE AND MEDICAL LEAVE (continued)

Pursuant to 2 CCR 11095, the district must translate the notice into every language that is spoken by at least 10 percent of the district's employees at any facility.

The Superintendent or designee shall provide the following notifications regarding state and federal law related to PDL or FMLA/CFRA leave:

1. **General Notice:** Information explaining the provisions of the FEHA/PDL and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks. (2 CCR 11049, 11095; 29 USC 2619)

Note: Pursuant to 2 CCR 11050 and 11091, a district may require an employee, when the need for the leave is foreseeable, to provide at least 30 days advance notice before the leave is to begin; see the section entitled "Request for Leave" above. 2 CCR 11049 and 11091 specify that districts requiring such notice from employees must give them "reasonable advance notice" of their obligation and that incorporation of the requirement into the general notice satisfies the "advance notice" requirement.

The following **optional** paragraph is for use by districts that require employees to provide advance notice.

The general notice shall also explain an employee's obligation to provide the Superintendent or designee with at least 30 days' notice of the need for the requested leave, when the need is reasonably foreseeable at least 30 days prior to the start of the leave. (2 CCR 11049, 11050, 11091)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

2. **Eligibility Notice:** When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of **his/her** eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)
3. **Rights and Responsibilities Notice:** Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)
 - a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

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4361.8

FAMILY CARE AND MEDICAL LEAVE (continued)

If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

Note: 29 CFR 825.300 requires the designation notice to specify whether the district requires paid leave to be used during an otherwise unpaid family care and medical leave, whether the district requires an employee to present release to return to work certification, and whether that certification must address the employee's ability to perform the essential functions of the job. See the sections entitled "Use/Substitution of Paid Leave" and "Release to Return to Work" above. The following paragraph should be revised to reflect district practice.

If the district requires paid leave to be used during an otherwise unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a release to return to work certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (2 CCR 11091, 11097; 29 CFR 825.300)

Any time the information provided in the designation notice changes, the Superintendent or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

Records

Note: Government Code 12946, 29 USC 2616, and 29 CFR 825.500 require districts to maintain records of, among other things, applications, dates, and personnel and employment action related to family care and medical leave. Pursuant to 42 USC 2000ff-1, any individually identifiable genetic information possessed by the district must be treated as a confidential medical record of the employee involved.

The Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)

Legal Reference: (see next page)

115

FAMILY CARE AND MEDICAL LEAVE (continued)

Legal Reference:

EDUCATION CODE

44965 *Granting of leaves of absence for pregnancy and childbirth*

FAMILY CODE

297-297.5 *Rights, protections, and benefits under law; registered domestic partners*

300 *Validity of marriage*

GOVERNMENT CODE

12926 *Fair employment and housing act, definitions*

12940 *Unlawful employment practices*

12945 *Pregnancy; childbirth or related medical condition; unlawful practice*

12945.1-12945.2 *California Family Rights Act*

12945.6 *Parental leave*

12946 *Fair Employment and Housing Act: discrimination prohibited*

UNEMPLOYMENT INSURANCE CODE

3300-3308 *Paid family leave*

CODE OF REGULATIONS, TITLE 2

11035-11051 *Sex discrimination: pregnancy, childbirth and related medical conditions*

11087-11097 **8** *California Family Rights Act*

UNITED STATES CODE, TITLE 1

7 *Definition of marriage **and spouse***

UNITED STATES CODE, TITLE 29

2601-2654 *Family and Medical Leave Act of 1993, as amended*

UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.702 *Family and Medical Leave Act of 1993*

COURT DECISIONS

United States v. Windsor, (201**3**) 699 F.3d 169

Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864

Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045

Management Resources:

U.S. DEPARTMENT OF LABOR PUBLICATIONS

Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act, Form WH-380-F

Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES PUBLICATIONS

Questions and Answers - Military Family Leave - FMLA

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

California Department of Human Resources: <https://www.calhr.ca.gov>

U.S. Department of Labor, FMLA: <http://www.dol.gov/whd/fmla>

(7/15 3/18) 3/21

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CSBA Sample Board Policy

Instruction

BP 6142.8(a)

COMPREHENSIVE HEALTH EDUCATION

Note: The following **optional** policy may be revised to reflect district practice.

The Governing Board believes that health education should foster the knowledge, skills, and attitudes that students need in order to lead healthy lives and avoid high-risk behaviors, **and that creating a safe, supportive, inclusive, and nonjudgmental environment is crucial in promoting healthy development for all students.** The district's health education program shall be part of a coordinated school health system which supports the **physical, mental, and social** well-being of students and is linked to district and community services and resources.

(cf. 0415 - Equity)

(cf. 3513.3 - Tobacco-Free Schools)

(cf. 3514 - Environmental Safety)

(cf. 3550 - Food Service/Child Nutrition Program)

(cf. 3554 - Other Food Sales)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.62 - Tobacco)

(cf. 5131.63 - Steroids)

(cf. 5137 - Positive School Climate)

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.23 - Asthma Management)

(cf. 5141.3 - Health Examinations)

(cf. 5141.32 - Health Screening for School Entry)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5141.5 - Mental Health)

(cf. 5141.52 - Suicide Prevention)

(cf. 5141.6 - School Health Services)

(cf. 5141.7 - Sun Safety)

(cf. 5142 - Safety)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6164.2 - Guidance/Counseling Services)

Note: The federal Child Nutrition and Women, Infants and Children (WIC) Reauthorization Act of 2004 (42 USC 1758b) requires each district participating in the National School Lunch program (42 USC 1751-1769j) or any program in the Child Nutrition Act of 1966, including the School Breakfast Program (42 USC 1771-1791-1793), including the School Breakfast Program, to adopt a districtwide school wellness policy which includes goals for nutrition **promotion and education, education and physical activity, and other school-based activities that promote student wellness education.** See BP 5030 - Student Wellness for language fulfilling this mandate.

Goals for the district's health education program shall be designed to promote student wellness and shall include, but not be limited to, goals for nutrition **promotion and education, and physical activity, and other school-based activities that promote student well-being.**

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COMPREHENSIVE HEALTH EDUCATION (continued)*(cf. 0200 - Goals for the School District)**(cf. 5030 - Student Wellness)**(cf. 6142.7 - Physical Education and Activity)*

Note: The following **optional** paragraph should be revised as necessary to reflect grade levels offered by the district. Education Code 51210 requires that the adopted course of study for grades 1-6 include instruction in health, including instruction in the principles and practices of individual, family, and community health. Education Code 51202 requires that certain health-related topics be addressed at the appropriate elementary and secondary grade levels and in appropriate subject areas, as determined by the district.

Education Code 51934 requires that **students be districts provided comprehensive sexual health education and HIV/AIDS prevention instruction**, at least once in middle school or junior high school and at least once in high school, **by instructors trained in the appropriate courses. Education Code 51934 also authorizes, but does not require, districts to provide age-appropriate comprehensive sexual health education prior to grade 7 on any of the topics specified in Education Code 51934.** See AR 6143 - Courses of Study and BP/AR 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction.

Additionally, Education Code 51900.6 authorizes districts to provide age-appropriate instruction in grades K-12 in sexual abuse and sexual assault awareness and prevention pursuant to content standards developed by the State Board of Education (SBE), provided that students are allowed to be excused from such instruction upon the written request of their parents/guardians. SBE has not yet adopted content standards regarding sexual abuse and sexual assault awareness and prevention. Also see BP 5141.4 - Child Abuse Prevention and Reporting.

The Health Education Framework for California Public Schools, Kindergarten through Grade Twelve provides nonprescriptive instructional guidance and support to California teachers, administrators, curriculum specialists, other educators, and school boards for implementation of the voluntary health education standards, which include the following six content areas: nutrition and physical activity; growth, development, and sexual health; injury prevention and safety; alcohol, tobacco, and other drugs; mental, emotional, and social health; and personal and community health.

In March 2008, the State Board of Education adopted voluntary content standards for health education as required by Education Code 51210.8; see the accompanying administrative regulation. The state's Health Framework for California Public Schools, provides nonprescriptive guidance on the scope and sequence of the health curriculum.

The district shall provide a planned, sequential, research-based, and developmentally appropriate health education curriculum for students in grades K-12 which is aligned with the state's content standards and curriculum framework **and integrated with other content areas of the district's curriculum.** The Superintendent or designee shall determine the grade levels and subject areas in which health-related topics will be addressed, in accordance with law, Board policy, and administrative regulation.

*(cf. 6011 - Academic Standards)**(cf. 6141 - Curriculum Development and Evaluation)**(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)**(cf. 6143 - Courses of Study)*

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COMPREHENSIVE HEALTH EDUCATION (continued)

Note: The following **optional** paragraph may be revised to reflect district practice. Education Code 51890 defines a "comprehensive health education program" as one that includes community participation in the **teaching of health, including classroom participation by practicing professional health and safety personnel in the community.** Education Code 51891 defines "community participation" as **active including participation in the planning, implementation, and evaluation of comprehensive health education** by parents/guardians, practicing health care and public safety personnel, and public and private health care and service agencies **in the planning, implementation, and evaluation of the program.**

As appropriate, the Superintendent or designee shall involve school administrators, teachers, school nurses, health professionals representing various fields of health care, parents/guardians, community-based organizations, and other community members in the development, implementation, and evaluation of the district's health education program. Health and safety professionals may be invited to provide related instruction in the classroom, school assemblies, and other instructional settings.

(cf. 1220 - Citizen Advisory Committees)

(cf. 1240 - Volunteer Assistance)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 1700 - Relations Between Private Industry and the Schools)

(cf. 6020 - Parent Involvement)

(cf. 6145.8 - Assemblies and Special Events)

(cf. 6162.8 - Research)

The Superintendent or designee shall provide professional development as needed to ensure that health education teachers are knowledgeable about academic content standards, **the state curriculum framework**, and effective instructional methodologies.

(cf. 4131 - Staff Development)

Note: The following **optional** paragraph should be revised to reflect indicators agreed upon by the Governing Board and Superintendent for evaluating the district's health education program.

ok The Superintendent or designee shall provide periodic reports to the Board regarding the implementation and effectiveness of the district's health education program, which may include, but not be limited to, a description of the district's program and the extent to which it is aligned with the state's content standards and curriculum framework, the amount of time allotted for health instruction at each grade level, ~~and~~ student achievement of district standards for health education, **and the manner in which the district's health education program supports the physical, mental, and social well-being of students.**

(cf. 0500 - Accountability)

(cf. 6190 - Evaluation of the Instructional Program)

Legal Reference: (see next page)

NBS

COMPREHENSIVE HEALTH EDUCATION (continued)

Legal Reference:

EDUCATION CODE

- 8850.5 Family relationships and parenting education
 - 35183.5 Sun protection
 - 49413 First aid **and cardiopulmonary resuscitation** training
 - 49430-49434 Pupil Nutrition, Health and Achievement Act of 2001
 - 49490-49494 School breakfast and lunch programs
 - 49500-49505 School meals
 - 51202 Instruction in personal and public health and safety
 - 51203 Instruction on alcohol, narcotics and dangerous drugs
 - 51210 Areas of study; **grades 1-6**
 - 51210.8 State content standards for health education
 - 51220.5 Parenting skills; areas of instruction
 - 51225.36 Sexual harassment and violence instruction; affirmative consent standard**
 - 51225.6 Compression-only cardiopulmonary resuscitation instruction**
 - 51260-51269 Drug education
 - 51513 Personal beliefs; **exams, questionnaires, and surveys**
 - 51880-51881.5 Health education, legislative findings and intent
 - 51890-51891 Comprehensive health education programs **and community participation; definitions**
 - 51900.6 Sexual abuse and sexual assault awareness and prevention**
 - 51913 District health education plan
 - 51920 Inservice training, health education
 - 51930-51939 **California Healthy Youth Act; Comprehensive sexual health and HIV/AIDS prevention education**
 - 67386 Affirmative consent; definition**
- #### CALIFORNIA CODE OF REGULATIONS, TITLE 5
- 11800-11801 District health education plan
- #### UNITED STATES CODE, TITLE 42
- 1751-1769j National School Lunch Program, **especially:**
 - 1758b Local wellness policy
 - 1771-1793 Child nutrition programs, including National School Breakfast Program

Management Resources:

CSBA PUBLICATIONS

- Why Schools Hold the Promise for Adolescent Mental Health, Governance Brief, May 2019**
- The Impact of Marijuana Legalization on K-12: The Effect of Marijuana on the Brain, November 2018**
- Preventing Catastrophic Health Illness, Governance Brief, July 2018**
- Integrating Physical Activity into the School Day, April 2016**
- Promoting Healthy Relationships for Adolescents: Board Policy Considerations, August 2014**
- Asthma Management in the Schools, Policy Brief, March 2008**
- Monitoring for Success: A Guide for Assessing and Strengthening Student Wellness Policies Student Wellness Policy Implementation Monitoring Report and Guide, 2007-2012**
- Physical Education and California Schools, Policy Brief, rev. October 2007**
- Promoting Oral Health for California's Students: New Roles, New Opportunities for Schools, Policy Brief, March 2007 November 2008**
- Asthma Management in the Schools, Policy Brief, March 2008**

Management Resources continued: (see next page)

COMPREHENSIVE HEALTH EDUCATION (continued)

Management Resources: (continued)

CSBA PUBLICATIONS (continued)

Sun Safety in Schools, Policy Brief, July 2006

Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. April 2006

AMERICAN ASSOCIATION FOR HEALTH EDUCATION PUBLICATIONS

National Health Education Standards: Achieving Excellence, 2007-rev. November 2012

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Health Education Content Standards for California Public Schools, Kindergarten Through Grade Twelve, 2008

Health Education Framework for California Public Schools: Kindergarten Through Grade Twelve, 2003 2019

Health Education Content Standards for California Public Schools, Kindergarten Through Grade Twelve, 2008

HUMAN RIGHTS CAMPAIGN FOUNDATION PUBLICATIONS

California LGBTQ Youth Report, January 2019

WEB SITES

CSBA: <http://www.csba.org>

American Association for Health Education: <http://www.aahperd.org>

American School Health Association: <http://www.ashaweb.org>

California Association of School Health Educators: <http://www.cashe.org>

California Department of Education, Health Education: <http://www.cde.ca.gov/ci/he>

California Department of Public Health: <http://www.cdph.ca.gov>

California Healthy Kids Resource Center: <http://www.californiahealthykids.org>

California Subject Matter Project, Physical Education-Health Project: <https://csmp.online>
<http://csmp.ucop.edu/cpehp>

Center for Injury Prevention Policy and Practice: <http://www.cipp.org>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Human Rights Campaign Foundation: <https://www.hrc.org/>

National Center for Health Education: <http://www.nche.org>

National Hearing Conservation Association: <http://www.hearingconservation.org>

Shape American Association for Society of Health and Physical Educators: <http://www.aahperd.org> <https://www.shapeamerica.org>

(11/05 7/08) 3/21

CSBA Sample Administrative Regulation

Instruction

AR 6142.8(a)

COMPREHENSIVE HEALTH EDUCATION

Content of Instruction

Note: Items #1-6 below reflect six content areas delineated in the voluntary content standards for health education adopted by the State Board of Education (SBE) in March 2008. The district may revise the following list to reflect the topics to be addressed in the district's program.

The district's health education program shall include instruction at the appropriate grade levels in the following content areas:

1. Alcohol, tobacco, and other drugs

(cf. 3513.3 - Tobacco-Free Schools)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.62 - Tobacco)

(cf. 5131.63 - Steroids)

Note: Education Code 51934 requires that districts provide comprehensive sexual health education and HIV prevention instruction, at least once in middle school or junior high school and at least once in high school, by instructors trained in the appropriate courses. Education Code 51934 also authorizes, but does not require, districts to provide age-appropriate comprehensive sexual health education prior to grade 7 on any of the topics specified in Education Code 51934. See AR 6143 - Courses of Study and BP/AR 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction.

Education Code 51900.6 authorizes districts to provide age-appropriate instruction in grades K-12 in sexual abuse and sexual assault awareness and prevention pursuant to content standards developed by SBE, provided that students are allowed to be excused from such instruction upon the written request of their parents/guardians. SBE has not yet adopted content standards regarding sexual abuse and sexual assault awareness and prevention. Also see BP 5141.4 - Child Abuse Prevention and Reporting.

2. Human growth, development, and sexual health

*(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention **Instruction Education**)*

Note: The **optional** paragraph under item #3 below includes examples of topics that are addressed in the state content standards within the content area of injury prevention and safety. In addition, pursuant to Education Code 51940, districts may, on a voluntary basis, use curricula distributed by the California Healthy Kids Resource Center that focuses on prevention of brain and spinal cord injuries.

3. Injury prevention and safety

MS

COMPREHENSIVE HEALTH EDUCATION (continued)

Instruction related to injury prevention and safety may include, but is not limited to, first aid, protective equipment such as helmets, **prevention of brain and spinal cord injuries**, violence prevention, topics related to bullying and harassment, **emergency procedures**, and Internet safety.

- (cf. 0450 - Comprehensive Safety Plan)*
- (cf. 3516 - Emergencies and Disaster Preparedness Plan)*
- (cf. 3543 - Transportation Safety and Emergencies)*
- (cf. 5131 - Conduct)*
- (cf. 5138 - Conflict Resolution/Peer Mediation)*
- (cf. 5141 - Health Care and Emergencies)*
- (cf. 5142 - Safety)*
- (cf. 5145.3 - Nondiscrimination/Harassment)*
- (cf. 5145.7 - Sexual Harassment)*
- (cf. 5145.9 - Hate-Motivated Behavior)*
- (cf. 6145.2 - Athletic Competition)*
- (cf. 6163.4 - Student Use of Technology)*

4. Mental, emotional, and social health

- (cf. 5137 - Positive School Climate)*
- (cf. 5141.5 - Mental Health)*
- (cf. 5141.52 - Suicide Prevention)*

5. Nutrition and physical activity

- (cf. 3550 - Food Service/Child Nutrition Program)*
- (cf. 5030 - Student Wellness)*
- (cf. 6142.7 - Physical Education and Activity)*

Note: The **optional** paragraph under item #6 below includes examples of topics that are addressed in the state content standards within the content area of personal and community health.

6. Personal and community health

Instruction in personal and community health may include, but is not limited to, oral health, personal hygiene, sun safety, **vision and hearing protection**, transmission of germs and communicable diseases, symptoms of common health problems and chronic diseases **such as asthma and diabetes**, **emergency procedures**, and the effect of behavior on the environment.

- (cf. 3516 - Emergencies and Disaster Preparedness Plan)*
- (cf. 5141 - Health Care and Emergencies)*
- (cf. 5141.21 - Administering Medication and Monitoring Health Conditions)*
- (cf. 5141.22 - Infectious Diseases)*
- (cf. 5141.23 - Asthma Management)*
- (cf. 5141.7 - Sun Safety)*

COMPREHENSIVE HEALTH EDUCATION (continued)

(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6142.5 - Environmental Education)

Note: Items #1-6 below combine eight "overarching standards" described in the state content standards as essential concepts and skills to be taught to students.

Within each of the above content areas, instruction shall be designed to assist students in developing:

1. An understanding of essential concepts related to enhancing health
2. The ability to analyze internal and external influences that affect health
3. The ability to access and analyze health information, products, and services

(cf. 5141.6 - School Health Services)

4. The ability to use interpersonal communication skills, decision-making skills, and goal-setting skills to enhance health
5. The ability to practice behaviors that reduce risk and promote health
6. The ability to promote and support personal, family, and community health

High School Health Education

Note: The following section is for use by districts that serve students in grades 9-12 and require a course in health education as a requirement for graduation from high school. Pursuant to Education Code 51225.36, districts that require a course in health education for graduation from high school must include instruction in sexual harassment and violence, including, but not limited to, the affirmative consent standard as defined in Education Code 67386. In addition, pursuant to Education Code 51225.6, districts that require a course in health education for graduation from high school must include instruction in performing compression-only cardiopulmonary resuscitation, as specified.

Whenever the Board requires a course in health education for graduation from high school, the district's high school health education course(s) shall include instruction in:

1. Sexual harassment and violence, including, but not limited to, the affirmative consent standard as defined in Education Code 67386. When delivering such instruction, teachers shall consult information related to sexual harassment and violence in the Health Education Framework for California Public Schools. (Education Code 51225.36)

delete HS

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COMPREHENSIVE HEALTH EDUCATION (continued)

Delete HS

- 2. **Compression-only cardiopulmonary resuscitation (CPR), which is based on national evidence-based emergency cardiovascular care guidelines for the performance of compression-only CPR and includes instruction relative to the psychomotor skills necessary to perform compression-only CPR. (Education Code 51225.6)**

(cf. 6146.1 - High School Graduation Requirements)

Exemption Students Excused from Health Instruction

Upon written request from a parent/guardian, a student shall be excused from any part of health instruction that conflicts with his/her the student's religious training and beliefs, including personal moral convictions. (Education Code 51240)

(cf. 6141.2 - Recognition of Religious Beliefs and Customs)

Note: Pursuant to Education Code 51938, a student's parent/guardian has the right to excuse the student from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education through a passive consent ("opt-out") process. The district may not require active parental consent ("opt-in") for such purpose. The district's notice to parents/guardians regarding planned instruction for the school year in the area of comprehensive sexual health education and HIV prevention education must include notification of the right to excuse a student from such education by written request to the district. See BP/E 5145.6 - Parental Notifications and BP/AR 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction.

The district shall excuse a student from instruction in comprehensive sexual health education and HIV prevention education if the student's parent/guardian requests in writing that the student be excused. (Education Code 51938)

(cf. 5145.6 - Parental Notifications)

(cf. 6145.8 - Assemblies and Special Events)

Note: Pursuant to Education Code 51900.6, districts that provide instruction in sexual abuse and sexual assault awareness and prevention are required to excuse students whose parent/guardian has made a written request. The following paragraph is for districts that provide instruction in sexual abuse and/or sexual assault awareness and prevention.

In addition, the district shall excuse a student from instruction in sexual abuse and/or sexual assault awareness and prevention if the student's parent/guardian requests in writing that the student be excused. (Education Code 51900.6)

Note: Pursuant to Education Code 51513, districts may not administer exams, surveys, or questionnaires containing questions about a student's or his/her a student's family's personal beliefs or practices in sex, family life, morality, and religion unless the student's parent/guardian is notified in writing of such administration and has provided prior written consent. See AR 5022 - Student and Family Privacy Rights.

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COMPREHENSIVE HEALTH EDUCATION (continued)

The district shall not administer any exam, survey, or questionnaire which contains questions about the student's or the student's family's personal beliefs or practices in sex, family life, morality, or religion unless the student's parent/guardian has given written permission. Upon written request from a parent/guardian, a student shall be excused from any part of health instruction that conflicts with his/her religious training and beliefs, including personal moral convictions. (Education Code 51240-51513)

(cf. 5020 - Parent Rights and Responsibilities)
(cf. 5022 - Student and Family Privacy Rights)

Note: Notwithstanding Education Code 51513, Education Code 51938 authorizes anonymous, voluntary, and confidential research and evaluation tools to measure students' health behaviors and risks, including tests, questionnaires, and surveys containing age-appropriate questions about the student's attitudes concerning or practices relating to sex, to students in grades 7-12. Parents/guardians have the right to excuse their child from such research and evaluations through a passive ("opt-out") process and may not be required to provide active ("opt-in") consent. The district is required to notify parents/guardians of the test, questionnaire, or survey to be administered, given the opportunity to review such research or evaluation tool, and notified of their right to excuse their child by making such request in writing to the district. The following paragraph is for use by districts that serve students in any of grades 7-12 and should be deleted by districts that do not serve such students.

However, the district may administer anonymous, voluntary, and confidential tests, questionnaires, and surveys containing age-appropriate questions about students' attitudes concerning or practices relating to sex, as long as parents/guardians are notified of the right to request in writing that the student be excused from participation. A student shall be excused from participating in any such research or evaluation tools if the student's parent/guardian requests in writing to excuse the student from participation. (Education Code 51938)

(cf. 5020 - Parent Rights and Responsibilities)
(cf. 5022 - Student and Family Privacy Rights)
(cf. 6141.2 - Recognition of Religious Beliefs and Customs)
(cf. 6145.8 - Assemblies and Special Events)

Students so excused shall be given an alternative educational activity.

Involvement of Health Professionals

Health care professionals, health care service plans, health care providers, and other entities participating in a voluntary initiative with the district are prohibited from communicating about a product or service in a way that is intended to encourage persons to purchase or use the product or service. However, the following activities may be allowed: (Education Code 51890)

COMPREHENSIVE HEALTH EDUCATION (continued)

1. Health care or health education information provided in a brochure or pamphlet that contains the logo or name of a health care service plan or health care organization, if provided in coordination with the voluntary initiative
2. Outreach, application assistance, and enrollment activities relating to federal, state, or county-sponsored health care insurance programs **if the activities are conducted in compliance with the statutory, regulatory, and programmatic guidelines applicable to those programs.**

(cf. 1325 - Advertising and Promotion)

(11/05 7/08) 3/21

CSBA Sample Board Policy

Facilities

BP 7210(a)

FACILITIES FINANCING

The Governing Board recognizes its responsibility to identify the most cost-efficient and effective method of financing when purchasing or modifying district facilities. Financing may be necessary ~~When~~ when it is determined that school facilities must be built or expanded to accommodate an increased or projected increased enrollment, ~~the Governing Board shall consider appropriate methods of financing for the purchase of school sites and the construction of buildings.~~ In addition, financing may be needed ~~or~~ when safety considerations and educational program improvements require the replacement, reconstruction, or modernization of existing facilities.

The Superintendent or designee shall research funding alternatives and recommend to the Board the method of funding that ~~would~~ will best serve district needs as identified in the district's master plan for school facilities.

(cf. 7110 - Facilities Master Plan)

Note: The following list describes some of the facilities financing options available to school districts.

~~These f~~ Funding alternatives may include, but ~~are~~ are not be limited to:

1. Levying developer fees pursuant to Education Code 17620 and Government Code 65995-65998

(cf. 7211- Developer Fees)

2. Forming a community facilities district pursuant to Government Code 53311-53368.3, the Mello-Roos Community Facilities Act

(cf. 7212 - Mello-Roos Districts)

3. Forming a school facilities improvement district pursuant to Education Code 15300-15425

(cf. 7213 - School Facilities Improvement Districts)

4. Issuing voter-approved general obligation bonds

(cf. 7214 - General Obligation Bonds)

5. Imposing a ~~qualified~~ parcel tax pursuant to Government Code 50079

FACILITIES FINANCING (continued)

(cf. 3471 - Parcel Taxes)

6. Using lease revenues for capital outlay purposes from surplus school property

(cf. 3280 - Sale or Lease of District-Owned Real Property)

Note: Pursuant to the Leroy F. Greene School Facilities Act of 1998 (Education Code 17070.10-17079.30), the State Allocation Board provides state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization for applicant school districts.

7. Applying for state facilities funding pursuant to the Leroy F. Greene School Facilities Act (Education Code 17070.10-17079.30)

Note: Pursuant to Education Code 41024, districts that receive state facilities funding pursuant to the Leroy F. Greene School Facilities Act must annually report a detailed list of all expenditures of state funds and of the district's matching funds for completed projects until all funds are expended, and submit an audit of completed facilities projects within one year of project completion. As amended by SB 820 (Ch. 110, Statutes of 2020), Education Code 41024 requires the auditor to file the audit with the California State Controller, who will then provide a copy of the audit to the California Department of Education and notify the Office of Public School Construction of any audit findings and any identified amounts to be adjusted. See AR 3460 - Financial Reports and Accountability for more specific information about reporting and auditing requirements.

The district shall provide reports, maintain records, and provide for audits of the expenditure of state facilities funds as required by law and AR 3460 - Financial Reports and Accountability. (Education Code 41024)

(cf. 3460 - Financial Reports and Accountability)

Note: Government Code 8855 requires districts to adopt a debt management policy prior to issuing any debt, such as general obligation bonds. The policy must include (1) the purposes for which the debt proceeds may be used; (2) the types of debt that may be issued; (3) the relationship of the debt to, and integration with, the district's capital improvement program or budget, if applicable; (4) policy goals related to the district's planning goals and objectives; and (5) internal control procedures to ensure that the proceeds of the proposed debt issuance will be directed to the intended use. See BP 3470 - Debt Issuance and Management.

As applicable, the district shall comply with BP 3470 - Debt Issuance and Management.

(cf. 3470 - Debt Issuance and Management)

Legal Reference: (see next page)

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FACILITIES FINANCING (continued)*Legal Reference:*EDUCATION CODE15100-~~17059.2~~ **17199.6** School bonds, especially:

15122.5 Ballot statement

15300-15327 School facilities improvement districts

17000-17059.2 State School Building Lease-Purchase Law of 1976

17060-17066 Joint venture school facilities construction projects

17070.10-~~17076.10~~ **17079.30** Leroy F. Greene School Facilities Act of 199817085-~~17095~~ **17096** State Relocatable Classroom Law of 1979

17582 District deferred maintenance fund

17620-17626 Levies against development projects by school districts, especially:

17621 Procedures for levying fees

41024 Accounting system and auditsGOVERNMENT CODE6061 ~~One-time~~ Manner of notice as prescribed in designated section

6066 Two weeks' notice

8855 Debt issuance and management

50075-50077.5 Voter-approved special taxes

50079 School districts; qualified special taxes

53175-53187 Integrated Financing District Act

53311-53368.3 Mello-Roos Community Facilities Act of 1982

53753 Assessment notice and hearing requirements

53753.5 Exemptions

54954.1 Mailing of agenda notice to property owners

54954.6 New or increased tax or assessment; public meetings and hearings; notice

65864-~~65867~~ **65869.5** Development agreements65970-~~65980.4~~ **65981** School facilities development project

65995-65998 Payment of fees against a development project

66000-66008 Fees for development projects

66016-~~66018.5~~ **66019** Development project fees

66020-66025 Protests and audits

HEALTH AND SAFETY CODE

33445.5 Overcrowding of schools resulting from redevelopment

33446 School construction by redevelopment agency

CALIFORNIA CONSTITUTION

Article 13D, Sections 1-6 Assessment and property related fee reform

UNCODIFIED STATUTES~~17696~~ ~~17696.98~~ ~~Greene-Hughes School Building Lease Purchase Bond Law of 1986~~CODE OF REGULATIONS, TITLE 21859-1859.~~106~~**199** School facility program*Legal Reference continued: (see next page)*

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FACILITIES FINANCING (continued)

Legal Reference: (continued)

COURT DECISIONS

Ehrlich v. City of Culver City (1996) 12 Cal.4th 854

Loyola Marymount University v. Los Angeles Unified School District (1996) 45 Cal.App.4th 1256

Ehrlich v. City of Culver City (1996) 12 Cal.4th 854

Dolan v. City of Tigard (1994) 114 S.Ct. 2309

Canyon North Co. v. Conejo Valley Unified School District (1993) 19 Cal.App.4th 243, 23 Cal.Rptr.2d 495

Garlic Development Co. v. Hayward Unified School District (1992) 3 Cal.App.4th 320, 4 Cal.Rptr.2d 897

Nollan v. California Coastal Commission (1987) 107 S.Ct. 3141

ATTORNEY GENERAL OPINIONS

79 Ops.Cal.Atty.Gen. 149 (1996)

Management Resources:

WEB SITES

California Department of Education: www.cde.ca.gov

California State Controller: www.sco.ca.gov

Department of General Services, Office of Public School Construction: <http://www.opsc.dgs.ca.gov>

(10/97 2/99) 3/21



Policy 6173: Education For Homeless Children

Status: ADOPTED

Original Adopted Date: 07/01/2005 | Last Revised Date: 10/01/2016 | Last Reviewed Date: 10/01/2016

The Governing Board desires to ensure that homeless students have access to the same free and appropriate public education provided to other students within the district. The district shall provide homeless students with access to education and other services necessary for them to meet the same challenging academic standards as other students.

The Superintendent or designee shall identify and remove any barriers to the identification and enrollment of homeless students and to the retention of homeless students due to absences or outstanding fees or fines. (42 USC 11432)

When there are at least 15 homeless students in the district or a district school, the district's local control and accountability plan (LCAP) shall include goals and specific actions to improve student achievement and other outcomes of homeless students. (Education Code 52052, 52060)

The Superintendent or designee shall designate an appropriate staff person to serve as a liaison for homeless children and youths. The district liaison shall fulfill the duties specified in 42 USC 11432 to assist in identifying and supporting homeless students to succeed in school.

In order to identify district students who are homeless, the Superintendent or designee may give a housing questionnaire to all parents/guardians during school registration, make referral forms readily available, include the district liaison's contact information on the district and school web sites, provide materials in a language easily understood by families and students, provide school staff with professional development on the definition and signs of homelessness, and contact appropriate local agencies to coordinate referrals for homeless children and youth and unaccompanied youth.

Information about a homeless student's living situation shall be considered part of a student's educational record, subject to the Family Educational Rights and Privacy Act and shall not be deemed to be directory information as defined in 20 USC 1232g. (42 USC 11432)

The Superintendent or designee shall ensure that placement decisions for homeless students are based on the student's best interest as defined in law and administrative regulation.

Each homeless student shall be provided services that are comparable to services offered to other students in the school, including, but not limited to, transportation, educational programs for which the student meets the eligibility criteria (such as federal Title I services or similar state or local programs, programs for students with disabilities, and educational programs for English learners), career and technical education programs, programs for gifted and talented students, and school nutrition programs. (42 USC 11432)

Homeless students shall not be segregated into a separate school or program based on their status as homeless and shall not be stigmatized in any way. However, the Superintendent or designee may separate homeless students on school grounds as necessary for short periods of time for health and safety emergencies or to provide temporary, special, and supplementary services to meet the unique needs of homeless students. (42 USC 11432, 11433)

The Superintendent or designee shall coordinate with other agencies and entities to ensure that homeless children and youth are promptly identified, ensure that homeless students have access to and are in reasonable proximity to available education and related support services, and raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness. Toward these ends, the Superintendent or designee shall collaborate with local social services agencies, other agencies or entities providing services to homeless children and youth, and, if applicable, transitional housing facilities. In addition, the Superintendent or designee shall coordinate transportation, transfer of school records, and other interdistrict activities with other local educational agencies. As necessary, the Superintendent or designee shall coordinate, within

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the district and with other involved local educational agencies, services for homeless students and services for students with disabilities. (42 USC 11432)

District liaisons and other appropriate staff shall participate in professional development and other technical assistance activities to assist them in identifying and meeting the needs of homeless students and to provide training on the definitions of terms related to homelessness. (42 USC 11432)

At least annually, the Superintendent or designee shall report to the Board on outcomes for homeless students, which may include, but are not limited to, school attendance, student achievement test results, promotion and retention rates by grade level, graduation rates, suspension/expulsion rates, and other outcomes related to any goals and specific actions identified in the LCAP. Based on the evaluation data, the district shall revise its strategies as needed to better support the education of homeless students.

Regulation 6173: Education For Homeless Children

Status: ADOPTED

Original Adopted Date: 12/01/2014 | Last Revised Date: 10/01/2016 | Last Reviewed Date: 10/01/2016

Definitions

Homeless students means students who lack a fixed, regular, and adequate nighttime residence and includes: (Education Code 48852.7; 42 USC 11434a)

1. Students who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals
2. Students who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodations for human beings
3. Students who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings
4. Migratory children who qualify as homeless because they are living in conditions described in items #1-3 above

Unaccompanied youth includes youth who are not in the physical custody of a parent or guardian. (20 USC 11434a)

School of origin means the school that the homeless student attended when permanently housed or the school in which he/she was last enrolled, including a preschool. If the school the homeless student attended when permanently housed is different from the school in which he/she was last enrolled, or if there is some other school that he/she attended within the preceding 15 months and with which he/she is connected, the district liaison shall determine, in consultation with and with the agreement of the homeless student and the person holding the right to make educational decisions for the student, and in the best interests of the homeless student, which school shall be deemed the school of origin. (Education Code 48852.7; 42 USC 11432)

Best interest means that, in making educational and school placement decisions for a homeless student, consideration is given to, among other factors, educational stability, the opportunity to be educated in the least restrictive educational setting necessary to achieve academic progress, and the student's access to academic resources, services, and extracurricular and enrichment activities that are available to all district students. (Education Code 48850, 48853; 42 USC 11432)

District Liaison

The Superintendent designates the following staff person as the district liaison for homeless students: (42 USC 11432)

Assistant Principal
(title or position)
1530 S Rockwood Rd, Escondido, CA 92027
(address)
760-745-4931
(phone number)

The district's liaison for homeless students shall: (Education Code 48852.5; 42 USC 11432)

1. Ensure that homeless students are identified by school personnel through outreach and coordination activities

with other entities and agencies

2. Ensure that homeless students are enrolled in, and have a full and equal opportunity to succeed in, district schools
3. Ensure that homeless families and children and youth have access to and receive educational services for which they are eligible, including services through Head Start and Early Head Start programs, early intervention services under Part C of the federal Individuals with Disabilities Education Act, and other preschool programs administered by the district
4. Ensure that homeless families and students receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services
5. Inform parents/guardians of the educational and related opportunities available to their children and ensure that they are provided with meaningful opportunities to participate in the education of their children
6. Disseminate notice of the educational rights of homeless students in locations frequented by parents/guardians of homeless children and youth and by unaccompanied youth, including schools, family shelters, public libraries, and hunger relief agencies (soup kitchens). The rights shall be presented in a manner and form understandable to the parents/guardians of homeless students and unaccompanied youth.
7. Mediate enrollment disputes in accordance with law and the section "Resolving Enrollment Disputes" below
8. Fully inform parents/guardians of homeless students and unaccompanied youth of all transportation services, including transportation to the school of origin, and assist them in accessing transportation to the school of choice
9. Ensure that school personnel providing services to homeless students receive professional development and other support
10. Ensure that unaccompanied youth are enrolled in school, have opportunities to meet the same challenging state academic standards established for other students, and are informed of their status as independent students under 20 USC 1087vv and that they may receive assistance from the district liaison to receive verification of their independent student status for purposes of applying for federal student aid pursuant to 20 USC 1090
11. Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless students, including the provision of comprehensive data to the state coordinator as required by law

In addition, when notified pursuant to Education Code 48918.1, the district liaison shall assist, facilitate, or represent a homeless student who is undergoing a disciplinary proceeding that could result in his/her expulsion. When notified pursuant to Education Code 48915.5, the district liaison shall participate in an individualized education program team meeting to make a manifestation determination regarding the behavior of a student with a disability.

The Superintendent or designee shall inform homeless children and youth, their parents/guardians, school personnel, service providers, and advocates working with homeless families of the duties of the district's liaison. He/she shall also provide the name and contact information of the district's liaison to the California Department of Education (CDE) for publishing on the CDE's web site. (42 USC 11432)

Enrollment

The district shall make placement decisions for homeless students based on the student's best interest. (42 USC 11432)

In determining the best interest of the student, the district shall consider student-centered factors related to the student's best interest, including factors related to the impact of mobility on achievement, education, health, and safety, giving priority to the request of the student's parent/guardian or, in the case of an unaccompanied youth, the

youth. (42 USC 11432)

Such factors may include, but are not limited to, the age of the student, the distance of the commute and the impact it may have on the student's education, personal safety issues, the student's need for special instruction, the length of anticipated stay in the temporary shelter or other temporary location, likely area of future housing, school placement of siblings, and the time remaining in the school year.

However, placement decisions shall not be based on whether a homeless student lives with his/her homeless parent/guardian or has been temporarily placed elsewhere. (42 USC 11432)

In the case of an unaccompanied youth, the liaison shall assist in placement or enrollment decisions, give priority to the views of the student, and provide notice to the student of his/her appeal rights. (42 USC 11432)

In determining a student's best interest, a homeless student shall, to the extent feasible, be placed in his/her school of origin, unless the student's parent/guardian or the unaccompanied youth requests otherwise. (Education Code 48852.7; 42 USC 11432)

Once a placement decision has been made, the principal or designee shall immediately enroll the student in the school of choice. The student shall be enrolled even if he/she: (Education Code 48852.7; 42 USC 11432)

1. Has outstanding fees, fines, textbooks, or other items or monies due to the school last attended
2. Does not have clothing normally required by the school, such as school uniforms
3. Is unable to produce records normally required for enrollment, such as previous academic records, proof of residency, and records of immunization and other required health records
4. Has missed application or enrollment deadlines during any period of homelessness

The principal or designee shall immediately contact the school last attended by the student to obtain the relevant records. If the student needs to obtain immunizations or does not possess immunization or other required health records, the principal or designee shall refer the parent/guardian to the district liaison for homeless students. The district liaison shall assist the parent/guardian, or the student if he/she is an unaccompanied youth, in obtaining the necessary immunizations, screenings, or records for the student. (42 USC 11432)

If the student is placed at a school other than his/her school of origin or the school requested by his/her parent/guardian or an unaccompanied youth, the Superintendent or designee shall provide the parent/guardian or the unaccompanied youth with a written explanation of the decision along with a statement regarding the right to appeal the placement decision. (42 USC 11432)

The student may continue attending his/her school of origin for the duration of the homelessness. (Education Code 48852.7; 42 USC 11432)

To ensure that the homeless student has the benefit of matriculating with his/her peers in accordance with the established feeder patterns, the following shall apply: (Education Code 48852.7; 42 USC 11432)

1. If the student is transitioning between grade levels, he/she shall be allowed to continue in the same attendance area.
2. If the student is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, he/she shall be allowed to continue to the school designated for matriculation in that district.

If the student's status changes before the end of the school year so that he/she is no longer homeless, he/she shall be allowed to stay in the school of origin: (Education Code 48852.7)

1. Through the duration of the school year if he/she is in grades K-8
2. Through graduation if he/she is in high school

Resolving Enrollment Disputes

If a dispute arises over student eligibility, school selection, or enrollment in a particular school, the matter shall be referred to the district liaison, who shall carry out the dispute resolution process as expeditiously as possible. (42 USC 11432)

The parent/guardian or unaccompanied youth shall be provided with a written explanation of any decisions related to eligibility, school selection, or enrollment and of the right of the parent/guardian or unaccompanied youth to appeal such decisions. (42 USC 11432)

The written explanation shall include:

1. A description of the action proposed or refused by the district
2. An explanation of why the action is proposed or refused
3. A description of any other options the district considered and the reasons that any other options were rejected
4. A description of any other factors relevant to the district's decision and information related to the eligibility or best interest determination including the facts, witnesses, and evidence relied upon and their sources
5. Appropriate timelines to ensure any relevant deadlines are not missed
6. Contact information for the district liaison and state coordinator, and a brief description of their roles

The written explanation shall be complete, as brief as possible, simply stated, and provided in language that the parent/guardian or student can understand.

The district liaison may use an informal process as an alternative to formal dispute resolution procedures, provided that the parents/guardians or unaccompanied youth have access to the more formal process if informal resolution is not successful in resolving the matter.

In working with a student's parents/guardians or unaccompanied youth to resolve an enrollment dispute, the district liaison shall:

1. Inform them that they may provide written and/or oral documentation to support their position
2. Inform them that they may seek the assistance of social services, advocates, and/or service providers in having the dispute resolved
3. Provide them a simple form that they may use and turn in to the school to initiate the dispute resolution process
4. Provide them a copy of the dispute form they submit for their records
5. Provide them the outcome of the dispute for their records



If a parent/guardian or unaccompanied youth disagrees with the liaison's enrollment decision, he/she may appeal the decision to the Superintendent. The Superintendent shall make a determination within five working days.

If the parent/guardian chooses to appeal the district's placement decision, the district liaison shall forward all written documentation and related paperwork to the homeless liaison at the county office of education.

Pending final resolution of the dispute, including all available appeals, the student shall be immediately enrolled in the school in which enrollment is sought and shall be allowed to attend classes and participate fully in school activities. (42 USC 11432, 11434a)

Transportation

in collaboration with the school of origin and county welfare senate

The district shall provide transportation for a homeless student to and from his/her school of origin when the student is residing within the district and the parent/guardian, or the district liaison in the case of an unaccompanied youth, requests that such transportation be provided. If the student moves outside of district boundaries, but continues to attend his/her school of origin within this district, the Superintendent or designee shall consult with the superintendent of the district in which the student is now residing to agree upon a method to apportion the responsibility and costs of the transportation. (42 USC 11432)

The district shall not be obligated to provide transportation to students who continue attending their school of origin after they cease to be homeless, unless the formerly homeless student has an individualized education program that includes transportation as a necessary related service for the student. (Education Code 48852.7)

Transfer of Coursework and Credits

When a homeless student transfers into a district school, the district shall accept and issue full credit for any coursework that the student has satisfactorily completed while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency and shall not require the student to retake the course. (Education Code 51225.2)

If the homeless student did not complete the entire course, he/she shall be issued partial credit for the coursework completed and shall be required to take the portion of the course that he/she did not complete at his/her previous school. However, the district may require the student to retake the portion of the course completed if, in consultation with the holder of educational rights for the student, the district finds that the student is reasonably able to complete the requirements in time to graduate from high school. Whenever partial credit is issued to a homeless student in any particular course, he/she shall be enrolled in the same or equivalent course, if applicable, so that he/she may continue and complete the entire course. (Education Code 51225.2)

Partial credits shall be awarded on the basis of 0.5 credits for every seven class periods attended per subject. If the school is on a block schedule, each block schedule class period attended shall be equal to two regular class periods per subject. Partial credits and grades earned by a student shall be included on the student's official transcript within two business days of the district's notification of the student's transfer, as required under Education Code 49069.5.

In no event shall the district prevent a homeless student from taking or retaking a course to meet the eligibility requirements for admission to the California State University or the University of California. (Education Code 51225.2)

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Applicability of Graduation Requirements

To obtain a high school diploma, a homeless student shall complete all courses required by Education Code 51225.3 and fulfill any additional graduation requirements prescribed by the Governing Board.

However, when a homeless student who has completed his/her second year of high school transfers into the district from another school district or transfers between high schools within the district, he/she shall be exempted from all

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district-adopted coursework and other district-established graduation requirements, unless the district makes a finding that the student is reasonably able to complete the additional requirements in time to graduate from high school by the end of his/her fourth year of high school. Within 30 calendar days of the homeless student's transfer, the Superintendent or designee shall notify the student, the person holding the right to make educational decisions for him/her, and the district liaison for homeless students of the availability of the exemption and whether the student qualifies for it. If the Superintendent or designee fails to provide this notification, the student shall be eligible for the exemption once notified, even if the notification occurs after the student is no longer homeless. (Education Code 51225.1)

To determine whether a homeless student is in his/her third or fourth year of high school, the district shall use either the number of credits he/she has earned as of the date of the transfer or the length of his/her school enrollment, whichever qualifies him/her for the exemption. (Education Code 51225.1)

The Superintendent or designee shall notify any homeless student who is granted an exemption and the person holding the right to make educational decisions for him/her how any requirements that are waived will affect the student's ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges. (Education Code 51225.1)

The district shall not require or request a homeless student to transfer schools in order to qualify for an exemption and no request for a transfer solely to qualify for an exemption shall be made by a homeless student, the person holding the right to make educational decisions for the student, or the district liaison on behalf of the student. (Education Code 51225.1)

If a homeless student is exempted from local graduation requirements, the exemption shall continue to apply after the student is no longer homeless or if he/she transfers to another school or school district. (Education Code 51225.1)

If the Superintendent or designee determines that a homeless student is reasonably able to complete district graduation requirements within his/her fifth year of high school, he/she shall: (Education Code 51225.1)

1. Inform the student and, if under 18 years of age, the person holding the right to make educational decisions for him/her, of the option available to the student to remain in school for a fifth year to complete the district's graduation requirements and how that will affect his/her ability to gain admission to a postsecondary educational institution
2. Provide information to the homeless student about transfer opportunities available through the California Community Colleges
3. Upon agreement with the homeless student or with the person holding the right to make educational decisions for him/her if he/she is under 18 years of age, permit the student to stay in school for a fifth year to complete the district's graduation requirements

Eligibility for Extracurricular Activities

A homeless student who enrolls in any district school shall be immediately deemed to meet all residency requirements for participation in interscholastic sports or other extracurricular activities. (Education Code 48850)

Notification and Complaints

Information regarding the educational rights of homeless students, as specified in Education Code 51225.1 and 51225.2, shall be included in the annual uniform complaint procedures notification distributed to students, parents/guardians, employees, and other interested parties pursuant to 5 CCR 4622. (Education Code 51225.1, 51225.2)

Any complaint that the district has not complied with requirements regarding the education of homeless students, as specified in Education Code 51225.1 or 51225.2, may be filed in accordance with the district's procedures in AR 1312.3 - Uniform Complaint Procedures.

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