

CSBA Sample Exhibit

Community Relations

E 1113(a)

DISTRICT AND SCHOOL WEB SITES

MATERIALS REQUIRED TO BE POSTED ON DISTRICT WEB SITE

Note: The following exhibit lists material which the law explicitly requires be posted on district or school web sites. See the referenced Board policy, administrative regulation, or Board bylaw for further information about related requirements. The exhibit does not include other postings that may be recommended throughout CSBA's sample policy manual but are not required by law.

Materials to Prominently Display

The following must be posted in a prominent location on the district's web site, such as on the home page when required by law:

1. The district's local control and accountability plan (LCAP), any updates or revisions to the LCAP, and the local control funding formula budget overview (Education Code 52064.1, 52065). See AR 0460 - Local Control and Accountability Plan.
2. A direct link to the current board agenda containing the time and location of the meeting and a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session, or a link to the district's agenda management platform where the current agenda shall be the first available (Government Code 54954.2, 54956). Post at least 72 hours before a regular board meeting or 24 hours before a special meeting. See BB 9320 - Meetings and Notices and BB 9322 - Agenda/Meeting Materials.
3. The district's policy on student suicide prevention including, for grades K-6, the age appropriateness of the policy (Education Code 234.6). See BP 5141.52 - Suicide Prevention.
4. The district's policies and procedures prohibiting discrimination, harassment, student sexual harassment, intimidation, bullying, and cyberbullying, including a section on social media bullying that includes all of the references described in Education Code 234.6 as possible forums for social media (Education Code 234.6). See AR 5131.2 - Bullying and AR 5145.3 - Nondiscrimination/Harassment.
5. The district's policy on preventing and responding to hate violence, if the district has adopted such a policy (Education Code 234.6). See BP 5145.9 - Hate-Motivated Behavior.

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DISTRICT AND SCHOOL WEB SITES (continued)

6. The definition of discrimination and harassment based on sex as described in Education Code 230, including the rights set forth in Education Code 221.8 (Education Code 234.6). See AR 5145.3 - Nondiscrimination/Harassment.
7. Information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the name and contact information of the Title IX Coordinator, the rights of students and the public as specified in Education Code 221.8, the responsibilities of the district under Title IX, web links to information about those rights and responsibilities on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights, a description of how to file a complaint of noncompliance under Title IX with specified components, and a link to Title IX information posted on the California Department of Education's (CDE) web site (Education Code 221.6, 221.61, 234.6; 34 CFR 106.8). See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment.
8. A link to statewide CDE-compiled resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying and to their families (Education Code 234.5, 234.6). See AR 5145.3 - Nondiscrimination/Harassment.
9. If the district has formed a community facilities district (Mello-Roos district) for the acquisition or improvement of school facilities, a copy of the annual report for the fiscal year if requested pursuant to Government Code 53343.1, the report provided to the California Debt and Investment Advisory Commission pursuant to Government Code 53359.5, and the report provided to the State Controller's office pursuant to Government Code 12463.2 (Government Code 53343.2). Post within seven months after the last day of the fiscal year. See BP 7212 - Mello-Roos Districts.

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Other Postings

The following materials are also required to be posted on the district web site. However, there are no specific requirements related to where they are posted on the web site.

1. The Special Education Local Plan Area's approved comprehensive local plan for special education, annual budget plan, annual service plan, and annual assurances support plan and any updates or revisions to the plans (Education Code 56205.5). See AR 0430 - Comprehensive Local Plan for Special Education.

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DISTRICT AND SCHOOL WEB SITES (continued)

2. The district's nondiscrimination policy and regulation, including the complaint procedure and the compliance coordinator's contact information (34 CFR 100.6, 106.8). See BP 0410 - Nondiscrimination in District Programs and Activities and AR 4030 - Nondiscrimination in Employment.
3. Training materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person(s) who facilitate an informal resolution process in response to a Title IX sexual harassment complaint (34 CFR 106.45). See AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.
4. For all schools offering competitive athletics, the total enrollment of the school classified by gender, the number of students enrolled at the school who participate in competitive athletics classified by gender, and the number of boys' and girls' teams classified by sport and by competition level (Education Code 221.9). The information shall be posted at the end of the school year on the school's web site or, if the school does not have a web site, on the district's web site. See AR 6145.2 - Athletic Competition.
5. If the district has interdistrict attendance agreement(s), the procedures and timelines for requesting an interdistrict transfer permit, including, but not limited to, a link to the board's policy on interdistrict attendance, the date that the district will begin accepting applications, reasons that the district may approve/deny the request, the process for appeal, that failure to meet timelines will be deemed an abandonment of the request, and the condition under which an exiting interdistrict transfer permit may be revoked or rescinded (Education Code 46600.2). See AR 5117 - Interdistrict Transfer.
6. If the district has elected to be a school district of choice, application information including, at a minimum, any applicable form, the timeline for a transfer, and an explanation of the selection process (Education Code 48301). See AR 5117 - Interdistrict Transfer.
7. For districts that offer grade 9, the district's policy and protocols related to student placement in mathematics courses (Education Code 51224.7). See AR 6152.1 - Placement in Mathematics Courses.
7. 8. The section(s) of the district's employee code of conduct addressing interactions with students (Education Code 44050). Post these section(s) or a link to them on each school's web site or, if a school does not have its own web site, on the

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DISTRICT AND SCHOOL WEB SITES (continued)

district's web site in a manner that is accessible to the public without a password. See BP 4119.21/4219.21/4319.21 - Professional Standards and BP 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions.

- 8/9. The district's meal payment collection policy and procedures (CDE Nutrition Services Division Management Bulletin SNP-03-2017). See AR 3551 - Food Services Operations/Cafeteria Fund.
- 9 10. If the district includes information about the free and reduced-priced meal program on its web site, a nondiscrimination statement about the district's status as an equal opportunity provider and the address of the agency with responsibility to handle complaints made against the district (U.S. Department of Agriculture's FNS Instruction 113-1). For the required wording of the statement, see E 3555 - Nutrition Program Compliance.
- 10 11. The school's or district's integrated pest management plan, whenever a school chooses to use a pesticide not exempted pursuant to Education Code 17610.5 (Education Code 17611.5). Post on the school's web site or, if the school does not have a web site, then on the district's web site. See AR 3514.2 Integrated Pest Management.
- 11 12. When a citizens' oversight committee is formed after the approval of a bond under the 55 percent majority threshold, the committee's minutes, documents received, and reports issued (Education Code 15280). See AR 7214 - General Obligation Bonds.
- 12 13. Copy of each school's school accountability report card, on or before February 1 of each year (Education Code 35258). See BP 0510 - School Accountability Report Card.
- Remove - 14. Results of the Western Association of Schools and Colleges (WASC) or other accrediting agency's inspection of a school, within 60 days of receiving the results. (This notification could be made in writing to parents/guardians instead of or in addition to posting the results on the district's web site.) In addition, if a school loses its WASC or other agency's accreditation, the district and school shall post on their web sites a notice of the loss of accreditation and potential consequences (Education Code 35178.4). See BP 6190 - Evaluation of the Instructional Program.

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3280(a)

SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY

Note: The following optional policy and accompanying administrative regulation detail the procedures that govern the district's sale or lease of surplus real property.

When district properties are not being utilized for school purposes after specific time periods, Education Code 17219-17224 authorize the State Allocation Board (SAB) to charge an "unused site fee." For further information regarding non-use payments, see the Office of Public School Construction's Unused Site Program Handbook.

Education Code 17455 authorizes the sale, or lease ~~of for~~ up to 99 years, of any district real property together with any personal property located thereon without ~~taking a vote of the electors of the district~~ **approval of the voters within the district**. To do so, the property must not or will not be needed by the district and the district must follow the procedures ~~under stated in~~ Education Code 17387-17391.

Pursuant to Education Code 17219, when the district has not used a previously used site for school purposes within the preceding five years, or has not used a newly acquired site within five years of acquisition for any of grades K-8 or seven years of acquisition for any of grades 7-12, the State Allocation Board (SAB) is authorized to charge an "unused site fee" pursuant to Education Code 17219-17224. For further information regarding non-use payments, see the Office of Public School Construction's Unused Site Program Handbook.

The Governing Board believes that district facilities and resources should be utilized in an economical and practical manner. The Superintendent or designee shall periodically study the current and projected use of all district facilities to ensure the efficient utilization of space for the effective delivery of instruction.

(cf. 1330 - Use of School Facilities)

(cf. 7110 - Facilities Master Plan)

(cf. 7111 - Evaluating Existing Buildings)

(cf. 7160 - Charter School Facilities)

Note: Pursuant to Education Code 17387-17391, before surplus real property is sold or leased, the Governing Board must appoint an advisory committee to advise the Board on the disposition of such property. Education Code 17388 and 17391 establish exceptions from this requirement. ~~for rentals not exceeding 30 days, and for the lease or rental of a district facility to a private educational institution for the purpose of offering summer school. In addition, Education Code 17391, as amended by AB 1157 (Ch. 717, Statutes of 2017), provides that an advisory committee need not be appointed prior to the sale, lease, or rental of excess real property if it is to be used for teacher or other employee housing. As amended by SB 820 (Ch. 110, Statutes of 2020), Education Code 17391 adds an exception, until July 1, 2024, for the sale or lease of property that has not previously operated, or was not constructed to be operated, as an early childhood education facility or a school for elementary or secondary instruction.~~

Education Code 17389 requires that the advisory committee be representative of specific groups within the community and be composed of not less than seven nor more than 11 members (commonly referred to as a "7-11 committee"). See the accompanying administrative regulation for further information on the composition and duties of this committee.

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SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

Prior to the sale or lease of any surplus real property, ~~the~~ The Board shall appoint a district advisory committee ~~prior to the sale or lease of any surplus real property~~ to advise the Board regarding the use or disposition of schools or school building space which is not needed for school purposes. ~~Rentals of surplus property not exceeding 30 days are exempted from this requirement. When the sale, lease, or rental of surplus property is for the purpose of teacher or other employee housing or for the offering of summer school by a private educational institution,~~ The Board may elect not to appoint a district advisory committee, **for any of the following:** (Education Code ~~17387-17388~~, 17391)

1. A rental of property for a period of time not exceeding 30 days
2. A lease or rental of surplus property to a private educational institution for the purpose of offering summer school
3. A sale, lease, or rental of surplus property to be used for teacher or other employee housing
4. **Until July 1, 2024, a sale or lease of surplus property that has not previously operated, or was not constructed to be operated, as an early childhood education facility or a school for elementary or secondary instruction**

(cf. 1220 - Citizen Advisory Committees)

Note: Pursuant to Government Code 65402, if the county or city has adopted a general plan which is applicable in the area where the district property is located, the district must notify the county or city planning agency of the location, purpose, and extent of the proposed disposition of district property so that the agency can determine and report on the extent to which the disposition conforms with the local planning agency's general plan. The planning agency has 40 days during which it may raise objections. If objections are not raised within 40 days, the lack of response is deemed to be a finding that the district's proposed disposition of the property is in conformity with the local planning agency's adopted general plan.

In addition, to ensure that the proposed disposition of the property conforms with any general plan adopted by ~~If the local planning agency has adopted a general plan~~ that affects or includes the area where the surplus property is located, the Board shall submit a report to the local planning agency describing the location of the surplus property and the purpose and extent of the proposed sale or lease. (Government Code 65402)

Note: When proposing the sale or lease of surplus property, the district must also comply with Public Resources Code 21000-21177 (the California Environmental Quality Act) (CEQA), when applicable. Pursuant to 14 CCR 15061, the sale or lease of property is exempt from detailed CEQA review if there is no possibility that the sale or lease will have a significant environmental effect. In such cases, the district must adopt a notice of exemption in accordance with 14 CCR 14062.

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SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

The Board shall determine whether the sale or lease of the surplus property is subject to review under the California Environmental Quality Act. (Public Resources Code 21000-21177; 14 CCR 15061-15062)

Note: Pursuant to Government Code 54956.8, the Board may hold a closed session for real property negotiations, including the sale or lease of property by the district. An Attorney General opinion (94 Ops.Cal.Atty.Gen. 82 (2011)) has concluded that only three subjects related to real property negotiations may be considered in closed session: (1) the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms. See BB 9321 - Closed Session.

The Board may meet in closed session with its real property negotiator prior to the sale or lease of real property by the district in order to grant its negotiator authority regarding the minimum price or rent and terms of the sale or lease. (Government Code 54956.8)

(cf. 9321 - Closed Session)

Note: When a district is selling any surplus property or leasing it with an option to purchase, Education Code 17464 lists the public entities that must be given priority to lease or purchase the property and the types of notice that the district must provide such entities before disposing of the property. Under certain circumstances, districts may also need to comply with the Naylor Act (Education Code 17485-17500), which requires that priority be given to public agencies when disposing of any district property that includes a playground, playing field, or land with an outdoor recreational purpose. Under certain conditions, the district may grant priority to licensed child care providers pursuant to Education Code 17458 or may sell surplus property for less than fair market value to public entities for recreational purposes pursuant to Education Code 17230. The requirement to first offer surplus property to a charter school with a projected in-district average daily attendance of at least 80 students expired July 1, 2016 pursuant to the terms of Education Code 17457.5.

When selling or leasing district real property, the Board shall comply with applicable procedures and give priority to specified public agencies as required by law ~~comply with the priorities and procedures specified in applicable law.~~ (Education Code 17230, 17464, 17485-17499; Government Code 54222)

(cf. 5148 - Child Care and Development)

(cf. 5148.2 - Before/After School Programs)

(cf. 5148.3 - Preschool/Early Childhood Education)

Note: Pursuant to Education Code 17462.3, the SAB may require a district selling real property purchased, improved, or modernized with funds received from a state school facilities funding program, to return those funds if: (1) the state funds were received and the property purchased or improved within the previous 10 years; (2) the proceeds from the sale are not used for capital outlay; and (3) the property is not sold to a charter school, another school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services.

SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

~~When selling real property purchased, constructed, or modernized with funds received within the past 10 years from a state school facilities funding program, the Board shall consider whether any of the proceeds from the sale will need to be returned to the State Allocation Board (SAB) pursuant to Education Code 17462.3.~~

Resolution of Intention to Sell or Lease

Before ordering the sale or lease of any real property, the Board shall adopt a resolution by a two-thirds vote of all of its members at a regularly scheduled open meeting. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it, specify the minimum price or rent, describe the terms upon which it will be sold or leased, and specify the commission or rate, if any, which the Board will pay to a licensed real estate broker out of the minimum price or rent. The resolution shall fix a time, not less than three weeks thereafter, for a public meeting, held at the Board's regular meeting place, at which sealed proposals to purchase or lease will be received and considered. (Education Code 17466)

(cf. 9320 - Meetings and Notices)
(cf. 9323.2 - Actions by the Board)

The Superintendent or designee shall provide notice of the adoption of the resolution and of the time and place of the meeting that will be held to consider bids by posting copies of the resolution, signed by the Board, in three public places not less than 15 days before the date of the meeting. In addition, the notice shall be published at least once a week for three successive weeks before the meeting, in a newspaper of general circulation published in the county in which the district is located, if such a newspaper exists. (Education Code 17469)

Note: Education Code 17470 requires districts to take reasonable steps to notify the former owner of the property of the public meeting at which bids will be considered. However, the Board is not required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

~~In accordance with Education Code 17470, At least 60 days prior to the public meeting, the Superintendent or designee shall take reasonable steps to provide written notification of the public meeting, by certified mail, to the former owners of the property of the district's intent to sell it. from whom the district acquired the property. (Education Code 17470)~~

Acceptance/Rejection of Bids

At the public meeting specified in the resolution of intention to sell or lease property, the Board shall open, examine, and declare all sealed bids. Before accepting a written proposal, the Board shall call for oral bids in accordance with law. (Education Code 17472, 17473)

SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

The Board may reject any and all bids, either written or oral, and withdraw the properties from sale when the Board determines that rejection is in the best public interest. If no proposals are submitted or the submitted proposals do not conform to all the terms and conditions specified in the resolution of intention to lease, the Board may lease the property in accordance with Education Code 17477. (Education Code 17476, 17477)

Of the proposals submitted by responsible bidders which conform to all terms and conditions specified in the resolution of intention to sell or lease, the Board shall finally accept the highest bid after deducting the commission, if any, to be paid to a licensed real estate broker, unless the Board accepts a higher oral bid or rejects all bids. (Education Code 17472)

The final acceptance of the bid may be made either at the same meeting specified in the resolution or at any adjourned/continued meeting held within 10 days. Upon acceptance of the bid, the Board may adopt a resolution of acceptance that directs the Board president, or any other Board member, to execute the deed or lease and to deliver the document upon performance and compliance by the successful bidder of all of the terms and conditions of the contract. (Education Code 17475-17478)

(cf. 1431 - Waivers)

Use of Proceeds

Note: Pursuant to Education Code 17462, the proceeds derived from the sale of surplus property or lease with an option to purchase must generally be used for **one-time expenditures for** capital outlay or maintenance, **with specified exceptions**, except as provided below. In addition, Education Code 17462 requires that the proceeds be used for one-time expenditures and prohibits the use for ongoing expenditures such as salaries and general operating expenses. However, 2 CCR 1700 authorizes the use of such proceeds, if approved by the SAB, for one-time funding to reduce a district's unfunded liability for other postemployment benefits (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long term care, long term disability, and other nonpension benefits for retired employees). For information about prefunding OPEBs and reporting the district's liability for OPEBs, see BP 3100 – Budget and AR 3460 – Financial Reports and Accountability. The law does not place limitations on the use of proceeds for a lease of surplus property that does not include an option to purchase.

The Superintendent or designee shall ensure that the proceeds from the sale or lease with an option to purchase of surplus district property are used for one-time expenditures and not for ongoing expenditures such as salaries and general operating expenses. (Education Code 17462; **2 CCR 1700**)

Proceeds from a sale of surplus district property shall **generally** be used for capital outlay or maintenance costs that the Board determines will not recur within a five-year period. Proceeds from a lease of district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the SAB, for up to a **five-year period**. (Education Code 17462)

SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

~~Proceeds from a lease of district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the SAB, for up to a five year period. (Education Code 17462)~~

Note: Pursuant to Education Code 17462, proceeds from the sale or lease with an option to purchase may be deposited in the district's general fund when the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements. Thus, districts may not apply to the state for new construction or modernization funding during that time period unless certain conditions specified in Education Code 17462 are satisfied.

However, if ~~if~~ the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements, the proceeds from the sale or lease with an option to purchase may be deposited in a special reserve fund for the future maintenance and renovation of school sites or in the district's general fund. ~~Proceeds from the sale or lease with option to purchase of district property may also be deposited in a special reserve fund for capital outlay or maintenance costs of district property that the Board determines will not recur within a five year period.~~ (Education Code 17462)

(cf. 3100 - Budget)
(cf. 3460 - Financial Reports and Accountability)

Note: Until July 1, 2024, Education Code 17463.7, as added by SB 98 (Ch. 24, Statutes of 2020), authorizes the proceeds from the sale or lease of property purchased entirely with local funds to be used for any general fund purpose.

In addition, until July 1, 2024, if district surplus property was purchased entirely with local funds, the proceeds from the sale or lease of the property, together with any personal property located on the property, may be deposited into the general fund of the district and may be used for any one-time general fund purpose. Before exercising this authority, the Board shall: (Education Code 17463.7)

- 1. Submit to SAB documents certifying that the sale of real property does not violate the provisions of a local bond act and the real property is not suitable to meet projected school construction needs for the next 10 years**
- 2. At a public meeting, adopt a plan for expending one-time resources from the sale or lease of the property which identifies the source and intended use of the surplus property proceeds and describes the reasons that the expenditure will not result in ongoing fiscal obligations for the district**

Note: Pursuant to Education Code 17462.3, ~~the SAB may require a~~ **if the district is selling real property purchased, improved, or modernized with funds received from a state school facilities funding program within the previous 10 years, the district is required to return those funds to SAB if: (1) the state funds were**

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SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

received and the property purchased or improved within the previous 10 years; (2) the proceeds from the sale are not used for capital outlay; and (3) the property is not sold to a charter school, another school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services. under specified conditions. **The district must notify OPSC of the sale by submitting Form SAB 308, available on OPSC's web site.**

Whenever the district sells real property that was purchased, improved, or modernized with funds that were received from a state school facilities funding program within the previous 10 years, the district shall notify OPSC within 90 calendar days of the sale of the property if the proceeds from the sale are not used for capital outlay and the property is not sold to a charter school, another school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services. If SAB subsequently makes a finding that the sale is subject to Education Code 17462.3, the district shall return the funds to the SAB within 90 calendar days of the finding. (2 CCR 1702)

Legal Reference:

EDUCATION CODE

17219-17224 Acquisition of property not utilized as school site; nonuse payments; exemptions

17230-17234 Surplus property

17385 Conveyances to and from school districts

17387-17391 Advisory committees for use of excess school facilities

17400-17429 Leasing property

17430-17447 Leasing facilities

17453 Lease of surplus district property

17455-17484 Sale or lease of real property, especially:

17462.3 State Allocation Board program to reclaim funds

17485-17500 Surplus school playground (Naylor Act)

17515-17526 Joint occupancy

17527-17535 Joint use of district facilities

33050 Request for waiver

38130-38139 Civic Center Act

GOVERNMENT CODE

50001-50002 Definitions

54220-54232 Surplus land, especially:

54222 Offer to sell or lease property

54950-54963 Brown Act, especially:

54952 Legislative body, definition

PUBLIC RESOURCES CODE

21000-21177 California Environmental Quality Act

CODE OF REGULATIONS, TITLE 2

1700-1702 Definitions related to surplus property; use of proceeds

Legal Reference continued: (see next page)

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SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)

Legal Reference: (continued)

COURT DECISIONS

San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District, (2006) 139 Cal.App.4th 1356

ATTORNEY GENERAL OPINIONS

94 Ops. Cal. Atty. Gen. 82 (2011)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Closing a School Best Practices Guide

OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS

Unused Site Program Handbook, December 2015

WEB SITES

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

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

Coalition for Adequate School Housing: <http://www.cashnet.org>

Office of Public School Construction: <http://www.dgs.ca.gov/opsc>

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3530(a)

RISK MANAGEMENT/INSURANCE

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

The Governing Board ~~strongly supports a risk management program that protects district resources and desires to promote~~ the safety of students, staff, and the public **while protecting district resources.** The Superintendent or designee shall establish a risk management program that uses effective safety and loss control practices.

The district shall strive to keep its liability at a minimum and its insurance premiums as low as possible while maintaining adequate protection **against loss which may occur due to hazards facing the district.**

To determine the most economical means of insuring the district consistent with required services, the Superintendent or designee shall annually review the district's options for obtaining coverage, including qualified insurance agents, a joint powers agency, self-insurance, or a combination of these means. **Decisions regarding the means of insuring the district shall be based on a careful analysis of past claims records indicating the frequency and magnitude of losses and a prediction of future losses.**

Note: In reviewing various means of insuring the district, decisions related to self-insurance should be based on a careful analysis of past claims records indicating the frequency and magnitude of losses and a prediction of future losses. Any self-insured retention reserves should be carefully monitored and compared with open claims.

~~The Board reserves the right to remove an insurance agent of record or a participating agent whenever, in the judgment of the Board, such action becomes desirable for the best interests of the district.~~

To ~~attempt to~~ minimize the district's exposure to liability, the Board shall adopt clear policies related to discrimination, harassment, safety procedures, and the timely handling of claims. The Superintendent or designee shall ~~ensure that~~ **enforce** these policies and related procedures ~~are enforced~~ fairly and consistently. **The Superintendent or designee shall provide safety-related training and protective equipment to staff as appropriate for their position.**

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

(cf. 0450 - Comprehensive Safety Plan)

(cf. 3320 - Claims and Actions Against the District)

(cf. 4030 - Nondiscrimination in Employment)

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

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

(cf. 4157/4257/4357 - Employee Safety)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

RISK MANAGEMENT/INSURANCE (continued)

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

~~(cf. 5142 - Safety)~~

~~(cf. 5141.4 - Child Abuse Prevention and Reporting)~~

~~(cf. 5145.3 - Nondiscrimination/Harassment)~~

~~(cf. 5145.7 - Sexual Harassment)~~

~~(cf. 6162.6 - Use of Copyrighted Materials)~~

~~(cf. 9260 - Legal Protection)~~

Note: The following **optional** paragraph may be revised to require more or less frequent reporting.

The Superintendent or designee shall **periodically** report to the Board ~~twice a year~~ on the district's risk management activities, **including, but not limited to, the district's property and liability risks and exposures and the effectiveness of the district's risk management and loss control practices.**

Legal Reference: (see next page)

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RISK MANAGEMENT/INSURANCE (continued)

Legal Reference:

EDUCATION CODE

17029.5 Contract funding; board liability

17565-17592 Board duties re property maintenance and control

32350 Liability on equipment loaned to district

35162 Power to sue, be sued, hold and convey property

35200-35214 Liabilities, especially:

35208 Liability insurance

35211 Driver training civil liability insurance

35213 Reimbursement for loss, destruction, or damage of personal property

35214 Liability self-insurance

35331 Medical or hospital service for students on field trip

39837 Transportation of ~~pupils~~ **students** to places of summer employment

41021 Requirement for employees' indemnity bonds

44873 Qualifications for physician (liability coverage)

49470-49474 District medical services and insurance

GOVERNMENT CODE

820.9 Board members not vicariously liable for injuries caused by district

831.7 Hazardous recreational activities

989-991.2 Local public entity insurance

LABOR CODE

3200-4855 Workers' compensation

Management Resources:

WEB SITES

California Association of Joint Powers Authorities: <https://www.cajpa.org>

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

California Department of Industrial Relations, Division of Occupational Safety and Health:

<https://www.dir.ca.gov/dosh>

Public Agency Risk Management Association: <https://www.parma.com>

(9/88 10/95) 10/20

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3530(a)

RISK MANAGEMENT/INSURANCE

Note: The following administrative regulation may be revised to reflect district practice.

Risk Management

The Superintendent or designee, **in consultation with risk management, insurance, safety, or other professionals as appropriate,** shall ~~take action to:~~

1. Identify the risks inherent in ~~the operation of~~ district **operations and programs, including physical sites, educational and experiential programs, computer networks and systems, employment and staffing, and transportation services, using methods that may include, but are not limited to, physical inspections, surveys, staff interviews, compliance reviews, contract reviews, review of policies and procedures, and consultation with experts**
2. ~~Assess the above risks and keep records of accidents, losses and damage~~ **Analyze, evaluate, and prioritize identified risks based on the frequency and likelihood of the risk and the potential impact to the district**
3. **Develop strategies to reduce or mitigate identified risks, such as new or modified policies, processes, or procedures; training or loss prevention programs; and/or additional or repairs to equipment, real property, computer networks, or other physical assets**
4. **Implement strategies to promote safety and prevent loss, taking into account the nature of the risks, the associated exposures, and the costs and benefits associated with the proposed response**
- 3-5. Mitigate **potential risks through loss control and safety-related loss following an incident through activities such as effective claims management, litigation management, disaster recovery, or a modified duty program for workers' compensation**
4. ~~Determine the extent to which risks should be assumed by the district or covered by the purchase of insurance or pooling with other districts~~

(cf. 0450 - Comprehensive Safety Plan)

(cf. 1330 - Use of School Facilities)

(cf. 4157/4257/4357- Employee Safety)

(cf. 5142 - Safety)

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RISK MANAGEMENT/INSURANCE (continued)

The Superintendent or designee shall advise the Governing Board of any needed action requiring Board approval.

Following any incident resulting in potential or actual harm or injury to a person or damage to property, staff shall promptly document the date and time of the incident, a description of the incident, and any persons present.

Employees are expected to take reasonable precautions for the care and safety of the school equipment with which they have been entrusted. Employees may be held responsible for recurring damage or losses that occur due to their negligence or lack of supervision. Responsibilities related to safety and loss control shall be included in employee job descriptions.

~~(cf. 0450—Comprehensive Safety Plan)~~
~~(cf. 1240—Volunteer Assistance)~~
~~(cf. 1330—Use of School Facilities)~~
~~(cf. 3400—Management of District Assets/Accounts)~~
~~(cf. 3430—Investing)~~
~~(cf. 3440—Inventories)~~
~~(cf. 3512—Equipment)~~
~~(cf. 3514—Environmental Safety)~~
~~(cf. 3514.1—Hazardous Substances)~~
~~(cf. 3515.4—Recovery for Property Loss or Damage)~~
~~(cf. 3516—Emergencies and Disaster Preparedness Plan)~~
~~(cf. 3541.1—Transportation for School-Related Trips)~~
~~(cf. 3543—Transportation Safety and Emergencies)~~
~~(cf. 4112.42/4212.42/4312.43—Drug and Alcohol Testing for School Bus Drivers)~~
~~(cf. 4112.5/4212.5/4312.5—Criminal Record Check)~~
~~(cf. 4119.42/4219.42/4319.42—Exposure Control Plan for Bloodborne Pathogens)~~
~~(cf. 4157/4257/4357—Employee Safety)~~
~~(cf. 4112.5/4212.5/4312.5—Criminal Record Check)~~
~~(cf. 5131.1—Bus Conduct)~~
~~(cf. 5131.61—Drug Testing)~~
~~(cf. 5141—Health Care and Emergencies)~~
~~(cf. 5141.22—Infectious Diseases)~~
~~(cf. 5142—Safety)~~
~~(cf. 6145.2—Athletic Competition)~~
~~(cf. 6153—School-Sponsored Trips)~~
~~(cf. 9260—Legal Protection)~~

Insurance

Note: California law requires districts to maintain liability insurance, property fire insurance, workers' compensation insurance, and fidelity bond insurance. Property insurance for theft and damage is permissive. The following list may be expanded to reflect other types of insurance that the district obtains, such as employee health insurance and athletic team member insurance for students who are not otherwise covered.

Insurance **or risk pooled** coverage shall include, but **may** not be limited to:

RISK MANAGEMENT/INSURANCE (continued)

1. Liability insurance (Education Code 35200-35214)
2. ~~Fire insurance for buildings, equipment, and vehicles~~ **Insurance against fire or other property damage** (Education Code 17565)
3. Workers' compensation insurance (Labor Code 3700)
4. Fidelity bond insurance **for employees whose duty includes handling district funds, and other employees as needed** (Education Code 41021)

(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
(cf. 5143 - Insurance)

~~A suitable bond indemnifying the district against loss shall be purchased for employees responsible for handling district funds and may be purchased for employees responsible for handling district property. The district shall bear the cost of this bonding. (Education Code 41021)~~

(cf. 1330 - Use of School Facilities)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4156.3/4256.3/4356.3 - Employee Property Reimbursement)
(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
(cf. 5143 - Insurance)
(cf. 9260 - Legal Protection)

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CSBA Sample Board Policy

All Personnel

BP 4119.11(a)
4219.11
4319.11

SEXUAL HARASSMENT

Note: Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Sexual harassment is prohibited pursuant to Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996). Whether a complaint of sexual harassment is addressed through federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, or procedures adopted pursuant to 2 CCR 11023 is dependent on whether the alleged conduct meets the more stringent federal definition of sexual harassment or the state definition. **In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently.** See the accompanying administrative regulation, AR 4030 - Nondiscrimination in Employment, and AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for sexual harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for sexual harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board prohibits sexual harassment against district employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4030 - Nondiscrimination in Employment)

Note: Government Code 12940 clarifies that sexual harassment includes harassment based on sex, gender, pregnancy, childbirth, or related medical conditions.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

SEXUAL HARASSMENT (continued)

Note: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sexual harassment cases. In Department of Health Services v. Superior Court (McGinnis), the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in Burlington Industries v. Ellerth held that, for certain claims under federal law, an employer may defend against sexual harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer.

Pursuant to Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), employers with five or more employees are required to provide sexual harassment training to supervisory and nonsupervisory employees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance and Government Code 12950.1, and should be modified to reflect district practice.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to employees and others to whom the policy may apply
3. Ensuring prompt, thorough, fair, and equitable investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

Note: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance Promising Practices for Preventing Harassment and may be revised to reflect district practice.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, complaint procedures, or training.

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SEXUAL HARASSMENT (continued)

Sexual Harassment Reports and Complaints

Note: 34 CFR 106.8, as amended by 85 Fed. Reg. 30026, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

34 CFR 106.44, as added by 85 Fed. Reg. 30026, requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not unreasonable in light of the known circumstances and in compliance with Title IX regulations. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. For this reason, the district should train all employees regarding the reporting process.

In Faragher v. City of Boca Raton, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

District employees who feel that they have been sexually harassed in the performance of their district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall promptly notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint **or allegation** is addressed through ~~either AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures for complaints meeting the Title IX definition of sexual harassment or AR 4030 - Nondiscrimination in Employment for complaints meeting the state definition~~, as applicable, ~~and shall offer supportive measures to the complainant.~~ **Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.**

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

The Title IX Coordinator and shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.

Note: In addition to district discipline imposed on employees who engage in sexual harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

SEXUAL HARASSMENT (continued)

Upon investigation of a sexual harassment complaint, any district employee found to have engaged or participated in sexual harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

(cf. 4117.7/4317.7 - *Employment Status Reports*)
(cf. 4118 - *Dismissal/Suspension/Disciplinary Action*)
(cf. 4218 - *Dismissal/Suspension/Disciplinary Action*)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination on the basis of sex*

GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act, especially:*

12940 *Prohibited discrimination*

12950 *Sexual harassment; distribution of information*

12950.1 *Sexual harassment training*

LABOR CODE

1101 *Political activities of employees*

1102.1 *Discrimination: sexual orientation*

CODE OF REGULATIONS, TITLE 2

11009 *Employment discrimination*

11021 *Retaliation*

11023 *Harassment and discrimination prevention and correction*

11024 *Sexual harassment training and education*

11034 *Terms, conditions, and privileges of employment*

CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education programs*

UNITED STATES CODE, TITLE 20

1681-1688 *Title IX of the Education Amendments of 1972*

UNITED STATES CODE, TITLE 42

2000e-2000e-17 *Title VII, Civil Rights Act of 1964, as amended*

CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.9 *Nondiscrimination on the basis of sex in education programs or activities*

106.51-106.82 *Nondiscrimination on the basis of sex in employment in education programs or activities*

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

BP 4119.11(e)
4219.11
4319.11

SEXUAL HARASSMENT (continued)

Management Resources:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Promising Practices for Preventing Harassment, November 2017

WEB SITES

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

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr/index.html>

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Policy Reference UPDATE Service

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CSBA Sample Administrative Regulation

All Personnel

AR 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

Note: The following administrative regulation is **mandated** pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act). The focus of this administrative regulation is on sexual harassment by and of employees. Pursuant to Government Code 12940 and 2 CCR 11009, interns, volunteers, and job applicants are entitled to the same protection against sexual harassment as applicable to employees.

For information related to sexual harassment involving students, see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

The following administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Title IX Coordinator/Compliance Officer

Note: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. Districts may modify this policy to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as well as to investigate and resolve sexual harassment complaints under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

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SEXUAL HARASSMENT (continued)

~~The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)~~

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

Prohibited Conduct Definitions

Note: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30, as added by 85 Fed. Reg. 30026, requires investigation and resolution through Title IX regulations; see AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.30, sexual harassment includes (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291)

Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. Conduct that does not meet the definition of sexual harassment in 34 CFR 106.30 shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.

In Oncale v. Sundowner Offshore Services, Inc., the U.S. Supreme Court held that same-sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17).

~~Prohibited s~~Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.

SEXUAL HARASSMENT (continued)

4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district.

(cf. 4030 - Nondiscrimination in Employment)

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, *sexual harassment* is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

- 1. A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct**
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity**
- 3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291**

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

Examples of Sexual Harassment

Note: Pursuant to Government Code 12940, the district may be held liable for sexual harassment committed against employees by clients, customers, or other third parties 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 following paragraph clarifies that sexual harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

Examples of actions that might constitute sexual harassment **under state or federal law in accordance with the definitions above**, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors

AR 4119.11(d)
4219.11
4319.11

SEXUAL HARASSMENT (continued)

2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

Note: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. Districts may modify this policy to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and resolve sexual harassment complaints processed under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Assistant Principal
(title or position)
15305 Rockwood Rd, Esccondido, CA 92027
(address)
760.745.4931
(telephone number)
spusd @ empasqualunion.net
(email)

Note: Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees by January 1, 2021 (or two years after a training provided in 2019) and once every two years thereafter. As amended, Government Code 12950.1 requires that new nonsupervisory employees be provided the training within six months of hire, consistent with the requirement for all newly hired supervisors or employees promoted to a supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

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SEXUAL HARASSMENT (continued)

Governing Board members, as elected officials, are not usually considered "supervisors"; however, since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive sexual harassment training. Districts should consult with legal counsel to ensure that the appropriate individuals receive training.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A *supervisory employee* is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

(cf. 4300 - Administrative and Supervisory Personnel)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace
5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware

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SEXUAL HARASSMENT (continued)

6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
 7. The limited confidentiality of the complaint process
 8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
 9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint
 10. What to do if the supervisor is personally accused of harassment
 11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed
- Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.
12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
 13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024)

Notifications

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement

SEXUAL HARASSMENT (continued)

extends to employment, and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

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

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the Board policy and this administrative regulation shall: ~~(Education Code 231.5)~~

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted **(Education Code 231.5)**
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired **(Education Code 231.5)**
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct **(Education Code 231.5)**
4. **Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site (34 CFR 106.8)**
5. **Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)**

Note: Government Code 12950 requires the Department of Fair Employment and Housing (DFEH) to develop an information sheet on employment discrimination and the illegality of sexual harassment and a poster regarding the rights of transgender employees. These documents are available on DFEH's web site.

All employees shall receive a copy of an information sheet prepared by the California Department of Fair Employment and Housing (DFEH) or the district that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law

SEXUAL HARASSMENT (continued)

3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, the DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

All complaints and allegations of sexual harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, and address any continuing effects.

(3/18 7/20) 10/20

CSBA Sample Administrative Regulation

All Personnel

AR 4119.12(a)

4219.12

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES

4319.12

Note: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and **mandates** that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment in employment that does not meet this definition should be addressed through the district's complaint procedures described in AR 4030 - Nondiscrimination in Employment.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

Also see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sexual harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, **while in an education program or activity in which a district school exercises substantial control over the context and respondent**, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, **106.44**)

1. A district employee conditioning the provision of a district aid, benefit, or service on a person's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

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

All other sexual harassment complaints **or allegations** shall be investigated and **responded to pursuant to resolved in accordance with** AR 4030 - Nondiscrimination in Employment. **The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.**

(cf. 4030 - Nondiscrimination in Employment)

Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.

Reporting Allegations/Filing a Formal Complaint

Note: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 4119.11/4219.11/4319.11 - Sexual Harassment and may be revised to reflect district practice.

A report of sexual harassment shall be submitted directly to or forwarded An employee who is the alleged victim of sexual harassment may submit a report of sexual harassment to the district's Title IX Coordinator using the contact information listed in AR 4119.11/4219.11/4319.11 - Sexual Harassment or to the employee's direct supervisor or other district administrator, who shall forward the report to the Title IX Coordinator within one day of receiving the report.

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of **the right to file a formal complaint and** the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district. (34 CFR 106.30)

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Note: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situation seven when the victim chooses not to do so, including, but not limited to, when a safety threat exists.

In such cases, **the Title IX Coordinator and** the alleged victim ~~is not a party~~ **are not named parties** to the case, but **the alleged victim must** ~~will~~ receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations ~~in which~~ **when** a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, **including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment.** In such cases, the **Title IX Coordinator shall provide the alleged victim** ~~alleged victim is not a party to the case, but will receive~~ notices as required by the Title IX regulations at specific points in the complaint process.

~~A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district. (34 CFR 106.30)~~

~~The Superintendent or designee shall ensure that the~~ Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process **does shall** not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, ~~and that s~~Such persons **shall** receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, ~~even if a formal complaint is not filed,~~ the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures ~~which are nondisciplinary, nonpunitive, and do not unreasonably burden the other party,~~ and shall consider the complainant's wishes with respect to the supportive measures **implemented. Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and not unreasonably burden the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment.** ~~Such Supportive~~ measures may include, but are not limited to, counseling, extensions of

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AR 4119.12(d)
4219.12
4319.12

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

deadlines, modifications of work schedules, mutual restrictions on contact, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus. ~~The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.~~ (34 CFR 106.30, 106.44)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the supportive measures. (34 CFR 106.30)

Emergency Removal

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

Note: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but requires that a student should not be "disciplined" prior to a finding being made pursuant to the grievance process established by 34 CFR 106.45. Due to this inconsistency in state and federal law, districts are advised to consult legal counsel as to the manner of imposing an emergency removal.

If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint **that in which the alleged conduct** did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

complaint, the respondent is no longer employed by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly, ~~and simultaneously to the parties,~~ send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, **and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below.** (34 CFR 106.45)

If a complaint is dismissed ~~on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30,~~ the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The district may facilitate an informal resolution process provided that the district: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process

~~Formal Complaint Process~~ **Written Notice**

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, ~~the district investigates allegations~~ **new Title IX allegations arise** about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

Note: The following paragraph is **optional**. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decision-maker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker ~~and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons~~ **and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.**

Investigation Procedures

Note: Pursuant to 34 CFR 106.45, when investigating a formal complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45.

During the investigation process, the district's **designated investigator** shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence **obtained as part of the investigation** that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

9. ~~After sending the investigative report to the parties and before reaching a determination regarding responsibility, afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow up questions from each party~~

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. **(34 CFR 106.45)**

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

Note: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

Note: Pursuant to 34 CFR 106.45, the person designated as the decision-maker of the determination of responsibility cannot be the same person designated as the Title IX Coordinator, an investigator, or the person who considers appeals. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the decision-maker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter. (34 CFR 106.45)

~~After sending the investigative report to the parties and~~ **the investigative report has been sent to the parties but** before reaching a determination regarding responsibility, **the decision-maker shall** afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

Note: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process, but does not specify the number of days within which the final decision must be issued. Districts may revise the following paragraph to include a different timeline as long as it would satisfy the requirement to act promptly.

The written decision shall be issued within **45 60** calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

Note: 34 CFR 106.45 **mandates** that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use.

In making this determination, the **district decision-maker** shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the district includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the district's code of conduct **or policies** to the facts

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
6. The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

Note: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

An appeal must be filed in writing within 10 calendar days of receiving the **determination notice of the decision or dismissal**, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. ~~Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights.~~

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

Note: 34 CFR 106.45 **mandates** that the district's Title IX complaint process list, or describe the range of possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

When an employee is found to have committed sexual harassment or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

(cf. 4117.7/4317.7 - Employment Status Report)

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

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

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

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: **(34 CFR 106.45)**

1. **a A** record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, **and** any appeal or informal resolution and the results therefrom, **and responses made pursuant to 34 CFR 106.44. (34 CFR 106.45)**
2. **A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances**
3. **The Superintendent or designee shall also maintain for a period of seven years all All** materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public. **(34 CFR 106.45)**

(cf. 1113 - District and School Web Sites)
(cf. 3580 - District Records)

Legal Reference: (see next page)

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48985 Notices, report, statements and records in primary language

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1092 Definition of sexual assault

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 34

12291 Definition of dating violence, domestic violence, and stalking

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.82 Nondiscrimination on the basis of sex in education programs

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School District, (2000, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

WEB SITES

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

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

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

(7/20) 10/20

Policy Reference UPDATE Service

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CSBA Sample

Exhibit

All Personnel

E 4119.12(a)

4219.12

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES

4319.12

Note: 34 CFR 106.8 requires the district to provide notice to employees, bargaining units, and job applicants of its policy prohibiting sexual harassment and its grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for students and parents/guardians, see E 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, the district must provide the Title IX Coordinator's contact information on its web site and in any employee handbook. In addition, state law (Education Code 231.5) requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, displayed in district and school offices, and included in any publication that sets forth standards of employee conduct.

NOTICE OF TITLE IX SEXUAL HARASSMENT POLICY

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to employees, job applicants, and employee organizations:

The district does not discriminate on the basis of sex in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any employee for filing a complaint or exercising any right granted under Title IX.

Title IX requires a school district to take immediate and appropriate action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

Note: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - Sexual Harassment.

The district has designated and authorized the following employee as the district's Title IX Coordinator, to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking:

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E 4119.12(b)
4219.12
4319.12

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Assistant Principal
 (name and/or title/position)
 15305 Rockwood Rd, Escondido, CA 92027
 (address)
 760-745-4931
 (telephone number)
 spvsd@sanpasqualunion.net
 (email address)

Note: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants of the district's grievance procedures, and process, including how to report or file a formal complaint of sexual discrimination and/or harassment, and how the district will respond.

Any individual may report sex discrimination, including sexual harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of sexual harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on sexual harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment and AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures on the district's web site at _____ (insert website link) www.sanpasqualunion.net

To inspect or obtain a copy of the district's sexual harassment policies and administrative regulations, please contact: _____ (insert location/phone/email of contact person) [San Pasqual Union School District, 760-745-4931,](mailto:spvsd@sanpasqualunion.net)

Materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process are also publicly available on the district's web site or at the district office upon request.

spvsd@sanpasqualunion.net
10/20 [sanpasqualunion.net](http://www.sanpasqualunion.net)

MB

CSBA Sample Board Policy

All Personnel

BP 4157(a)

4257

EMPLOYEE SAFETY

4357

Note: The following **optional** policy and accompanying administrative regulation may be subject to collective bargaining agreements and should be modified to reflect district practice. Pursuant to Government Code 3543.2, safety conditions of employment are within the scope of bargaining.

The Governing Board is committed to maximizing employee safety and believes that workplace safety is **every employee's the** responsibility **of every employee**. Working conditions and equipment shall comply with standards prescribed by federal, state, and local laws and regulations.

(cf. 0450 - Comprehensive Safety Plan)

No employee shall be required or permitted to be in any place of employment which is unsafe or unhealthful. (Labor Code 6402)

The Superintendent or designee shall promote safety and correct any unsafe work practices through education and enforcement.

~~The Board expects a~~ All employees **are expected** to use safe work practices and, to the extent possible, correct any unsafe conditions which may occur. If an employee is unable to correct an unsafe condition, **he/she the employee** shall immediately report the problem to the Superintendent or designee.

~~The Superintendent or designee shall promote safety and correct any unsafe work practices through education and enforcement.~~

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

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

Note: Labor Code 6401.7 requires **the district every employer** to establish, implement, and maintain an effective injury prevention program. See the accompanying administrative regulation for required program elements.

8 CCR 3203, as amended by Register 2020, No. 10, requires the district to provide employees with access to the district's injury and illness prevention program. See the accompanying administrative regulation for specific requirements.

The Superintendent or designee shall establish and implement a written injury and illness prevention program, **and provide employees with access to such program**, in accordance with law. (Labor Code 6401.7; **8 CCR 3203**)

(cf. 3514 - Environmental Safety)

(cf. 3514.1 - Hazardous Substances)

MS

EMPLOYEE SAFETY (continued)

(cf. 3516 - Emergencies and Disaster Preparedness Plan)
(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)
(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)
(cf. 4119.43/4219.43/4319.43 - Universal Precautions)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4158/4258/4358 - Employee Security)

Note: 8 CCR 3400, as amended by Register 2009, No. 35, requires **districts** all employers to make provisions in advance to ensure that employees receive prompt medical treatment for serious injury or illness. See the accompanying administrative regulation for specific requirements.

The Superintendent or designee shall **ensure the ready availability of** **make** first aid materials **readily available** at district workplaces and shall make effective provisions, **in advance, to prepare** for prompt medical treatment in the event of an employee's serious injury or illness. (8 CCR 3400)

No employee shall be discharged or discriminated against for **exercising any right regarding employee safety or health specified in Labor Code 6310, including:**

1. **M**aking a report or complaints;
2. **I**nstituting proceedings **or causing proceedings to be instituted;** ~~or~~
3. **T**estifying with regard to employee safety or health ~~or for~~
4. **P**articipating in any occupational health and safety committee established pursuant to Labor Code 6401.7 (~~Labor Code 6310~~)
5. **R**equesting access to injury or illness reports and records
6. **E**xercising any other right protected by the Occupational Safety and Health Act

Legal Reference: (see next page)

EMPLOYEE SAFETY (continued)

Legal Reference:

EDUCATION CODE

32030-32034 Eye safety

32225-32226 Communications devices in classrooms

32280-32289.5 School safety plans

44984 Required rules for industrial accident and illness leave of absence

GOVERNMENT CODE

3543.2 Scope of bargaining

LABOR CODE

132a Workers' compensation; nondiscrimination

3300 Definitions of employer

6305 Occupational safety and health standards; special order

6310 Retaliation for filing complaint prohibited

6400-6413.5 Responsibilities and duties of employers and employees, especially:

6401.7 Injury and illness prevention program

CODE OF REGULATIONS, TITLE 8

3203 Injury and illness prevention program

3204 Access to employee exposure and medical records

3400 Medical services and first aid

5095-5100 Control of noise exposure

5193 Bloodborne pathogens

14000-14316 Occupational injury or illness reports and records

CODE OF REGULATIONS, TITLE 17

2508 Reporting of communicable diseases

CODE OF FEDERAL REGULATIONS, TITLE 29

651-678 Occupational safety and health

1910.95 Occupational noise exposure standards

1910.1030 Bloodborne pathogens

Management Resources:

DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Guide to Developing Your Workplace Injury and Illness Prevention Program, rev. August 2011

WEB SITES

California Department of Industrial Relations, Occupational Safety and Health:

http://www.dir.ca.gov/occupational_safety.html

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

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

National Institute for Occupational Safety and Health: <http://www.cdc.gov/niosh>

U.S. Department of Labor, Occupational Safety and Health Administration: <http://www.osha.gov>

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CSBA Sample Administrative Regulation

All Personnel

AR 4157(a)

4257

EMPLOYEE SAFETY

4357

The Superintendent or designee shall provide ~~and implement~~ safety devices, and implement safeguards, methods, and processes that are reasonably **necessary for the safety and health of employees in the workplace** ~~adequate to render the employment and place of employment safe and healthful~~. (Labor Code 6401)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

(cf. 4157.2/4257.2/4357.2 - Ergonomics)

(cf. 4161.11/4261.11/4361.11 - Industrial Accident/Illness Leave)

Injury and Illness Prevention Program

Note: The following section reflects the requirements of Labor Code 6401.7 and 8 CCR 3203 for a written injury and illness prevention program. When developing such a program, districts are encouraged to review the Department of Industrial Relations' Guide to Developing Your Workplace Injury and Illness Prevention Program.

The district's injury and illness prevention program shall cover all district employees and all other workers whom the district controls or directs and directly supervises on the job to the extent that the workers are exposed to hazards specific to their worksite and job assignment. The obligation of contractors or other employers who control or direct and supervise their own employees on the job shall not be affected by the district's injury and illness prevention program. (Labor Code 6401.7)

The district's injury and illness prevention program shall include: (Labor Code 6401.7; 8 CCR 3203)

1. The name/position of the person(s) with authority and responsibility for implementing the program.
2. A system for ensuring that employees comply with safe and healthful work practices, which may include, but not be limited to:
 - a. Recognition of employees who follow safe and healthful work practices

(cf. 4156.2/4256.2/4356.2 - Awards and Recognition)

- b. Training and retraining programs
- c. Disciplinary actions

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

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EMPLOYEE SAFETY (continued)

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

Note: Pursuant to 8 CCR 3203, districts with fewer than 10 employees may fulfill the communication requirements of item #3 below by providing oral instruction in general safe work practices and the hazards unique to the employees' assignments.

3. A system for communicating with employees, in a form readily understandable by all employees, on matters related to occupational health and safety, including provisions designed to encourage employees to report hazards at the worksite without fear of reprisal. The communications system may include, but not be limited to:
 - a. Meetings
 - b. Training programs
 - c. Posting
 - d. Written communications
 - e. A system of anonymous notification by employees about hazards

Note: Districts may use a labor/management safety and health committee to communicate the contents of the injury and illness prevention program, as long as the committee satisfies the requirements specified below in the section on "Labor/Management Safety and Health Committee."

- f. A labor/management safety and health committee
4. Procedures for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. Such inspections shall be made:

Note: Pursuant to 8 CCR 3203, districts should have identified and evaluated workplace hazards when the program was first established in 1991. Hazards should be reevaluated under the conditions specified below.

- a. Whenever new substances, processes, procedures, or equipment that represents a new occupational safety or health hazard is introduced into the workplace
- b. Whenever the district is made aware of a new or previously unrecognized hazard

EMPLOYEE SAFETY (continued)

(cf. 3514 - Environmental Safety)
(cf. 3514.1 - Hazardous Substances)

5. A procedure for investigating occupational injury or illness.
6. Methods and/or procedures for correcting unsafe or unhealthful conditions, work practices, and work procedures in a timely manner, based on the severity of the hazard, when the hazard is observed or discovered.

When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, these procedures shall call for the removal of all exposed staff from the area except those necessary to correct the hazardous condition. Employees needed to correct the condition shall be provided necessary safeguards.

7. Provision of training and instruction as follows:

Note: Pursuant to 8 CCR 3203, districts should have provided training and instruction when the program was first established in 1991. Additional training and instruction should be provided under the conditions specified below.

- a. To all new employees
- b. To all employees given new job assignments for which training has not previously been received
- c. Whenever new substances, processes, procedures, or equipment is introduced into the workplace and represents a new hazard
- d. Whenever the district is made aware of a new or previously unrecognized hazard
- e. To supervisors, to familiarize them with the safety and health hazards to which employees under their immediate direction and control may be exposed

(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

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EMPLOYEE SAFETY (continued)

Note: Pursuant to 8 CCR 3203, as amended by Register 2020, No. 10, employees or their designated representatives have the right to examine and receive a copy of the district's injury and illness prevention program, and districts are required to provide access as described below. 8 CCR 3203 defines "designated representative" as any individual or organization to whom an employee gives written authorization to exercise a right of access. A recognized or certified collective bargaining agent is, by definition, treated automatically as a designated representative.

Districts are not required to include records of steps taken to implement and maintain the injury and illness prevention program. However, access to such information, or any other information in addition to that required by 8 CCR 3203, may be subject to collective bargaining.

The Superintendent or designee shall provide employees, or their representative designated pursuant to 8 CCR 3203, with either of the following: (8 CCR 3203)

- 1. Access to the district's injury and illness prevention program in a reasonable time, place, and manner, but in no event later than five business days after the request for access is received from an employee or a designated representative of the employee**

When an employee or designated representative requests a copy of the district's injury and illness prevention program, the Superintendent or designee shall provide the requester a printed copy unless the employee or designated representative agrees to receive an electronic copy.

The Superintendent or designee shall provide one printed copy free of charge. If the employee or designated representative requests additional copies within one year of the previous request and the district's injury and illness prevention program has not been updated with new information since the prior copy was provided, the district may charge reasonable reproduction costs pursuant to 8 CCR 3204 for the additional copies.

Note: Pursuant to 8 CCR 3203, an employee has unobstructed access if, as part of the employee's regular work duties, the employee predictably and routinely uses the electronic means to communicate with management or coworkers.

- 2. Unobstructed access to the district's injury and illness prevention program through the district's server or web site, which allows an employee to review, print, and email the current version of the district's injury and illness prevention program**

The Superintendent or designee shall communicate the right and procedure to access the district's injury and illness prevention program to all employees. (8 CCR 3203)

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EMPLOYEE SAFETY (continued)

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

Labor/Management Safety and Health Committee

Note: The following **optional** section is for use by districts that choose to use a labor/management safety and health committee to comply with the requirements of 8 CCR 3203 regarding communication with employees as specified in item #3 above in the section title "Injury and Illness Prevention Program." Pursuant to 8 CCR 3203, if the committee adheres to the following practices, the district shall be deemed to be in substantial compliance with the communications requirements of the law.

The district's labor/management safety and health committee shall: (8 CCR 3203)

1. Meet regularly, but not less than quarterly.
2. Prepare and make available to affected employees written records of the safety and health issues discussed at committee meetings and maintained for review by the California Department of Industrial Relations' Division of Occupational Safety and Health (Cal/OSHA) upon request. These records shall be maintained for at least one year.
3. Review results of the periodic, scheduled worksite inspections.
4. Review investigations of occupational accidents and causes of incidents resulting in occupational injury or illness or exposure to hazardous substances. As appropriate, the committee may submit suggestions to the Superintendent or designee regarding the prevention of future incidents.
5. Review investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, it may conduct its own inspection and investigation to assist in remedial solutions.
6. Submit recommendations to assist in the evaluation of employee safety suggestions.
7. Upon request of Cal/OSHA, verify abatement action taken by the district to abate citations issued by Cal/OSHA.

Remove

Hearing Protection

Whenever employee noise exposure equals or exceeds the standards specified in law, the Superintendent or designee shall implement a hearing conservation program in accordance

EMPLOYEE SAFETY (continued)

with state and federal regulations, including, when required, monitoring of sound levels, **audiogram evaluation and** audiometric testing of affected employees, the provision of hearing protectors, and employee training. (8 CCR 5095-5100; 29 CFR 1910.95)

Eye Safety Devices

Eye safety devices shall be worn by employees whenever they are engaged in or observing an activity involving hazards or hazardous substances likely to cause injury to the eyes. (Education Code 32030-32034)

First Aid and Medical Services

Note: The following **optional** section reflects requirements of 8 CCR 3400, as amended by Register 2009, No. 35.

The Superintendent or designee shall ensure the ready availability of medical personnel for advice and consultation on matters of industrial health or injury. Whenever a **district facility or district grounds are workplace is** not in close proximity to an infirmary, clinic, or hospital where all injured employees may be treated, the Superintendent or designee shall ensure that at least one employee is adequately trained to provide first aid. (8 CCR 3400)

Note: Pursuant to 8 CCR 3400, if ambulance service is not available within 30 minutes under normal conditions, the district may be required by the California Department of Industrial Relations' Division of Occupational Safety and Health to provide stretchers, blankets, or other adequate warm covering.

The Superintendent or designee shall make adequate first aid materials readily available for employees at every worksite. Such materials shall be approved by a consulting physician and shall be kept in a sanitary and usable condition. The Superintendent or designee shall frequently inspect all first aid materials and replenish them as necessary. (8 CCR 3400)

The Superintendent or designee shall ensure that suitable facilities for quick drenching or flushing of the eyes and body are provided within the work area for immediate emergency use when the eyes or body or any person may be exposed to injurious corrosive materials. (8 CCR 3400)

Note: 8 CCR 3400, as amended by Register 2009, No. 35, requires **districts all employers** to make provisions in advance, using one or a combination of the provisions specified in items #1-3 below, to ensure that employees receive prompt medical treatment for serious injury or illness. **The Districts** should select the provision(s) that **will be used by the reflect** district **practice**.

EMPLOYEE SAFETY (continued)

To avoid unnecessary delay in medical treatment in the event of an employee's serious injury or illness, the Superintendent or designee shall use one or more of the following: (8 CCR 3400)

1. A communication system for contacting a physician or emergency medical service, such as access to 911 or equivalent telephone system. The communication system or the employees using the system shall have the ability to direct emergency services to the location of the injured or ill employee.
2. Readily accessible and available on-site treatment facilities suitable for treatment of reasonably anticipated injury and illness.

(cf. 5141.6 - School Health Services)

3. Proper equipment for prompt medical transport when transportation of injured or ill employees is necessary and appropriate.

Protection from Communicable Diseases and Infections

Note: The following section contains general information in regard to bloodborne pathogens and infectious diseases as it relates to employee safety. For more information regarding bloodborne pathogens, see BP/AR 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens and BP/AR 4119.43/4219.43/4319.43 - Universal Precautions. For more information regarding infectious diseases, see BP 4119.41/4219.41/4319.41 - Employees with Infectious Disease.

The Superintendent or designee shall develop an exposure control plan for bloodborne pathogens that is consistent with the district's injury and illness prevention program. The plan shall include a determination of which job classifications have occupational exposure to blood or other potentially infectious materials; precautions to be implemented, including universal precautions, engineering and work practice controls, and personal protective equipment; availability of the hepatitis B vaccination; provision of information and training to employees; and follow-up actions to be taken if exposure occurs. The district shall ensure that a copy of the exposure control plan is accessible to employees in accordance with law. (8 CCR 5193; 29 CFR 1910.1030)

(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)
(cf. 4119.43/4219.43/4319.43 - Universal Precautions)

Strategies to prevent and mitigate the outbreak or spread of infectious diseases shall be followed for diseases that are communicated through airborne transmission, skin-to-skin contact, foodborne transmission, or other casual or noncasual means. Such

EMPLOYEE SAFETY (continued)

strategies shall include, but are not limited to, communication and training about the disease(s); campus closures and alternative means of instruction when necessary; preventative measures, such as social distancing, personal protective equipment, temperature checks, and/or any other health screening allowed by law; and cleaning and sanitization of district facilities and equipment.

(cf. 5141.22 - Infectious Diseases)

The Superintendent or designee shall immediately report to the local health officer the presence or suspected presence of any communicable disease. (17 CCR 2508)

COVID-19 Exposure

Note: Pursuant to Labor Code 6409.6, as added by AB 685 (Ch. 84, Statutes of 2020), the district is required to take the following actions whenever it receives notice of potential exposure to COVID-19.

If the district receives notice of potential exposure to COVID-19, the Superintendent or designee shall, within one business day of the notice, take all of the following actions: (Labor Code 6409.6)

1. Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19. The notice shall be provided in a manner normally used to communicate employment-related information, which may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.
2. Provide a written notice to the exclusive representative, if any, of employees who were on the premises within the infectious period
3. Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding:
 - a. COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation
 - b. Available leave options for exposed employees
 - c. Antiretaliation and antidiscrimination protections of the employee

EMPLOYEE SAFETY (continued)

- 4. Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, of the disinfection and safety plan that the district plans to complete in accordance with Centers for Disease Control and Prevention guidelines**

The above notifications shall be maintained for a period of at least three years. (Labor Code 6409.6)

Note: Labor Code 6409.6, as amended by AB 685, requires the district to provide specified information to the local health agency when a COVID-19 outbreak occurs, as provided below. This notice must contain the same information as would be required in an incident report to the California Department of Industrial Relations' Division of Occupational Safety and Health (Cal/OSHA) Form 300 injury and illness log unless inapplicable or unknown.

If the district is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the California Department of Public Health, within 48 hours, the Superintendent or designee shall, within 48 hours of the notice, notify the local public health agency of the names, number, occupation, and worksite of employees who meet the definition of a qualifying individual. The Superintendent or designee shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. (Labor Code 6409.6)

Note: Pursuant to Labor Code 6325, as amended by AB 685, until January 1, 2023, Cal/OSHA may prohibit entry into a place of employment when, in its opinion, the place of employment exposes employees to the risk of COVID-19 infection and constitutes an imminent hazard to employees. In such cases, CalOSHA will provide a notice that must be posted in a conspicuous place at the place of employment.

In the event that Cal/OSHA prohibits entry into any district workplace or performance of a district operation or process based on a determination that the workplace exposes employees to the risk of COVID-19 infection and constitutes an imminent hazard to employees, the district shall post a notice thereof provided by Cal/OSHA in a conspicuous place at the work site. This notice shall not be removed except by an authorized representative of Cal/OSHA and only when the place of employment, operation, or process is made safe and the required safeguards or safety appliances or devices are provided. (Labor Code 6325)

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CSBA Sample Administrative Regulation

All Personnel

AR 4157.1(a)
4257.1
4357.1

WORK-RELATED INJURIES

In order to provide medical benefits, temporary or permanent disability benefits, wage replacement, retraining or skill enhancement, and/or death benefits in the event that an employee becomes injured or ill in the course of employment, the district shall provide all employees with insurance and workers' compensation benefits in accordance with law. The Superintendent or designee shall develop an efficient claims handling process that reduces costs and facilitates employee recovery.

(cf. 3320 - Claims and Actions Against the District)
(cf. 4032 - Reasonable Accommodation)
(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4157/4257/4357 - Employee Safety)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4161.11/4261.11/4361.11 - Industrial Accident/Illness Leave)

The Superintendent or designee shall notify every new employee, at the time of hire or by the end of the first pay period, of **the employee's his/her** right to receive workers' compensation benefits if injured at work. (Labor Code 3551; 8 CCR 15596)

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

In addition, a notice regarding workers' compensation benefits shall be posted in a conspicuous location frequented by employees, where the notice may be easily read during the workday. (Labor Code 3550)

In the event that an employee is injured or becomes ill in the course of employment, **the employee he/she** shall report the work-related injury or illness to the Superintendent or designee as soon as practicable. **The employee and appropriate district staff shall also promptly document the date and time of any incident, a description of the incident, and any persons present.**

Within one working day of receiving notice or knowledge of any injury to an employee in the course of employment, the Superintendent or designee shall provide a claim form and notice of potential eligibility for workers' compensation benefits to the employee or, in the case of the employee's death, to **the employee's his/her** dependents. The claim form and notice shall be provided personally or by first class mail. (Labor Code 5401)

The Superintendent or designee shall additionally ensure that any employee who is a victim of a crime that occurred at the place of employment is given written notice personally or by first class mail within one working day of the crime, or when the district reasonably should

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WORK-RELATED INJURIES (continued)

have known of the crime, that the employee is eligible for workers' compensation benefits for injuries, including psychiatric injuries, that may have resulted from the crime. (Labor Code 3553)

Note: Pursuant to Labor Code 3550, 3551, and 5401, all employee notices described above (i.e., the notice that must be posted in a conspicuous place, the notice provided to all employees at the time of hire, the notice that must be posted in a conspicuous place, and the notice and claim form provided when an employee is injured) must be in a form prescribed by the California Department of Industrial Relations (DIR) Division of Workers' Compensation (DWC). These notices are available on the DWC's web site or through the district's insurer. For districts that employ Spanish-speaking employees, the information must be made available in English and Spanish.

The Superintendent or designee shall ensure that all employee notices described above are in the form prescribed by the Department of Industrial Relations (DIR), Division of Workers Compensation.

Note: Pursuant to Labor Code 6409.1, the district must file a report concerning any injury or illness which has, or is alleged to have, arisen out of and in the course of employment. The report is required to be filed with the DIR or, if the district is insured through a third party insurer, with the insurer. The district should select the option below that corresponds to the manner in which it insures for workers' compensation. The following paragraph may be revised to reflect district practice.

OPTION 1: (Districts insured for workers' compensation through a third party insurer)

Upon learning of a work-related injury or illness, or injury or illness alleged to have arisen out of and in the course of employment, the Superintendent or designee shall report the incident to the district's insurance carrier or DIR, as applicable, within five days after obtaining knowledge of the injury or illness. If a subsequent death arises as a result of the reported injury or illness, an amended report indicating the death must shall be filed with the insurance carrier within five days after being notified of or learning about the death. (Labor Code 6409.1)

OPTION 2: (Districts insured for workers' compensation through self insurance)

Upon learning of a work-related injury or illness, or injury or illness alleged to have arisen out of and in the course of employment, the Superintendent or designee shall report the incident to the DIR within five days after obtaining knowledge of the injury or illness. If a subsequent death arises as a result of the reported injury or illness, an amended report indicating the death must be filed with the DIR within five days after being notified of or learning about the death. (Labor Code 6409.1)

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AR 4157.1(c)
4257.1
4357.1

WORK-RELATED INJURIES (continued)

Note: The following paragraph is for use by districts that selected either Option 1 or 2 above. Pursuant to Labor Code 6409.1, as amended by AB 1804 (Ch. 199, Statutes of 2019), in addition to the report described above, a report of death or serious injury or illness is required to be immediately reported to the Division of Occupational Safety and Health (Cal/OSHA) by telephone or through an online mechanism established by Cal/OSHA. Labor Code 6409.1 permits districts to make the report by telephone or email until Cal/OSHA has an online mechanism available.

Labor Code 6302, as amended by AB 1805 (Ch. 200, Statutes of 2019), redefines "serious injury or illness" as provided below.

In addition, in every case involving death or serious injury or illness, the Superintendent or designee shall immediately make a report to the Division of Occupational Safety and Health (Cal/OSHA) by telephone or through an online mechanism made available by Cal/OSHA email to the Division of Occupational Safety and Health. (Labor Code 6409.1)

For the purpose of this report, *serious injury or illness* means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement. (Labor Code 6302)

Claims Related to COVID-19

Note: Until January 1, 2023, Labor Code 3212.86 and 3212.88, as added by SB 1159 (Ch. 85, Statutes of 2020), define "injury" for purposes of workers' compensation as including COVID-19 related illness or death when a positive COVID-19 diagnosis was made within 14 days after the employee performed labor or services at the district's place of employment. Labor Code 3212.86 applies when the diagnosis was made between March 19, 2020 and July 5, 2020, and confirmed by a COVID-19 test within 30 days of the diagnosis. Labor Code 3212.88 applies when the diagnosis was made after July 6, 2020, and the positive test occurred during a period of an outbreak, as defined, at the employee's specific place of employment. Pursuant to Labor Code 3212.86 and 3212.88, a positive diagnosis as specified above creates a presumption that the injury arose out of and in the course of employment. Unless disputed by the district within 30 or 45 days, as applicable, the Workers' Compensation Appeals Board is bound to find, in accordance with the presumption, that COVID-19 was contracted within the course and scope of employment.

Because of the large number of workers' compensation claims that districts may receive due to COVID-19 infection, districts are encouraged to consult legal counsel as appropriate to determine its impact on the district, including about the use of paid sick leave and eligibility for temporary disability benefits.

Until January 1, 2023, an employee is presumed to be entitled to workers' compensation benefits for illness or death resulting from COVID-19 if the diagnosis was made within

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WORK-RELATED INJURIES (continued)

14 days after the employee performed labor or services at the place of employment and if the employee contracted COVID-19 during an outbreak at the employee's specific place of employment. (Labor Code 3212.86, 3212.88)

For this purpose, an *outbreak* means that, within 14 calendar days, one of the following occurs at a specific place of employment: (Labor Code 3212.88)

- 1. If a specific place of employment has 100 employees or fewer, four employees test positive for COVID-19.**
- 2. If a specific place of employment has more than 100 employees, four percent of the number of employees who reported to the specific place of employment test positive for COVID-19.**
- 3. A specific place of employment is ordered to close by a local public health department, the California Department of Public Health, Cal/OSHA, or the Superintendent due to a risk of infection with COVID-19.**

The Superintendent or designee may rebut a presumption that COVID-19 was contracted during the course and scope of employment by offering evidence to the Workers' Compensation Appeals Board, such as the measures that were in place at the employee's specific place of employment to reduce potential transmission of COVID-19 and evidence of an employee's nonoccupational risk of contracting COVID-19. (Labor Code 3212.86, 3212.88)

Legal Reference: (see next page)

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WORK-RELATED INJURIES (continued)

Legal Reference:

EDUCATION CODE

44984 Industrial accident and illness leaves, certificated employees

45192 Industrial accident and illness leaves, classified employees

LABOR CODE

3200-4856~~5~~ Workers' compensation, especially:

3212.86 COVID-19: critical workers pre-July 5, 2020

3212.88 COVID-19: critical workers post-July 5, 2020

3550-3553 Employee notice

3600-3605 Conditions of liability

3760 Report of injury to insurer

4600 Provision of medical and hospital treatment by employer

4906 Disclosures and statements

5400-5413 Notice of injury or death

6302 Definition of serious injury or illness

6409.1 Reports

CODE OF REGULATIONS, TITLE 8

15596 Notice of employee rights **to workers' compensation benefits**

Management Resources:

DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Workers' Compensation in California: A Guidebook for Injured Workers, 2016

Notice to Employees -- Injuries Caused by Work

Time of Hire Pamphlet

Workers' Compensation Claim Form (DWC 1) & Notice of Potential Eligibility

WEB SITES

California Department of Industrial Relations, Division of Occupational Safety and Health:

<http://www.dir.ca.gov/dosh>

California Department of Industrial Relations, Division of Workers Compensation:

<http://www.dir.ca.gov/dwc>

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

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CSBA Sample Board Policy

Students

BP 5113.1(a)

CHRONIC ABSENCE AND TRUANCY

Note: The following **optional** policy addresses both chronic absence, which refers to students missing an excessive number of school days for any reason, whether excused or unexcused, and truancy, which refers to students missing school and/or being tardy without a valid excuse. Education Code 48260 defines a "valid excuse" for purposes of classifying students as truants; see the accompanying administrative regulation. Also see BP/AR 5113 - Absences and Excuses for information about methods of verification of student absences.

The Governing Board believes that absenteeism, whatever the cause, may be an early warning sign of poor academic achievement and may put students at risk of dropping out of school. The Board desires to ensure that all students attend school in accordance with the state's compulsory education law and take full advantage of educational opportunities provided by the district.

(cf. 5113 - Absences and Excuses)

(cf. 5113.11 - Attendance Supervision)

Note: The following paragraph may be revised to reflect district practice. Districts must **track student attendance for the purpose of reporting chronic absenteeism for the state accountability system (the California School Dashboard) and monitor unexcused absences for the purpose of identifying students who are classified as truants pursuant to Education Code 48260-48273.** In addition, Education Code 52060 requires districts to include the rates of school attendance, chronic absence, dropout, and graduation, as applicable, in their local control and accountability plan (LCAP) (see BP/AR 0460—Local Control and Accountability Plan.), and chronic absence will be one of the state accountability indicators in the California School Dashboard beginning in the fall of 2018 (see BP 0500—Accountability). Pursuant to the LCAP template adopted by the State Board of Education, "chronic absence" is the number of students who are absent on 10 percent or more of the school days in the academic year (July 1 through June 30) divided by the total enrollment during the academic year. Other **tools to calculate chronic absence are available, such as the District Attendance Tracking Tool and School Attendance Tracking Tool, are available from Attendance Works.**

The Superintendent or designee shall establish a system to accurately track student attendance in order to identify individual students who are chronic absentees and truants, as defined in law and administrative regulation, and to identify patterns of absence throughout the district. **He/she shall provide the Board with data on school attendance, chronic absence, and truancy rates districtwide, for each school, and disaggregated for each numerically significant student subgroup as defined in Education Code 52052. Such data shall be used in the development of annual goals and specific actions for student attendance and engagement to be included in the district's local control and accountability plan and other applicable school and district plans.**

CHRONIC ABSENCE AND TRUANCY (continued)

~~(cf. 0400 – Comprehensive Plans)~~

~~(cf. 0420 – School Plans/Site Councils)~~

~~(cf. 0450 – Comprehensive Safety Plan)~~

~~(cf. 0460 – Local Control and Accountability Plan)~~

~~(cf. 0500 – Accountability)~~

Note: In developing strategies for addressing chronic absence and truancy, districts may consider reasons for absences given by individual students as well as survey data using tools such as the California Healthy Kids Survey and/or the California School Climate, Health, and Learning Survey System available from WestEd.

The Superintendent, **attendance supervisor**, or designee shall consult with students, parents/guardians, school staff, and community agencies, as appropriate, to identify factors contributing to chronic absence and truancy.

The Superintendent, **attendance supervisor**, or designee shall develop **strategies that a tiered approach to reducing chronic absence.** ~~focus on prevention of~~ **Such an approach shall include strategies for preventing** attendance problems, which may include, but are not limited to, efforts to provide a safe and positive school environment, relevant and engaging learning experiences, school activities that help develop students' feelings of connectedness with the school, school-based health services, **letters alerting parents/guardians to the value of regular school attendance**, and incentives and rewards to recognize students who achieve excellent attendance or demonstrate significant improvement in attendance.

~~The Superintendent or designee also shall develop strategies that enable~~ **The tiered approach shall also provide for** early outreach to students as soon as they show signs of poor attendance or if they were **chronically absent in the prior school year.** **Early intervention may include personalized outreach, individual attendance plans, and/or mentoring to students with moderate levels of chronic absence, with additional intensive, interagency wrap-around services for students with the highest level of absence.**

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

~~(cf. 5126 - Awards for Achievement)~~

~~(cf. 5131 - Conduct)~~

~~(cf. 5131.2 - Bullying)~~

~~(cf. 5137 - Positive School Climate)~~

~~(cf. 5141.6 - School Health Services)~~

~~(cf. 5145.3 - Nondiscrimination/Harassment)~~

Note: In developing strategies for addressing chronic absence and truancy, districts may consider reasons for absences given by individual students as well as survey data using tools such as the California Healthy Kids Survey and/or the California School Climate, Health, and Learning Survey System available from WestEd.

CHRONIC ABSENCE AND TRUANCY (continued)

The Superintendent or designee shall consult with students, parents/guardians, school staff, and community agencies, as appropriate, to identify factors contributing to chronic absence and truancy.

Interventions for sStudents with serious attendance problems shall be provided with interventions specific to their needs, which designed to meet the specific needs of the student and may include, but are not limited to, health care referrals, transportation assistance, counseling for mental or emotional difficulties, academic supports, efforts to address school or community safety concerns, discussions with the student and parent/guardian about their attitudes regarding schooling, or other strategies to remove identified barriers to school attendance. The Superintendent, attendance supervisor, or designee may collaborate with child welfare services, law enforcement, courts, public health care agencies, other government agencies, and/or medical, mental health, and oral health care providers to make alternative educational programs and support services available for students and families.

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

(cf. 5030 - Student Wellness)

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

(cf. 5147 - Dropout Prevention)

(cf. 6158 - Independent Study)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6164.5 - Student Success Teams)

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

(cf. 6175 - Migrant Education Program)

(cf. 6179 - Supplemental Instruction)

(cf. 6181 - Alternative Schools/Programs of Choice)

(cf. 6183 - Home and Hospital Instruction)

(cf. 6184 - Continuation Education)

(cf. 6185 - Community Day School)

The Superintendent or designee shall ensure that staff assigned to fulfill attendance-related duties are trained in implementing a trauma-informed approach to chronic absence and receive information about the high correlation between chronic absence and exposure to adverse childhood experiences.

(cf. 4131 - Staff Development)

Note: State law establishes a series of interventions that the district is required or authorized to impose depending on the number of truanancies committed by a student; see the accompanying administrative regulation. Habitually truant students, as defined in Education Code 48262, may be referred to a school attendance review board (SARB) if established by the county office of education or to a SARB established by the district Governing Board pursuant to Education Code 48321; see BP/AR 5113.12 - District School

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CHRONIC ABSENCE AND TRUANCY (continued)

Attendance Review Board. Instead of the SARB process, students may be referred to a truancy mediation program operated by the county's district attorney or probation officer pursuant to Education Code 48260.6. Education Code 48264.5 authorizes, but does not require, students who continue to be truant after receiving these interventions to be referred to a juvenile court. Parents/guardians of students who are identified as truant may be subject to penalties pursuant to Education Code 48293, Penal Code 270.1, and/or Penal Code 272.

Students who are identified as **chronically absent or** truant shall be subject to the interventions specified in law and administrative regulation.

(cf. 5113.12 - District School Attendance Review Board)

Note: Education Code 48900 expresses legislative intent that alternatives to suspension or expulsion be used with students who are truant, tardy, or otherwise absent from assigned school activities; see BP 5144 - Discipline and BP 5144.1 - Suspension and Expulsion/Due Process.

A student's truancy, tardiness, or other absence from school shall not be the basis for **his/her** suspension or expulsion. Alternative strategies and positive reinforcement for attendance shall be used whenever possible.

(cf. 5144 - Discipline)

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

Note: Education Code 52060 requires districts to include the rates of school attendance, chronic absence, dropout, and graduation, as applicable, in their local control and accountability plan (LCAP); see BP/AR 0460 - Local Control and Accountability Plan.

The California School Dashboard includes measures of district and school performance in each priority area addressed in the LCAP, including chronic absence for grades K-8. The Dashboard reports the degree to which districts and schools meet performance criteria as well as changes in performance from year to year. See BP 0500 - Accountability. For grades 9-12, chronic absence rates are available through the California Department of Education's DataQuest.

The Superintendent, **attendance supervisor**, or designee shall periodically report to the Board regarding **student attendance patterns in the district, including rates of chronic absence and truancy districtwide and for each school, grade level, and numerically significant student subgroup as defined in Education Code 52052.** ~~the district's progress in improving student attendance rates for all students and for each numerically significant student population.~~ Such information shall be used to evaluate the effectiveness of strategies implemented to reduce chronic absence and truancy and to ~~make changes as needed~~ **develop annual goals and specific actions for student attendance and engagement to be included in the district's local control and accountability plan and other applicable school and district plans.** As appropriate, the Superintendent or designee shall engage school staff in program evaluation and improvement and in the determination of how to best allocate available community resources.

CHRONIC ABSENCE AND TRUANCY (continued)

(cf. 0500 - Accountability)
(cf. 0400 - Comprehensive Plans)
(cf. 0420 - School Plans/Site Councils)
(cf. 0450 - Comprehensive Safety Plan)
(cf. 0460 - Local Control and Accountability Plan)

Legal Reference:

EDUCATION CODE

1740-1742 *Employment of personnel to supervise attendance (county superintendent)*

37223 *Weekend classes*

46000 *Records (attendance)*

46010-46014 *Absences*

46110-46119 *Attendance in kindergarten and elementary schools*

46140-46147 *Attendance in junior high and high schools*

48200-48208 *Children ages 6-18 (compulsory full-time attendance)*

48225.5 *Work permits, entertainment and allied industries*

48240-48246 *Supervisors of attendance*

48260-48273 *Truants*

48290-48297 *Failure to comply; complaints against parents*

48320-48325 *School attendance review boards*

48340-48341 *Improvement of student attendance*

48400-48403 *Compulsory continuation education*

48900 *Suspension and expulsion*

49067 *Unexcused absences as cause of failing grade*

52052 *Accountability; numerically significant student subgroups*

60901 *Chronic absence*

GOVERNMENT CODE

54950-54963 *The Ralph M. Brown Act*

PENAL CODE

270.1 *Chronic truancy; parent/guardian misdemeanor*

272 *Parent/guardian duty to supervise and control minor child; criminal liability for truancy*

830.1 *Peace officers*

VEHICLE CODE

13202.7 *Driving privileges; minors; suspension or delay for habitual truancy*

WELFARE AND INSTITUTIONS CODE

256-258 *Juvenile hearing officer*

601-601.4 *Habitually truant minors*

11253.5 *Compulsory school attendance*

CODE OF REGULATIONS, TITLE 5

306 *Explanation of absence*

420-421 *Record of verification of absence due to illness and other causes*

COURT DECISIONS

L.A. v. Superior Court of San Diego County, (2012) 209 Cal.App.4th 976

Management Resources: (see next page)

CHRONIC ABSENCE AND TRUANCY (continued)

Management Resources:

ATTENDANCE WORKS PUBLICATIONS

District Attendance Tracking Tool

For School Board Members: Frequently Asked Questions About Chronic Absence

School Attendance Tracking Tool

Bringing Attendance Home: Engaging Parents in Preventing Chronic Absence, 2015

Count Us In! Working Together to Show that Every School Day Matters, 2014

The Power of Positive Connections: Reducing Chronic Absence Through PEOPLE: Priority Early Outreach for Positive Linkages and Engagement, 2014

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

School Attendance Review Board Handbook: A Road Map for Improved School Attendance and Behavior, 2015 rev. 2018

School Attendance Improvement Handbook, 2000

WEB SITES

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

Attendance Works: <http://www.attendanceworks.org>

California Association of Supervisors of Child Welfare and Attendance: <http://www.cascwa.org>

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

California Healthy Kids Survey: <http://chks.wested.org>

California School Climate, Health, and Learning Survey System: <http://www.cal-schls.wested.org>

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CSBA Sample Administrative Regulation

Students

AR 5113.1(a)

CHRONIC ABSENCE AND TRUANCY

Note: The following administrative regulation may be revised to reflect the district personnel responsible for duties related to attendance supervision and matters related to chronic absence and truancy. Pursuant to Education Code 48240-48246, the district may appoint an attendance supervisor, join a consortium of districts to employ an attendance supervisor, or contract with the County Superintendent of Schools to supervise the attendance of district students. See AR 5113.11 - Attendance Supervision.

Education Code 48273 **mandates** that the district adopt rules and regulations related to reports of district referrals to a school attendance review board (SARB). See the section on "Reports" below for language fulfilling this mandate.

Definitions

Note: The following definition of "chronic absentee" is provided in Education Code 60901 for purposes of reporting student attendance within the California Longitudinal Pupil Achievement Data System. This definition is also used in the template adopted by the State Board of Education to assist districts in completing the local control and accountability plan. Chronic absence includes absence for any reason (i.e., excused and/or unexcused absences).

Chronic absentee means a student who is absent for any reason on 10 percent or more of the school days in the school year, when the total number of days the student is absent is divided by the total number of days the student is enrolled and school was actually taught in the regular schools of the district, exclusive of Saturdays and Sundays. (Education Code 60901)

Truant means a student who is absent from school without a valid excuse three full days in one school year, or tardy or absent for more than any 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof. (Education Code 48260)

Habitual truant means a student who has been reported as a truant three or more times within the same school year, provided the district has made a conscientious effort to hold at least one conference with the student and **his/her the student's** parent/guardian after either of the two previous reports. (Education Code 48262, 48264.5)

Chronic truant means a student who has been absent from school without a valid excuse for 10 percent or more of the school days in one school year, from the date of enrollment to the current date, provided the district has met the requirements of Education Code 48260, 48260.5, 48261, 48262, 48263, and 48291. (Education Code 48263.6)

Note: As provided above, definitions of the various categories of truancy are based on the number of absences from school without a valid excuse. Education Code 48260 defines a "valid excuse," for purposes of

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CHRONIC ABSENCE AND TRUANCY (continued)

classifying a student as a truant, as any of the reasons specified in Education Code 48205 (i.e., illness, quarantine, health services appointments, funeral service attendance, jury duty, illness or medical appointment of student's child, justifiable personal reasons, service on precinct board, time with family member called to active duty or on leave from active duty, and religious exercises), Education Code 48225.5 (i.e., entertainment or allied industries work permits and nonprofit organization performances), or other reasons at the discretion of school administrators. AR 5113 - Absences and Excuses reflects the reasons that students may be excused from school pursuant to Education Code 48205 and provides information about methods of verification of student absences.

For purposes of classifying a student as a truant, *valid excuse* includes, but is not limited to, the reasons for which a student shall be excused from school pursuant to Education Code 48205 and 48225.5 **and AR 5113 - Absences and Excuses**. A valid excuse may include other reasons that are within the discretion of school administrators and, based on the facts of the student's circumstances, are deemed to constitute a valid excuse. (Education Code 48260)

(cf. 5113 - Absences and Excuses)

(cf. 5113.2 - Work Permits)

Addressing Chronic Absence

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

For further information about strategies to address chronic absence, see CSBA's policy brief *Improving Student Achievement by Addressing Chronic Absence* and the California Department of Education's (CDE) *School Attendance Improvement Handbook*. Also see AR 5113 - Absences and Excuses for language requiring students with frequent absences due to illness to provide written verification from a health care practitioner.

When a student is identified as a chronic absentee, the Superintendent, **attendance supervisor**, or designee shall communicate with the student and **his/her the student's** parents/guardians to determine the reason(s) for the excessive absences, ensure the student and parents/guardians are aware of the adverse consequences of poor attendance, and jointly develop a plan for improving the student's school attendance.

(cf. 5113.11 - Attendance Supervision)

(cf. 6020 - Parent Involvement)

The student may be referred to a student success team or school-site attendance review team to assist in evaluating **his/her the student's** needs and identifying strategies and programs to assist **him/her the student**. When necessary, the student may be referred to a school attendance review board (SARB) program, a truancy mediation program established by the district attorney or the probation officer, or a comparable program deemed acceptable by the Superintendent or designee, in accordance with Education Code 48263 and item #3 in the section "Addressing Truancy" below.

CHRONIC ABSENCE AND TRUANCY (continued)

- (cf. 5146 - Married/Pregnant/Parenting Students)*
- (cf. 5147 - Dropout Prevention)*
- (cf. 6164.2 - Guidance/Counseling Services)*
- (cf. 6164.5 - Student Success Teams)*
- (cf. 6173 - Education for Homeless Children)*
- (cf. 6173.1 - Education for Foster Youth)*
- (cf. 6173.2 - Education of Children of Military Families)*
- (cf. 6175 - Migrant Education Program)*

A student who is struggling academically may be offered tutoring or other supplemental instruction, extended learning opportunities, and/or alternative educational options as appropriate.

Note: Pursuant to Education Code 49067, the Governing Board may authorize teachers to assign failing grades to students with excessive unexcused absences, with the threshold number of absences established by the Board. See BP 5121 - Grades/Evaluation of Student Achievement. However, CSBA's governance brief Research-Supported Strategies to Improve the Accuracy and Fairness of Grades recommends that student absences be dealt with separately from grading and that absences should not be considered in determining a student's level of understanding of course content. The following paragraph is consistent with that recommendation and may be revised to reflect district practice.

Students who are absent shall be given an opportunity to make up missed assignments or assessments and shall receive full credit for satisfactory completion of the work. Students with excessive absences shall be supported to the extent possible to limit the impact of absences on the student's grades.

- (cf. 5121 - Grades/Evaluation of Student Achievement)*
- (cf. 6158 - Independent Study)*
- (cf. 6176 - Weekend/Saturday Classes)*
- (cf. 6178.1 - Work-Based Learning)*
- (cf. 6179 - Supplemental Instruction)*
- (cf. 6181 - Alternative Schools/Programs of Choice)*
- (cf. 6183 - Home and Hospital Instruction)*
- (cf. 6184 - Continuation Education)*

Whenever chronic absenteeism is linked to a health ~~issue or~~, **social-emotional, family, or other** nonschool ~~condition~~ **issue**, the Superintendent or designee may recommend school or community resources and/or collaborate with community agencies and organizations to address the needs of the student and **the student's** ~~his/her~~ family.

- (cf. 1400 - Relations Between Other Governmental Agencies and the Schools)*
- (cf. 5141.6 - School Health Services)*

CHRONIC ABSENCE AND TRUANCY (continued)**Addressing Truancy**

An attendance supervisor or designee, peace officer, probation officer, or school administrator or designee may, as applicable, arrest or assume temporary custody during school hours of any minor student found away from **his/her** home who is absent from school without a valid excuse. Any person arresting or assuming temporary custody of a minor student shall deliver the student and make reports in accordance with Education Code 48265 and 48266. (Education Code 48264, 48265, 48266)

(cf. 3515.3 - District Police/Security Department)

The Superintendent, **attendance supervisor**, or designee shall investigate a complaint from any person that a parent/guardian has violated the state compulsory education laws contained in Education Code 48200-48341. (Education Code 48290)

When a student has been identified as a truant as defined above, the following steps shall be implemented based on the number of truancies **he/she the student** has committed:

1. Initial truancy
 - a. The student shall be reported to the Superintendent, **attendance supervisor**, or designee. (Education Code 48260)

Note: When a student is classified as truant, Education Code 48260.5 requires notification of **his/her the student's** parents/guardians by the most cost-effective method possible, which may include email or a telephone call. ~~The CDE's web site and School Attendance Improvement Handbook~~ **The California Department of Education's (CDE) School Attendance Review Board: A Road Map for Improved School Attendance and Behavior** provides sample letters.

- b. The student's parent/guardian shall be notified by the most cost-effective method possible, which may include email or a telephone call, that: (Education Code 48260.5)
 - (1) The student is truant.
 - (2) The parent/guardian is obligated to compel the student to attend school **and, if** the parent/guardian fails to meet this obligation, **he/she the parent/guardian** may be guilty of an infraction of the law and subject to prosecution pursuant to Education Code 48290-48296.
 - (3) Alternative educational programs are available in the district.

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CHRONIC ABSENCE AND TRUANCY (continued)

- (4) The parent/guardian has the right to meet with appropriate school personnel to discuss solutions to the student's truancy.
- (5) The student may be subject to arrest or held in temporary custody by a probation officer, a peace officer, a school administrator or designee, or attendance supervisor or designee pursuant to Education Code 48264 if found away from home and absent from school without a valid excuse.
- (6) **If the student is at least 13 years of age but under age 18,** the student may be subject to **the** suspension, restriction, or delay of **his/her** driving privilege pursuant to Vehicle Code 13202.7.
- (7) It is recommended that the parent/guardian accompany the student to school and attend classes with the student for one day.

(cf. 5145.6 - Parental Notifications)

- c. The student may be required to attend makeup classes on one day of a weekend pursuant to Education Code 37223. (Education Code 48264.5)
- d. The student and, as appropriate, **his/her the student's** parent/guardian may be requested to attend a meeting with a school counselor or other school designee to discuss the root causes of the attendance issue and develop a joint plan to improve the student's attendance. (Education Code 48264.5)

Note: The following **optional** item is for use by districts in which there is no county SARB and the county's district attorney or probation officer has elected to participate in a truancy mediation program pursuant to Education Code 48260.6.

- e. The Superintendent, **attendance supervisor,** or designee may notify the district attorney and/or probation officer of the student's name and the name and address of **his/her the student's** parents/guardians. (Education Code 48260.6)
2. Second truancy
- a. Any student who has once been reported as a truant shall again be reported to the Superintendent, **attendance supervisor,** or designee as a truant if **he/she the student** is absent from school without a valid excuse one or more days or is tardy on one or more days during the school year. (Education Code 48261)

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CHRONIC ABSENCE AND TRUANCY (continued)

- b. The student may be required to attend makeup classes on one day of a weekend pursuant to Education Code 37223. (Education Code 48264.5)
- c. The student may be assigned to an after-school or weekend study program within the county. If the student fails to successfully complete this study program, **he/she the student** shall be subject to item #3 below. (Education Code 48264.5)

Note: Education Code 48262 provides that a student cannot be classified as a habitual truant (item #3 below) until the district has made a conscientious effort to hold at least one conference with the student and **his/her** parent/guardian after the attendance supervisor has been notified of either the first or second truancy. Education Code 48262 defines "conscientious effort," for purposes of this section, as attempting to communicate with the parent/guardian at least once using the most cost-effective method possible, which may include email or a telephone call. Thus, the following paragraph requires such communication in the event of the second truancy.

- d. An appropriate district staff member shall make a conscientious effort to hold at least one conference with the student and **his/her the student's** parent/guardian by communicating with the parent/guardian at least once using the most cost-effective method possible, which may include email or a telephone call. (Education Code 48262)
- e. The student may be given a written warning by a peace officer. A record of that warning may be kept at the school for not less than two years or until the student graduates or transfers from the school. If the student transfers, the record may be forwarded to the new school. (Education Code 48264.5)

Note: The following **optional** item is for use by districts in which there is no county SARB and the county's district attorney or probation officer has elected to participate in a truancy mediation program. Pursuant to Education Code 48260.6, if the district notifies the district attorney and/or probation officer that a student continues to be classified as a truant after proper notification to the parents/guardians as described in item #1b above, the district attorney or probation officer may request a meeting with the student and **his/her the student's** parents/guardians to discuss the possible legal consequences of the student's truancy.

- f. The Superintendent or designee may notify the district attorney and/or probation officer when the student continues to be classified as a truant after the parents/guardians have been notified in accordance with item #1b above. (Education Code 48260.6)

3. Third truancy (habitual truancy)

Note: Education Code 48263 and 48264.5 authorize the district to refer habitual truants, **chronic absentees, and students who are habitually insubordinate or disorderly** to a SARB, a county truancy mediation program, or a comparable program for services. The district should revise the following items to reflect the option(s) available in the district.

CHRONIC ABSENCE AND TRUANCY (continued)

According to the CDE's School Attendance Improvement Handbook **Review Board: A Road Map for Improved School Attendance and Behavior**, prior to referring a ~~truant~~ student to a SARB or county truancy mediation program, some districts initiate an intermediate step, such as a school-site attendance review team or student success team. Districts that have established such an intermediate step may revise the following item accordingly.

- a. A student who is habitually truant, ~~irregular in school attendance~~ **a chronic absentee**, or habitually insubordinate or disorderly during attendance at school may be referred to, and required to attend, a ~~school attendance review board~~ **(SARB)** program, a truancy mediation program established by the district attorney or the probation officer, or a comparable program deemed acceptable by the Superintendent or designee. (Education Code 48263, 48264.5)

(cf. 5113.12 - District School Attendance Review Board)

- b. Upon making a referral to the SARB or the probation department, the Superintendent, ~~or designee~~ **attendance supervisor, or other person designated to make the referral** shall provide the student, ~~the student's and~~ **parent/guardian, and SARB or probation department with documentation of the interventions undertaken at the school. The attendance supervisor or designee shall also provide the student and the student's parent/guardian,** in writing, the name and address of the SARB or probation department and the reason for the referral. This notice shall indicate that the student and **the student's** parent/guardian shall be required, along with the district staff person making the referral, to meet with the SARB or a probation officer to consider a proper disposition of the referral. (Education Code 48263)
- c. If the student does not successfully complete the truancy mediation program or other similar program, ~~he/she~~ **the student** shall be subject to item #4 below. (Education Code 48264.5)

Note: Pursuant to Education Code 48263, the SARB or probation officer may direct a student and/or the student's parents/guardians to make use of available community services and may require satisfactory evidence of participation. If the SARB or probation officer determines that available community resources cannot resolve the problem, or if the student and/or **the student's** parents/guardians have failed to respond to the directives of the SARB or probation officer, the SARB may so notify the district attorney and/or probation officer, or the probation officer may notify the district attorney provided the district attorney or probation officer participates in a truancy mediation program. If the county has not established a SARB, the district may make this finding and notification.

The following paragraph is for use by districts in which the county has not established a SARB and the county's district attorney or probation officer has elected to participate in a truancy mediation program.

CHRONIC ABSENCE AND TRUANCY (continued)

- d. If the Superintendent or designee determines that available community services cannot resolve the problem of the truant or insubordinate student or if the student and/or **his/her the student's** parents/guardians have failed to respond to the directives of the district or to services provided, the Superintendent or designee may so notify the district attorney and/or the probation officer. (Education Code 48263)

4. Fourth truancy

- a. Upon **his/her the** fourth truancy within the same school year, the student may be referred to the jurisdiction of the juvenile court. (Education Code 48264.5; Welfare and Institutions Code 601)

Note: Pursuant to Education Code 48264.5 and Welfare and Institutions Code 601, a student coming within the jurisdiction of the juvenile court may be adjudged a ward of the court and required to perform community service, pay a fine, attend a court-approved truancy prevention program, and/or lose driving privileges.

In L.A. v. Superior Court of San Diego County, a court of appeal held that juvenile court judges have the authority to imprison a truant as a last resort if the student commits an egregious violation of a court order, less restrictive alternatives have proved ineffective, and the student is confined separately from youths held for criminal violations.

- b. If a student has been adjudged by the county juvenile court to be a habitual truant, the Superintendent or designee shall notify the juvenile court and the student's probation or parole officer whenever the student is truant or tardy on one or more days without a valid excuse in the same or succeeding school year, or is habitually insubordinate or disorderly at school. The juvenile court and probation or parole officer shall be notified within 10 days of the violation. (Education Code 48267)

Note: Item #5 below is for use by districts that offer any of grades K-8. Penal Code 270.1 states that a parent/guardian of a "chronic truant" who is at least six years old and is in any of grades K-8 is guilty of a misdemeanor punishable by a fine and/or imprisonment if **he/she the parent/guardian** has failed to reasonably supervise and encourage the student's school attendance and has been offered language-accessible support services to address the student's truancy. Pursuant to Penal Code 270.1, a parent/guardian found guilty of a misdemeanor may participate in a program established by a superior court, if available, which includes periodic meetings with district representatives and service referrals.

5. Chronic truancy (unexcused absence for 10 percent of school days)

- a. The Superintendent or designee shall ensure that the student's parents/guardians are offered language-accessible support services to address the student's truancy.

CHRONIC ABSENCE AND TRUANCY (continued)

- b. If a chronically truant student is at least age six years and is in any of grades K-8, the Superintendent or designee shall notify the student's parents/guardians that failure to reasonably supervise and encourage the student's school attendance may result in the parent/guardian being found guilty of a misdemeanor pursuant to Penal Code 270.1.

Records

Note: The following **optional** paragraph may be revised to reflect district practice. **The CDE's School Attendance Review Board Handbook: A Road Map for Improved School Attendance and Behavior** cautions that it is important to keep accurate and complete records of any violations of compulsory school attendance laws because such records may ultimately be introduced as evidence in a trial for truancy.

The Superintendent, **attendance supervisor**, or designee shall maintain accurate attendance records for students identified as habitual or chronic truants. ~~The Superintendent or designee also~~ **In addition, the attendance supervisor, designee, and/or the staff persons who have direct contact with the student or parent/guardian** shall document all **their** contacts ~~with a student and his/her parent/guardian~~ regarding the student's attendance, including a summary of all conversations and a record of all intervention efforts.

(cf. 5125 - Student Records)

Note: Education Code 48273 **mandates** that the district adopt rules and regulations for the purpose of gathering data and making a report to the County Superintendent of Schools regarding SARB referrals. **The** CDE's web site provides a model annual summary report form.

The Superintendent, **attendance supervisor**, or designee shall gather and transmit to the County Superintendent of Schools the number and types of referrals made to the SARB and of requests for petitions made to the juvenile court. (Education Code 48273)

(11/12 10/17) 10/20

CSBA Sample Board Policy

Students

AR 5113.11(a)

ATTENDANCE SUPERVISION

Note: The following **optional** administrative regulation is for use by districts that appoint their own attendance supervisor and may be revised to reflect district practice. Pursuant to Education Code 48242 and 48243, the district may appoint an attendance supervisor or may jointly employ an attendance supervisor with one or more other districts. Alternatively, pursuant to Education Code 48244, the district may contract with the County Superintendent of Schools for the supervision of attendance of district students. **AB 2815 (Ch. 829, Statutes of 2016) amended Education Code 48244 to delete the requirement that the County Board of Education approve the district's contract with the County Superintendent.**

The Superintendent or designee shall appoint an attendance supervisor and any assistant attendance supervisor(s) as may be necessary to supervise the attendance of district students. (Education Code 48240, **48242**)

Note: Pursuant to Education Code **48241 and 48245**, the following paragraph is applicable to any district with an average daily attendance of 1,000 or more, according to the annual school report of the last preceding school year: **require an attendance supervisor to be certificated for the work by the County Board of Education. However, it is not clear that all county boards currently provide this function. The following paragraph may be revised to reflect local practice.**

Remove
~~The Superintendent or designee shall ensure that a~~ Any person appointed as an attendance supervisor ~~has been~~ **shall be appropriately** certificated ~~for to perform~~ the work by the County Board of Education. (Education Code 48241, 48245)

Such Attendance supervisors shall perform duties related to compulsory full-time education, truancy, compulsory continuation education, work permits, and any additional duties prescribed by the Superintendent or designee. (Education Code 48240)

(cf. 5112.1 - Exemptions from Attendance)
(cf. 5113 - Absences and Excuses)
(cf. 5113.1 - Chronic Absence and Truancy)
(cf. 5113.2 - Work Permits)
(cf. 6184 - Continuation Education)

Note: Items #1-5 below may be revised to reflect district practice. Education Code 48240, **as amended by AB 2815 (Ch. 829, Statutes of 2016)**, states the Legislature's intent that attendance supervisors fulfill the following duties.

The attendance supervisor shall promote a culture of attendance and establish a system to accurately track student attendance in order to achieve all of the following: **(Education Code 48240)**

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ATTENDANCE SUPERVISION (continued)

1. Raise the awareness of school personnel, parents/guardians, caregivers, community partners, and local businesses of the effects of chronic absenteeism and truancy and other challenges associated with poor attendance
2. Identify and respond to grade level or student subgroup patterns of chronic absenteeism or truancy

(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education of Children of Military Families)
(cf. 6175 - Migrant Education Program)

3. Identify and address factors contributing to chronic absenteeism and habitual truancy, including suspension and expulsion

(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

4. Ensure that students with attendance problems are identified as early as possible to provide applicable support services and interventions
5. Evaluate the effectiveness of strategies implemented to reduce chronic absenteeism rates and truancy rates

(cf. 0500 - Accountability)

The attendance supervisor may provide support services and interventions, including, but not limited to, the following: (Education Code 48240)

1. A conference between school personnel, the student's parent/guardian, and the student
2. Promotion of cocurricular and extracurricular activities that increase student connectedness to school, such as tutoring, mentoring, the arts, service learning, or athletics

(cf. 6142.4 - Service Learning/Community Service Classes)
(cf. 6142.6 - Visual and Performing Arts)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)

3. Recognition of students who achieve excellent attendance or demonstrate significant improvement in attendance

(cf. 5126 - Awards for Achievement)

MS

ATTENDANCE SUPERVISION (continued)

4. Referral of the student to a school nurse, school counselor, school psychologist, school social worker, and other student support personnel for case management and counseling

(cf. 5141.6 - School Health Services)
(cf. 6164.2 - Guidance/Counseling Services)

5. Collaboration with child welfare services, law enforcement, courts, public health care agencies, government agencies, or medical, mental health, and oral health care providers to receive necessary services

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

6. Collaboration with school study teams, guidance teams, school attendance review teams, or other intervention-related teams to assess the attendance or behavior problem in partnership with the student and **his/her the student's** parents/guardians or caregivers

(cf. 6164.5 - Student Success Teams)

7. In schools with significantly higher rates of chronic absenteeism, identification of barriers to attendance that may require schoolwide strategies rather than case management
8. Referral of the student for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program for a student with disabilities or creating a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973

(cf. 6159 - Individualized Education Program)
(cf. 6164.6 - Identification and Education Under Section 504)

9. Referral of the student to a school attendance review board **(SARB)** established pursuant to Education Code 48321 or to the probation department pursuant to Education Code 48263

(cf. 5113.12 - District School Attendance Review Board)

10. Referral of the student to a truancy mediation program operated by the county's district attorney or probation officer pursuant to Education Code 48260.6

Note: Pursuant to Education Code 48290, the Governing Board is required to investigate any complaint that a parent/guardian has violated compulsory education laws. The following paragraph delegates this responsibility to the attendance supervisor and may be revised to reflect district

ATTENDANCE SUPERVISION (continued)

practice. Pursuant to Education Code 48292, it is the responsibility of the attendance supervisor to file a criminal complaint against a parent/guardian who continually and willfully fails to respond to school attendance review board directives or services.

Upon receiving any complaint that a parent/guardian or other person having control or charge of a student has violated Education Code 48200-48341, the state compulsory education laws, the attendance supervisor shall investigate the matter and, if a violation is found, shall recommend referral to a SARB. If the district is subsequently notified by the SARB that the parent/guardian continually and willfully has failed to respond to directives of the SARB or the services provided, the attendance supervisor shall refer the matter for possible prosecution in court in accordance with Education Code 48291-48292 as applicable. (Education Code 48290-48292)

Note: Pursuant to Education Code 48273, the Board is required to assign appropriate officers and employees to provide the County Superintendent with a report of SARB referrals and requests for petitions to the juvenile court; see AR 5113.1 - Chronic Absence and Truancy. The following paragraph is for use by districts that have delegated this responsibility to the attendance supervisor.

The attendance supervisor shall gather and transmit to the County Superintendent of Schools the number and types of referrals made to the SARB and of requests for petitions made to the juvenile court. (Education Code 48273)

Note: The following optional paragraph may be revised to reflect district practice. Among the primary roles of the attendance supervisor are the accurate tracking of student attendance and monitoring of chronic absence in order to identify students at risk. Pursuant to Education Code 52060, districts are required to include rates of school attendance, chronic absence, dropout, and graduation, as applicable, in their local control and accountability plan (see BP/AR 0460 - Local Control and Accountability Plan), and chronic absence is one of the state accountability indicators in the California School Dashboard (see BP 0500 - Accountability).

The attendance supervisor shall annually report student attendance data to the Superintendent or designee and the Governing Board. Such data shall include, by school, grade level, and each numerically significant student subgroup as defined in Education Code 52052, rates of school attendance, chronic absence in which students are absent on 10 percent or more of the school days in the school year, and dropout.

(cf. 5147 - Dropout Prevention)

Legal References: (see next page)

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ATTENDANCE SUPERVISION (continued)

Legal Reference:

EDUCATION CODE

1740 *Employment of personnel to supervise attendance (county superintendent)*

37223 *Weekend classes*

46000 *Records (attendance)*

46010-46014 *Absences*

46110-46119 *Attendance in kindergarten and elementary schools*

46140-46147 *Attendance in junior high and high schools*

48200-48208 *Children ages 6-18 (compulsory full-time attendance)*

48240-48246 *Supervisors of attendance*

48260-48273 *Truants*

48290-48297 *Failure to comply; complaints against parents*

48320-48325 *School attendance review boards*

48340-48341 *Improvement of student attendance*

48400-48403 *Compulsory continuation education*

52052 *Accountability; numerically significant student subgroups*

52060-52077 *Local control and accountability plan*

60901 *Chronic absence*

PENAL CODE

270.1 *Chronic truancy; parent/guardian misdemeanor*

WELFARE AND INSTITUTIONS CODE

601-601.4 *Habitually truant minors*

11253.5 *Compulsory school attendance*

CODE OF REGULATIONS, TITLE 5

306 *Explanation of absence*

420-421 *Record of verification of absence due to illness and other causes*

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

School Attendance Review Board Handbook, 2015

School Attendance Improvement Handbook, 2000

WEB SITES

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

Attendance Works: <http://www.attendanceworks.org>

California Association of Supervisors of Child Welfare and Attendance: <http://www.cascwa.org>

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

CSBA Sample Board Policy

Students

BP 5145.7(a)

SEXUAL HARASSMENT

Note: Education Code 231.5 and 34 CFR 106.8 **mandate** the district to have written policies on sexual harassment. The following policy addresses harassment by and of students in the school setting. As part of this mandate, the district should also adopt a sexual harassment policy related to employees; see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment **and AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.**

Both federal law (Title IX of the Education Amendments of 1972) (20 USC 1681-1688; 34 CFR 106.1-106.82) and state law (Education Code 220, 231.5) prohibit sexual harassment and require districts to establish procedures for the prompt and equitable resolution of sexual harassment complaints. Whether a complaint is addressed through the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, or the state uniform complaint procedures adopted pursuant to 5 CCR 4600-4670 is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. **In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently.** See the accompanying administrative regulation, BP/AR 1312.3 - Uniform Complaint Procedures, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

A district can be held liable for civil damages for the sexual harassment of students pursuant to Title IX if the district is found to have been "deliberately indifferent" in its response to known sexual harassment. Pursuant to 34 CFR 106.30, a district is deliberately indifferent if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

In addition to filing a private civil lawsuit, an alleged victim of sexual harassment may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education.

The Governing Board is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by anyone. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.

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

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.3 - Nondiscrimination/Harassment)

Note: 34 CFR 106.44, as added by 85 Fed. Reg. 30026, requires the district, when there is actual knowledge of sexual harassment in an education program or activity, to respond promptly in a manner that is not unreasonable in light of the known circumstances. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school.

SEXUAL HARASSMENT (continued)

It is important to note that a referral to law enforcement does not relieve a school district of its responsibility to investigate the complaint as a matter of sex discrimination.

The district strongly encourages students who feel that they are being or have been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who have experienced off-campus sexual harassment that has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint **or allegation** is addressed through **Title IX complaint procedures or uniform complaint procedures AR 5145.71 - Title IX Sexual Harassment Complaint Procedures or BP/AR 1312.3 - Uniform Complaint Procedures**, as applicable, **and shall offer supportive measures to the complainant. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 5145.71 concurrently meets the requirements of BP/AR 1312.3.**

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

The Title IX Coordinator and shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.

Note: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post the district's written policy on sexual harassment in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students.

Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it prominently and conspicuously in each bathroom and locker room on campus.

Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

Pursuant to 34 CFR 106.8, the district is required to notify students, parents/guardians, employees, and bargaining units of its policy to not discriminate on the basis of sex as well as its complaint procedures and processes, and to post this information in a prominent location on the district's web site and in student and staff handbooks.

Requirements related to the dissemination of the district's sexual harassment policy and procedures and best practices for reinforcing the policy are addressed in the accompanying administrative regulation.

SEXUAL HARASSMENT (continued)

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.

Instruction/Information

The Superintendent or designee shall ensure that all district students receive age-appropriate information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance
3. Encouragement to report observed incidents of sexual harassment even when the alleged victim of the harassment has not complained

Note: Where sexual harassment or violence occurs in the context of other possible rule violations, students may be reluctant to report sexual harassment or violence. For example, a student who is sexually harassed while away from school without permission may be reluctant to file a complaint if the student believes discipline will be imposed for the violation. As such, item #4 below clarifies that any other rule violation will be addressed separately from the sexual harassment complaint in order to encourage students to report the harassment.
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4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
6. Information about the district's procedures for investigating complaints and the person(s) to whom a report of sexual harassment should be made

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SEXUAL HARASSMENT (continued)

7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sexual harassment complaint continues
8. A clear message that, when needed, the district will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sexual harassment and/or other students during an investigation

Disciplinary Actions

Note: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

Upon completion of an investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence in violation of this policy shall be subject to disciplinary action. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

(cf. 5144 - Discipline)

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

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

(cf. 4117.7/4317.7 - Employment Status Report)

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

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

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

Record-Keeping

In accordance with law **and district policies and regulations**, the Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

(cf. 3580 - District Records)

Legal Reference: (see next page)

SEXUAL HARASSMENT (continued)

Legal Reference:

EDUCATION CODE

- 200-262.4 *Prohibition of discrimination on the basis of sex*
- 48900 *Grounds for suspension or expulsion*
- 48900.2 *Additional grounds for suspension or expulsion; sexual harassment*
- 48904 *Liability of parent/guardian for willful student misconduct*
- 48980 *Notice at beginning of term*
- 48985 *Notices, report, statements and records in primary language*

CIVIL CODE

- 51.9 *Liability for sexual harassment; business, service and professional relationships*
- 1714.1 *Liability of parents/guardians for willful misconduct of minor*

GOVERNMENT CODE

- 12950.1 *Sexual harassment training*

CODE OF REGULATIONS, TITLE 5

- 4600-4670 *Uniform complaint procedures*
- 4900-4965 *Nondiscrimination in elementary and secondary education programs*

UNITED STATES CODE, TITLE 20

- 1092 *Definition of sexual assault*
- 1221 *Application of laws*
- 1232g *Family Educational Rights and Privacy Act*
- 1681-1688 *Title IX of the Education Amendments of 1972*

UNITED STATES CODE, TITLE 34

- 12291 *Definition of dating violence, domestic violence, and stalking*

UNITED STATES CODE, TITLE 42

- 1983 *Civil action for deprivation of rights*
- 2000d-2000d-7 *Title VI, Civil Rights Act of 1964*
- 2000e-2000e-17 *Title VII, Civil Rights Act of 1964 as amended*

CODE OF FEDERAL REGULATIONS, TITLE 34

- 99.1-99.67 *Family Educational Rights and Privacy*
- 106.1-106.82 *Nondiscrimination on the basis of sex in education programs*

COURT DECISIONS

- Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567*
- Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130*
- Reese v. Jefferson School District, (2000, 9th Cir.) 208 F.3d 736*
- Davis v. Monroe County Board of Education, (1999) 526 U.S. 629*
- Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274*
- Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473*
- Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447*

Management Resources:

CSBA PUBLICATIONS

- Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014*
- Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011*
- U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
- Q&A on Campus Sexual Misconduct, September 2017

Management Resources continued: (see next page)

SEXUAL HARASSMENT (continued)

Management Resources: (continued)

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS (continued)

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

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

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

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

(9/16 7/20) 10/20

CSBA Sample Administrative Regulation

Students

AR 5145.7(a)

SEXUAL HARASSMENT

Note: Education Code 231.5 and Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibit discrimination based on sex, including sexual harassment, and **mandate** that the district adopt and publish complaint procedures. Also see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Title IX Coordinator/Compliance Officer

Note: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are **mandated** to designate an employee to ensure district compliance with Title IX and its implementing regulations. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the compliance officer(s) for the district's uniform complaint procedures pursuant to AR 1312.3 - Uniform Complaint Procedures. Districts may modify this regulation to designate separate district employees to serve these functions:

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as well as to investigate, and resolve sexual harassment complaints under AR 1312.3 - Uniform Complaint Procedures. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

The district shall notify students, parents/guardians, employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

Prohibited Conduct Definitions

Note: Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. For purposes of suspension and expulsion, Education Code 48900.2 defines sexual harassment as conduct, when considered from the perspective of a reasonable person of the same gender as

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SEXUAL HARASSMENT (continued)

the victim, that is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment for the victim; see AR 5144.1 - Suspension and Expulsion/Due Process. Conduct that meets the federal definition of sexual harassment in 34 CFR 106.30 (i.e., (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291) requires investigation and resolution through Title IX regulations; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Prohibited ~~s~~ *Sexual harassment* includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5145.3 - Nondiscrimination/Harassment)

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

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, *sexual harassment* is defined as any of the following

SEXUAL HARASSMENT (continued)

forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

- 1. A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct**
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity**
- 3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291**

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

Examples of Sexual Harassment

Note: The following list contains common examples of sexual harassment from the **U.S. Department of Education's Office for Civil Rights OCR** January 2001 Revised Sexual Harassment Guidance, and definitions specified in 5 CCR 4916.

Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment **under state and/or federal law, in accordance with the definitions above**, include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions
3. Graphic verbal comments about an individual's body or overly personal conversation
4. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way

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SEXUAL HARASSMENT (continued)

9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Any prohibited conduct that occurs off campus or outside of school related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

Title IX Coordinator/Compliance Officer

Note: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are **mandated** to designate an employee to ensure district compliance with Title IX and its implementing regulations. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the compliance officer(s) for the district's uniform complaint procedures pursuant to AR 1312.3 - Uniform Complaint Procedures. Districts may modify this regulation to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee investigate, and/or resolve sexual harassment complaints processed under AR 1312.3 - Uniform Complaint Procedures. The Title IX Coordinator(s) may be contacted at:

Assistant Principal
(title or position)
15305 Rockwood Rd., Escondido, CA 92027
(address)
760-745-4931
(telephone number)
spvsd@empresguslunson.net
(email)

Notifications

The Superintendent or designee shall notify students and parents/guardians that the district does not discriminate on the basis of sex as required by Title IX and that

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SEXUAL HARASSMENT (continued)

inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

(cf. 5145.6 - Parental Notifications)

The district shall notify students, and parents/guardians, employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)

(cf. 5145.6 - Parental Notifications)

2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)

Note: Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it, as specified below. The district may partner with local, state, or federal agencies, or nonprofit organizations, for the purposes of the design and content of the poster.

3. Be summarized on a poster which shall be prominently and conspicuously displayed in each bathroom and locker room at each school. The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)

Note: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post on the district's web site the district's written policy on sexual harassment as well as other state and federal law requirements, in the manner specified below. 34 CFR 106.8 also requires districts that have web sites to prominently display the contact information for the Title IX Coordinator and the district's nondiscrimination policy on its web site.

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SEXUAL HARASSMENT (continued)

4. Be posted, **along with the name or title and contact information of the Title IX Coordinator**, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students ~~This shall include the name or title, office address, email address, and telephone number of the employee(s) designated as the district's Title IX Coordinator.~~ (Education Code 234.6; 34 CFR 106.8)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

Note: Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

5. Be provided as part of any orientation program conducted for new and continuing students at the beginning of each quarter, semester, or summer session (Education Code 231.5)
6. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
7. Be included, **along with the name or title and contact information of the Title IX Coordinator**, in any handbook provided to students, **or** parents/guardians, ~~employees, or employee organizations~~ (34 CFR 106.8)

Note: Education Code 234.6, as added by AB 34, requires a district, starting in the 2020-21 school year, to post the definitions specified below. Also see AR 5145.3 - Nondiscrimination/Harassment for language reflecting this requirement and other notifications related to sex discrimination.

The Superintendent or designee shall also post the definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)

Reporting Complaints

A student or parent/guardian who believes that the student has been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to a teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Within one school day of receiving such a report, the principal or other school employee shall forward the report to the district's Title IX Coordinator. Any school employee who observes an incident of

SEXUAL HARASSMENT (continued)

sexual harassment involving a student shall, within one school day, report the observation to the principal or Title IX Coordinator. **The report shall be made** regardless of whether the alleged victim files a formal complaint **or requests confidentiality.**

(cf. 5141.4 - Child Abuse Prevention and Reporting)

When a report or complaint of sexual harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

Complaint Procedures

All complaints **and allegations** of sexual harassment by and against students shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to **BP/AR 1312.3** - Uniform Complaint Procedures.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, implement remedies, and address any continuing effects.

(9/16 7/20) 10/20

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CSBA Sample Administrative Regulation

Students

AR 5145.71(a)

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES

Note: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and **mandates** that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment that does not meet this definition should be addressed through the district's uniform complaint procedures (UCP); see BP/AR 1312.3 - Uniform Complaint Procedures.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment in an education program or activity, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of the district. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

See BP/AR 5145.7 - Sexual Harassment for information about prohibited conduct, student instruction, required notifications, and processes for reporting sexual harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a student, **while in an education program or activity in which a district school exercises substantial control over the context and respondent**, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, **106.44**)

1. A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

All other sexual harassment complaints **or allegations brought by or on behalf of students shall be investigated and responded to pursuant to resolved in accordance with BP/AR 1312.3 - Uniform Complaint Procedures. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.**

Because the complainant has a right to pursue a complaint under BP/AR 1312.3 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for BP/AR 1312.3 are concurrently met while implementing the Title IX procedure.

(cf. 1312.3 - Uniform Complaint Procedures)

Reporting Allegations/Filing a Formal Complaint

Note: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 5145.7 - Sexual Harassment and may be revised to reflect district practice.

A report of sexual harassment shall be submitted directly to or forwarded A student who is the alleged victim of sexual harassment or the student's parent/guardian may submit a report of sexual harassment to the district's Title IX Coordinator using the contact information listed in AR 5145.7 - Sexual Harassment or to any other available school employee, who shall forward the report to the Title IX Coordinator within one day of receiving the report.

(cf. 5145.7 - Sexual Harassment)

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of **the right to file a formal complaint and** the process for filing a formal complaint. **(34 CFR 106.44)**

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district. **(34 CFR 106.30)**

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Note: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situations even when the victim chooses not to do so, including, but not limited to, when a safety threat exists. In such cases, **the Title IX Coordinator and the alleged victim is not a party are not named parties** to the case, but **the alleged victim must will** receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations ~~in which~~ **when** a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, **including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment.** In such cases, **the Title IX Coordinator shall provide the alleged victim** ~~alleged victim is not a party to the case, but will receive~~ notices as required by the Title IX regulations at specific points in the complaint process.

~~A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district. (34 CFR 106.30)~~

~~The Superintendent or designee shall ensure that the~~ Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process ~~does~~ **shall** not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, ~~and that s~~Such persons **shall** receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, ~~even if a formal complaint is not filed,~~ the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures ~~which are nondisciplinary, nonpunitive, and do not unreasonably burden the other party.~~ **and shall consider the complainant's wishes with respect to the supportive measures implemented. Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment.** Such **Supportive** measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus. ~~The Title IX Coordinator shall consider the complainant's wishes with respect to supportive measures.~~ (34 CFR 106.30, 106.44)

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the supportive measures. (34 CFR 106.30)

Emergency Removal from School

Note: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but requires that a student should not be "disciplined" prior to a finding being made pursuant to the grievance process established by 34 CFR 106.45. Due to this inconsistency in state and federal law, districts are advised to consult legal counsel as to the manner of imposing an emergency removal.

A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed. However, on an emergency basis, the district may remove a student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint **that in which the alleged conduct** did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly, ~~and simultaneously to the parties,~~ send written notice of the dismissal and the reasons for the dismissal **simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal**

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed ~~on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30,~~ the conduct may still be addressed pursuant to BP/AR 1312.3 - Uniform Complaint Procedures as applicable.

Informal Resolution Process

Note: As part of an informal resolution, the parties may agree upon discipline, including suspension or expulsion, without the need for an investigation (Analysis of Comments and Changes, 85 Fed. Reg. 30026, pages 30232, 30406-30407). This is an exception to the general rule provided in 34 CFR 106.44 which prohibits the district from imposing discipline on a respondent for sexual harassment until the full investigation process is complete. Also see the section "Stipulated Expulsion" in AR 5144.1 - Suspension and Expulsion/Due Process.

When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The district may facilitate an informal resolution process provided that the district: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

Formal Complaint Process **Written Notice**

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, ~~the district investigates allegations~~ **new Title IX allegations arise** about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

Note: The following paragraph is **optional**. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decision-maker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker ~~and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons~~ **and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.**

Investigation Procedures

Note: Pursuant to 34 CFR 106.45, when investigating a formal complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45.

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

During the investigation process, the district's **designated investigator** shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence **obtained as part of the investigation** that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
- ~~9. After sending the investigative report to the parties and before reaching a determination regarding responsibility, afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow up questions from each party~~

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. **(34 CFR 106.45)**

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

Note: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

Note: Pursuant to 34 CFR 106.45, the person designated as the decision-maker of the determination of responsibility cannot be the same person designated as the Title IX Coordinator, an investigator, or the person who considers appeals. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the decision-maker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter. (34 CFR 106.45)

After sending the investigative report to the parties and the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

Note: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process, but does not specify the number of days within which the final decision must be issued. The following paragraph specifies a 45-60-day period so that, in the event it is determined that the alleged conduct does not meet the definition of sexual harassment pursuant to Title IX regulations, there will be time for the district to complete the resolution of the complaint through uniform complaint procedures within the required 60-day period for that process in order to align with the requirements of the UCP which are simultaneously triggered when a complaint of sexual harassment is received. Districts may revise the following paragraph to include a different timeline as long as it would satisfy the requirement to act promptly.

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

The written decision shall be issued within **45 60** calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

Note: 34 CFR 106.45 **mandates** that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use.

In making this determination, the **district decision-maker** shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the district includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the district's code of conduct **or policies** to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
6. The district's procedures and permissible bases for the complainant and respondent to appeal



TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Appeals

Note: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or c
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the **determination notice of the decision or dismissal**, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. **Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights.**

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Note: **5 CCR 4632-4633 provide that complainants may appeal to CDE if they disagree with the district's decision on any matter within the scope of the UCP. As amended by Register 2020, No. 21, 5 CCR 4632 changes the timeline for filing an appeal with CDE from 15 calendar days to 30 calendar days.**

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

The district's decision may be appealed to the California Department of Education within 30 days of the written decision in accordance with BP/AR 1312.3.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

Note: The following paragraph is consistent with requirements under Education Code 262.3, 5 CCR 4622, and the California Department of Education's Federal Program Monitoring instrument to provide notice regarding civil law remedies in the annual UCP notice and in the final written decision in the UCP process.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

Note: 34 CFR 106.45 mandates that the district's Title IX complaint process list, or describe the range of, possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Corrective/Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the principal or Superintendent shall immediately suspend the student and shall recommend expulsion. (Education Code 48900.2, 48915)

(cf. 5144 - Discipline)

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

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team

(cf. 6164.5 - Student Success Teams)

6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

(cf. 6145 - Extracurricular and Cocurricular Activities)

When an employee is found to have committed sexual harassment or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

(cf. 4117.7/4317.7 - Employment Status Report)

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

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

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

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: **(34 CFR 106.45)**

1. **a** record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, **and** any appeal or informal resolution and the results therefrom, **and responses made pursuant to 34 CFR 106.44. (34 CFR 106.45)**

2. **A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education**

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances

3. ~~The Superintendent or designee shall also maintain for a period of seven years all~~ **All** materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public. **(34 CFR 106.45)**

(cf. 1113 - District and School Web Sites)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination on the basis of sex*

48900 *Grounds for suspension or expulsion*

48900.2 *Additional grounds for suspension or expulsion; sexual harassment*

48985 *Notices, report, statements and records in primary language*

CIVIL CODE

51.9 *Liability for sexual harassment; business, service and professional relationships*

1714.1 *Liability of parents/guardians for willful misconduct of minor*

GOVERNMENT CODE

12950.1 *Sexual harassment training*

CODE OF REGULATIONS, TITLE 5

4600-4670 *Uniform complaint procedures*

4900-4965 *Nondiscrimination in elementary and secondary education programs*

UNITED STATES CODE, TITLE 20

1092 *Definition of sexual assault*

1221 *Application of laws*

1232g *Family Educational Rights and Privacy Act*

1681-1688 *Title IX of the Education Amendments of 1972*

UNITED STATES CODE, TITLE 34

12291 *Definition of dating violence, domestic violence, and stalking*

UNITED STATES CODE, TITLE 42

1983 *Civil action for deprivation of rights*

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

2000e-2000e-17 *Title VII, Civil Rights Act of 1964 as amended*

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 *Family Educational Rights and Privacy*

106.1-106.82 *Nondiscrimination on the basis of sex in education programs*

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Legal Reference continued: (see next page)

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TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Legal Reference: (continued)

COURT DECISIONS (continued)

Reese v. Jefferson School District, (2000, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

FEDERAL REGISTER

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, May 19, 2020, Vol. 85, No. 97, pages 30026-30579

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Q&A on Campus Sexual Misconduct, September 2017

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

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

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

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

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CSBA Sample Exhibit

Students

E 5145.71(a)

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES

Note: 34 CFR 106.8 requires the district to provide notice to students and parents/guardians of its policy prohibiting sexual harassment and its grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for employees, bargaining units, and applicants for employment, see E 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, the district must provide the Title IX Coordinator's contact information on its web site and in any handbook for students or parents/guardians. In addition, state law (Education Code 231.5, 231.6, 234.6, and 48980) requires distribution of the district's sexual harassment policy through the parental notification at the beginning of the school year, in any orientation program for new and continuing students, in any publication of rules of student conduct, and by posting the policy on the district's web site, in school offices, and in a poster displayed in locker rooms and bathrooms.

NOTICE OF TITLE IX SEXUAL HARASSMENT POLICY

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to students at all grade levels and their parents/guardians:

The district does not discriminate on the basis of sex in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any student for filing a complaint or exercising any right granted under Title IX.

Title IX requires a school district to take immediate and appropriate action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education or both.

Note: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - Sexual Harassment.

The district has designated and authorized the following employee as the district's Title IX Coordinator to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking:

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES (continued)

Assistant Principal
 (name and/or title/position)
 15305 Rockwood Rd. Escondido, CA 92027
 (address)
 760-745-4931
 (telephone number)
 sps@d.sanpsqualunion.net
 (email address)

Note: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants of the district's grievance procedures and process, including how to report or file a formal complaint of sexual discrimination and/or harassment, and how the district will respond.

Any individual may report sex discrimination, including sexual harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of sexual harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on sexual harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures on the district's web site at _____ (insert website link) www.sanpsqualunion.net.

To inspect or obtain a copy of the district's sexual harassment policies and administrative regulations, please contact: _____ (insert location/phone/email of contact person) San Pasqual Union School District, 760-745-4931, sps@d.sanpsqualunion.net

Materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process are also publicly available on the district's web site or at the district office upon request.

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CSBA Sample Board Policy

Instruction

BP 6161.1(a)

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS

Note: Pursuant to Education Code 60200 and 60400, the Governing Board is responsible for the adoption of textbooks and other instructional materials, as defined in Education Code 60010, for use in district schools. See the accompanying administrative regulation for required and optional criteria for the selection of instructional materials. See BP 6161.11 - Supplementary Instructional Materials and BP 6163.1 - Library Media Centers for selection processes regarding supplementary materials.

The Governing Board desires that district instructional materials, as a whole, present a broad spectrum of knowledge and viewpoints, reflect **and value** society's diversity, and enhance **instructors' ability to educate all students through** the use of multiple teaching strategies and technologies. The Board shall adopt instructional materials based on a determination that such materials are an effective learning resource to help students achieve grade-level competency and that the materials meet criteria specified in law. Textbooks, technology-based materials, and other educational materials shall be aligned with academic content standards and the district's curriculum to ensure that they effectively support the district's adopted courses of study.

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

(cf. 0415 - Equity)

(cf. 0440 - District Technology Plan)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 6000 - Concepts and Roles)

(cf. 6011 - Academic Standards)

(cf. 6141 - Curriculum Development and Evaluation)

(cf. 6143 - Courses of Study)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6161.11 - Supplementary Instructional Materials)

(cf. 6162.5 - Student Assessment)

(cf. 6163.1 - Library Media Centers)

~~The Superintendent or designee shall establish a process by which instructional materials shall will be reviewed for recommendation to the Board.~~

Note: The following paragraph is for use by districts that maintain any of grades K-8 and may be revised to reflect the grade levels offered by the district. Pursuant to Education Code 60200, the State Board of Education (SBE) is required to adopt basic instructional materials in specified subjects that districts may select for use in grades K-8. **As amended by AB 575 (Ch. 550, Statutes of 2016)**, Education Code 60200 provides that the SBE may adopt materials in any of the specified subject areas at least once, but not more than twice, every eight years. Education Code 60210 authorizes the Board to select materials that have not been approved by the SBE, provided they are aligned with state academic content standards or Common Core State Standards. **In addition, if the district uses materials not adopted by the SBE, the majority of participants in the review process must be teachers assigned to the subject area or grade level for which the materials will be used; see section below entitled "Review Process."**

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

The Board shall select instructional materials for use in grades K-8 that have been approved by the State Board of Education (SBE) or **that have, during the district's review process, otherwise** been determined to be aligned with the state academic content standards adopted pursuant to ~~Education Code 60605 or the Common Core State Standards adopted pursuant to Education Code 60605.8~~ **by SBE.** (Education Code 60200, 60210)

Note: The following paragraph is for use by districts that maintain high schools.

Remove The Board shall adopt instructional materials for grades 9-12 upon determining that the materials meet the criteria specified in law and **the accompanying** administrative regulation. (Education Code 60400)

In selecting or adopting instructional materials, the Board shall consider the recommendation of the Superintendent or designee and/or an advisory committee established to review the materials.

Review Process

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

~~The Superintendent or designee shall establish a process by which instructional materials shall be reviewed for recommendation to the Board. Toward that end, he/she may establish an instructional materials review committee to evaluate and recommend instructional materials.~~

~~(cf. 1220 – Citizen Advisory Committees)~~

Note: Pursuant to Education Code 60002, the Board must provide for "substantial" teacher involvement in the selection of instructional materials and must promote the involvement of parents/guardians and other members of the community in the selection of instructional materials. The Education Code does not define "substantial."

~~The review process shall involve teachers in a substantial manner and shall encourage the participation of parents/guardians and community members. (Education Code 60002)~~

~~(cf. 6020 – Parent Involvement)~~

~~In addition, the instructional materials committee may include administrators, other staff who have subject matter expertise, and students as appropriate.~~

Note: The following paragraph is for use by districts that maintain any of grades K-8.

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

If the district chooses to use instructional materials for grades K-8 that have not been adopted by the SBE, the Superintendent or designee shall ensure that a majority of the participants in the district's review process are classroom teachers who are assigned to the subject area or grade level of the materials. (Education Code 60210)

Individuals who participate in the selection or review of instructional materials shall not have a conflict of interest, as defined in administrative regulation, in the materials being reviewed.

(cf. 9270 - Conflict of Interest)

The committee shall review instructional materials using criteria provided in law and administrative regulation, and shall provide the Board with documentation supporting its recommendations.

All recommended instructional materials shall be available for public inspection at the district office.

(cf. 5020 - Parent Rights and Responsibilities)

Note: SBE Policy on Guidelines for Piloting Textbooks and Instructional Materials provides a sample process for piloting instructional materials that addresses the selection of materials to pilot, a chronology of the process, and additional considerations, such as conflict of interest, contacts with publishers, and consideration of standards maps.

The district may pilot instructional materials, using a representative sample of classrooms for a specified period of time during a school year, in order to determine how well the materials support the district's curricular goals and academic standards. Feedback from teachers piloting the materials shall be made available to the Board before the materials are adopted.

Public Hearing on Sufficiency of Instructional Materials

Note: As a condition of receiving funds for instructional materials from any state source, Education Code 60119 requires the Board to annually hold a public hearing to determine whether each student in the district has sufficient standards-aligned textbooks or instructional materials in English/language arts (including English language development), mathematics, science, and history-social science that are consistent with the content and cycles of the curriculum framework adopted by the SBE. As clarified in the California Department of Education's (CDE) Instructional Materials FAQ, state funding sources for instructional materials include local control funding formula funds and Proposition 20 (2000) lottery funds. The Board must also make a written determination during the hearing as to the sufficiency of textbooks or instructional materials in **foreign world** language and health courses, as well as **the availability of** science laboratory equipment in science laboratory courses **although the provision of the materials or the equipment in these courses is not a condition for receipt of state funding.**

Pursuant to Education Code 60010, as amended by SB 820 (Ch. 110, Statutes of 2020), "technology-based materials" include the electronic equipment required to make use of those materials, including,

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

but not limited to, laptop computers and devices that provide Internet access. Thus, when districts provide technology-based materials to students, such equipment is subject to the determination of sufficiency pursuant to Education Code 60119.

Education Code 1240 requires the County Superintendent of Schools to review the textbooks and instructional materials of underperforming schools and, if ~~he/she~~ **the County Superintendent** determines that a school does not have sufficient materials, to prepare a report outlining the noncompliance and give the district a chance to remedy the deficiency. If the deficiency is not remedied by the second month of the school year, the County Superintendent may request that ~~the~~ CDE purchase textbooks or materials for the district, and the cost must be repaid by the district. ~~The~~ CDE will issue a public statement at an SBE meeting indicating the district's failure to provide instructional materials.

The Board shall annually conduct one or more public hearings on the sufficiency of the district's ~~textbooks and other~~ instructional materials, **including textbooks, technology-based materials, other educational materials, and tests. Technology-based materials include, but are not limited to, software programs, video disks, compact disks, optical disks, video and audio tapes, lesson plans, databases, and the electronic equipment required to make use of those materials by students and teachers as a learning resource.** (Education Code **60010, 60119**)

Note: Education Code 60119 specifies that the hearing must be held within eight weeks of the beginning of the school year. ~~Option 1 is for use by districts without any schools on a multitrack year-round calendar. Option 2 is for use by districts with schools on a multitrack year-round calendar. Pursuant to Education Code 60119, for a district that operates schools on a multitrack, year-round calendar, the timeline begins with the first day students attend school in any track that begins in August or September.~~

OPTION 1: The hearing shall be held on or before the end of the eighth week from the first day students attend school for that year. (Education Code 60119)

~~**OPTION 2:** The hearing shall be held on or before the end of the eighth week from the first day of the school year of any district school that operates on a multitrack year-round calendar that begins its school year in August or September. (Education Code 60119)~~

Note: ~~The remainder of this policy applies to all districts.~~

The Board encourages participation by parents/guardians, teachers, interested community members, and bargaining unit leaders at the hearing. Ten days prior to the hearing, the Superintendent or designee shall post a notice in three public places within the district containing the time, place, and purpose of the hearing. The hearing shall not take place during or immediately following school hours. (Education Code 60119)

(cf. 9322 - Agenda/Meeting Materials)

Note: Education Code 60119 requires the Board to adopt a resolution indicating whether or not each student in each school has sufficient standards-aligned textbooks or instructional materials for the subjects specified in items #1-6 below. See the accompanying Exhibit for a sample resolution.

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

At the hearing(s), the Board shall determine, through a resolution, whether each student in each school, including each English learner, has sufficient textbooks or **other** instructional materials **that are aligned to the content standards adopted by SBE and consistent with the content and cycles of the curriculum framework adopted by SBE** ~~which are aligned to the state content standards adopted pursuant to Education Code 60605 or the Common Core State Standards adopted pursuant to Education Code 60605.8 and which are consistent with the content and cycles of the state's curriculum frameworks.~~ Sufficiency of instructional materials shall be determined in each of the following subjects: (Education Code 60119)

1. Mathematics

(cf. 6142.92 - Mathematics Instruction)

2. Science

(cf. 6142.93 - Science Instruction)

3. History-social science

(cf. 6142.94 - History-Social Science Instruction)

4. English language arts, including the English language development component of an adopted program

*(cf. 6142.91 - **Reading-English**/Language Arts Instruction)*
(cf. 6174 - Education for English Learners)

5. World/**foreign** language

*(cf. 6142.2 - World/**Foreign**-Language Instruction)*

6. Health

(cf. 6142.8 - Comprehensive Health Education)

Note: The following paragraph is for use by districts that maintain any of grades 9-12.

Remove

~~The Board shall also determine the availability of science laboratory equipment, as applicable to science laboratory courses offered in grades 9-12. (Education Code 60119)~~

In making these determinations, the Board shall consider whether each student has sufficient textbooks **and/or other** instructional materials to use in class and to take home. **However, this does not require that each student have two sets of materials. The materials may be in a**

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

digital format as long as each student, at a minimum, has and can access the same materials in the class and to take home as all other students in the same class or course in the district and has the ability to use and access them at home. However, the materials shall not be considered sufficient if they are photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage. (Education Code 60119)

If materials are in a digital format, they shall be considered sufficient as long as each student, at a minimum, has and can access the same materials in the class and to take home as all other students in the same class or course in the district, and has the ability to use and access them at home. (Education Code 60119)

Note: Pursuant to Education Code 60119, if the Board makes a determination that there are insufficient textbooks or **other** instructional materials, the Board must take action to ensure that the materials are provided within two months of the beginning of the school year. The CDE's Instructional Materials FAQ states that, if a district has submitted purchase orders to the publisher to purchase materials to remedy the insufficiency, these materials should be received and made available to students by the end of the second month of the school year. Thus, districts are strongly encouraged to hold the public hearing as early in the school year as possible in order to provide sufficient time to correct any deficiencies.

If the Board determines that there are insufficient textbooks or **other** instructional materials, ~~it~~ **the district** shall provide information to classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the percentage of students who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each student does not have sufficient textbooks or instructional materials. The Board shall take any action, ~~except an action that would require reimbursement by the Commission of State Mandates,~~ to ensure that each student has sufficient materials within two months of the beginning of the school year in which the determination is made. (Education Code 60119)

The degree to which every student has sufficient access to standards-aligned instructional materials shall be included in the district's local control and accountability plan. (Education Code 52060)

(cf. 0460 - Local Control and Accountability Plan)

Complaints

Note: Complaints regarding the contents of instructional materials are addressed in BP/AR 1312.2 - Complaints Concerning Instructional Materials. See AR 1312.4 - Williams Uniform Complaint Procedures for language regarding complaints about deficiencies in instructional materials.

Complaints concerning instructional materials shall be handled in accordance with **law BP/AR 1312.2 - Complaints Concerning Instructional Materials or AR 1312.4 - Williams Uniform Complaint Procedures, as applicable.**

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

Legal Reference:

EDUCATION CODE

220 Prohibition against discrimination

1240 County superintendent, general duties

33050-33053 General waiver authority

33126 School accountability report card

35272 Education and athletic materials

44805 Enforcement of course of studies; use of textbooks, rules and regulations

49415 Maximum textbook weight

51501 Nondiscriminatory subject matter

52060-52077 Local control and accountability plan

60000-60005 Instructional materials, legislative intent

60010 Definitions

60040-60052 Instructional requirements and materials

60060-60063.5 Requirements for publishers and manufacturers

60070-60076 Prohibited acts (re instructional materials)

60110-60115 Instructional materials on alcohol and drug education

60119 Public hearing on sufficiency of materials

60200-60210 Elementary school materials

60226 Requirements for publishers and manufacturers

60350-60352 Core reading program instructional materials

60400-60411 High school textbooks

60510-60511 Donation for sale of obsolete instructional materials

60605 State content standards

60605.8 Common Core State Standards

60605.86-60605.88 Supplemental instructional materials aligned with Common Core State Standards

CODE OF REGULATIONS, TITLE 5

9505-9530 Instructional materials

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Instructional Materials FAQ

01-05 *Guidelines for Piloting Textbooks and Instructional Materials*, rev. January 2015

Standards for Evaluating Instructional Materials for Social Content, 2013

WEB SITES

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

Association of American Publishers: <http://www.publishers.org>

California Academic Content Standards Commission, Common Core State Standards:

<http://www.scoe.net/castandards>

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

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CSBA Sample Administrative Regulation

Instruction

AR 6161.1(a)

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS

Review Process

Note: The following section may be revised to reflect district practice. Pursuant to Education Code 60002, the district must provide for "substantial" teacher involvement in the selection of instructional materials and must promote the involvement of parents/guardians and other members of the community in the selection of instructional materials. The Education Code does not define "substantial."

The **district's review process for evaluating instructional materials shall** involve teachers in a substantial manner and shall encourage the participation of parents/guardians and community members.—(**in accordance with** Education Code 60002). ~~In addition, the instructional materials~~ **The review committee process may also include involve** administrators, other staff who have subject-matter expertise, and students as appropriate. **The Superintendent or designee shall seek input from stakeholders with diverse backgrounds and perspectives.**

(cf. 6020 - Parent Involvement)

Note: The following paragraph is for use by districts that maintain any of grades K-8.

If the district ~~chooses to~~ **is considering the use of** instructional materials for grades K-8 that have not been adopted by the **State Board of Education (SBE)**, the Superintendent or designee shall ensure that a majority of the participants in the district's review process are classroom teachers who are assigned to the subject area or grade level of the materials. (Education Code 60210)

Note: The following paragraph is optional. The use of review committees is recommended as a best practice, but is not required by law.

~~Toward that end, he/she~~ **The Superintendent or designee may establish an advisory an instructional materials review committee to evaluate and recommend instructional materials conduct the review of instructional materials.**

(cf. 1220 - Citizen Advisory Committees)

The Superintendent or designee shall present to the Governing Board recommendations for instructional materials and documentation that supports the recommendations.

All recommended instructional materials shall be available for public inspection at the district office.

(cf. 5020 - Parent Rights and Responsibilities)

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

Note: State Board of Education (SBE) policy on Guidelines for Piloting Textbooks and Instructional Materials provides a sample process for piloting instructional materials that addresses the selection of materials to pilot, a chronology of the process, and additional considerations, such as conflict of interest, contacts with publishers, and consideration of standards maps.

When possible, the district may pilot instructional materials, using in a representative sample of classrooms for a specified period of time during a school year, in order to determine **how well the extent to which** the materials support the district's curricular goals and academic standards. Feedback from teachers piloting the materials shall be made available to the Board before the materials are adopted.

Criteria for Selection and Adoption of Instructional Materials

In recommending **textbooks or other** instructional materials for adoption by the **Governing Board**, the Superintendent or designee shall ensure that **such the** materials:

1. Are aligned to **the content standards adopted by SBE and consistent with the content and cycles of the curriculum framework adopted by SBE pursuant to Education Code 60605 and/or Common Core Standards adopted pursuant to Education Code 60605.8**

(cf. 6011 - Academic Standards)

Note: The following paragraph is for use by districts that offer any of grades K-8. Pursuant to Education Code 60200, ~~the State Board of Education (SBE)~~ is responsible for adopting at least five basic instructional materials for grades K-8 in specified core subjects and any other subject for which SBE determines that the adoption of instructional materials is necessary or desirable.

Education Code 60210 authorizes the Governing Board to select instructional materials for grades K-8 that have not been approved by SBE, provided they are aligned with state academic content standards ~~adopted by SBE pursuant to Education Code 60605 or Common Core Standards adopted pursuant to Education Code 60605.8~~ and have been reviewed through a process that requires a majority of the participants in the process to be classroom teachers who are assigned to the subject area or grade level for which the materials will be used; also see the accompanying Board policy.

For grades K-8, ~~the Superintendent or designee shall select~~ **only** instructional materials ~~from among on~~ the list of materials adopted by ~~the~~ SBE and/or other **instructional** materials that have not been adopted by ~~the~~ SBE but are aligned with the state academic content standards ~~and/or~~ the Common Core **State Standards may be recommended for selection.** (Education Code 60200, 60210)

(cf. 6161.11 - Supplementary Instructional Materials)

Note: The following **optional** paragraph is for use by districts offering any of grades 9-12 and may be revised to reflect district practice. **One way to ensure that instructional materials in core courses for grades 9-12 are aligned to state standards is through a review of standards maps created by the CDE. A template of**

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

the standards map is available on the CDE's web site. The California Department of Education provides standards map templates on its web site for reference in determining alignment of instructional materials for grade 9-12 core courses.

Remove For grades 9-12, the Superintendent or designee shall review instructional materials in history-social science, mathematics, English/language arts, and science **shall be reviewed** using a standards map in order to determine the extent to which the materials are aligned to state academic content standards.

Note: Item #2 below is for use by districts that offer any of grades 9-12.

~~2.~~ For grades 9-12, are provided by publishers that comply with the requirements of Education Code 60040-60052, 60060-60062, and 60226 (Education Code 60400)

~~3.2.~~ Do not reflect adversely upon persons because of **any characteristic specified in law and BP 0410 - Nondiscrimination in District Programs and Activities**—~~their race or ethnicity, gender, religion, disability, nationality, sexual orientation, occupation, or other characteristic listed in Education Code 220~~, nor contain any sectarian or denominational doctrine or propaganda contrary to law (Education Code 51501, 60044)

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

~~4.3.~~ To the satisfaction of the Board, are accurate, objective, current, and suited to the needs and comprehension of district students at their respective grade levels (Education Code 60045)

~~5.4.~~ With the exception of literature and tradebooks, use proper grammar and spelling (Education Code 60045)

Note: Education Code 60048 and 60200 require that the Board not adopt basic instructional materials that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo, unless it makes specific findings that the use has an educational purpose or is incidental to the general nature of an illustration, as provided in item #6 below. SBE's publication Standards for Evaluating Instructional Materials for Social Content details standards for the use of brand names and corporate logos in instructional materials.

~~6.5.~~ Do not expose students to a commercial brand name, product, or corporate or company logo unless the Board makes a specific finding that the use is appropriate based on one of the following: (Education Code 60048, 60200)

a. The commercial brand name, product, or corporate or company logo is used in text for an educational purpose as defined in guidelines or frameworks adopted by **the** SBE.

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

- b. The appearance of a commercial brand name, product, or corporate or company logo in an illustration is incidental to the general nature of the illustration.

(cf. 1325 - Advertising and Promotion)

~~7. If the materials are technology-based materials, are both available and comparable to other, equivalent instructional materials (Education Code 60052)~~

Note: Education Code 60040-60043 require that specific subject matter be included in the district's instructional materials. Education Code 60040 requires that instructional materials include accurate portrayals of the cultural and racial diversity of society as specified. Education Code 60041 requires (1) accurate portrayal of humanity's place in ecological systems and the need to protect the environment and (2) the effects of tobacco, alcohol, and other drug use on the human system. Education Code 60042 requires the Board to adopt materials as it deems necessary to encourage thrift, fire prevention, and the humane treatment of animals and people. Education Code 60043 requires that the Board, when appropriate to the comprehension of students, adopt textbooks for social science, history, or civics classes that contain the Declaration of Independence and the Constitution of the United States. If desired, the district may expand item #8-6 below to list these specific requirements.

8-6. Meet the requirements of Education Code 60040-60043 for specific subject content, including, but not limited, accurately portraying society's cultural and racial diversity

Note: Items #9-18 7-14 below are optional and may be revised to reflect district practice. The district may choose to develop subject-specific criteria as well as general criteria.

9-7. Support the district's adopted courses of study and curricular goals

(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6142.2 - World/Foreign Language Instruction)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6142.91 - English Reading/Language Arts Instruction)
(cf. 6142.92 - Mathematics Instruction)
(cf. 6142.93 - Science Instruction)
(cf. 6142.94 - History-Social Science Instruction)
(cf. 6143 - Courses of Study)
(cf. 6146.1 - High School Graduation Requirements)

10-8. Contribute to a comprehensive, balanced curriculum

11-9. Demonstrate reliable quality of scholarship as evidenced by:

- a. Accurate, up-to-date, and well-documented information
- b. Objective presentation of diverse viewpoints

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

- c. Clear, concise writing and appropriate vocabulary
- d. Thorough treatment of subject matter

12.10. Provide for a wide range of materials at all levels of difficulty, with appeal to students of varied interests, abilities, and developmental levels

13.11. ~~Include materials that~~ Stimulate discussion of contemporary issues and improve students' thinking and decision-making skills

~~14. — Contribute to the proper articulation of instruction through grade levels~~

15.12. As appropriate, have corresponding versions available in languages other than English

16.13. Include high-quality teacher's guides

~~17. — Meet high standards in terms of the quality, durability, and appearance of paper, binding, text, and graphics~~

Note: 5 CCR 9517.2 sets the following maximum weight standards for each student textbook: three pounds for grades K-4, four pounds for grades 5-8, and five pounds for grades 9-12. 5 CCR 9517.2 requires publishers submitting textbooks to SBE that exceed those weight standards to provide lighter weight alternatives, such as split volumes or electronic editions, soft cover editions, or other alternate physical formats. For materials for grades 9-12, publishers must disclose the availability of lighter weight alternatives. Item #~~18~~ **14** below includes textbook weight as one of the criteria for Board consideration.

18.14. When available, include options for lighter weight materials in order to help minimize any injury to students by the combined weight of instructional materials

In addition to meeting the above criteria as applicable, technology-based materials shall:

- 1.** ~~If the materials are technology-based materials, are~~ **Be both available and comparable to other, eq**
- 2.** **Be accessible to all students, including economically disadvantaged students, students with disabilities, and English learners**
- 3.** **Protect the privacy of student data**

(cf. 6157 - Distance Learning)

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

Conflict of Interest

Note: The following **optional** section is for use by districts that choose to require individuals who will participate in the review process to first complete a disclosure statement which provides an opportunity to disclose any conflict of interest or appearance of conflict of interest.

The following conflict of interest rules are not applicable to "public officials" (including Board members and designated staff) who are subject to the district's conflict of interest code pursuant to the Political Reform Act. Such persons who are making decisions concerning instructional materials must comply with the more stringent conflict of interest requirements described in BB 9270—Conflict of Interest.

To ensure integrity and impartiality in the evaluation and selection of instructional materials, any district employee **individuals** who **is are** participating in the evaluation of instructional materials and **are** not otherwise designated in the district's conflict of interest code shall sign a disclosure statement indicating that **he/she they**:

Note: Education Code 60061 requires publishers to provide instructional materials free of charge within California to the same extent that they provide free materials to other states or school districts; see Price List of Adopted Instructional Materials on CDE's web site. However, Education Code 60071 forbids publishers from offering "valuable thing(s)" to school officials for the purpose of influencing the purchase of instructional materials. CDE's Instructional Materials FAQ clarifies that, in accordance with the definition of "technology-based materials" in Education Code 60010, districts may accept electronic equipment necessary to make use of technology-based materials provided that such equipment is used by students and teachers as a learning resource, not to replace computers or related equipment in an existing computer lab or to establish a new computer lab.

1. **Shall Will** not accept any emolument, money, or other valuable thing or inducement to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material (Education Code 60072)

Sample copies of instructional materials are excepted from this prohibition. (Education Code 60075)

Note: Items # 2-4 below are **optional** and should be modified to reflect district practice.

2. **Is Are** not employed by nor receive compensation from the publisher or supplier of the instructional materials or any person, firm, organization, subsidiary, or controlling entity representing it
3. ~~Does not have and will not negotiate a contractual relationship with the publisher or supplier of the instructional materials or any person, firm, organization, subsidiary, or controlling entity representing it~~

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

4.3. Does not have an interest as a contributor, author, editor, or consultant in any textbook or other instructional material submitted to the district

(cf. 9270 - Conflict of Interest)

(11/11 11/12) 10/20

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CSBA Sample Exhibit

Instruction

E 6161.1(a)

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS

RESOLUTION ON SUFFICIENCY OF INSTRUCTIONAL MATERIALS

Note: Education Code 60119 requires that the Governing Board hold an annual public hearing regarding the sufficiency of textbooks or other instructional materials and determine through a resolution whether each student has sufficient materials; see the accompanying Board policy. "Sufficient textbooks or instructional materials," as defined in Education Code 60119, means that each student in the district, including each English learner, has a standards-aligned textbook or instructional materials, which may include **technology-based** materials ~~in a digital format under specified conditions~~, to use in class and to take home.

The following sample resolution is based on the 2008 sample resolution developed by the California Department of Education (CDE) but has been updated to reflect **new current** law. This resolution may be used to certify compliance with Education Code 60119.

Whereas, the Governing Board of the *(name of school district)*, in order to comply with the requirements of Education Code 60119, held a public hearing on *(date)*, at *(time)* o'clock, which is on or before the eighth week of school (between the first day that students attend school and the end of the eighth week from that day) and which did not take place during or immediately following school hours, and;

Whereas, the Board provided at least 10 days' notice of the public hearing by posting it in at least three public places within the district stating the time, place, and purpose of the hearing, and;

Whereas, the Board encouraged participation by parents/guardians, teachers, members of the community, and bargaining unit leaders in the public hearing, and;

Whereas, information provided at the public hearing detailed the extent to which sufficient textbooks or **other** instructional materials were provided to all students, including English learners, in the *(name of school district)*, and;

Whereas, the definition of "sufficient textbooks or instructional materials" means that each student, including each English learner, has a standards-aligned textbook or instructional materials to use in class and to take home, which may include materials in a digital format but shall not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage, and;

Whereas, textbooks or instructional materials in core curriculum subjects should be aligned with state academic content standards and/or the Common Core State Standards adopted by the State Board of Education pursuant to ~~Education Code 60605 and/or the Common Core State Standards adopted pursuant to Education Code 60605.8;~~

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SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

Finding of Sufficient Textbooks or Instructional Materials

Note: The following section is for use when the Board is making a finding that the district has "sufficient" materials. According to CDE, Education Code 60119 requires documentation of sufficiency of textbooks or instructional materials to be presented at the public hearing. Survey forms are available on CDE's web site which may be used as a self-study and county office validation tool for grades K-12.

Whereas, sufficient standards-aligned textbooks or **other** instructional materials that are consistent with the cycles and content of the curriculum frameworks were provided to each student, including each English learner, in the following subjects:

Note: To provide complete information about the basis for the Board's determination of sufficiency, the district may wish to include the names of the textbooks or instructional materials provided to students, as well as the applicable state adoption cycle.

- Mathematics: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

- Science: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

- History-social science: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

- English language arts, including the English language development component of an adopted program: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

- World/**foreign** language: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

- **Health:** *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*
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Note: The following paragraph is for use by districts that maintain grades 9-12. The Board may provide a list of the science laboratory classes offered in grades 9-12 and details on the science laboratory equipment available for these classes.

Whereas, laboratory science equipment was available for science laboratory classes offered in grades 9-12, inclusive;

Therefore, it is resolved that for the *(year)* school year, the *(name of school district)* has provided each student with sufficient standards-aligned textbooks or **other** instructional materials that are consistent with the cycles and content of the curriculum frameworks.

Finding of Insufficient Textbooks or Instructional Materials

Note: The following section is for use when the Board is making a finding of "insufficient" materials. Education Code 60119 requires that the Board's resolution list, for each school for which an insufficiency exists, the percentage of students at each grade level who lack sufficient materials in each of the subject areas listed below.

Whereas, information provided at the public hearing and to the Board at the public meeting detailed that insufficient standards-aligned textbooks or **other** instructional materials were provided to students in the following subjects and grade levels at district schools: *(For each school, list the percentage of students who lack sufficient standards-aligned textbooks or instructional materials in mathematics, science, history-social science, English language arts, world/foreign language, and health.)*

Whereas, sufficient textbooks or **other** instructional materials were not provided at each school listed above due to the following reasons: *(For each school at which there is an insufficiency, list the reasons that each student does not have sufficient instructional materials in each subject and grade level listed above.)*

Therefore, it is resolved, that for the *(year)* school year, the *(name of school district)* has not provided each student with sufficient textbooks or **other** instructional materials that are consistent with the cycles and content of the curriculum framework, and;

SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS (continued)

Be it further resolved, that the following actions will be taken to ensure that all students have sufficient standards-aligned textbooks or **other** instructional materials in all subjects that are consistent with the cycles and content of the curriculum frameworks within two months of the beginning of the school year in which this determination is made. *(List actions to be taken to resolve insufficiency.)*

PASSED AND ADOPTED THIS day of at a meeting, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Attest:

Secretary

President

(11/12 7/17) 10/20

CSBA Sample Exhibit

Board Bylaws

E(1) 9323.2(a)

ACTIONS BY THE BOARD

ACTIONS REQUIRING A SUPER MAJORITY VOTE

Note: The following exhibit lists some of the Governing Board actions that require more than a simple majority vote. Other such actions may exist and may be identified in the future.

Actions Requiring a Two-Thirds Vote of the Board:

Note: For an action requiring a two-thirds vote to pass, a three-member board will need two board members to vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need five board members to vote in favor of the item.

1. Resolution declaring the Governing Board's intention to sell or lease real property (Education Code 17466)

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

2. Resolution declaring the Board's intent to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)
3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
4. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

Note: Item #5 below is different from temporary borrowing pursuant to Government Code 53850-53858 which requires only a majority vote of the Board.

5. Request for temporary borrowing of funds needed for immediate requirements of the district to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)
6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

(cf. 7131 - Relations with Local Agencies)

ACTIONS BY THE BOARD (continued)

(cf. 7150 - Site Selection and Development)
(cf. 7160 - Charter School Facilities)

7. When the district is organized to serve only grades K-8, action to establish a community day school for any of grades K-8 (Education Code 48660)

(cf. 6185 - Community Day School)

8. When the district is organized to serve only grades K-8, has an average daily attendance (ADA) of 2,500 or less, or desires to operate a community day school to serve any of grades K-6 (and no higher grades) and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

9. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)

(cf. 7214 - General Obligation Bonds)

10. Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code 15266)

(cf. 7213 - School Facilities Improvement Districts)

11. Resolution to place a parcel tax on the ballot (Government Code 53724)

(cf. 3471 - Parcel Taxes)

Note: Code of Civil Procedure 1245.240 requires that, prior to commencing an eminent domain action, the Board adopt a resolution of necessity approved by a two-thirds vote of the Board unless a greater vote is required by statute, charter, or ordinance. In addition, if the Board desires to use the property for a different purpose than stated in the resolution of necessity, then pursuant to Code of Civil Procedure 1245.245, the Board must adopt, by two-thirds vote, another resolution authorizing the different use unless a greater vote is required by statute, charter, or ordinance.

12. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

Note: Item #13 is for use by ~~three member boards~~ **districts governed by a three-member board that have elected to use an alternative procedure for awarding contracts for public works projects pursuant to**

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ACTIONS BY THE BOARD (continued)

the Uniform Public Construction Cost Accounting Act (UPCCAA) (Public Contract Code 22000-22045), which establishes a higher bid limit and a more informal bidding process for certain projects. For further information, see BP 3311.1 - Uniform Public Construction Cost Accounting Procedures.

13. When the district has a three-member Board **and has adopted the procedures set forth in the Uniform Public Construction Cost Accounting Act (UPCCAA)**, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)

(cf. 3311.1 - Uniform Public Construction Cost Accounting Procedures)

Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting:

1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session ~~Purposes and Agendas~~)

Actions Requiring a Four-Fifths Vote of the Board:

Note: For an action requiring a four-fifths vote to pass, a three-member board will need a unanimous vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need six board members to vote in favor of the item.

- ~~1. Expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense (Government Code 53790-53792)~~

(cf. 3110 - Transfer of Funds)

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ACTIONS BY THE BOARD (continued)

- 2-1.** Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)
- 3-2.** Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823-53824)
- 4-3.** Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

(cf. 3311 - Bids)

Note: Item ~~#5~~ **#4** is for use by districts governed by a five-member or seven-member board.

Items #4-5 are for use by districts that have elected to use an alternative procedure for awarding contracts for public works projects pursuant to the UPCCAA. For further information, see BP 3311.1 - Uniform Public Construction Cost Accounting Procedures.

- 5-4.** When the district has a five-member or seven-member Board **and has adopted the procedures set forth in UPCCAA**, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)

Note: ~~AB 2249 (Ch. 169, Statutes of 2018) amended Public Contract Code 22034 to change the thresholds for public works projects bid pursuant to the Uniform Public Construction Cost Accounting Act, thereby increasing the amount requiring board resolution, as provided in item #6.~~

- 6-5.** Resolution to award a contract for a public works project at \$212,500 or less to the lowest responsible bidder, when the district is using the informal process authorized under the **Uniform Public Construction Cost Accounting Act UPCCAA** for projects of \$200,000 or less, all bids received are in excess of \$200,000, and the Board determines that the district's cost estimate was reasonable (Public Contract Code 22034)

(cf. 3311.1 - Uniform Public Construction Cost Accounting Procedures)

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ACTIONS BY THE BOARD (continued)

Action Requiring a Four-Fifths Vote of the Board Members Present at the Meeting

A four-fifths vote of the Board members present at the meeting shall be required to approve the expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense. (Government Code 53790-53792)

(cf. 3110 - Transfer of Funds)

Actions Requiring a Unanimous Vote of the Board:

1. Resolution authorizing and prescribing the terms of a lease of district property for extraction and taking of gas not associated with oil (Education Code 17510-17511)
2. Authorization of the use of day labor or force account, or waiver of the competitive bid process pursuant to Public Contract Code 20111, when the Board determines that an emergency exists requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property, and upon approval of the County Superintendent of Schools (Public Contract Code 20113)

Action Requiring a Unanimous Vote of the Board Members Present at the Meeting:

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

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

(10/16 3/19) 10/20

CSBA Sample Administrative Regulation

Philosophy, Goals, Objectives, and Comprehensive Plans

AR 0430(a)

COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION

Definitions

Free appropriate public education (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the California Department of Education, including the requirements of 34 CFR 300.1-300.818; include appropriate preschool, elementary school, or secondary school education for individuals between the ages of 3 and 21; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320-300.324. (Education Code 56040; 34 CFR 300.17, 300.101, 300.104)

Least restrictive environment means that, to the maximum extent appropriate, students with disabilities, including individuals in public or private institutions or other care facilities, be educated with individuals who are nondisabled, including the provision of nonacademic and extracurricular services and activities. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Education Code 56040.1; 34 CFR 300.107, 300.114, 300.117)

Elements of the Local Plan

Note: Education Code 56205 and 56206 detail the elements that must be included in the local plan developed by the Special Education Local Plan Area (SELPA), including a requirement that the plan contain assurances of general compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482), and the Americans with Disabilities Act (42 USC 12101-12213).

Pursuant to Education Code 56122, the California Department of Education (CDE) has developed templates for plan development, which are available on its web site.

The local plan developed by the Special Education Local Plan Area (SELPA) shall include, but not be limited to: (Education Code 56122, 56205, 56206)

1. Policies, procedures, and programs, that are consistent with state laws, regulations, and policies and 20 USC 1412(a), 20 USC 1413(a)(1), and 34 CFR 300.201 governing the following:
 - a. Free appropriate public education
 - b. Full educational opportunity

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COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION (continued)

- c. Child find and referral
- d. Individualized education programs, including development, implementation, review, and revision
- e. Least restrictive environment
- f. Procedural safeguards
- g. Annual and triennial assessments
- h. Confidentiality
- i. Transition from the Infants and Toddlers with Disabilities programs pursuant to 20 USC 1431 to the preschool program
- j. Children in private schools
- k. Compliance assurances, including general compliance with the federal Individuals with Disabilities Education Act (20 USC 1400-1482), Section 504 of the federal Rehabilitation Act of 1973 (29 USC 794), the federal Americans with Disabilities Act of 1990 (42 USC 12101-12213), related federal regulations, and Education Code 56000-56865
- l. A description of the governance and administration of the local plan in accordance with Education Code 56205(a)(12)
- m. Personnel qualification to ensure that personnel, including special education teachers and personnel and paraprofessionals are appropriately and adequately prepared and trained in accordance with Education Code 56058 and 56070 and 20 USC 1412(a)(14) and 1413(a)(3)
- n. Performance goals and indicators
- o. Participation in state and districtwide assessments, including assessments described in 20 USC 6301 et seq. and alternate assessments in accordance with 20 USC 1412(a)(16), and reports relating to assessments
- p. Supplementation of state, local, and other federal funds, including nonsupplantation of funds
- q. Maintenance of financial effort

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COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION (continued)

- r. Opportunities for public participation before adoption of policies and procedures
 - s. Suspension and expulsion rates
 - t. Access to instructional materials by blind individuals with exceptional needs and others with print disabilities in accordance with 20 USC 1412(a)(23)
 - u. Overidentification and disproportionate representation by race and ethnicity of children as individuals with exceptional needs, including children with disabilities with a particular impairment described in 20 USC 1401 and 1412(a)(24)
 - v. Prohibition of mandatory medication use pursuant to Education Code 56040.5 and 20 USC 1412(a)(25)
2. An annual budget plan, including descriptions of the SELPA's allocation plan in accordance with Education Code 56836-56845, all revenues by revenue source received by the SELPA specifically for the purpose of special education, a breakdown of the distribution of funds to each local educational agency (LEA) within the SELPA, projected total special education expenditures by each LEA, projected total expenditures by the SELPA and the LEAs within the SELPA, projected funding to be received specifically for regionalized operations, and a breakdown of projected SELPA operating expenditures
 3. An annual service plan, describing the services to be provided by each LEA, regardless of whether the LEA participates in the local plan, including the nature of the services and the physical location at which the services will be provided. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

Note: Pursuant to Education Code **56205 and 56122**, as amended by SB 75 (Ch. 51, Statutes of 2019), beginning July 1, 2021, the local plan must include an annual assurances support plan to demonstrate how the SELPA and its participating agencies are coordinating to assure effective outcomes for students with disabilities. As amended by SB 98 (Ch. 24, Statutes of 2020), Education Code 56122 extends the timeline for developing an annual assurances support plan to July 1, 2023. A template for the annual assurances support plan will be developed by CDE by July 1, 2020 2022.

4. Beginning July 1, **2021 2023**, an annual assurances support plan to demonstrate how the SELPA and its participating agencies are coordinating for purposes of assuring effective outcomes for students with disabilities, including a description of:

COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION (continued)

- a. How the **governing board of the** SELPA will support ~~each~~ participating **agencies** ~~district~~ in achieving the goals, actions, and services identified in **its** ~~their~~ local control and accountability plans
 - b. How the **governing board of the** SELPA will connect ~~any~~ participating **agencies** ~~district~~ in need of technical assistance to the statewide system of support
 - c. The services, technical assistance, and support the **governing board of the** SELPA will provide to meet the required policies, procedures, and programs specified in Education Code 56205
5. A description of programs for early childhood special education from birth through five years of age
 6. A description of the method by which members of the public, including parents/guardians of individuals with disabilities who are receiving services under the plan, may address questions or concerns pursuant to Education Code 56205
 7. A description of a dispute resolution process, including mediation and arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the local plan
 8. Verification that the plan has been reviewed by the community advisory committee in accordance with Education Code 56205 and that the committee had at least 30 days to conduct this review before submission of the local plan to CDE
 9. A description of the process being utilized to refer students for special education instruction pursuant to Education Code 56303
 10. A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools, the method of ensuring that all requirements of each student's IEP are being met, and a method for evaluating whether the student is making appropriate educational progress
 11. A description of how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve students in isolated sites and maximizes the opportunities to serve students in the least restrictive environment

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COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION (continued)

The local plan, annual budget plan, annual service plan, and annual assurances support plan shall be written in language that is understandable to the general public. They shall be adopted at a public hearing of the SELPA, for which notice of the hearing shall be posted in each school in the SELPA at least 15 days before the hearing. (Education Code 56205)

Availability of the Plan

The Superintendent or designee shall post on the district's web site the approved local plan, annual budget plan, annual service plan, and annual assurances support plan and any updates or revisions to the plans. A complete copy of the local plan, annual budget plan, annual service plan, annual assurances support plan, and policies and procedures shall be held on file in the district office and shall be accessible to any interested party. (Education Code 56205.5)

(3/08 5/20) 12/20

CSBA Sample Board Policy

Community Relations

BP 1312.3(a)

UNIFORM COMPLAINT PROCEDURES

Note: To address prohibited discrimination and violations of state and federal laws governing educational programs, 5 CCR 4621 **mandates** districts to adopt uniform complaint procedures (UCP) consistent with the state's complaint procedures specified in 5 CCR 4600-4670. See the section "Complaints Subject to UCP" below for a list of programs and activities subject to these procedures pursuant to state law.

The California Department of Education (CDE) monitors district programs and operations for compliance with these requirements through its Federal Program Monitoring (FPM) process. The FPM consists of a review of (1) written district policies and procedures for required statements, including prohibition of discrimination (such as discriminatory harassment, intimidation, and bullying) against students pursuant to Education Code 234.1; and (2) records of required activities, such as annual notification provided to students, parents/guardians, employees, and other school community members.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces federal anti-discrimination laws, including Title II of the Americans with Disabilities Act (42 USC 12101-12213), Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000e-17), Title IX of the Education Amendments Act of 1972 (20 USC 1681-1688), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Age Discrimination Act of 1975 (42 USC 6101-6107). **OCR has issued guidance describing federal requirements for discrimination complaint procedures. OCR requires such complaint procedures to be "prompt and equitable." OCR evaluates a district's procedures based on factors specified in the accompanying administrative regulation, including whether the procedures (1) provide notice to the district's students, parents/guardians, and employees; (2) ensure adequate, reliable, and impartial investigation of complaints; (3) contain reasonably prompt timeframes for major stages of the complaint process; (4) provide notice to the complainant of the resolution of the complaint; and (5) provide an assurance that action will be taken to prevent recurrence of any discrimination found and to correct its effects. Whether a complaint of sexual harassment is addressed through the UCP or the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. See the accompanying administrative regulation, BP/AR 5147 - Sexual Harassment, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.**

The following policy and accompanying administrative regulation reflect all components required by law, **5 CCR 4600-4670, as amended by Register 2020, No. 21**, and the 2020-21 FPM instrument. Additional details provided herein may help districts during a compliance check by CDE or in the event that a CDE or OCR investigation occurs.

The Governing Board recognizes that the district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The Board encourages early resolution of complaints whenever possible. To resolve complaints which may require a more formal process, the Board adopts the uniform system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

UNIFORM COMPLAINT PROCEDURES (continued)

Complaints Subject to UCP

Note: The FPM process includes a review of a district's policies and procedures to determine whether all district programs and activities that are subject to the UCP, as listed in the FPM instrument, are addressed. Items #1-14 23 list all programs and activities identified in the FPM instrument. According to CDE, the district's policy must list all such programs and activities and, at the district's discretion, may add a paragraph below the list stating the UCP programs and activities that are implemented in the district.

For further information regarding requirements for the following programs and activities, see the related CSBA policy and/or administrative regulation.

The district's uniform complaint procedures (UCP) shall be used to investigate and resolve the following complaints regarding the following programs and activities:

1. ~~Any complaint alleging district violation of applicable state or federal laws or regulations governing any program subject to the UCP which is offered by the district, including adult education programs; After School Education and Safety programs; agricultural career technical education; federal career technical education; child care and development programs; child nutrition programs; compensatory education; consolidated categorical aid programs; the federal Every Student Succeeds Act; migrant education; Regional Occupational Centers and Programs; school safety plans; California State Preschool Programs; and any other district implemented state categorical program that is not funded through the local control funding formula pursuant to Education Code 64000~~

~~(cf. 3553 – Free and Reduced Price Meals)~~

~~(cf. 3555 – Nutrition Program Compliance)~~

~~(cf. 5148 – Child Care and Development)~~

~~(cf. 5148.2 – Before/After School Programs)~~

~~(cf. 5148.3 – Preschool/Early Childhood Education)~~

~~(cf. 6171 – Title I Programs)~~

~~(cf. 6174 – Education for English Learners)~~

~~(cf. 6175 – Migrant Education Program)~~

~~(cf. 6178 – Career Technical Education)~~

~~(cf. 6178.1 – Work Based Learning)~~

~~(cf. 6178.2 – Regional Occupational Center/Program)~~

~~(cf. 6200 – Adult Education)~~

2. Any complaint, by a student, employee, or other person participating in a district program or activity, alleging the occurrence of unlawful discrimination, (such as discriminatory harassment, intimidation, or bullying) in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on the person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national

UNIFORM COMPLAINT PROCEDURES (continued)

~~origin, immigration status, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on the person's association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)~~

~~(cf. 0410—Nondiscrimination in District Programs and Activities)
(cf. 5145.3—Nondiscrimination/Harassment)
(cf. 5145.7—Sexual Harassment)~~

~~3. Any complaint alleging district noncompliance with the requirement to provide reasonable accommodation to a lactating student on school campus to express breast milk, breastfeed an infant child, or address other breastfeeding-related needs of the student (Education Code 222)~~

~~(cf. 5146—Married/Pregnant/Parenting Students)~~

~~4. Any complaint alleging district noncompliance with requirements to provide a pregnant or parenting student the accommodations specified in Education Code 46015, including those related to the provision of parental leave, right of return to the school of previous enrollment or to an alternative education program, if desired, and possible enrollment in school for a fifth year of instruction to enable the student to complete state and Board-imposed graduation requirements (Education Code 46015)~~

~~5. Any complaint alleging district noncompliance with the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities (5 CCR 4610)~~

~~(cf. 3260—Fees and Charges)
(cf. 3320—Claims and Actions Against the District)~~

~~6. Any complaint alleging district noncompliance with applicable requirements of Education Code 52060-52077 related to the implementation of the local control and accountability plan, including the development of a local control funding formula budget overview for parents/guardians (Education Code 52075)~~

~~(cf. 0460—Local Control and Accountability Plan)
(cf. 3100—Budget)~~

~~7. Any complaint alleging noncompliance with requirements related to the development of a school plan for student achievement or the establishment of a school site council, as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64000-64001, 65000-65001)~~

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UNIFORM COMPLAINT PROCEDURES (continued)

(cf. 0420—School Plans/Site Councils)

8. Any complaint, by or on behalf of a student who is a foster youth as defined in Education Code 51225.2, alleging district noncompliance with any requirement applicable to the student regarding placement decisions; the responsibilities of the district's educational liaison to the student; the award of credit for coursework satisfactorily completed in another school, district, or country; school or records transfer; or the grant of an exemption from Board imposed graduation requirements (Education Code 48853, 48853.5, 49069.5, 51225.1, 51225.2)

(cf. 6173.1—Education for Foster Youth)

Note: Items #9-11 are for use by districts that maintain high schools.

9. Any complaint, by or on behalf of a student who transfers into the district after the second year of high school and is a homeless child or youth as defined in 42 USC 11434a, a former juvenile court school student currently enrolled in the district, a child of a military family as defined in Education Code 49701, or a migrant student as defined in Education Code 54441, or by or on behalf of an immigrant student participating in a newcomer program as defined in Education Code 51225.2 in the third or fourth year of high school, alleging district noncompliance with any requirement applicable to the student regarding the grant of an exemption from Board imposed graduation requirements (Education Code 51225.1)

(cf. 6173—Education for Homeless Children)

(cf. 6173.2—Education of Children of Military Families)

(cf. 6173.3—Education for Juvenile Court School Students)

10. Any complaint, by or on behalf of a student who is a homeless child or youth as defined in 42 USC 11434a, a former juvenile court school student, a child of a military family as defined in Education Code 49701, a migrant child as defined in Education Code 54441, or a newly arrived immigrant student who is participating in a newcomer program as defined in Education Code 51225.2, alleging district noncompliance with requirements for the award of credit for coursework satisfactorily completed in another school, district, or country (Education Code 51225.2)

11. Any complaint alleging district noncompliance with the requirements of Education Code 51228.1 and 51228.2 that prohibit the assignment of a student in grades 9-12 to a course without educational content for more than one week in any semester or to a course the student has previously satisfactorily completed, without meeting specified conditions (Education Code 51228.3)

(cf. 6152—Class Assignment)

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UNIFORM COMPLAINT PROCEDURES (continued)

Note: Education Code 51222, as amended by SB 75 (Ch. 51, Statutes of 2019), extends the UCP to complaints alleging noncompliance with the physical education instructional minutes requirement for grades 7-12.

~~12. Any complaint alleging district noncompliance with the physical education instructional minutes requirement (Education Code 51210, 51222, 51223)~~

~~(cf. 6142.7 - Physical Education and Activity)~~

~~13. Complaints regarding the noncompliance of a license exempt California State Preschool Program (CSPP) with health and safety standards specified in Health and Safety Code 1596.7925 and related state regulations (Education Code 8235.5; Health and Safety Code 1596.7925)~~

1. Accommodations for pregnant and parenting students (Education Code 46015)

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

2. Adult education programs (Education Code 8500-8538, 52334.7, 52500-52617)

(cf. 6200 - Adult Education)

3. After School Education and Safety programs (Education Code 8482-8484.65)

(cf. 5148.2 - Before/After School Programs)

4. Agricultural career technical education (Education Code 52460-52462)

5. Career technical and technical education and career technical and technical training programs (Education Code 52300-52462)

(cf. 6178 - Career Technical Education)

(cf. 6178.1 - Work-Based Learning)

6. Child care and development programs (Education Code 8200-8498)

(cf. 5148 - Child Care and Development)

7. Compensatory education (Education Code 54400)

(cf. 6171 - Title I Programs)

8. Consolidated categorical aid programs (Education Code 33315; 34 CFR 299.10-299.12)

UNIFORM COMPLAINT PROCEDURES (continued)

- 9. Course periods without educational content, when students in grades 9-12 are assigned to such courses more than one week in any semester or in a course the student has previously satisfactorily completed, unless specified conditions are met (Education Code 51228.1-51228.3)**

(cf. 6152 - Class Assignment)

- 10. Discrimination, harassment, intimidation, or bullying in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on the person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on the person's association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)**

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

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

- 11. Educational and graduation requirements for students in foster care, homeless students, students from military families, students formerly in a juvenile court school, migrant students, and immigrant students participating in a newcomer program (Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, 51225.2)**

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

(cf. 6173.3 - Education for Juvenile Court School Students)

- 12. Every Student Succeeds Act (Education Code 52059; 20 USC 6301 et seq.)**

- 13. Local control and accountability plan (Education Code 52075)**

(cf. 0460 - Local Control and Accountability Plan)

- 14. Migrant education (Education Code 54440-54445)**

(cf. 6175 - Migrant Education Program)

- 15. Physical education instructional minutes (Education Code 51210, 51222, 51223)**

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UNIFORM COMPLAINT PROCEDURES (continued)

(cf. 6142.7 - Physical Education and Activity)

16. Student fees (Education Code 49010-49013)

(cf. 3260 - Fees and Charges)

17. Reasonable accommodations to a lactating student (Education Code 222)

18. Regional occupational centers and programs (Education Code 52300-52334.7)

(cf. 6178.2 - Regional Occupational Center/Program)

19. School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64001)

(cf. 0420 - School Plans/Site Councils)

20. School safety plans (Education Code 32280-32289)

(cf. 0450 - Comprehensive Safety Plan)

21. School site councils as required for the consolidated application for specified federal and/or state categorical funding (Education Code 65000)

(cf. 0420 - School Plans/Site Councils)

22. State preschool programs (Education Code 8235-8239.1)

(cf. 5148.3 - Preschool/Early Childhood Education)

Note: Pursuant to Education Code 8235.5 and CDE's 2020-21 FPM instrument, the district must use the UCP, with modifications as necessary, to resolve complaints alleging deficiencies in license-exempt California State Preschool Programs related to health and safety issues. Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694, as added by Register 2020, No. 21. See the section "Health and Safety Complaints in License-Exempt Preschool Programs" in the accompanying administrative regulations.

23. State preschool health and safety issues in license-exempt programs (Education Code 8235.5)

Note: 5 CCR 4621 mandates that district policy ensure that complainants are protected from retaliation as specified in item #14 24 below.

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UNIFORM COMPLAINT PROCEDURES (continued)

14.24. Any complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy

Note: Pursuant to 5 CCR 4610, a district may, at its discretion, use the UCP to investigate and resolve other complaints.

~~15. Any other complaint as specified in district policy~~

25. Any other state or federal educational program the Superintendent of Public Instruction or designee deems appropriate

Note: 5 CCR 4631 authorizes the district to utilize alternative dispute resolution (ADR) methods, including mediation, to resolve complaints before initiating a formal investigation. However, the district should ensure that any ADR it uses, particularly "in-person ADR," is appropriate for the particular situation. For example, in some instances (e.g., sexual assault), face-to-face mediation should not be used, even if all parties voluntarily agree, given the risk that a student might feel pressured to "voluntarily" agree to it. The following **optional** paragraph provides for a neutral mediator and should be revised to reflect district practice.

The Board recognizes that alternative dispute resolution (ADR) can, depending on the nature of the allegations, offer a process for resolving a complaint in a manner that is acceptable to all parties. An ADR process such as mediation may be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. The Superintendent or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations.

Note: The following paragraph is **mandated** pursuant to 5 CCR 4621. Appropriate disclosure will vary in each case depending on the facts and circumstances.

The district shall protect all complainants from retaliation. In investigating complaints, the confidentiality of the parties involved shall be protected as required by law. For any complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the Superintendent or designee shall keep the identity of the complainant, and/or the subject of the complaint if different from the complainant, confidential when appropriate and as long as the integrity of the complaint process is maintained.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 5125 - Student Records)

(cf. 9011 - Disclosure of Confidential/Privileged Information)

UNIFORM COMPLAINT PROCEDURES (continued)

When an allegation that is not subject to UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the district's UCP.

The Superintendent or designee shall provide training to district staff to ensure awareness and knowledge of current law and requirements related to UCP, including the steps and timelines specified in this policy and the accompanying administrative regulation.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Note: It is important to maintain records of all UCP complaints and the investigations of those complaints. If the district is investigated by OCR or CDE, these are important documents in demonstrating that the district has complied with federal law, state law, and its own policies and regulations.

The Superintendent or designee shall maintain a record of each complaint and subsequent related actions, including steps taken during the investigation and all information required for compliance with 5 CCR 4631 and 4633.

(cf. 3580 - District Records)

Non-UCP Complaints

Note: 5 CCR 4611 details complaint issues that are not subject to UCP. Such issues include, but are not limited to, allegations of child abuse, health and safety complaints regarding a child development program, allegations of fraud, and employment discrimination complaints.

The following complaints shall not be subject to the district's UCP but shall be referred to the specified agency: ~~(5 CCR 4611)~~ **investigated and resolved by the specified agency or through an alternative process:**

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services Protective Services Division **and or** the appropriate law enforcement agency. **(5 CCR 4611)**

(cf. 5141.4 - Child Abuse Prevention and Reporting)

2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services **and shall, for licensing exempt facilities, be referred to the appropriate Child Development regional administrator.** **(5 CCR 4611)**

UNIFORM COMPLAINT PROCEDURES (continued)

Note: Complaints of employment discrimination are not subject to the UCP. Instead, pursuant to 2 CCR 11023, the district must establish an impartial and prompt process for addressing such complaints. In addition, 5 CCR 4611 requires that employment discrimination complaints be referred to the Department of Fair Employment and Housing (DFEH). See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

3. Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in AR 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Department of Fair Employment and Housing.

~~3. Any complaint alleging fraud shall be referred to the Legal, Audits and Compliance Branch of the California Department of Education.~~

Note: 5 CCR 4610, as amended by Register 2020, No. 21, limits the applicability of the UCP for complaints regarding special education and child nutrition, as provided in items #4-6 below.

4. Any complaint alleging a violation of a state or federal law or regulation related to special education, a settlement agreement related to the provision of a free appropriate public education, or a due process hearing order shall be submitted to the California Department of Education (CDE) in accordance with AR 6159.1 - Procedural Safeguards and Complaints for Special Education. (5 CCR 3200-3205)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

5. Any complaint alleging noncompliance of the district's food service program with laws regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses shall be filed with or referred to CDE in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15580-15584)

6. Any allegation of discrimination based on race, color, national origin, sex, age, or disability in the district's food service program shall be filed with or referred to the U.S. Department of Agriculture in accordance with BP 3555 - Nutrition Program Compliance. (5 CCR 15582)

Note: ~~Complaints of employment discrimination are not subject to the UCP. Instead, pursuant to 2 CCR 11023, the district must establish an impartial and prompt process for addressing such complaints. In addition, 5 CCR 4611 requires that employment discrimination complaints be referred to the Department of Fair Employment and Housing (DFEH). See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.~~

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UNIFORM COMPLAINT PROCEDURES (continued)

~~Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in AR 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Department of Fair Employment and Housing.~~

Note: Education Code 35186 requires the district to use UCP, with modifications, to investigate and resolve complaints related to the issues stated in the following paragraph (i.e., "Williams complaints"). Because Education Code 35186 sets forth different timelines for investigation and resolution of these kinds of complaints than the timelines specified in law for other uniform complaints, CDE has created a separate uniform complaint process for the Williams complaints. See AR 1312.4 - Williams Uniform Complaint Procedures for the separate procedure.

7. Any complaint related to sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff, or teacher vacancies and misassignments shall be investigated and resolved in accordance with ~~the procedures in~~ AR 1312.4 - Williams Uniform Complaint Procedures. (Education Code ~~8235.5,~~ 35186)

(cf. 1312.4 - Williams Uniform Complaint Procedures)

Legal Reference: (see next page)

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UNIFORM COMPLAINT PROCEDURES (continued)

Legal Reference:

EDUCATION CODE

- 200-262.4 *Prohibition of discrimination*
 - 8200-8498 *Child care and development programs*
 - 8500-8538 *Adult basic education*
 - 18100-18203 *School libraries*
 - 32280-32289 *School safety plan, uniform complaint procedures*
 - 35186 *Williams uniform complaint procedures*
 - 46015 *Parental leave for students*
 - 48853-48853.5 *Foster youth*
 - 48985 *Notices in language other than English*
 - 49010-49014 *Student fees*
 - 49060-49079 *Student records, especially:*
 - 49069.5 *Records of foster youth*
 - 49490-49590 *Child nutrition programs*
 - 49701 *Interstate Compact on Educational Opportunity for Military Children*
 - 51210 *Courses of study grades 1-6*
 - 51222 *Physical education, secondary schools*
 - 51223 *Physical education, elementary schools*
 - 51225.1-51225.2 *Foster youth, homeless children, former juvenile court school students, military-connected students, migrant students, and newly arrived immigrant students; course credits; graduation requirements*
 - 51226-51226.1 *Career technical education*
 - 51228.1-51228.3 *Course periods without educational content*
 - 52059.5 *Statewide system of support***
 - 52060-52077 *Local control and accountability plan, especially:*
 - 52075 *Complaint for lack of compliance with local control and accountability plan requirements*
 - 52300-52462 *Career technical education*
 - 52500-52616.24 *Adult schools*
 - 54400-54425 *Compensatory education programs*
 - 54440-54445 *Migrant education*
 - 54460-54529 *Compensatory education programs*
 - 59000-59300 *Special schools and centers*
 - 64000-64001 *Consolidated application process; school plan for student achievement*
 - 65000-65001 *School site councils*
- GOVERNMENT CODE
- 11135 *Nondiscrimination in programs or activities funded by state*
 - 12900-12996 *Fair Employment and Housing Act*

Legal Reference continued: (see next page)

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UNIFORM COMPLAINT PROCEDURES (continued)

Legal Reference: (continued)

HEALTH AND SAFETY CODE

1596.792 *California Child Day Care Act; general provisions and definitions*

1596.7925 *California Child Day Care Act; health and safety regulations*

PENAL CODE

422.55 *Hate crime; definition*

422.6 *Interference with constitutional right or privilege*

CODE OF REGULATIONS, TITLE 2

11023 *Harassment and discrimination prevention and correction*

CODE OF REGULATIONS, TITLE 5

3200-3205 *Special education compliance complaints*

4600-4670 *Uniform complaint procedures*

4680-4687 *Williams uniform complaint procedures*

4690-4694 *Complaints regarding health and safety issues in license-exempt preschool programs*

900-4965 *Nondiscrimination in elementary and secondary education programs*

15580-15584 *Child nutrition programs complaint procedures*

UNITED STATES CODE, TITLE 20

1221 *Application of laws*

1232g *Family Educational Rights and Privacy Act*

1681-1688 *Title IX of the Education Amendments of 1972*

6301-6576 *Title I Improving the Academic Achievement of the Disadvantaged*

6801-7014 *Title III language instruction for limited English proficient and immigrant students*

UNITED STATES CODE, TITLE 29

794 *Section 504 of Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

2000d-2000e-17 *Title VI and Title VII Civil Rights Act of 1964, as amended*

2000h-2-2000h-6 *Title IX of the Civil Rights Act of 1964*

6101-6107 *Age Discrimination Act of 1975*

11431-11435 *McKinney-Vento Homeless Assistance Act*

12101-12213 *Title II equal opportunity for individuals with disabilities*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 *Nondiscrimination on basis of disability; complaints*

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 *Family Educational Rights and Privacy Act*

100.3 *Prohibition of discrimination on basis of race, color or national origin*

104.7 *Designation of responsible employee for Section 504*

106.1-106.82 *Nondiscrimination on the basis of sex in education programs, especially:*

106.8 *Designation of responsible employee for Title IX*

106.9 *Notification of nondiscrimination on basis of sex*

110.25 *Notification of nondiscrimination on the basis of age*

Management Resources: (see next page)

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UNIFORM COMPLAINT PROCEDURES (continued)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Uniform Complaint Procedure 2020-21 Program Instrument

Sample UCP Board Policies and Procedures

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter, September 22, 2017

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS (continued)

Dear Colleague Letter: Harassment and Bullying, October 2010

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

U.S. DEPARTMENT OF JUSTICE PUBLICATIONS

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2002

WEB SITES

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

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

Family Policy Compliance Office: <https://www2.ed.gov/policy/gen/guid/fpeo/>

Student Privacy Policy Office: <https://www2.ed.gov/about/offices/list/opepd/sppo/>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/ocr>

U.S. Department of Justice: <http://www.justice.gov>

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CSBA Sample Administrative Regulation

Community Relations

AR 1312.3(a)

UNIFORM COMPLAINT PROCEDURES

Note: 5 CCR 4621 **mandates** that the district's uniform complaint procedures (UCP) be consistent with the procedures of 5 CCR 4600-4670. Additionally, Education Code 52075 **mandates** districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan (LCAP) and Education Code 8235.5 **mandates** districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying). For example, all districts are **mandated** pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are **mandated** pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt **such** policies and procedures to address discrimination on the basis of sex and age. Some of the factors considered by the U.S. Department of Education's Office for Civil Rights (OCR) when determining whether a district's procedures are "prompt and equitable" are addressed throughout the following administrative regulation.

Apart from these mandates, state law authorizes the use of UCP to resolve complaints of noncompliance with laws related to the development of a school plan for student achievement and the establishment of school site councils; accommodations for pregnant and parenting students; prohibition against the charging of student fees; educational rights of foster youth, homeless students, former juvenile court school students, children of military families, migrant students, and students participating in a newcomer program for newly arrived immigrants; assignment of students to courses without educational content; and physical education instructional minutes. See the section "Complaints Subject to UCP" in the accompanying Board policy.

Except as the Governing Board may otherwise specifically provide in other district policies, these uniform complaint procedures (UCP) shall be used to investigate and resolve only the complaints specified in BP 1312.3.

- (cf. 1312.1 - Complaints Concerning District Employees)*
- (cf. 1312.2 - Complaints Concerning Instructional Materials)*
- (cf. 1312.4 - Williams Uniform Complaint Procedures)*
- (cf. 4030 - Nondiscrimination in Employment)*

Compliance Officers

Note: 5 CCR 4621 **mandates** the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including the receiving and investigating of complaints alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) and retaliation. During its Federal Program Monitoring (FPM) process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for receiving and investigating complaints. Districts should identify the specific title(s) of the compliance officer(s) in the space provided below. If a district identifies multiple compliance officers, it is recommended that one be designated the lead compliance officer.

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UNIFORM COMPLAINT PROCEDURES (continued)

The following paragraph specifies that the compliance officer will be the same person designated to serve as the Title IX Coordinator for addressing complaints of sexual harassment pursuant to AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Districts may modify this regulation to designate different district employees to serve these functions.

The district designates the individual(s), position(s), or unit(s) identified below as responsible for coordinating the district's response to complaints and for complying with state and federal civil rights laws. The individual(s), position(s), or unit(s) also serve as the compliance officer(s) specified in AR 5145.3 - Nondiscrimination/Harassment responsible for handling complaints regarding unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) and in AR 5145.7 - Sexual Harassment for handling complaints regarding sexual harassment. The compliance officer(s) shall receive and coordinate the investigation of complaints and shall ensure district compliance with law.

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.71 - Title IX Sexual Harassment Complaints Procedures)

Assistant Principal

(title or position)

San Paequal Union School

(unit or office)

15305 Rockwood Rd, Escandido, CA

(address)

760.745.4931

(telephone number)

spusa@sanpaequalunion.net

(email)

92027

Note: The following paragraph is for use by districts that have designated more than one compliance officer.

No

The compliance officer who receives a complaint may assign another compliance officer to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent, if applicable, if another compliance officer is assigned to the complaint.

In no instance shall a compliance officer be assigned to a complaint in which the compliance officer has a bias or conflict of interest that would prohibit the fair investigation or resolution of the complaint. Any complaint against a compliance officer or that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias shall be filed with the Superintendent or designee who shall determine how the complaint will be investigated.

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UNIFORM COMPLAINT PROCEDURES (continued)

Note: 5 CCR 4621 **mandates** that the district's policy require employees responsible for compliance and/or for investigating and resolving complaints to be knowledgeable about the laws and programs at issue in the complaints they are assigned. OCR requires that the compliance officer(s) involved in implementing discrimination complaint procedures be knowledgeable about the procedures and be able to explain them to parents/guardians and students. They must also have training or experience in handling discrimination complaints, including appropriate investigative techniques and understanding of the applicable legal standards.

The Superintendent or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program, applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), applicable standards for reaching decisions on complaints, and appropriate corrective measures. Assigned employees may have access to legal counsel as determined by the Superintendent or designee.

(cf. 4331 - Staff Development)

(cf. 9124 - Attorney)

The compliance officer or, if necessary, any appropriate administrator shall determine whether interim measures are necessary during and pending the result of an investigation. If interim measures are determined to be necessary, the compliance officer or the administrator shall consult with the Superintendent, the Superintendent's designee, or, if appropriate, the site principal to implement one or more interim measures. The interim measures shall remain in place until the compliance officer determines that they are no longer necessary or until the district issues its final written decision, whichever occurs first.

Notifications

The district's UCP policy and administrative regulation shall be posted in all district schools and offices, including staff lounges and student government meeting rooms. (Education Code 234.1)

Note: During the FPM process, CDE staff will check to ensure that the district's policy contains a statement ensuring annual dissemination of notice of the district's UCP to the persons specified below.

In addition, the Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians of district students, district advisory committee members, school advisory committee members, appropriate private school officials or representatives, and other interested parties. (5 CCR 4622)

(cf. 0420 - School Plans/Site Councils)

(cf. 1220 - Citizen Advisory Committees)

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

UNIFORM COMPLAINT PROCEDURES (continued)

(cf. 5145.6 - Parental Notifications)

Note: 5 CCR 4622 requires the district to include specified information in its annual UCP notice to students, parents/guardians, employees, and others. During the FPM process, CDE staff will check the notice to ensure that it contains the components specified below. **The following list reflects those required components and additional content of the notice listed in CDE's FPM instrument.**

A sample of the annual notice is available through CDE's web site. It is the district's responsibility to update the notice as necessary to reflect new law.

The notice shall include:

1. A statement that the district is primarily responsible for compliance with federal and state laws and regulations, including those related to prohibition of unlawful discrimination, harassment, intimidation, or bullying against any protected group, and **a list of all programs and activities that are subject to UCP as identified in the section "Complaints Subject to UCP" in the accompanying Board policy**
2. **The title of the position responsible for processing complaints, the identity of the person(s) currently occupying that position if known, and a statement that such persons will be knowledgeable about the laws and programs that they are assigned to investigate**
- 4.3. **A statement that a UCP complaint regarding student fees must be filed no later than one year from the date the alleged violation occurred**
4. **A statement that, in the case of a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, a UCP complaint must be filed no later than six months from the date of the alleged conduct or the date the complainant first obtained knowledge of the facts of the alleged conduct**
- 3-5. **A statement that a student enrolled in a public school shall not be required to pay a fee for participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities**
- 2-6. A statement that a complaint regarding student fees or the local control and accountability plan (LCAP) may be filed anonymously if the complainant provides evidence or information leading to evidence to support the complaint

(cf. 0460 - Local Control and Accountability Plan)

(cf. 3260 - Fees and Charges)

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UNIFORM COMPLAINT PROCEDURES (continued)

~~3. A statement that a student enrolled in a public school shall not be required to pay a fee for participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities~~

~~4. A statement that a complaint regarding student fees must be filed no later than one year from the date the alleged violation occurred~~

5-7. A statement that the district will post a standardized notice of the educational rights of foster youth, homeless students, former juvenile court school students now enrolled in the district, children of military families, migrant students, and immigrant students enrolled in a newcomer program, as specified in Education Code 48853, 48853.5, 49069.5, 51225.1, and 51225.2, and the complaint process

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

(cf. 6173.3 - Education for Juvenile Court School Students)

(cf. 6175 - Migrant Education Program)

~~6. Identification of the responsible staff member(s), position(s), or unit(s) designated to receive complaints~~

7-8. A statement that complaints will be investigated in accordance with the district's UCP and a written decision will be sent to the complainant within 60 days from the receipt of the complaint, unless this time period is extended by written agreement of the complainant

8-9. A statement that the complainant has a right to appeal the district's **decision investigation report** to CDE **for programs within the scope of the UCP** by filing a written appeal, including a copy of the original complaint and the district's decision, within 15 days of receiving the district's decision

9-10. A statement advising the complainant of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable

10-11. A statement that copies of the district's UCP are available free of charge

Note: The following paragraph may be modified to reflect district practice. Pursuant to Education Code 221.61, districts are required to post information related to Title IX on their web sites, including specified information about complaint procedures under Title IX. See AR 5145.3 - Nondiscrimination/Harassment. A district that does not maintain a web site may comply by posting the information on the web site of its county office of education. A comprehensive list of rights based on the provisions of the federal regulations

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UNIFORM COMPLAINT PROCEDURES (continued)

implementing Title IX can be found in Education Code 221.8. In addition, in its April 2015 Dear Colleague Letter: Title IX Coordinators, OCR recommends that districts use web posting and social media to disseminate their nondiscrimination notices, policies, and procedures and communicate current compliance officer(s)' contact information to students, parents/guardians, and employees.

The annual notification, complete contact information of the compliance officer(s), and information related to Title IX as required pursuant to Education Code 221.61 shall be posted on the district web site and may be provided through district-supported social media, if available.

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

Note: Both federal and state laws contain requirements for translation of certain information and documents. Title VI of the Civil Rights Act of 1964 requires districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's 2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on balancing four factors: (1) the number or proportion of LEP individuals likely to encounter the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient. State law is more specific than federal law: Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, have access to the relevant information provided in the district's policy, regulation, forms, and notices concerning the UCP.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning the UCP shall be translated into that language, in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

Filing of Complaints

Note: Complaints filed under UCP may be filed directly with a compliance officer or with any site administrator not designated as a compliance officer. For example, acts of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) may initially be reported to a principal. See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment. If a site administrator not designated as a compliance officer receives a UCP complaint, the site administrator must notify a compliance officer. A

UNIFORM COMPLAINT PROCEDURES (continued)

district may also establish a site-level process for receiving informal reports about incidents for which a UCP complaint may be filed and notifying students and parents/guardians of their right to file a UCP complaint. Any site-level process established by a district should be in writing and distributed in the same manner as the grievance procedures listed herein with an explanation of how it interacts with the UCP complaint process.

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

All complaints shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist in the filing of the complaint. (5 CCR 4600)

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging district violation of applicable state or federal law or regulations governing the programs specified in the accompanying Board policy (item #1 of the section "Complaints Subject to UCP") may be filed by any individual, public agency, or organization. (5 CCR 4630)

Note: Education Code 49013 and 52075 **mandate** districts to adopt procedures that allow for anonymous complaints to be filed when a district allegedly violates the prohibition against the charging of student fees or violates any requirement related to the LCAP.

2. Any complaint alleging noncompliance with law regarding the prohibition against student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if the complaint provides evidence, or information leading to evidence, to support an allegation of noncompliance. A complaint about a violation of the prohibition against the charging of unlawful student fees may be filed with the principal of the school or with the Superintendent or designee. ~~However, any such complaint shall be filed no later than one year from the date the alleged violation occurred.~~

Note: Pursuant to 5 CCR 4630, as amended by Register 2020, No. 21, complaints related to the LCAP must be filed within a year of the date that the reviewing authority approves the district's LCAP. Pursuant to Education Code 52070, the County Superintendent of Schools is the reviewing authority for district LCAPs.

3. ~~However, any such~~ A UCP complaint shall be filed no later than one year from the date the alleged violation occurred. **For complaints related to the LCAP, the date of the alleged violation is the date when the County Superintendent of Schools approves the LCAP that was adopted by the Board.** (5 CCR 4630)

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UNIFORM COMPLAINT PROCEDURES (continued)

3.4. A complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) may be filed only by **a persons who alleges that they have having personally suffered unlawful discrimination, a person or who believes that an individual or** any specific class of individuals has been subjected to unlawful discrimination, **or a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying.** The complaint shall be initiated no later than six months from the date that the alleged unlawful discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful discrimination. The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630)

4.5. When a complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.

Note: OCR's Revised Sexual Harassment Guidance indicates that if a complainant in a sexual harassment case requests that the complainant's name or that of the victim not be revealed to the alleged perpetrator or asks that the complaint not be pursued, the district should first inform the complainant that honoring the request may limit its ability to respond and pursue disciplinary action against the alleged perpetrator. The OCR publication acknowledges that situations may exist in which a district cannot honor a student's request for confidentiality, but cautions that, in all instances, the district must still continue to ensure that it provides a safe and nondiscriminatory environment for all students. Districts should consult legal counsel before honoring a confidentiality request to withhold the victim's name from the alleged perpetrator, especially in the case of alleged sexual assault. These guiding principles would also apply to harassment on the basis of race, gender, disability, or other protected characteristic.

5.6. When the complainant of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) or the alleged victim, when not the complainant, requests confidentiality, the compliance officer shall inform the complainant or victim that the request may limit the district's ability to investigate the conduct or take other necessary action. When honoring a request for confidentiality, the district shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

Mediation

Note: The following section should be used only by those districts that have decided to establish procedures for attempting to resolve complaints through alternative dispute resolution procedures such as mediation; see the accompanying Board policy. **The following section may be modified to specify the alternative dispute resolution method and timelines used within the district.**

UNIFORM COMPLAINT PROCEDURES (continued)

Within three business days after receiving the complaint, the compliance officer may informally discuss with all the parties the possibility of using mediation. Mediation shall be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving an allegation of sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the compliance officer shall ensure that all parties agree to make the mediator a party to relevant confidential information. The compliance officer shall also notify all parties of the right to end the informal process at any time.

If the mediation process does not resolve the problem within the parameters of law, the compliance officer shall proceed with an investigation of the complaint.

The use of mediation shall not extend the district's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. If mediation is successful and the complaint is withdrawn, then the district shall take only the actions agreed upon through the mediation. If mediation is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

Investigation of Complaint

Note: 5 CCR 4631, which requires the district to provide the complainant with the opportunity to present relevant information, does not provide any timeline. Thus, **the timeline specified below may be modified to reflect district practice.**

Within 10 business days after the compliance officer receives the complaint, the compliance officer shall begin an investigation into the complaint.

Within one business day of initiating the investigation, the compliance officer shall provide the complainant and/or the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or representative of the opportunity to present the compliance officer with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.

UNIFORM COMPLAINT PROCEDURES (continued)

Note: In the investigation, the compliance officer should consider all relevant circumstances, such as how the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity, age, and sex of the individuals involved in and impacted by the conduct and the relationship between them; the number of persons engaged in the conduct and at whom the conduct was directed; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school involving different individuals.

In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The compliance officer shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the compliance officer shall inform both parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the compliance officer shall interview the alleged victim(s), any alleged offenders, and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

Note: 5 CCR 4631 allows the district to dismiss a complaint when the complainant refuses to provide the investigator with relevant documents or otherwise obstructs the investigation. 5 CCR 4631 also provides that, if the district refuses to provide the investigator with access to records or other documents, the investigator may issue a finding in favor of the complainant. During the FPM process, CDE staff will check to ensure that both of these statements regarding the provision of access to information are included in the district's policy or procedures, as specified below.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. Similarly, a respondent's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in a finding, based on evidence collected, that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

In accordance with law, the district shall provide the investigator with access to records and other information related to the allegation in the complaint and shall not in any way obstruct the investigation. Failure or refusal of the district to cooperate in the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

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UNIFORM COMPLAINT PROCEDURES (continued)

Timeline for **Final Decision Investigation Report**

Note: Pursuant to 5 CCR 4631, the district's **written decision investigation report** must be sent to the complainant within 60 calendar days of receiving the complaint. Option 1 below is for districts that do not allow complainants to appeal the compliance officer's decision to the Governing Board. Option 2 is for districts that allow appeals to the Board, and it requires the compliance officer's decision within 30 calendar days so that the Board's decision can still be given within the 60-day time limit.

Pursuant to 5 CCR 4631, only a complainant has the right to receive **a written report the investigation report** and to file a complaint with the Board if dissatisfied with the compliance officer's decision. However, OCR has recommended that the same rights be extended to a respondent to a complaint alleging unlawful discrimination to ensure the process is equitable for all involved. Furthermore, OCR recommends notifying the respondent in such a complaint whenever the complainant approves an extension of the timeline. Options 1 and 2 reflect these recommendations and may be modified to reflect district practice.

Pursuant to 5 CCR 4640, when a UCP complaint is erroneously sent to CDE without first being filed with the district, the 60-day period specified in 5 CCR 4631 begins when the district receives the complaint.

OPTION 1:

Unless extended by written agreement with the complainant, the compliance officer shall prepare and send to the complainant a written **investigation report**, as described in the section "**Final Written Decision Investigation Report**" below, within 60 calendar days of the district's receipt of the complaint. (5 CCR 4631)

For any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying), the respondent shall be informed of any extension of the timeline agreed to by the complainant. The respondent also shall be sent the **district's final written decision investigation report** at the same time it is provided to the complainant.

OPTION 2:

Unless extended by written agreement with the complainant, **a final decision the investigation report** shall be sent to the complainant within 60 calendar days of the district's receipt of the complaint. Within 30 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report, as described in the section "**Final Written Decision Investigation Report**" below. If the complainant is dissatisfied with the compliance officer's decision, the complainant may, within five business days, file the complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. When required by law, the matter shall be considered in closed session. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

Yes

No

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UNIFORM COMPLAINT PROCEDURES (continued)*(cf. 9321 - Closed Session)*

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 calendar days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

For any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying), the respondent shall be informed of any extension of the timeline agreed to by the complainant, shall be sent the district's **final written decision investigation report**, and, in the same manner as the complainant, may file a complaint with the Board if dissatisfied with the decision.

Final Written Decision Investigation Report

Note: 5 CCR 4631, **as amended by Register 2020, No. 21**, and ~~guidance provided by OCR~~ specify components that should be part of the district's **decision investigation report**. Inclusion of these items will help protect the district's position in case of an appeal to CDE, a complaint submitted to OCR, or if litigation is filed.

For all complaints, the district's **final written decision investigation report** shall include: (5 CCR 4631)

1. The findings of fact based on the evidence gathered. ~~In reaching a factual determination, the following factors may be taken into account:~~
 - a. ~~Statements made by any witnesses~~
 - b. ~~The relative credibility of the individuals involved~~
 - c. ~~How the complaining individual reacted to the incident~~
 - d. ~~Any documentary or other evidence relating to the alleged conduct~~
 - e. ~~Past instances of similar conduct by any alleged offenders~~
 - f. ~~Past false allegations made by the complainant~~
2. ~~The conclusion(s) of law~~ **A conclusion providing a clear determination for each allegation as to whether the district is in compliance with the relevant law**
3. ~~Disposition of the complaint~~
4. ~~Rationale for such disposition~~

UNIFORM COMPLAINT PROCEDURES (continued)

~~For complaints of retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the disposition of the complaint shall include a determination for each allegation as to whether retaliation or unlawful discrimination has occurred.~~

~~The determination of whether a hostile environment exists may involve consideration of the following:~~

- ~~a. The manner in which the misconduct affected one or more students' education~~
- ~~b. The type, frequency, and duration of the misconduct~~
- ~~c. The relationship between the alleged victim(s) and offender(s)~~
- ~~d. The number of persons engaged in the conduct and at whom the conduct was directed~~
- ~~e. The size of the school, location of the incidents, and context in which they occurred~~
- ~~f. Other incidents at the school involving different individuals~~

5.3. ~~Corrective action(s) whenever the district finds merit in the complaint, including, when required by law, a remedy to all affected students and parents/guardians and, for a student fees complaint, a remedy that complies with Education Code 49013 and 5 CCR 4600 any actions that have been taken or will be taken to address the allegations in the complaint and including, with respect to a student fees complaint, a remedy that comports with Education Code 49013 and 5 CCR 4600~~

~~For complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the decision may, as required by law, include:~~

- ~~a. The corrective actions imposed on the respondent~~
- ~~b. Individual remedies offered or provided to the complainant or another person who was the subject of the complaint, but this information should not be shared with the respondent.~~
- ~~c. Systemic measures the school has taken to eliminate a hostile environment and prevent recurrence~~

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UNIFORM COMPLAINT PROCEDURES (continued)

6.4. Notice of the complainant's and respondent's right to appeal the district's **decision investigation report** to CDE within 15 calendar days, and procedures to be followed for initiating such an appeal, except when the district has used the UCP to address a complaint not specified in 5 CCR 4610

5. Procedures to be followed for initiating an appeal to CDE

The **decision investigation report** may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

Note: The Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99.1-99.67) protects student privacy, including student records containing details of the actions taken in response to a UCP complaint. However, pursuant to 20 USC 1221, FERPA may not "be construed to affect the applicability of Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, Title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." In February 2015, the Family Policy Compliance Office (FPCO), ~~the federal agency which administers FERPA~~ (now the Student Privacy Protection Office) released a letter concluding that FERPA permits a district to disclose to a student who was subjected to unlawful discrimination certain information about the sanctions imposed upon the offender when the sanctions directly relate to that student. Thus, if properly remedying the impact of discrimination would require disclosing to the alleged victim certain information on how the district disciplined the alleged student offender (e.g., an order that the alleged offender stay away from the alleged victim), FPCO interprets FERPA as allowing the district to disclose that information.

Given the potential liability from improperly disclosing such information, districts are advised to consult with legal counsel when presented with a situation where a victim of unlawful discrimination requests information about sanctions imposed upon the offender.

In consultation with district legal counsel, information about the relevant part of a **decision an investigation report** may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the **decision investigation report** or are affected by the complaint, as long as the privacy of the parties is protected. In a complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying), notice of the ~~district's decision~~ **investigation report** to the alleged victim shall include information about any sanction to be imposed upon the respondent that relates directly to the alleged victim.

Note: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure compliance with this requirement. Based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If the complaint involves a limited-English-proficient student or parent/guardian and the student involved is enrolled in a school at which 15 percent or more of the students speak a

UNIFORM COMPLAINT PROCEDURES (continued)

single primary language other than English, then the **decision investigation report** shall also be translated into that language pursuant to Education Code 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

Note: During the FPM process, CDE staff will expect to see a statement detailing a complainant's right to pursue civil law remedies (i.e., action in a court of law) in addition to or in conjunction with the right to pursue administrative remedies from CDE.

For complaints alleging unlawful discrimination based on state law (such as discriminatory harassment, intimidation, and bullying), the **decision investigation report** shall also include a notice to the complainant that:

1. The complainant may pursue available civil law remedies outside of the district's complaint procedures, including seeking assistance from mediation centers or public/private interest attorneys, 60 calendar days after the filing of an appeal with CDE. (Education Code 262.3)
2. The 60 days moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law. (Education Code 262.3)
3. Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at www.ed.gov/ocr within 180 days of the alleged discrimination.

Corrective Actions

Note: The following section may be revised to reflect district practice.

When a complaint is found to have merit, the compliance officer shall adopt any appropriate corrective action permitted by law. Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies; training for faculty, staff, and students; updates to school policies; or school climate surveys.

(cf. 5137 - Positive School Climate)

For complaints involving retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling

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UNIFORM COMPLAINT PROCEDURES (continued)

(cf. 6164.2 - Guidance/Counseling Services)

2. Academic support
3. Health services
4. Assignment of an escort to allow the victim to move safely about campus
5. Information regarding available resources and how to report similar incidents or retaliation
6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim
7. Restorative justice
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation

For complaints involving retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), appropriate corrective actions that focus on a student offender may include, but are not limited to, the following:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education regarding the impact of the conduct on others
4. Positive behavior support
5. Referral to a student success team

(cf. 6164.5 - Student Success Teams)

6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

(cf. 6145 - Extracurricular and Cocurricular Activities)

7. Disciplinary action, such as suspension or expulsion, as permitted by law

(cf. 5144 - Discipline)

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

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UNIFORM COMPLAINT PROCEDURES (continued)

When an employee is found to have committed retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

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

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

The district may also consider training and other interventions for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), that the district does not tolerate it, and how to report and respond to it.

Note: Generally, when a complaint is found to have merit, an appropriate remedy is provided to the complainant or other affected person. However, in certain instances, the law may require a remedy to be provided to all affected persons, not just the complainant or subject of the complaint. For example, pursuant to Education Code 49013 and 5 CCR 4600, if the district, or CDE on appeal, finds merit in the complaint alleging noncompliance with the law regarding student fees and charges, the district is required to provide a remedy to all affected students and parents/guardians, as specified below. The same requirement applies to allegations of noncompliance with the LCAP requirements, pursuant to Education Code 52075, and to noncompliance with required instructional minutes for physical education, pursuant to Education Code 51222 and 51223. Districts that do not maintain elementary schools should delete reference to physical education below.

When a complaint is found to have merit, an appropriate remedy shall be provided to the complainant or other affected person.

However, if a complaint alleging noncompliance with the laws regarding student fees, deposits, and other charges, physical education instructional minutes, **courses without educational content**, or any requirement related to the LCAP is found to have merit, the district shall provide a remedy to all affected students and parents/guardians subject to procedures established by regulation of the State Board of Education. (Education Code 49013, 51222, 51223, 52075)

For complaints alleging noncompliance with the laws regarding student fees, the district shall attempt in good faith, by engaging in reasonable efforts, to identify and fully reimburse all affected students and parents/guardians who paid the unlawful student fees within one year prior to the filing of the complaint. (Education Code 49013; 5 CCR 4600)

Appeals to the California Department of Education

Note: 5 CCR 4632-4633 provide that complainants may appeal to CDE if they disagree with the district's decision on any matter within the scope of the UCP, as provided below. **As amended by Register 2020, No. 21, 5 CCR 4632 changes the timeline for filing an appeal to CDE from 15 calendar days to 30 calendar days.**

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UNIFORM COMPLAINT PROCEDURES (continued)

Any complainant who is dissatisfied with the district's ~~final written decision~~ **investigation report** on a complaint regarding any specified federal or state educational program subject to UCP may file an appeal in writing with CDE within ~~15~~ **30** calendar days of receiving the district's ~~decision~~ **investigation report**. (5 CCR 4632)

Note, 5 CCR 4632, as amended by Register 2020, No. 21, expands the bases upon which an appeal may be filed with CDE.

~~The complainant shall specify the basis for the appeal of the decision and how the facts of the district's decision are incorrect and/or the law has been misapplied.~~ The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's ~~decision~~ **investigation report** for that complaint. The complainant shall specify **and explain** the basis for the appeal, including as least one of the following: (5 CCR 4632)

- 1. The district failed to follow its complaint procedures.**
- 2. Relative to the allegations of the complaint, the district's investigation report lacks material findings of fact necessary to reach a conclusion of law.**
- 3. The material findings of fact in the district's investigation report are not supported by substantial evidence.**
- 4. The legal conclusion in the district's investigation report is inconsistent with the law.**
- 5. In a case in which the district found noncompliance, the corrective actions fail to provide a proper remedy.**

Note: Although not required pursuant to 5 CCR 4631-4633, OCR recommends that the right to appeal the district's decision to CDE be extended to the respondent to an allegation of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) to ensure fairness for all parties involved. The following paragraphs reflect OCR's recommendation.

~~When a respondent in any complaint alleging unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) is dissatisfied with the district's final written decision, the respondent, in the same manner as the complainant, may file an appeal with CDE.~~

Note: 5 CCR 4633, as amended by Register 2020, No. 21, requires the district to submit the following documents to CDE within 10 days after the district has been notified that an appeal has been filed. The district's failure to provide a timely and complete response may result in CDE ruling on the appeal without considering information from the district.

UNIFORM COMPLAINT PROCEDURES (continued)

Upon notification by CDE that the district's **decision investigation report** has been appealed, the Superintendent or designee shall forward the following documents to CDE **within 10 days of the date of notification**: (5 CCR 4633)

1. A copy of the original complaint
2. A copy of the **written decision district's investigation report**
- ~~3. A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision~~
- 4.3. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the investigator
- 5.4. A report of any action taken to resolve the complaint
- 6.5. A copy of the district's UCP
- 7.6. Other relevant information requested by CDE

Note: Pursuant to 5 CCR 4632, as amended by Register 2020, No. 21, if CDE determines that the district's investigation report failed to address an allegation raised by the complaint and subject to the UCP process, CDE will notify the district and direct the district to investigate and address such allegation(s) as follows.

If notified by CDE that the district's investigation report failed to address allegation(s) raised by the complaint, the district shall, within 20 days of the notification, provide CDE and the appellant with an amended investigation report that addresses the allegation(s) that were not addressed in the original investigation report. The amended report shall also inform the appellant of the right to separately appeal the amended report with respect to the allegation(s) that were not addressed in the original report. (5 CCR 4632)

Note: Pursuant to 5 CCR 4633, CDE is required to issue a written decision regarding the appeal within 60 days of CDE's receipt of the appeal, unless extended by written agreement with the appellant or documentation by CDE of exceptional circumstances. Within 30 days of the appeal decision, either party may request reconsideration by the Superintendent of Public Instruction or designee.

Pursuant to 5 CCR 4650, CDE may directly intervene in a complaint without waiting for action by the district when certain conditions exist, including the following: (1) the complaint alleges failure to comply with the UCP, including failure to follow the required timelines and failure to implement the final **written decision investigation report**; (2) the complainant requires anonymity due to the possibility of retaliation and would suffer immediate and irreparable harm if a complaint was filed and the complainant was named; **or** (3) the complainant would suffer immediate and irreparable harm as a result of an application of a

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UNIFORM COMPLAINT PROCEDURES (continued)

districtwide policy that is in conflict with state or federal law and that filing a complaint would be futile.; (4) the complainant alleges failure to comply with the due process procedures established pursuant to special education law and regulation to implement a due process hearing order; (5) the complainant alleges facts that indicate that one or more students may be in immediate physical danger or that the health, safety, or welfare of one or more students is threatened; or (6) the complainant alleges failure to follow a student's individualized education program.

Health and Safety Complaints in Licensed-Exempt Preschool Programs

Note: The following section is for use by districts that operate any license-exempt CSPP program. Education Code 8235.5 mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in a license-exempt CSPP program. Pursuant to Education Code 8235.5, the district must use the UCP, with modifications as necessary, to resolve such complaints. Pursuant to 5 CCR 4610, as amended by Register 2020, No. 21, such complaints must be addressed through the procedures described in 5 CCR 4690-4694.

See the accompanying exhibits for a sample classroom notice and complaint form.

Any complaint regarding health or safety issues in a license-exempt CSPP program shall be addressed through the procedures described in 5 CCR 4690-4694.

In each license-exempt CSPP classroom, a notice shall be posted notifying parents/guardians, students, and teachers of the health and safety requirements of Title 5 regulations that apply to CSPP programs pursuant to Health and Safety Code 1596.7925 and the location at which to obtain a form to file any complaint alleging noncompliance with those requirements. (Education Code 8235.5; **5 CCR 4690**)

The district's annual UCP notification distributed pursuant to 5 CCR 4622 shall clearly indicate which of its CSPP programs are operating as exempt from licensing and which CSPP programs are operating pursuant to requirements under Title 22 of the Code of Regulations. (5 CCR 4691)

Any complaint regarding specified health or safety issues in a license-exempt CSPP program shall be filed with the preschool program administrator or designee, and may be filed anonymously. The complaint form shall specify the location for filing the complaint and shall contain a space to indicate whether the complainant desires a response to the complaint. If it is determined that the complaint is beyond the authority of the preschool program administrator, the matter shall be forwarded to the Superintendent or designee in a timely manner, not to exceed 10 working days, for resolution. (Education Code 8235.5; **5 CCR 4690**)

Investigation of a complaint regarding health or safety issues in a license-exempt CSPP program shall begin within 10 days of receipt of the complaint. (Education Code 8235.5; **5 CCR 4692**)

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UNIFORM COMPLAINT PROCEDURES (continued)

The preschool administrator or designee shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. If the complainant has indicated on the complaint form a desire to receive a response to the complaint, the preschool administrator or Superintendent's designee shall, **within 45 working days of the initial filing of the complaint**, report the resolution of the complaint to the complainant **and CDE's assigned field consultant** ~~within 45 working days of the initial filing of the complaint~~. If the preschool administrator makes this report, the information shall be reported at the same time to the Superintendent or designee. ~~If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Board at a regularly scheduled meeting.~~ (Education Code 8235.5; **5 CCR 4692**)

Note: Pursuant to Education Code 8235.5, a complainant who is not satisfied with the district's decision related to a complaint of health and safety conditions in a CSPP program may appeal to the Superintendent of Public Instruction. The law does not provide a timeline for filing the appeal, but the 2020-21 FPM instrument provides a timeline of 30 days.

~~A complainant may file a written appeal of the district's decision to CDE in accordance with 5 CCR 4632. (Education Code 8235.5)~~

~~Any such appeal shall be filed within 30 days of receiving the decision.~~

If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Board at a regularly scheduled meeting **and, within 30 days of the date of the written report, may file a written appeal of the district's decision to the Superintendent of Public Instruction in accordance with 5 CCR 4632. (Education Code 8235.5; 5 CCR 4693, 4694)**

Note: The following paragraph reflects a requirement of the 2020-21 FPM instrument.

On a quarterly basis, the Superintendent or designee shall report summarized data on the nature and resolution of all CSPP health and safety complaints, including the number of complaints by general subject area with the number of resolved and unresolved complaints, to the Board at a regularly scheduled Board meeting and to the County Superintendent of Schools. **(5 CCR 4693)**

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CSBA Sample Board Policy

All Personnel

BP 4119.25(a)

4219.25

POLITICAL ACTIVITIES OF EMPLOYEES

4319.25

Note: The following policy pertains to political activities of individual employees acting on their own behalf as well as employee organizations. Employees engaging in political activities on behalf of the district are subject to legal limitations as discussed in BP 1160 - Political Processes. For any portion of the district's educational program that includes instruction related to political philosophy or activities which may be controversial in nature, see the accompanying administrative regulation and BP 6144 - Controversial Issues.

The First Amendment generally prohibits districts from disciplining an employee because of the employee's engagement in constitutionally protected political activity. In Pickering v. Board of Education Township High School District, the U.S. Supreme Court held that a teacher may not be dismissed for exercising the right to speak on issues of public importance, including criticisms of the board and superintendent, without proof of false statements made knowingly or recklessly. However, an employee may be disciplined if the speech impedes the employee's proper performance of daily duties or interferes with the regular operation of the schools.

Districts should be careful that employee discipline does not amount to retaliation in response to the exercise of free speech protected by the First Amendment, and are encouraged to consult legal counsel as appropriate.

The Governing Board recognizes the importance of political activity, voting, and civic engagement, and respects the right of school-district employees to engage in political discussions and activities as individuals on their own time and at their own expense. On such occasions When engaging in such activities, employees shall make it clear that they are acting as individuals on their own behalf and not as representatives of the district.

(cf. 1160 - Political Processes)

(cf. 6144 - Controversial Issues)

~~Like other community members, employees~~ District employees, as members of the community, may use school facilities for meetings, including political activities, as permitted under the Civic Center Act and district policy.

(cf. 1330 - Use of School Facilities)

Employees shall refrain from prohibited political activities identified in law, Board policy, and administrative regulations. Employees who engage in these activities shall be subject to disciplinary action and/or criminal penalties.

(cf. 1325 - Advertising and Promotion)

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

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

POLITICAL ACTIVITIES OF EMPLOYEES (continued)

Legal Reference:

EDUCATION CODE

7050-70587 Political activities of school officers and employees

38130-38139 Civic Center Act

51520 Prohibited solicitations on school premises

ELECTIONS CODE

18304 Prohibition against use of district seal in campaign literature

GOVERNMENT CODE

3543.1 Rights of employee organizations

8314 Prohibition against use of public resources for campaign activity

82041.5 Definition of mass mailing

PENAL CODE

424 Punishment for misuse of public funds

COURT DECISIONS

Heffernan v. City of Paterson, (2016) 136 S. Ct. 1412

Diguisto v. County of Santa Clara, (2010) 181 Cal. App. 4th 236

San Leandro Teachers Association v. Governing Board of the San Leandro Unified School District, (2010) 46 Cal. 4th 822

Downs v. Los Angeles Unified School District, (9th Cir. 2000) 228 F.3d 1003

California Teachers Association v. Governing Board of San Diego Unified School District, (1996) 45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education, (1969) 71 Cal.2d 551

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ATTORNEY GENERAL OPINIONS

84 Ops.Cal.Atty.Gen. 106 (2001)

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City of Sacramento, (2019) PERB Dec. No. 2702m

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East Whittier School District, (2004) PERB Dec. No. 1727

Turlock Joint Elementary School District, (2004) PERB Dec. No. 1490a

California Federation of Teachers, Local 1931 v. San Diego Community College District, (2001) PERB Order Dec. No. 1467 (26 PERC 33014)

Management Resources:

CSBA PUBLICATIONS

Political Activities of School Districts: Legal Issues, 1998, revised 2001

WEB SITES

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

California Office of the Attorney General, Dept. of Justice: <http://oag.ca.gov> eaag.state.ca.us/

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

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Policy Reference UPDATE Service

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CSBA Sample Administrative Regulation

All Personnel

AR 4119.25(a)
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POLITICAL ACTIVITIES OF EMPLOYEES

Note: Education Code 7055 authorizes the **Governing** Board to establish **rules and** regulations related to **(1)** officers and employees engaging in political activity during working hours and **(2)** political activities on district premises.

Nothing in Board policy or administrative regulation shall be construed to prevent employees. No employee shall be prohibited from soliciting or receiving political funds or contributions to promote the support or defeat of a ballot measure for political purposes during nonworking time, including before and after school, the lunch period, or other scheduled work intermittency during the school day. (Education Code 7056)

District employees shall not:

1. Use district funds, services, supplies, **or** equipment, **work hours, or other public resources** to urge the **support** or defeat of any ballot measure or candidate, including any candidate for election to the Governing Board (Education Code 7054, **7056; Government Code 8314**)
2. **Use the district's seal in any campaign literature or mass mailing with the intent to deceive voters, including, but not limited to, the use of a reproduction or facsimile of the seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by the Board, a Board member, or the district (Elections Code 18304)**

(cf. 1160 - Political Processes)

- 2.3.** During working hours **and on district property**, solicit or receive any political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service or other working conditions (Education Code 7056)

Note: Items **#3-9 4-9** below present examples of other types of activities that **are not specified in law but** would be prohibited as they constitute a use of public funds, services, supplies or equipment.

- 3.4.** During working hours **and on district property**, solicit or receive any political funds or contributions to promote the passage or defeat of other types of ballot measures
- 4.** **Use district time to urge the passage or defeat of any ballot measure or candidate**

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POLITICAL ACTIVITIES OF EMPLOYEES (continued)

5. Use district equipment for the preparation or reproduction of political campaign materials, **even if the district is reimbursed**

(cf. 3512 - Equipment)

6. Post or distribute political campaign materials **in classrooms, through distance learning platforms, or** on district property

7. Disseminate political campaign materials through the district's mail service, e-mail, or staff mailboxes

(cf. 4040 - Employee Use of Technology)

8. Use students to write, address, or distribute political campaign materials

9. Present viewpoints on particular candidates or ballot measures in the classroom without giving equal time to the presentation of **all perspectives opposing views**

(cf. 6144 - Controversial Issues)

Note: **Optional item #11 10** below prohibits employees from wearing political buttons during instructional time. ~~In California Teachers Association v. Governing Board of San Diego, the appellate court of Appeal concluded that a district may prevent its employees from wearing political buttons in its classrooms and when they are otherwise engaged in providing instruction to the district's students. This authority does not extend to noninstructional time.~~ The ruling in this case applied to both elementary and secondary teachers. This decision supports and expands upon an earlier Attorney General opinion of 1994, which made a similar conclusion regarding elementary teachers only. ~~If the d Districts does that~~ decide to allow teachers to wear political buttons during instructional time, ~~it~~ may not support this activity with public funds nor selectively permit some speech while prohibiting other speech. ~~Optional item #10 below would prohibits political buttons during instructional time.~~

~~The authority to prohibit political buttons does not extend to noninstructional time. However Although not binding,~~ in 2001 the Attorney General opined that teachers cannot be prevented from wearing political buttons at Back-to-School Night because it is a noninstructional setting, parents/guardians are less likely than students to be unduly influenced by these political expressions, and teachers' political buttons are not likely to be perceived as reflecting the district's views. ~~Attorney General opinions are not binding but are given deference by the courts.~~

~~In East Whittier School District, the Public Employment Relations Board (PERB) found that the wearing of union buttons that favor or oppose any matter that is the subject of negotiations does not constitute a political activity, and that a district policy prohibiting employees from wearing such buttons violated the Educational Employment Relations Act. See BP 4140/4240/4340 - Bargaining Units.~~

POLITICAL ACTIVITIES OF EMPLOYEES (continued)

10. Wear buttons, hats, or other articles of clothing that express political opinions on ballot measures or candidates during instructional time

However, teachers shall not be prohibited from wearing political buttons during noninstructional time, such as Back to School Night.

Nothing in Board policy or administrative regulation shall be construed to prevent employees from soliciting or receiving funds or contributions for political purposes during nonworking time, including before and after school, the lunch period or other scheduled work intermittency during the school day. (Education Code 7056)

Political Activities of Employee Organizations

Employee organizations may use district mailboxes and other means to communicate with employees, subject to reasonable regulation. Employee organizations may have access at reasonable times to areas in which employees work; may use institutional bulletin boards, mailboxes, and other means of communication and may use district facilities at reasonable times for the purpose of meetings. (Government Code 3543.1)

Note: In California Federation of Teachers, Local 1931 v. San Diego Community College District, PERB found that a district regulation prohibiting a union from using the district's mail system and other equipment for the distribution of political flyers was not an unfair practice charge. According to PERB, Education Code 7054 clearly prohibits such use, even when the union reimburses the district for costs, and the mandate of Education Code 7054 removes the issue from the scope of representation. In San Leandro Teachers Association v. Governing Board of San Leandro Unified School District, the California Supreme Court held that the district's refusal to permit union communication through school mailboxes which included endorsements of certain school board candidates was within the scope of Education Code 7054. The court concluded that the policy did not violate Government Code 3543.1, which gives school employee organizations the right to use internal mailboxes subject to "reasonable regulation." It further held that a policy that bans candidate endorsements pursuant to Education Code 7054 to preserve the integrity of the electoral process does not unduly limit a union's statutory right of access nor does it interfere with the union's core mission of advocating for its members. The court emphasized the narrowness of its holding, and stated that school boards are not prohibited from opening up mailboxes to political endorsement literature as long as this "nonpublic forum" is made available to all sides on an equitable basis. This holding does not extend to literature that merely urges the involvement in upcoming elections and informs union members how to do so, or engages in public policy discussion in more general terms. Also see PERB rulings in Conejo Valley Unified School District and San Diego Community College District.

However, eEmployee organizations shall not use district funds, services, supplies, or equipment, such as staff mailboxes or the district mail system, to urge the passage-support or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

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POLITICAL ACTIVITIES OF EMPLOYEES (continued)

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

No employee organization or its officers, agents, or representatives shall be prohibited from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure during nonworking time, including before and after school, the lunch period, or other scheduled work intermittency during the school day. (Education Code 7056)

~~Access to district communication channels shall be limited in cases where such access would be disruptive to district operations.~~

~~In the event of a concerted action or work stoppage, political activities by employee organizations and individual employees shall be restricted to peaceful informational picketing and other activities allowed by law.~~

~~*(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)*~~

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CSBA Sample Board Policy

All Personnel

BP 4140(a)

4240

BARGAINING UNITS

4340

Note: Pursuant to Government Code 3544, an employee organization may become the employees' exclusive representative for negotiations by filing a request with the district providing proof that a majority of the employees in an appropriate unit wish to be represented by that organization. Notice of such request must be immediately posted conspicuously on all employee bulletin boards in each district facility in which members of the unit are employed. Government Code 3544.1 requires the district to grant the request for recognition unless (1) the district doubts the appropriateness of the unit, (2) another employee organization files a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 work days of the posting of notice of the written request, or (3) the district currently has a lawful written agreement with another employee organization representing the same employees.

Pursuant to Government Code 3540.1, the definition of "exclusive representative" includes representation of "all public school employees" other than management and confidential employees, as defined.

Government Code 3543 provides that public school employees have the right to represent themselves individually in their employment relations with the district except that, once an exclusive representative has been recognized, an employee in that unit is prohibited from meeting and negotiating with the district.

The Governing Board recognizes the right of district employees to form a bargaining unit, select an employee organization as their exclusive representative, and be represented by that organization in their employment relationship with the district. The Board is committed to negotiating in good faith with recognized employee organizations and respecting the rights of employees and employee organizations.

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4143/4243 - Negotiations/Consultation)

(cf. 9000 - Role of the Board)

The district shall not dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. (Government Code 3543.5)

Note: In East Whittier School District, the Public Employment Relations Board (PERB) found that the district's policy limiting the wearing of union buttons that favor or oppose any matter that is the subject of negotiations in the classroom or in other instructional areas in the presence of students violated the Educational Employment Relations Act, as there was no finding of special circumstances which would limit the established right of employees to wear union buttons in the workplace, nor was there a finding that wearing the union buttons was a political activity. PERB continues to use a case-by-case approach to determine whether a district's policy restricting employees from wearing union buttons is justified by special circumstances. See PERB's ruling in City of Sacramento. Due to the legal uncertainty in this area, districts are encouraged to consult legal counsel prior to limiting the wearing of union buttons that support the union's position in collective bargaining.

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BARGAINING UNITS (continued)

Employees shall not be prohibited from wearing union buttons or other items that favor or oppose the formation of a bargaining unit or any matter that is the subject of negotiations.

(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

Formation of Bargaining Units

Certificated and classified employees shall not be included in the same bargaining unit. (Government Code 3545)

The district may recognize a bargaining unit of supervisory employees if: (Government Code 3545)

1. The bargaining unit includes all supervisory employees.
2. The supervisors are not represented by the same organization that represents employees whom the supervisory employees supervise.

(cf. 4300 - Administrative and Supervisory Personnel)

(cf. 4301 - Administrative Staff Organization)

(cf. 4312.1 - Contracts)

For this purpose, *supervisory employee* means any employee, regardless of job description, having the authority, in the interest of the district, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, assign work, direct, adjust grievance of other employees, or effectively recommend that action. The exercise of this authority shall not be merely routine or clerical in nature, but shall require the use of independent judgment. (Government Code 3540.1)

Note: Pursuant to Government Code 3543.4, management and confidential employees, as defined in Government Code 3540.1, are excluded from the right to be represented in negotiations by an employee organization. The Public Employment Relations Board ultimately determines, based upon the duties of the position, which positions qualify as "management" or "confidential" and thus are excluded from bargaining.

Employees serving in management, senior management, or confidential positions shall not be represented by an exclusive representative. Such employees may represent themselves individually. **or, For purposes other than negotiations and bargaining, such employees** may be represented by an employee organization whose membership is composed entirely of

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BARGAINING UNITS (continued)

employees designated as holding those positions. ~~When represented by an employee organization, that organization shall not meet and negotiate with the district.~~ For this purpose: (Government Code 3540.1, 3543.4)

1. *Management employee* means any employee who has significant responsibilities for formulating district policies or administering district programs, and whose position is designated as a management position by the Board.
2. *Confidential employee* means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

Membership

Note: Government Code 3550, as amended by SB 866 (Ch. 53, Statutes of 2018), prohibits a district from deterring or discouraging employees or job applicants from authorizing representation by or making dues deductions to an employee organization.

The district shall not deter or discourage employees or job applicants from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization. In addition, the district shall not impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their membership or nonmembership in an employee organization. (Government Code 3543.5, 3550)

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

Note: The following paragraph **remainder of this section** is optional. Government Code 3553, as added by SB 866 (Ch. 53, Statutes of 2018), establishes requirements for districts that choose to disseminate a mass communication regarding employees' rights to join, support, or refrain from joining or supporting an employee organization. A "mass communication" means any written document, including a script for an oral or recorded presentation or message, intended for multiple employees.

Districts should exercise caution and consult with legal counsel before communicating with employees about their rights to join or not join an employee organization to avoid violating the law against unfair labor practices. When an employee approaches the district with questions specifically about the benefits of the membership in an employee organization, the employee should be referred to the employee organization.

BARGAINING UNITS (continued)

The Superintendent or designee may communicate with district employees regarding their rights under the law. Such communications shall be factual and accurate, and may not promise a benefit, threaten a reprisal, or in any way deter or discourage employees from joining an employee organization or paying dues.

However, before disseminating to multiple employees any mass communication concerning employees' right to join or support an employee organization or to refrain from joining or supporting an employee organization, such as a written document or script for oral or recorded presentation or message, the Superintendent or designee shall meet and confer with the employees' exclusive representative regarding the content of the communication. If the district and exclusive representative do not come to agreement on the content of the mass communication, the Superintendent or designee may disseminate the district's mass communication provided that, at the same time, copies of the exclusive representative's communication, which shall be of reasonable length, are also distributed. (Government Code 3553)

Access to Employee Orientations ~~and Contact Information~~

The district shall permit employee organizations access to new employee orientations where newly hired employees are advised, whether in person, online, or through other means or mediums, of their employment status, rights, benefits, duties, responsibilities, or any other employment-related matters. The district shall provide employee organizations at least 10 days' notice in advance of an orientation. However, in any specific instance where an unforeseeable, urgent need critical to the district's operation prevents the required 10 days' notice, a shorter notice may be provided. (Government Code 3555.5, 3556)

The structure, time, and manner of the access to new employee orientations shall be determined by mutual agreement of the district and the exclusive representative, following a request to negotiate by either party. If the district and exclusive representative fail to reach an agreement, matters related to the access to new employee orientation shall be subject to compulsory interest arbitration. The district and employee organization may mutually agree to submit any dispute to compulsory interest arbitration at any time. In addition, if any dispute arises during negotiations and is not resolved within 45 days after the first meeting or within 60 days after the initial request to negotiate, whichever is earlier, either party may make a demand for compulsory interest arbitration. When any such dispute arises during the summer when the district's administrative office is closed, the timeline shall commence on the first day the administrative office reopens. The decision of the arbitrator shall be final and binding on the parties. (Government Code 3556, 3557)

Note: SB 866 (Ch. 53, Statutes of 2018) amended Government Code 3556 to add the following requirement.

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BARGAINING UNITS (continued)

The date, time, and place of the orientation shall not be disclosed to anyone other than employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation. (Government Code 3556)

Access to Employee Contact Information

Note: Pursuant to Government Code 3558, districts are required to provide recognized employee organizations with specified contact information for new employees in the bargaining unit, as provided below. The information required by Government Code 3558 must be provided in a manner consistent with Government Code 6254.3, which authorizes disclosure of an employee's home address, home telephone number(s), and personal cell phone number to an employee organization unless the district receives a written request by the employee to not disclose the information. Pursuant to Government Code 6254.3, the personal email address of an employee is not disclosable unless used by the employee to conduct public business. The following paragraph should be revised if districts have an agreement with their employee organization(s) requiring more frequent or more detailed contact lists.

In County of Los Angeles v. Service Employees International Union, Local 721, the California Supreme Court held that (1) an employer has a duty to provide information relevant to collective bargaining to the applicable bargaining unit and failure to do so is a violation of the employer's obligation to bargain in good faith; (2) the disclosure of an employee's home address and phone number(s) by an employer to the union **is presumptively relevant to the union's role as bargaining agent and** does not violate the employee's constitutional right of privacy; and (3) other avenues for implementing privacy safeguards are available, such as bargaining for a notice and opt-out procedure or drafting employment contracts that will notify employees that their home contact information is subject to disclosure to the union and that they may request nondisclosure.

The Superintendent or designee shall provide an exclusive representative with the name, job title, department, work location, telephone numbers (work, home, and personal cell phone), personal email address(es) on file with the district, and home address of any newly hired employee in the bargaining unit, within 30 days of hire or by the first pay period of the month following hire. In addition, the Superintendent or designee shall provide the same information in regard to all employees in the bargaining unit to an exclusive representative at least every 120 days, unless more frequent or detailed lists are required by agreement with the exclusive representative. (Government Code 3558, 6254.3)

However, the Superintendent or designee shall not disclose the home address and any phone numbers on file for employees performing law enforcement-related functions, nor **shall he/she** disclose the home address, home or personal cell phone number(s), or personal email address(es) of any employee who is a participant in the Safe at Home address confidentiality program pursuant to Government Code 6207 or **of** any employee who provides **a** written request that the information not be disclosed for this purpose. Following receipt of a written request, the district shall remove the employee's home address, home and personal cell phone

BARGAINING UNITS (continued)

numbers, and personal email address from any mailing list maintained by the district unless the list is only used by the district to contact the employee. (Government Code 3558, 6207, 6254.3)

(cf. 1340 - Access to District Records)

Communications with Employees

Employee organizations may have access at reasonable times to areas in which employees work and may use district facilities at reasonable times for the purpose of meetings. Subject to reasonable regulation, employee organizations may also use institutional bulletin boards, mailboxes, and other means of communication to communicate with employees. (Government Code 3543.1)

Access to district means of communication shall be limited in cases where such access would be disruptive to district operations.

Membership Dues or Other Payments to an Employee Organization

Note: Bargaining unit employees who choose to join the employee organization pay membership dues, which are deducted from the employee's salary or wage payment as provided below. Pursuant to the U.S. Supreme Court's decision in Janus v. American Federation of State, County, and Municipal Employees, bargaining unit employees who choose not to join an employee organization ~~may no longer~~ **cannot** be required to pay any fees to the employee organization. However, pursuant to Education Code 45060 and 45168, ~~as amended by SB 866 (Ch. 53, Statutes of 2018)~~, an employee who chooses not to join an employee organization may be charged fees for applicable services, programs, or committees provided to ~~him/her~~ **the employee** by the employee organization if that nonmember employee first affirmatively and voluntarily consents to pay those fees to the employee organization, as required by Janus v. AFSCME.

~~As provided in the following section,~~ Education Code 45060 and ~~45168~~ **45068**, ~~as amended by SB 866 (Ch. 53, Statutes of 2018)~~, set forth the process for handling authorizations, changes, and cancellations for dues or other payments, and provide safeguards for districts that rely on information provided by an employee organization concerning such payroll deductions (i.e., the employee organization's indemnification of the district against any employee's claim based on such reliance).

~~Specifically, Education Code 45060 and 45168, as amended, provide that the employee organization will handle and process employee written authorizations if it certifies that it has and will maintain individual employee authorizations. When such certification is provided to the district, the employee organization is not required to submit a copy of the written authorization in order for the payroll deductions to be effective, unless there is a dispute about the existence or terms of the written authorization. The employee organization is required to indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization.~~

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BARGAINING UNITS (continued)

When an employee organization declines to provide such certification pursuant to Education Code 45060 and 45168, then the district should request a copy of the employee written authorization before making the payroll deductions. Education Code 45060 and 45168 require that the district honor the terms of the employee's written authorization for payroll deductions, which thus requires the district to first see a copy of such authorization in order to honor its terms.

Pursuant to Education Code 45060 and 45168, as amended, employee requests to cancel or change authorization for payroll deductions must be directed to the employee organization rather than the district.

When drawing an order for the salary or wage payment of a bargaining unit employee of an employee organization, the district shall deduct any amount which has been requested by the employee in a revocable written authorization for the purpose of paying dues or other payments for any service, program, or committee provided or sponsored by the employee organization. (Education Code 45060, 45168)

An employee organization that certifies that it has and will maintain individual employee authorizations shall handle and process employee written authorizations for payroll deductions. When an employee organization provides such a certification to the district, the district shall rely on information from the employee organization regarding the amounts of such payroll deductions and from which employees. The employee organization shall not be required to submit to the district a copy of the written authorization in order for the payroll deductions to be effective. However, when there is a dispute about the existence or terms of the written authorization, a copy of the employee's written authorization shall be submitted to the district. The employee organization shall indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization. (Education Code 45060, 45168)

When an employee organization which has declined to certify that it will handle and process employee written authorizations makes a request for payroll deductions, the district shall request a copy of the employee's written authorization before making the payroll deductions. (Education Code 45060, 45168)

A written authorization shall remain in effect until expressly revoked in writing by the employee and pursuant to the terms of the written authorization. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than the district. The employee organization shall be responsible for processing these requests. The district shall rely on the information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed. The employee organization shall be required to indemnify the district for any claims made by an employee for deductions made by the district in reliance on information from the employee organization. (Education Code 45060, 45168)

BARGAINING UNITS (continued)

Legal Reference:

EDUCATION CODE

45060-45061.5 *Deduction of fees from salary or wage payment, certificated employees*

45100.5 *Senior management positions*

45104.5 *Abolishment of senior classified management positions*

45108.5 *Definition of senior classified management employees*

45108.7 *Waiver of provisions of 45108.5*

45168 *Deduction of fees from salary or wage payment, classified employees*

45220-45320 *Merit system, classified employees*

GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act, especially:*

3540.1 *Definitions*

3543.4 *Management position; representation*

3545 *Appropriateness of unit; basis*

3550-3552 *Prohibition on public employers deterring or discouraging union membership*

3555-3559 *Public employee communication, information and orientation*

6205-6210 *Confidentiality of addresses for victims of domestic violence, sexual assault or stalking*

6254.3 *Disclosure of employee contact information to employee organization*

6503.5 *Joint powers agencies*

53260-53264 *Employment contracts*

CODE OF REGULATIONS, TITLE 8

33015-33490 *Recognition of exclusive representative; proceedings*

33700-33710 *Severance of established unit*

34020 *Petition to rescind organizational security arrangement*

34055 *Reinstatement of organizational security arrangement*

COURT DECISIONS

Janus v. American Federation of State, County and Municipal Employees, Council 31, (2018) 138 S.Ct. 2448

Friedrichs v. California Teachers Association, et al., (2016) 136 S.Ct. 1083

County of Los Angeles v. Service Employees International Union, Local 721, (2013) 56 Cal. 4th 905

PUBLIC EMPLOYMENT RELATIONS BOARD RULINGS

City of Sacramento, (2019) PERB Dec. No. 2702m

East Whittier School District, (2004) PERB Dec. No. 1727

Management Resources:

WEB SITES

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

Association of California School Administrators: <http://www.acsa.org>

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>

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Policy Reference UPDATE Service

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CSBA Sample Board Policy

Students

BP 5113.2(a)

WORK PERMITS

Note: The following **optional** policy may be revised to reflect district practice. Education Code 49160 requires **all** minors to obtain a work permit issued by the proper educational officers in order to accept employment, even for periods when school is not in session. See the accompanying administrative regulation for further information about the conditions under which a work permit is required, **specified exceptions**, and the process for issuing permits.

The Governing Board recognizes that part-time employment can provide students with income, **as well as job experience, and valuable life skills that can help them develop appropriate workplace skills and attitudes and should be permitted to the extent that such employment does not interfere with a student's education.** ~~Upon obtaining an~~ **Before accepting any** offer of employment, district students who are minors shall obtain work permits from the Superintendent or designee, ~~in accordance with law~~, regardless of whether the employment will occur when school is in session and/or not in session, **unless otherwise exempted by law.**

(cf. 6178 - Career Technical Education)

Note: Education Code 49111, 49112, and 49116 and Labor Code 1391-1391.1 limit the number of hours that students may work on school days and days when school is not in session; see the accompanying administrative regulation. According to the ~~California Department of Education~~ **Department of Industrial Relations' Child Labor Laws**, districts have discretion to establish lower limits than provided by law for the maximum number of work hours and may impose additional requirements such as a minimum grade point average (e.g., 2.0) for issuance of a work permit. **However, Education Code 49200, as added by AB 908 (Ch. 64, Statutes of 2020), prohibits consideration of grades, grade point average, or school attendance in the event the student's school has been physically closed for an extended time due to a natural disaster, pandemic, or other emergency. See the accompanying administrative regulation.**

The following **optional** paragraph should be revised to reflect criteria established by the Board.

In determining whether to grant or continue a work permit, the Superintendent or designee shall consider whether employment is likely to significantly interfere with the student's schoolwork. Students granted work permits ~~must~~ **shall be required to** demonstrate and maintain a 2.0 grade point average and satisfactory school attendance, **except during periods of extended school closure due to an emergency as described in Education Code 49200 and the accompanying administrative regulation.** On a case-by-case basis, the Superintendent or designee may approve a maximum work hour limit that is lower than the limit specified in law and administrative regulation.

(cf. 5121 - Grades/Evaluation of Student Achievement)

Students with work permits may be exempted from attendance in a full-time day school provided they attend part-time classes. (Education Code 48230)

WORK PERMITS (continued)

(cf. 5112.1 - Exemptions from Attendance)

Note: Education Code 49130-49135 specify circumstances under which students between the ages of 14 and 18 may receive a permit to work full time.

Work permits shall be limited to part-time employment as defined by law, except when the Superintendent or designee determines that circumstances warrant the granting of a permit for full-time employment.

Any student authorized to work full time when school is in session shall be enrolled in part-time continuation classes. A student age 14 or 15 who receives a permit to work full time shall also be enrolled in a work experience education program. (Education Code 49130, 49131, 49135)

(cf. 6178.1 - Work-Based Learning)
(cf. 6184 - Continuation Education)

Legal Reference: (see next page)

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WORK PERMITS (continued)

Legal Reference:

EDUCATION CODE

48230 Exemption from full-time school attendance for students with work permits
48231 Exemption from compulsory attendance for students entering attendance area near end of term
49100-49101 Compulsory attendance
49110-49119 Permits to work
49130-49135 Permits to work full time
49140-49141 Exceptions
49160-49165 Employment of minors; duties of employers
49180-49183 Violations
49200 Permit to work during extended emergency school closure
51760-51769.5 Work experience education
52300-52499.66 Career technical education

LABOR CODE

1285-1312 Employment of minors
1391-1394 Working hours for minors
CODE OF REGULATIONS, TITLE 5
10120-10121 Work permits
16023-16027 District records, retention and destruction
CODE OF REGULATIONS, TITLE 8
11701-11707 Prohibited and dangerous occupations for minors
11750-11763 Work permits and conditions, minor employed in entertainment industry
CODE OF FEDERAL REGULATIONS, TITLE 29
570.1-570.129 Child labor regulations
ATTORNEY GENERAL OPINIONS
18 Ops.Cal.Atty.Gen. 114 (1951)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Work Permit Handbook for California Schools: Laws and Regulations Governing the Employment of Minors, 2007

Permit to Employ and Work, Form B1-4

Statement of Intent to Employ a Minor and Request for a Work Permit - Certificate of Age, Form B1-1

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Child Labor Laws, 2000-2013

WEB SITES

California Department of Education, Work Experience Education: <http://www.cde.ca.gov/ci/ct/we>
California Department of Education, Office of Regional Occupational Centers and Programs and Workforce Development: <http://www.cde.ca.gov/ci/ct/wd>
California Department of Industrial Relations: <http://www.dir.ca.gov>

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CSBA Sample Administrative Regulation

Students

AR 5113.2(a)

WORK PERMITS

Note: Education Code 49160 requires all minors to obtain a work permit in order to accept employment. Labor Code 1286 defines "minors" as persons under the age of 18 years who are subject to the state's compulsory attendance laws. **Once a minor is 18 years of age and are no longer subject to compulsory attendance pursuant to Education Code 49101 (e.g., is age 18, has graduated from high school, or has received a certificate of proficiency), he/she is not required to obtain a work permit even if they have not yet graduated from high school. Pursuant to Education Code 49114, students who have graduated early from high school or have received a certificate of proficiency need a "certificate of age" to be employed. Pursuant to 5 CCR 10120.1, the certificate of age is contained within the California Department of Education's (CDE) Statement of Intent to Employ a Minor and Request for Work Permit - Certificate of Age (Form B1-1), available on its web site.**

Before accepting employment, a student under the age of 18 who is subject to the state's compulsory attendance law, including a students who have has not yet graduated from high school or have has not received a certificate of proficiency, shall obtain a work permit.

(cf. 5112.1 - Exemptions from Attendance)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6146.2 - Certificate of Proficiency/High School Equivalency)

Note: State and federal labor laws generally require that minors be at least 14 years of age to be employed, although Education Code 49111 authorizes the issuance of a work permit to a minor who is at least 12 years of age for periods when school is not in session.

The district may issue a permit authorizing employment while school is in session, including employment connected with a work experience education program pursuant to Education Code 51760-51769.5, to a ~~minor~~ student **age 14-17 years of age**. The district also may issue a permit to any ~~minor~~ **age student 12-17 years of age** to be employed during a regular school holiday, during a regular or specified occasional public school vacation, and when the student is exempt from compulsory school attendance **pursuant to Education Code 48231** because ~~he/she~~ **the student** arrived from another state within 10 days before the end of the school term **pursuant to Education Code 48231**. (Education Code 49111, 49113, 49160)

(cf. 6178.1 - Work-Based Learning)

If a ~~minor~~ **student** has obtained an offer of employment in the entertainment industry, ~~he/she~~ **the student** shall request a work permit from the California Department of Industrial Relations, Division of Labor Standards Enforcement, pursuant to Labor Code 1308.5 and 8 CCR 11752-11753.

A work permit shall not be required for a student who is not receiving pay or financial reimbursement for services rendered in volunteer services or educational purposes, is

WORK PERMITS (continued)

not in an employer-employee relationship in accordance with the Fair Labor Standards Act, is serving as an unpaid trainee or volunteer or in an in-school placement, and has submitted written parent/guardian permission. (5 CCR 10121)

Note: The following paragraph reflects exemptions cited in **Education Code 49112 and 49141, Labor Code 1394, and California Department of Education's (CDE) Work Permit Handbook for California Schools** and the Department of Industrial Relations' (DIR) **Child Labor Laws**.

In addition, a A student shall not be required to obtain a work permit if **he/she the student** is self-employed; is working at odd jobs such as yard work and babysitting in private homes where **he/she the student** is not regularly employed; is a self-employed news carrier delivering newspapers to consumers on a regular route; is employed **by his/her parent/guardian in agricultural, horticultural, viticultural, or domestic labor during non-school hours when the work is performed for or under the control of the parent/guardian and is performed upon** ~~on~~ or in connection with premises the parent/guardian owns, operates, or controls; or is otherwise exempted by law.

Persons Authorized to Issue Work Permits

Note: Education Code 49110 specifies persons authorized to issue work permits in the district, including the Superintendent, a designated employee holding a services credential with a specialization in pupil personnel services, a certificated work experience education teacher or coordinator, and, **as amended by AB 66 (Ch. 214, Statutes of 2009)**, a principal or other school administrator designated by the principal. Pursuant to Education Code 49110, if the district does not employ or contract with a person holding a services credential with a specialization in pupil personnel services or a certificated work experience education teacher or coordinator, the Superintendent may provide written authorization for a person without such qualifications to **temporarily** issue work permits when the Superintendent is absent from the district. Education Code 49110 also authorizes a charter school chief executive officer or designee, the County Superintendent of Schools or designee, or private school principal or designee to issue a work permit.

Items #1-3 below may be revised to specify the position(s) of the employee(s) responsible for issuing work permits in the district.

The following individuals are authorized to issue a work permit to a **minor** student in the district: (Education Code 49110)

1. The Superintendent
2. An employee holding a services credential with a specialization in pupil personnel services or a certificated work experience education teacher or coordinator, when authorized by the Superintendent in writing
3. A principal, or another school administrator designated by the principal, provided that **he/she the principal or designee:**

WORK PERMITS (continued)

- a. Provides a self-certification that ~~he/she~~ **the principal or designee** understands the requirements of law for issuing a work permit
- b. Does not issue a work permit to ~~his/her~~ **the principal's or designee's** own child

If the person designated to issue work permits is not available and delay in issuing a permit would jeopardize a student's ability to secure work, the Superintendent may **temporarily** authorize another person to issue the permit. (Education Code 49110)

Approval Process Application

The student's parent/guardian, foster parent, caregiver with whom the student resides, or residential shelter services provider shall file a written request for a work permit. (Education Code 49110)

Note: The request for a permit must be submitted to the district on a form approved by CDE pursuant to Education Code **49117 and** 49162-49163 (CDE Form B1-1, "Statement of Intent to Employ a Minor and Request for Work Permit - **Certificate of Age**").

The request for a work permit shall be submitted to the Superintendent or designee on a form approved by the California Department of Education (CDE). ~~The Superintendent or designee shall have discretion to determine whether or not to issue the work permit.~~

If the student is applying for a full-time work permit, the student and the student's parent/guardian shall generally be required to appear before, and submit the application to, the Superintendent or designee. (Education Code 49132)

Note: **Education Code 49200, as added by AB 908 (Ch. 64, Statutes of 2020), and Education Code 49132, as amended by AB 908, establish the following flexibility in the application process in the event of an extended physical closure of the campus due to a natural disaster, pandemic, or other emergency.**

In the event of an extended physical closure of the campus due to a natural disaster, pandemic, or other emergency, the required documentation, including signatures, may be collected electronically. In addition, if the application is for a full-time work permit, the student and parent/guardian shall not be required to appear in person before the Superintendent or designee if the completed application has been successfully submitted electronically and the student and parent/guardian have attended a video conference with the person issuing the work permit. (Education Code 49132, 49200)

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WORK PERMITS (continued)**Approval Process**

The Superintendent or designee shall have discretion to determine whether or not to issue the work permit.

Note: The following **optional** paragraph should be revised to reflect any criteria established by the Governing Board for the issuance of work permits; see the accompanying Board policy.

In determining whether to approve a work permit, the Superintendent or designee shall verify the student's date of birth, the type of work permit to be issued, and whether the student meets any other criteria established by the Governing Board. The Superintendent or designee may inspect the student's records and/or may confer with at least one of the student's teachers for evidence of satisfactory grades and school attendance and to determine whether the student possesses the motivation and maturity to maintain academic progress while working.

(*cf. 5121 - Grades/Evaluation of Student Achievement*)

Note: Although districts generally have the authority to impose additional requirements on the issuance of work permits, Education Code 49200, as added by AB 908, prohibits consideration of grades, grade point average, or school attendance in the event of an extended physical closure of the campus due to a natural disaster, pandemic, or other emergency.

However, a work permit shall not be denied based on a student's grades, grade point average, or school attendance under either of the following circumstances: (Education Code 49120, 49200)

1. The student's school has been physically closed for an extended time due to a natural disaster, pandemic, or other emergency.
2. The student is applying for a work permit in order to participate in a government-administered employment and training program that will occur during the regular summer recess or vacation of the student's school.

Minors Students shall not be approved to work in environments declared hazardous or dangerous for young workers or otherwise prohibited by child labor laws. (Labor Code 1290-1298; 29 CFR 570.33, 570.50-570.72)

Note: State and federal regulations pertaining to work hours are summarized on the reverse side of the CDE's "Statement of Intent to Employ Minor and Request for Work Permit" and in the DIR's Child Labor Laws. The following paragraph reflects legal requirements establishing maximum work hours for minors, but may be revised to reflect any more restrictive work hours established by Board policy.

AB 66 (Ch. 214, Statutes of 2009) amended Education Code 49110 to clarify that the hour limitations that apply to a work permit issued by the district must be based on the school calendar of the school that the student attends.

WORK PERMITS (continued)

The Superintendent or designee shall ensure that the requested work hours do not exceed the maximum work hours specified in law based on the student's age and whether the employment will occur while school is in session and/or not in session. (Education Code 49111, 49112, 49116; Labor Code 1391-1391.1; 29 CFR 570.35)

Note: Pursuant to Education Code 49130-49131, the district may issue a work permit authorizing full-time employment while school is in session to a student age 14-17. However, for students age 14-15, Education Code 49130 specifies ~~narrow circumstances under which the student may be issued a permit for full-time employment~~ **that the student must have completed elementary school, the permit must expire at the end of the current school year, and either (1) the student's earnings are needed due to a parent/guardian's death or incapacity to work by reason of illness or injury, (2) the earnings are needed due to the student's inability to reside with the family, or (3) a student who is in foster care has written authorization from a social worker, probation officer, or child protective services worker acting as an officer of the court for the purpose of furthering the goal of emancipation.**

Full-time employment may be authorized for students **age 14-17 years of age only** in accordance with Education Code 49130-49135.

(cf. 6184 - Continuation Education)

Note: **Pursuant to Education Code 49117, work permits must be issued on forms prepared and provided by the Superintendent of Public Instruction (SPI), or on forms produced by the district when authorized by the SPI.** ~~The district is responsible for printing the permits required for the employment of minors, which must contain the information provided on the~~ CDE's "Permit to Employ and Work" (CDE Form B1-4) **is available on its web site.**

All work permits shall be issued ~~in a format approved and authorized~~ **on forms provided by the or authorized by** CDE. (Education Code 49117)

Note: The following two paragraphs reflect information provided in ~~the CDE's Work Permit Handbook for California Schools~~ **DIR's Child Labor Laws.**

Each permit shall authorize work for a specific employer. Whenever a student changes employers, ~~he/she~~ **the student** shall request a new permit.

The student may be issued more than one work permit if ~~he/she~~ **the student** works concurrently for more than one employer, provided that the total number of hours worked does not exceed the total number of hours allowed by law and the district.

Note: The following **optional** paragraph is for use by districts that allow principals or their designees to issue work permits; see item #3 in the section "Persons Authorized to Issue Work Permits" above. ~~As amended by AB 66 (Ch. 214, Statutes of 2009), Education Code 49110 establishes the following requirement for principals or designees authorized to issue work permits.~~

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WORK PERMITS (continued)

Whenever a work permit is issued by a principal or other designated school administrator, the principal or designee shall submit to the Superintendent a copy of each work permit **he/she issued**, along with a copy of the application. (Education Code 49110)

The Superintendent or designee shall periodically inspect the grades and attendance records of students granted work permits to ensure maintenance of academic progress and any additional criteria established in Board policy.

Expiration of Work Permits

Work permits issued during the school year shall expire five days after the opening of the next succeeding school year. (Education Code 49118)

Note: The following **optional** paragraph may be revised to reflect district practice, including establishing a time period for submitting a renewal request before the permit expires.

Before the work permit expires, a student may apply for a renewed work permit in accordance with the procedures specified in the section "Approval Process" above.

Revocation of Work Permits

The Superintendent or designee shall revoke a student's work permit whenever **he/she the Superintendent or designee** determines that **the employment is interfering with the student's education impairing the health or education of the student, that any provision or condition of the permit is being violated, or that the student is performing work in violation of law, or any condition for the issuance of the permit no longer exists or never existed.** (Education Code 49116, 49164; **Labor Code 1300**)

Note: ~~Education Code 49110, as amended by AB 66 (Ch. 214, Statutes of 2009), provides that the Superintendent may revoke a work permit issued by a principal or designee under the circumstances described below.~~

The Superintendent may revoke a work permit issued by a principal of a public or private school located within the district if the Superintendent becomes aware of any grounds upon which the student may be deemed ineligible for a work permit under law. (Education Code 49110)

Retention of Records

Note: **According to the CDE, a A work permit is a "continuing record" which shall not be destroyed until the fourth year after it has been classified as Class 3 - Disposable Record pursuant to 5 CCR 16026 and thus should not be destroyed until four years after it was issued.** See AR 3580 - District Records for further information about the classification and disposal of records.

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WORK PERMITS (continued)

The Superintendent or designee shall retain a copy of the work permit application and the work permit until the end of the fourth year after the work permit was issued. (5 CCR 16026)

(cf. 3580 - District Records)

(cf. 5125 - Student Records)

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Policy Reference UPDATE Service

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CSBA Sample Board Policy

Students

BP 5126(a)

AWARDS FOR ACHIEVEMENT

The Governing Board encourages excellence as a goal for all students and wishes to publicly recognize students for exemplary achievement in academic, **athletic, artistic**, extracurricular, **athletic, and** ~~or~~ community service activities.

(cf. 5121 - Grades/Evaluation of Student Achievement)

(cf. 5127 - Graduation Ceremonies and Activities)

(cf. 6142.4 - Service Learning/Community Service Classes)

District/School Awards

Note: Education Code 44015 authorizes the Governing Board to give district-level awards to students for "excellence" and mandates that the district adopt rules and regulations implementing any such awards program. See the accompanying administrative regulation for language implementing this mandate.

Pursuant to Education Code 44015, when such an awards program is established in a district, the Board must budget funds for this purpose, but may authorize awards from funds under its control whether or not budgeted funds have been provided or the budgeted funds are exhausted.

Student awards may include verbal recognition, a letter, a certificate, a Board resolution, public ceremony, trophy, gift, plaque, or **cash monetary** gift.

The Superintendent or designee shall develop criteria for the selection of student award recipients.

Golden State Seal Merit Diploma

Note: The following **optional** section is for use by districts that **maintain high schools**. Education Code 51450-51455 establish the Golden State Seal Merit Diploma which may be awarded by the Superintendent of Public Instruction (SPI) and the State Board of Education to students identified as demonstrating mastery of the high school core curriculum. See the accompanying administrative regulation for eligibility criteria.

At graduation from high school, **special recognition shall be awarded to those students whose academic achievements in core curriculum areas have been outstanding shall receive special recognition.**

The Superintendent or designee shall identify **graduating** high school students who have demonstrated mastery of the high school curriculum qualifying them for the Golden State Seal Merit Diploma. (Education Code 51454)

(cf. 6162.51 - State Academic Achievement Tests)

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AWARDS FOR ACHIEVEMENT (continued)

State Seal of Biliteracy Award

Note: The following **optional paragraph section** is for use by districts maintaining one or more high schools. Education Code 51460-51464 establish the State Seal of Biliteracy, a voluntary program which recognizes high school graduates who have attained a high level of proficiency in one or more languages in addition to English. The SPI will provide an insignia that can be affixed to the diploma or transcript of eligible students. See the accompanying administrative regulation for eligibility criteria for the award. Districts that choose to adopt their own criteria and present a district-level biliteracy award may revise the following paragraph accordingly.

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The district shall present the State Seal of Biliteracy to each graduating high school student who has attained a high level of proficiency in speaking, reading, and writing in one or more languages in addition to English. (Education Code 51460-51464)

(cf. 6142.2 - World ~~Foreign~~ Language Instruction)
(cf. 6174 - Education for English Learners)

Note: The following **optional paragraph** is for use by districts that choose to present biliteracy awards at other grade levels, and should be revised to reflect district practice. Californians Together, a statewide coalition working to enhance the success of English learners, recommends issuing local "pathway awards" recognizing benchmarks toward biliteracy at preschool, grade 3, end of elementary school, ~~and~~ end of middle school, **and when a student who is an English learner is reclassified as fluent English proficient.**

In order to affirm the value of bilingualism and encourage students' enrollment in world language programs, the Superintendent or designee may present awards at appropriate grade levels to recognize the pursuit and/or attainment of grade-level proficiency in one or more languages in addition to English. **The Superintendent or designee may also present awards to English learners who are reclassified as fluent English proficient to recognize proficiency in both English and the student's native language.**

State Seal of Civic Engagement

Note: The following optional section is for use by districts that recognize students who have demonstrated excellence in civics education and participation and an understanding of the U.S. Constitution, the California Constitution, and the democratic system of government. Education Code 51470-51474 establish the State Seal of Civic Engagement, a voluntary program which encourages and creates pathways for students in elementary and secondary schools to become civically engaged in democratic governmental institutions at the local, state, and national levels.

The SPI will provide an insignia that can be affixed to the diploma or transcript of eligible students. See the accompanying administrative regulation for eligibility criteria for the award.

The Superintendent or designee shall present the State Seal of Civic Engagement to each student who demonstrates excellence in civics education and participation and has demonstrated an understanding of the U.S. Constitution, the California Constitution, and the democratic system of government. (Education Code 51470-51474)

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AWARDS FOR ACHIEVEMENT (continued)

Note: The following paragraph reflects information on the California Department of Education's web site emphasizing that the criteria are written to ensure that no student is excluded from the opportunity to earn the State Seal of Civic Engagement based on academic ability, alternative school settings, or unique or unconventional expressions of civic engagement.

All district students shall be afforded the opportunity to earn the State Seal of Civic Engagement, regardless of their background, communities, or experiences. No student shall be denied such opportunity based on academic ability, alternative school setting, or unique or unconventional expression of civic engagement.

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

(cf. 0415 - Equity)

(cf. 6157 - Distance Learning)

(cf. 6158 - Independent Study)

(cf. 6159 - Individualized Education Program)

(cf. 6172 - Gifted and Talented Student Program)

(cf. 6181 - Alternative Schools/Programs of Choice)

(cf. 6183 - Home and Hospital Instruction)

(cf. 6184 - Continuation Education)

Scholarship and Loan Fund

Note: The following section is for use by districts that choose to establish and maintain a scholarship and loan fund pursuant to Education Code 35310-35319. If the district chooses to establish such a fund, it should revise the following paragraph to reflect only those purposes for which it wishes to make funds available.

No
The Board shall establish and maintain a scholarship and loan fund which **shall may** be used to provide interest-free loans for educational advancement, scholarship, **and/or** grants-in-aid to bona fide organizations, students, or graduates of district schools. (Education Code 35310, 35315)

(cf. 1260 - Educational Foundation)

(cf. 3290 - Gifts, Grants and Bequests)

Note: If the district establishes a committee to administer the scholarship and loan fund, or if the number of Board members who serve on the committee constitutes a majority of the Board, the committee is required to comply with open meeting laws pursuant to Government Code 54950-54963 (the Brown Act). See AR 1220 - Citizen Advisory Committees and BB 9130 - Board Committees.

The district's scholarship and loan fund shall be administered by a district committee composed of Board members, the Superintendent, and such other community, staff, administrative, and/or student representatives as determined by the Board. (Education Code 35310)

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AWARDS FOR ACHIEVEMENT (continued)

Note: If the district chooses to establish and maintain a scholarship and loan fund, it is **mandated** pursuant to Education Code 35310 to develop rules and regulations specifying the term of office and method of selection **of the community, faculty, administrative, and student representative members** of the committee appointed to administer the fund. The following paragraph may be revised to reflect district practice.

PN
The Board shall select its own representatives to the committee. Staff, community, and/or student representatives shall be selected by the Superintendent. Members of this committee shall serve two-year terms.

(cf. 1220 - Citizen Advisory Committees)
(cf. 9140 - Board Representatives)

The committee may accept gifts, donations, and bequests made for the purposes of the fund and may prescribe conditions or restrictions on these gifts and bequests. If the donor imposes any conditions, the committee shall review the conditions and make a recommendation to the Board as to the compatibility of such conditions with the intent and purpose of the fund. The Board may prohibit the committee from accepting any donation under conditions it finds incompatible with the fund's intents and purposes. (Education Code 35313)

The Superintendent or designee shall report to the Board at least annually regarding the status and activity of the fund. (Education Code 35319)

Legal Reference: (see next page)

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AWARDS FOR ACHIEVEMENT (continued)

Legal Reference:

EDUCATION CODE

220 Nondiscrimination

35160 Authority of governing boards

35310-35319 Scholarship and loan funds

44015 Awards to employees and students

51243-51245 Credit for private school foreign language instruction

51450-51455 Golden State Seal Merit Diploma

51460-51464 State Seal of Bilingual

51470-51474 State Seal of Civic Engagement

52164.1 Assessment of English language skills of English learners

GOVERNMENT CODE

54950-54963 Brown Act open meeting laws

CODE OF REGULATIONS, TITLE 5

876 Golden State Seal Merit Diploma

1632 Credit for private school foreign language instruction

11517.60-11519.56 English Language Proficiency Assessments for California Assessment of English language development

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

SSCE Implementation Guidance

WEB SITES

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

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

Californians Together: <http://www.californianstogether.org>

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CSBA Sample Administrative Regulation

Students

AR 5126(a)

AWARDS FOR ACHIEVEMENT

District/School Awards

Note: Education Code 44015 authorizes the Governing Board to give district-level awards to students for "excellence." Before any awards are given under the authority of this law, the district is **mandated** to adopt rules and regulations implementing the awards program. The Board may delegate the authority to establish criteria for these awards to the Superintendent or designee; see the accompanying Board policy. The following section should be revised to reflect any such rules and regulations adopted by the district.

The Superintendent or designee may appoint an awards committee at each school which may consist of school administrators, **staff members teachers**, parents/guardians, community members, and student representatives. The committee shall submit recommendations for student awards to the Superintendent or designee for approval.

(cf. 1220 - Citizen Advisory Committees)

Individual awards in excess of \$200 must be expressly approved by the Governing Board. (Education Code 44015)

Golden State Seal Merit Diploma

Note: The following **optional** section is for use by districts that maintain high schools. Education Code 51450-51455 require the State Board of Education (SBE) to determine the means, **and the** performance standards, **and or** achievement levels that demonstrate mastery of the curriculum for the purpose of awarding the Golden State Seal Merit Diploma. **In November 2014, the SBE adopted new eligibility criteria for students graduating in 2015 to reflect changes in the state assessment system and established a workgroup to develop a plan for students graduating in 2016 and beyond.** Eligibility criteria are published on the California Department of Education (CDE) web site **and described below.**

To be eligible to receive the Golden State Seal Merit Diploma upon graduation from high school, a student shall complete all requirements for a high school diploma and **shall demonstrate, in accordance with the means adopted by the State Board of Education, mastery of the curriculum in mathematics, English language arts, science, United States U.S. history, and two other subject matter areas selected by the student by meeting at least one of the following criteria for each subject:** (Education Code 51451, 51452; 5 CCR 876)

1. **Mathematics and English language arts**

- a. **A grade of at least B+ or the numerical equivalent in a single course each semester completed in grade 9, 10, or 11**

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AWARDS FOR ACHIEVEMENT (continued)

b. An achievement level of "Standard Met" or above for the high school Smarter Balanced Summative Assessment

2. Science

a. A grade of at least B+ or the numerical equivalent in a single course each semester completed in grade 9, 10, or 11

b. An achievement level of "Standard Met" or above for the high school California Science Test taken in grade 10 or 11

3. U.S. history

a. A grade of at least B or the numerical equivalent in the required U.S. history course each semester

b. A qualifying score that demonstrates mastery of the subject as determined by the district for an exam produced by a private provider or the district

4. Two additional subject areas of the student's choosing

a. Any additional qualifying grade or score listed above, earned for the subject of English language arts, mathematics, science, or U.S. history not already used to meet eligibility

b. A grade of at least B or the numerical equivalent upon completion of high school courses in other subjects

c. A qualifying score that demonstrates mastery of other subjects, as determined by the district, for an exam produced by a private provider or the district

- (cf. 6143 - Courses of Study)*
- (cf. 6146.1 - High School Graduation Requirements)*
- (cf. 6146.11 - Alternative Credits Toward Graduation)*
- (cf. 6162.51 - State Academic Achievement Tests)*

The Superintendent or designee shall maintain appropriate records to identify students who are eligible for the merit diploma **have earned the Golden State Seal Merit Diploma** and shall affix an insignia to the **high school** diploma and transcript of each **such** student awarded the merit diploma. (Education Code 51454)

(cf. 5125 - Student Records)

No

AWARDS FOR ACHIEVEMENT (continued)

Note: The CDE requires each district to annually submit one districtwide insignia request on a form provided by the CDE. The CDE's web site encourages districts to submit the request far enough in advance of the graduation ceremony date to allow sufficient time for processing by the CDE and for district staff to place the insignias on the diplomas. The CDE begins mailing requested insignias the first week of April.

The Superintendent or designee shall submit an insignia request form to the California Department of Education in sufficient time to allow for processing of the request prior to the high school graduation ceremony.

State Seal of Biliteracy Award

Note: The following optional section is for use by districts that maintain high schools and choose to recognize graduating students' bilingual/multilingual proficiency with the State Seal of Biliteracy pursuant to Education Code 51460-51464; see the accompanying Board policy. Districts that choose to present district-level biliteracy awards to students at other grade levels may revise the following section to add eligibility criteria for those awards.

For students whose primary language is other than English, Education Code 51461 also requires attainment of the early advanced proficiency level on the state's English language proficiency assessment. The state expects to transition to the English Language Proficiency Assessments for California (ELPAC) in 2018.

Pursuant to Education Code 51461, as amended by SB 98 (Ch. 24, Statutes of 2020), the Superintendent of Public Instruction (SPI) may provide alternative criteria for students on track to graduate in 2020 or 2021 who did not receive a letter grade in English language arts or were not able to take the English Language Proficiency Assessments for California (ELPAC) or due to COVID-19. The SPI has determined that students who were unable to take the ELPAC may meet the requirement based on their prior ELPAC score and consultation with the student's teachers. In addition, the requirement to take the California Assessment of Student Performance and Progress is waived for students who were not able to take the exam, and students who completed all required English language arts courses through distance learning but did not receive a letter grade due to COVID-19 are eligible to earn the State Seal of Biliteracy if all other requirements are met. For further information, see CDE's State Seal of Biliteracy FAQs located on its web site.

To be eligible to receive the State Seal of Biliteracy upon graduation, a student shall demonstrate, in accordance with state criteria, a high level of proficiency in English and at least one other language, which may include American Sign Language, by meeting all of the following state-established criteria: A student whose primary language is other than English shall also attain the required proficiency level on the state test of English language proficiency. (Education Code 51461)

1. Completion of all English language arts requirements for graduation with an overall grade point average of at least 2.0 in those classes
2. Passage of the California Assessment of Student Performance and Progress for English language arts or any successor test administered in grade 11 at or above the "Standard Met" achievement level

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AWARDS FOR ACHIEVEMENT (continued)

3. Proficiency in one or more languages other than English, demonstrated through one of the following methods:

a. Passage of a world language Advanced Placement (AP) exam with a score of 3 or higher or an International Baccalaureate (IB) exam with a score of 4 or higher

b. Successful completion of a four-year high school course of study in a world language, attaining an overall grade point average of at least 3.0 in that course of study, and oral proficiency in the language comparable to that required on an AP or IB exam

c. If no AP exam or off-the-shelf language test exists, passage of a district language exam that can be certified to meet the rigor of a four-year high school course of study in a given language and, at a minimum, assesses speaking, reading, and writing in a language other than English at the proficient level or higher

d. If a language is not characterized by listening, speaking, or reading, or for which there is no written system, passage of an assessment on the modalities that characterize communication in that language at the proficient level or higher

e. Passage of the SAT II world language exam with a score of 600 or higher

(cf. 6141.4 - International Baccalaureate Program)

(cf. 6141.5 - Advanced Placement)

(cf. 6142.2 - World/Foreign Language Instruction)

(cf. 6174 - Education for English Learners)

To be eligible to receive the State Seal of Biliteracy, a student whose primary language is other than English shall also attain the level which demonstrates English language required proficiency level on the state's test of English Language Proficiency Assessments for California. (Education Code 51461)

(cf. 6174 - Education for English Learners)

Note: The CDE requires each district to submit one districtwide insignia request on a form provided by the CDE. The CDE recommends submitting the online form, which can be found on CDE's web site, four weeks prior to the graduation date to allow sufficient time for CDE to mail the insignias and for the district to affix the insignias to the diplomas. CDE will mail the insignias within two weeks of receiving the online request begins mailing requested insignias the first week of April.

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AWARDS FOR ACHIEVEMENT (continued)

20 The Superintendent or designee shall maintain appropriate records to identify high school students who ~~qualify for the award~~ **have earned the State Seal of Biliteracy** and shall affix the insignia to the **high school** diploma or transcript of each **such** student ~~who earns the award~~. (Education Code 51463)

State Seal of Civic Engagement

Note: The following optional section is for use by districts that choose to present the State Seal of Civic Engagement to students who have demonstrated excellence in civics education and participation and an understanding of the U.S. Constitution, the California Constitution, and the democratic system of government pursuant to Education Code 51470-51474; see the accompanying Board policy. The following criteria, adopted by SBE in September 2020, are intended to provide districts with a framework for making determinations of student qualifications based on local contexts.

CDE's SSCE Implementation Guidance, available on its web site, offers ideas and considerations for districts in the implementation of the criteria.

To be eligible to receive the State Seal of Civic Engagement, a student shall meet district requirements for all of the following state-established criteria:

- 1. Be engaged in academic work in a productive way**
- 2. Demonstrate a competent understanding of U.S. and California Constitutions, functions and governance of local governments, tribal government structures and organizations, the role of the citizen in a constitutional democracy, and democratic principles, concepts, and processes**
- 3. Participate in one or more informed civic engagement project(s) that address real-world problems and require students to identify and inquire into civic needs or problems, consider varied responses, take action, and reflect on efforts**
- 4. Demonstrate civic knowledge, skills, and dispositions through self-reflection**
- 5. Exhibit character traits that reflect civic-mindedness and a commitment to positively impact the classroom, school, community and/or society**

Note: CDE provides the insignias to be affixed to students' diplomas or transcripts indicating the award of the State Seal of Civic Engagement. When ordering the insignias, districts will self-certify that students earned the award based on locally created criteria.

The Superintendent or designee shall maintain appropriate records to identify students who have earned the State Seal of Civic Engagement and shall affix the insignia to the high school diploma or transcript of each such student. (Education Code 51473)

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AWARDS FOR ACHIEVEMENT (continued)

Scholarship and Loan Fund

Note: The following section is for use by any district that has established a scholarship and loan fund pursuant to Education Code 35310-35319; see the accompanying Board policy. Districts that have not established such a program should delete this section.

The Superintendent shall serve as chief executive officer of the scholarship and loan fund and as chairperson of the district committee established to administer the fund. The committee shall meet at least once each fiscal year and at other such times as it may be called into session by the Superintendent. (Education Code 35311, 35312)

Scholarship and loan funds shall be deposited, administered, and audited in accordance with Education Code 35314 and 35318.

(cf. 3400 - Management of District Assets/Accounts)
(cf. 3460 - Financial Reports and Accountability)

Note: If the district has chosen to maintain a scholarship and loan fund, it is **mandated** by Education Code 35316 to adopt regulations governing applications, provided such regulations do not limit student eligibility based on any conditions listed in Education Code 220; see BP 0410 - Nondiscrimination in District Activities and Programs. The following paragraph may be expanded to describe the district's application procedures.

The Superintendent or designee shall establish criteria, procedures, and deadlines for student applications for scholarships and/or loans from the fund. As applicable, the Superintendent or designee may require the student to submit letters of recommendation or other supplementary materials providing evidence of the student's accomplishments and/or need.

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

Notifications

Note: The following **optional** section may be revised to reflect programs offered by the district.

The Superintendent or designee shall annually distribute information about eligibility requirements for the Golden State Seal Merit Diploma, State Seal of Biliteracy, **State Seal of Civic Engagement**, and/or any district awards programs to students at the applicable grade levels.

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CSBA Sample Board Policy

Students

BP 5141.31(a)

IMMUNIZATIONS

To protect the health of all students and staff and to curtail the spread of infectious diseases, the Governing Board shall cooperate with state and local public health agencies to encourage and facilitate immunization of all district students against preventable diseases.

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

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.26 - Tuberculosis Testing)

(cf. 6142.8 - Comprehensive Health Education)

Note: The following **optional** paragraph should be revised to reflect the grade levels and programs offered by the district.

Health and Safety Code 120335 requires districts to ensure that students are fully immunized prior to admission. **and** In addition, beginning July 1, 2016, Health and Safety Code 120335, as amended by SB 277 (Ch. 35, Statutes of 2015), requires districts to ensure that students are fully immunized against all specified diseases before advancing to grade 7. See the accompanying administrative regulation for requirements pertaining to the immunization record, including the diseases for which students must be immunized.

Health and Safety Code 120335, as amended by SB 277, further provides that **students must be exempted from immunizations for any one of the following reasons: (1) a licensed physician indicates that a student should be exempted for medical reasons, (2) such immunization requirements do not apply when a parent/guardian files a letter or affidavit prior to January 1, 2016 stating his/her personal beliefs opposed to immunization (effective only until the student enters the next grade span), or (3) a student is enrolled in independent study and does not receive classroom-based instruction, or a student who qualifies for an individualized education program (IEP) is accessing any special education and related services required by the student's IEP. Additionally, Health and Safety Code 120730, as amended by SB 276 (Ch. 278, Statutes of 2019) and SB 714 (Ch. 281, Statutes of 2019), and Health and Safety Code 120372, as added by SB 276 and amended by SB 714, specify the conditions under which a medical exemption is effective.** See the accompanying administrative regulation for further information about exemptions.

Each student enrolling for the first time in a district **elementary or secondary** school, preschool, or child care and development program or, **after July 1, 2016**, enrolling in or advancing to grade 7 shall present an immunization record from any authorized private or public health care provider certifying that **he/she the student** has received all required immunizations in accordance with law. Students shall be excluded from school or exempted from immunization requirements only as allowed by law.

(cf. 5112.1 - Exemptions from Attendance)

(cf. 5112.2 - Exclusions from Attendance)

(cf. 5141.32 - Health Screening for School Entry)

(cf. 5148 - Child Care and Development)

(cf. 5148.3 - Preschool/Early Childhood Education)

APB

IMMUNIZATIONS (continued)

Note: 17 CCR 603570 allows a transfer student transferring from another school in the United States to be conditionally admitted for up to 30 school days while waiting for the transfer of immunization records from the student's his/her previous school; see the accompanying administrative regulation. However, the California Department of Public Health's California Immunization Handbook for Pre-kindergarten (Child Care) Programs and Schools recommends that schools request parents/guardians to bring their child's personal immunization record from his/her the child's health care provider to registration, rather than waiting for the cumulative file, especially if the student's former school is located outside the United States. In this way, districts would only need to request the record from the previous district for those students who could not present an adequate record at the time of entry.

Pursuant to 42 USC 11431 and Education Code 48853.5, homeless children and foster youth must be immediately enrolled even if they are unable to produce records normally required for enrollment, including medical records. See AR 6173 - Education for Homeless Children and AR 6173.1- Education for Foster Youth. In addition, pursuant to Education Code 49701, children of military families must be allowed 30 days from the date of enrollment to obtain required immunizations; see AR 6173.2 - Education of Children of Military Families. These exceptions are also addressed in the accompanying administrative regulation.

Each transfer students shall be requested to present his/her immunization records, if possible, upon registration at a district schools if possible.

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

Note: The following optional paragraph is for use by districts that permit medical personnel to administer immunizations at school as authorized by Education Code 49403. Pursuant to Education Code 49403, immunizations may be provided by a licensed physician or, if acting under the direction of a supervising physician, a registered nurse (including a school nurse), physician assistant, nurse practitioner, licensed vocational nurse, or nursing student acting under the supervision of a registered nurse. The authority of any health care practitioner, other than a licensed physician, to administer immunizations in a school immunization program is limited to immunizations for annual seasonal influenza, influenza pandemic episodes, and other diseases that represent a current or potential outbreak as declared by a federal, state, or local public health officer. Whenever a health care provider is authorized to administer immunizations at school, the school nurse must be notified and must maintain control, as necessary, as the supervisor of health in accordance with Education Code 44871 and other statutes.

NO
The Superintendent or designee may arrange for an authorized health care provider to administer immunizations at school to any student whose parent/guardian has consented in writing. At the beginning of the school year, parents/guardians shall be notified of their right to provide consent for the administration of an immunization to their child at school. (Education Code 48980, 49403)

(cf. 5141.3 - Health Examinations)

(cf. 5141.6 - School Health Services)

(cf. 5145.6 - Parental Notifications)

Legal Reference: (see next page)

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IMMUNIZATIONS (continued)

Legal Reference:

EDUCATION CODE

- 44871 *Qualifications of supervisor of health*
- 46010 *Total days of attendance*
- 48216 *Immunization **and exclusion from attendance***
- 48853.5 *Immediate enrollment of foster youth*
- 48980 *Required notification of rights*
- 49403 *Cooperation in control of communicable disease and immunizations*
- 49426 *Duties of school nurses*
- 49701 *Flexibility in enrollment of children of military families*
- 51745-51749.6 *Independent study*

HEALTH AND SAFETY CODE

- 120325-120380 *Immunization against communicable disease, especially:*
- 120335 *Immunization requirement for admission*
- 120372 *Statewide medical exemption electronic standardized form***
- 120395 *Information about meningococcal disease, including recommendation for vaccination*
- 120440 *Disclosure of immunization information*

CODE OF REGULATIONS, TITLE 5

- 430 *Student records; **definition***

CODE OF REGULATIONS, TITLE 17

- 6000-6075 *School attendance immunization requirements*

UNITED STATES CODE, TITLE 20

- 1232g *Family Educational Rights and Privacy Act*

UNITED STATES CODE, TITLE 42

- 11432 *Immediate enrollment of homeless children*

CODE OF FEDERAL REGULATIONS, TITLE 34

- 99.1-99.67 *Family Educational Rights and Privacy*

Management Resources:

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

California Immunization Handbook for Child Care Programs and Schools, August 2015

Exemptions FAQs

Guide to Immunizations Requirements for Pre-kindergarten (Child Care)

Guide to Immunizations Requirements for K-12th Grade School Entry

Parents' Guide to Immunizations Required for Pre-kindergarten (Child Care)

Parents' Guide to Immunizations Required for School Entry

Vaccinations and Medical Exemptions Questions and Answers

California Immunization Handbook for Pre-kindergarten (Child Care) Programs and Schools, 10th Edition, July 2019 August 2015

EDUCATION AUDIT APPEALS PANEL PUBLICATIONS

Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, July 2015

U.S. DEPARTMENT OF EDUCATION GUIDANCE

Family Educational Rights and Privacy Act (FERPA) and H1N1, October 2009

Management Resources continued: (see next page)

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IMMUNIZATIONS (continued)

Management Resources: (continued)

WEB SITES

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

California Department of Public Health, Immunization Branch:

<https://www.cdph.ca.gov/programs/cid/dcdc/pages/immunize.aspx>

<http://www.cdph.ca.gov/programs/immunize>

California Department of Public Health, Shots for Schools: <http://shotsforschools.org>

<https://www.shotsforschool.org>

California Health & Human Services Agency: <https://www.chhs.ca.gov>

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

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

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

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CSBA Sample Administrative Regulation

Students

AR 5141.31(a)

IMMUNIZATIONS

Required Immunizations

Note: The following **optional** paragraph may be revised to reflect district practice. The California Department of Public Health's (CDPH) California Immunization Handbook for (Child Care) Programs and Schools recommends that districts provide parents/guardians with a written notice of immunization requirements. The CDPH's Parents' Guide to Immunizations Required for School Entry and Parents' Guide to Immunizations Required for **Pre-kindergarten (Child Care)**, available on its web site, may be used for this purpose.

Upon a student's registration at a district school, ~~t~~The Superintendent or designee shall provide **the student's** parents/guardians, ~~upon school registration,~~ a written notice summarizing the state's immunization requirements.

Note: The following paragraph should be revised to reflect the grade levels and programs offered by the district. Health and Safety Code 120335 requires districts to ensure that students are fully immunized prior to admission **and when entering grade 7**. See 17 CCR ~~6020~~ **6025** and ~~the~~ CDPH's California Immunization Handbook for **Pre-kindergarten (Child Care) Programs and Schools** for details regarding the ages/grades at which specific immunizations are required and the doses needed.

~~Pursuant to Health and Safety Code 120335, districts must ensure that students entering grade 7 are fully immunized against st pertussis. Beginning July 1, 2016, Health and Safety Code 120335, as amended by SB 277 (Ch. 35, Statutes of 2015), also requires districts to ensure that students are fully immunized against all specified diseases before advancing to grade 7.~~

The Superintendent or designee shall not unconditionally admit any student to a district ~~elementary or secondary~~ school, preschool, or child care and development program for the first time nor, **after July 1, 2016**, admit or advance any student to grade 7, unless the student has been fully immunized. The student shall present documentation of full immunization, in accordance with the age/grade and dose required by the California Department of Public Health (CDPH), against the following diseases: (Health and Safety Code 120335; 17 CCR ~~6020~~ **6025**)

1. Measles, mumps, and rubella (~~MMR~~)
2. Diphtheria, tetanus, and pertussis (whooping cough) (~~DTP, DTaP, or Tdap~~)
3. Poliomyelitis (polio)
4. Hepatitis B
5. Varicella (chickenpox)

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IMMUNIZATIONS (continued)

6. Haemophilus influenza type b (Hib meningitis)
7. Any other disease **designated deemed appropriate by the** CDPH

(cf. 5141.22 - Infectious Diseases)
(cf. 5148 - Child Care and Development)
(cf. 5148.3 - Preschool/Early Childhood Education)
(cf. 6170.1 - Transitional Kindergarten)

However, full immunization against hepatitis B shall not be a condition by which the Superintendent or designee shall admit or advance any student to grade 7. (Health and Safety Code 120335)

Note: State law does not exempt from vaccination requirements students who qualify for an individualized education program (IEP). However, Health and Safety Code 120335, **as amended by SB 277 (Ch. 35, Statutes of 2015)**, specifies that its provisions do not prohibit a student who qualifies for an IEP from "accessing any special education and related service" required by **the student's his/her** IEP. The district should consult legal counsel if it has questions about how to ensure compliance with vaccination requirements consistent with a student's IEP. The district may want to consider holding an IEP meeting to resolve any potential conflicts with the IEP.

A student who qualifies for an individualized education program (IEP), unless otherwise exempt, shall be fully immunized in accordance with Health and Safety Code 120335 and this regulation. However, the district shall continue to implement the student's IEP and shall not prohibit the student from accessing any special education and related services **required by the student's his/her** IEP regardless of whether the student is fully immunized. (Health and Safety Code 120335)

(cf. 6159 - Individualized Education Program)

Note: According to ~~the~~ CDPH's **California Immunization Handbook for Pre-kindergarten (Child Care) Programs and Schools**, the immunization record **must may be either** a personal record with entries made by the physician or agency performing the immunization, **or a school immunization record from the student's previous school (either the California School Immunization Record (often referred to as the "blue card") or equivalent school record, the California School Immunization Record or another state's or country's school record), or a record accessed through the California Immunization Registry (CAIR).** 17 CCR 6070 specifies the information that must be included in the record.

School personnel shall record information for each student regarding all doses of required immunizations and the status of all requirements in accordance with 17 CCR 6070. The school records shall be based on the student's immunization record shall be provided by the student's health care provider, or from the student's previous school immunization record, or through the California Immunization Registry (CAIR). The record must show at least the month and year for each dose, except that the day, month, and year must be shown for the MMR doses given during the month of the first birthday and for the Tdap dose given during the month of the seventh birthday. (17 CCR 6070)

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IMMUNIZATIONS (continued)**Exemptions**

Exemption from one or more immunization requirements shall be granted under any of the following circumstances:

Note: Pursuant to Health and Safety Code 120372, as added by SB 276 (Ch. 278, Statutes of 2019), starting January 1, 2021, the Governing Board will only be able to accept a medical exemption request that is made by a licensed physician or surgeon on an electronic, standardized, statewide form developed by CDPH and transmitted using CAIR. If a medical exemption was authorized prior to adoption of a statewide standardized form, the parent or guardian must submit, by January 1, 2021, a copy of the exemption for inclusion into the state database in order for the exemption to remain valid.

Health and Safety Code 120370, as amended by both SB 276 and SB 714 (Ch. 281, Statutes of 2019), requires that a student who has a medical exemption issued prior to January 1, 2020 be allowed to continue enrollment until the next grade span, except that, after July 1, 2021 a student may not be admitted or advanced to grade 7 unless the student has been immunized pursuant to Health and Safety Code 120335 or a medical exemption form has been filed in compliance with Health and Safety Code 120372.

Pursuant to Health and Safety Code 120372.05, as added by SB 276, a parent/guardian may appeal the revocation of a student's medical exemption to the Secretary of California Health and Human Services.

For more information about the revocation of a student's medical exemption, see CDPH's [Vaccination and Medical Exemptions Questions and Answers](#), available on its website.

1. **A medical exemption is submitted using the standardized form developed by CDPH and transmitted using CAIR which includes, but is not limited to, a description of the medical basis for which the exemption for each individual immunization is sought and whether the medical exemption is permanent or temporary. (Health and Safety Code 120372)**

~~The parent/guardian files with the district a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe. The statement shall indicate the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization. (Health and Safety Code 1203720; 17 CCR 6051)~~

A student who has a medical exemption issued prior to January 1, 2020 shall be allowed to continue enrollment until the next grade span, except that after July 1, 2021, a student may not be admitted or advanced to grade 7 unless the student has been immunized or a medical exemption form filed as stated above. (Health and Safety Code 120370)

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IMMUNIZATIONS (continued)

A temporary exemption shall not exceed one year, and all medical exemptions shall not extend beyond the grade span. (Health and Safety Code 120372)

If a student's medical exemption is revoked by CDPH on the basis that the exemption does not meet applicable criteria for medical exemptions, the student shall continue in attendance and, within 30 calendar days of the revocation, commence the immunization schedule required for conditional admittance pursuant to 17 CCR 6050, as described below. (Health and Safety Code 120372)

The student's parent/guardian may appeal a revocation to the Secretary of California Health and Human Services. If a revocation is appealed, the student shall continue in attendance and shall not be required to commence the immunization schedule required for conditional admittance provided the appeal is filed within 30 calendar days of the revocation. (Health and Safety Code 120372, 120372.05)

Note: ~~Health and Safety Code 120365, which exempted a student from one or more immunization requirements if his/her parent/guardian stated in writing that the immunizations are contrary to his/her beliefs, was repealed by SB 277 (Ch. 35, Statutes of 2015). However, SB 277 also amended Health and Safety Code 120335 to provide~~ that a personal beliefs exemption may be granted for any student whose parent/guardian files a letter or affidavit prior to January 1, 2016 stating ~~his/her~~ beliefs opposed to immunization, and that such exemption shall be effective until ~~he/she~~ **the student** enters the next grade span. For this purpose, Health and Safety Code 120335 defines three grade spans: birth through preschool, grades K-6 (including TK), and grades 7-12. For example, a student granted a personal beliefs exemption in preschool must be immunized when entering kindergarten, and a student granted such an exemption in grade 4 must be immunized when entering grade 7. The district may revise item #2 to reflect grade levels offered by the district.

2. The student's parent/guardian **filed** with the district, before January 1, 2016, a letter or written affidavit stating that an immunization is contrary to ~~his/her~~ **the student's** personal beliefs, in which case the student shall be exempted from the immunization until ~~he/she~~ **the student** enrolls in the next applicable grade span requiring immunization (birth to preschool, grades K-6, grades 7-12). (Health and Safety Code 120335)

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

Note: The following paragraph reflects ~~the CDPH's Exemptions FAQs Senate Bill 277 Frequently Asked Questions~~, which indicate that a personal beliefs exemption filed before January 1, 2016 may be transferred to another school or child care facility within the same district or in another school district within California, **but may not be transferred if a student transfers from another state or country.** ~~The CDPH's position is that a personal beliefs exemption from another state or country is not valid. The district should consult legal counsel if any question arises regarding the validity of a student's personal beliefs exemption.~~

When a student transfers to a different school within the district or transfers into the

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IMMUNIZATIONS (continued)

district from another school district in California, **the student's his/her** personal beliefs exemption filed before January 1, 2016, shall remain in effect until the next applicable grade span. A student transferring from a school outside the district shall present a copy of the personal beliefs exemption upon enrollment. **When a student transfers into the district from outside California and presents a personal beliefs exemption issued by another state or country prior to January 1, 2016, the Superintendent or designee may consult with legal counsel regarding the applicable immunization requirements.**

Note: Health and Safety Code 120335, as amended by SB 277 (Ch. 35, Statutes of 2015), exempts certain students enrolled in independent study, as provided below.

3. The student is enrolled in an independent study program pursuant to Education Code 51745-51749.6 and does not receive classroom-based instruction. **(Health and Safety Code 120335)**

(cf. 6158 - Independent Study)

Conditional Enrollment

The Superintendent or designee may conditionally admit a student with documentation from an authorized health care provider that: **(Health and Safety Code 120340; 17 CCR 6000, 6035)**

1. ~~The~~ **the** student has not received all the immunizations required for **the student's his/her** age group, but has commenced receiving doses of all required vaccines and is not due for any other doses at the time of admission. The Superintendent or designee shall notify the student's parents/guardians of the date by which the student must complete all the remaining doses as specified in 17 CCR 6035. **(Health and Safety Code 120340; 17 CCR 6035)**
2. ~~The student has a temporary exemption from immunization for medical reasons pursuant to item #1 in the section "Exemptions" above.~~

~~The Superintendent or designee shall notify the student's parents/guardians of the date by which the student must complete all the remaining doses as specified in 17 CCR 6035.~~

(cf. 5145.6 - Parental Notifications)

In addition, a transfer student may be conditionally admitted for up to 30 school days while **the student's his/her** immunization records are being transferred from the previous school. If such documentation is not presented within 30 days, the student shall be excluded from school until the required immunizations have been administered. (17 CCR ~~6070~~ **6035**)

IMMUNIZATIONS (continued)

~~The Superintendent or designee shall review the immunization record of each student admitted conditionally every 30 days until that student has received all the required immunizations. If the student does not receive the required immunizations within the specified time limits, he/she shall be excluded from further attendance until the immunizations are received. (Health and Safety Code 120375; 17 CCR 6070)~~

The Superintendent or designee shall immediately enroll homeless students, foster youth, and students of military families even if their immunization records are missing or unavailable at the time of enrollment. School or district staff shall work with the student's prior school to obtain the student's immunization records or shall ensure that **the student he/she** is properly immunized. (Education Code 48853.5, 49701; Health and Safety Code 120341; 42 USC 11432)

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

~~The Superintendent or designee shall review the immunization record of each student admitted conditionally every 30 days until that student has received all the required immunizations. If the student does not receive the required immunizations within the specified time limits, **the student he/she** shall be excluded from further attendance until the immunizations are received. (Health and Safety Code 120375; 17 CCR **6040**, 6070)~~

Exclusions Due to Lack of Immunizations

~~Any student without the required evidence of immunization may be excluded from school until the immunization is obtained or an exemption is granted in accordance with the section "Exemptions" above.~~

(cf. 5112.2 - Exclusions from Attendance)

(cf. 6183 - Home and Hospital Instruction)

~~Before an already admitted student is excluded from school attendance because of a lack of immunization~~ **If an enrolled student who was previously believed to be in compliance with immunization requirements is subsequently discovered to not be in compliance with requirements for unconditional or conditional admission,** the Superintendent or designee shall notify the parent/guardian that **he/she has 10 school days to supply evidence of proper immunization or an appropriate exemption must be provided within 10 school days.** This notice shall refer the parent/guardian to the student's usual source of medical care or, if the student has no usual source of medical care, then to the county health department or school immunization program, if any. (Education Code 48216; 17 CCR 6040)

(cf. 5112.2 - Exclusions from Attendance)

(cf. 5141.6 - School Health Services)

IMMUNIZATIONS (continued)

The Superintendent or designee shall exclude from further attendance ~~any already admitted~~ **an enrolled** student who fails to obtain the required immunization within 10 school days following the parent/guardian's receipt of the notice specified above. The student shall remain excluded from school until ~~he/she provides~~ documentation **is provided indicating** that **the student** ~~he/she~~ has received a dose of each required vaccine due at that time. ~~The student shall also be reported to the attendance supervisor or principal.~~ (17 CCR **6040**, 6055)

The student shall also be reported to the attendance supervisor or principal.

Exclusion Due to Exposure to Disease

If the district has good cause to believe that a student has been exposed to a disease listed in the section "Required Immunizations" above and **the student's** ~~his/her~~ documentation of immunization does not show proof of immunization against that disease, that student may be temporarily excluded from the school until the local health officer ~~informs the district in writing that he/she~~ is satisfied that the student is no longer at risk of developing or transmitting the disease. (Health and Safety Code 120370)

Records

Note: ~~The CDPH requires that school staff record all immunization dates from each student's personal immunization record onto the California School Immunization Record (often referred to as the "blue card") and then complete the documentation section of the card which includes the type of record provided and the status of the student's immunizations. The record also may be maintained electronically.~~

An immunization record that is directly related to a student is an "education record" subject to the Family Educational Rights and Privacy Act (20 USC 1232g; 34 CFR 99.1-99.67) and therefore generally requires parent/guardian consent to be lawfully disclosed. However, pursuant to 20 USC 1232g and 34 CFR 99.31 and 99.36, an exception exists when knowledge of the information is necessary to address an articulable and significant threat to the health or safety of the student or other individuals.

~~The Superintendent or designee shall record each new entrant's immunizations in the California School Immunization Record and retain it~~ **Each student's immunization record shall be retained** as part of the student's mandatory permanent student record. District staff shall maintain the confidentiality of immunization records and may disclose such information to state and local health departments only in accordance with law. (Health and Safety Code 120375, 120440; 17 CCR 6070)

(cf. 5125 - Student Records)

The district shall also retain in the mandatory student record any physician or health officer statement, personal beliefs letter or affidavit, reason for conditional enrollment, or any other documentation related to the student's immunization record or exemptions.

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IMMUNIZATIONS (continued)

Note: Pursuant to Health and Safety Code 120375, as amended by SB 276, the district is required to file the written report on the immunization status of new students to CDPH and the local department of public health annually. The required forms are available on CDPH's ShotsforSchool web site.

At least annually, the Superintendent or designee shall file a written report on the immunization status of new students with CDPH and the local department of public health on forms prescribed by CDPH. (Health and Safety Code 120375; 17 CCR 6075)

Audits

Note: The Education Audit Appeals Panel's Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting requires an audit of the immunization records for any school which, in the previous year, (1) failed to submit immunization assessment reports to the CDPH for kindergarten or grade 7 or (2) reported a combined conditional admission and overdue rates greater than 10 25 percent in kindergarten or grade 7. The CDPH's ShotsforSchool web site contains information as to whether a school meets either of these conditions.

If an audit reveals deficiencies in the district's reporting procedures, the Superintendent or designee shall present the Board with a plan to remedy such deficiencies.

(11/12 10/15) 12/20

CSBA Sample Board Policy

Students

BP 5148.3(a)

PRESCHOOL/EARLY CHILDHOOD EDUCATION

Note: The following **optional** policy may be used by districts that operate their own preschool/early childhood education programs and/or collaborate to provide preschool opportunities within the community. CSBA's publication What Boards of Education Can Do about Kindergarten Readiness provides information about characteristics of effective preschool programs and actions that the district and Governing Board can take to encourage and/or provide high-quality preschool education. Education Code 8492, as added by AB 1808 (Ch. 32, Statutes of 2018), establishes the Early Education Expansion Program to provide grants for the purpose of increasing access to inclusive early care and education programs for children with and without disabilities.

The Governing Board recognizes the value of high-quality preschool experiences to enhance children's social-emotional development, knowledge, skills, abilities, and attributes necessary for a successful transition into the elementary education program. The Board desires to provide children ages 3-4 years access to developmentally appropriate activities in a safe, adequately supervised, and cognitively rich environment.

Note: The following **optional** paragraphs may be used by all districts, regardless of whether they provide their own preschool programs, and may be revised to reflect district practice.

Education Code 8499-8499.7 establish county-level child care and development planning councils, with members selected by the County Board of Supervisors and County Superintendent of Schools, to identify local priorities for child care, including preschool programs, and to develop policies to meet identified needs; see BP 5148 - Child Care and Development. Such councils may also develop centralized student eligibility lists; see section on "**Eligibility and Enrollment Priority**" in the accompanying administrative regulation.

The Superintendent or designee shall collaborate with the local child care and development planning council, the county office of education, other public agencies, organizations, and/or private preschool providers to assess the availability of preschool programs in the community and the extent to which the community's preschool needs are being met. The Board encourages the development of a comprehensive districtwide and/or countywide plan to increase children's access to high-quality preschool programs.

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

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

(cf. 5148 - Child Care and Development)

The Superintendent or designee shall provide information about preschool options in the community to parents/guardians upon request.

District Preschool Programs

Note: The following **optional** section is for use by districts that choose to provide preschool/early childhood education programs for children ages 3-4 years and should be revised to reflect district practice.

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

The district may contract with the California Department of Education (CDE) to offer a program through the California State Preschool Program (CSPP) pursuant to Education Code 8235-8239.1. The CSPP consolidates a number of state programs that serve children ages 3-4, including state preschool programs (Education Code 8235-8237), family literacy programs (Education Code 8238-8238.4), and general child care and development programs to the extent that they serve children ages 3-4 (Education Code 8240-8244). Children ages 3-4 years from low-income or otherwise disadvantaged families may be eligible for subsidized services. See the accompanying administrative regulation for major program requirements for CSPP.

Preschool programs may also receive funding through the state migrant child care and development program (Education Code 8230-8233), child care and development services for children with special needs program (Education Code 8250-8252), federal Head Start program (42 USC 9831-9852), Title I preschool program (20 USC 6311-6322), or other funding sources available to the district.

When the Board determines that it is feasible, the district may contract with the California Department of Education (CDE) to provide preschool services in facilities at or near district schools, either directly or through a subcontract with a public or private provider.

Note: Beginning July 1, 2019 or upon the adoption of emergency regulations, whichever comes first, Health and Safety Code 1596.792, as amended by AB 99 (Ch. 15, Statutes of 2017) and AB 1808 (Ch. 32, Statutes of 2018), exempts CSPP programs from specified licensure and regulation requirements if they Pursuant to Health and Safety Code 1596.792, CSPP programs that are operated in a school building by a school district under contract with CDE are exempted from specified licensure and regulation requirements of Health and Safety Code 1596.70-1597.21. However, such CSPP programs are required to comply with other specified health and safety requirements, including the Field Act, California Building Standards Code, requirements for kindergarten classrooms specified in 5 CCR 14001-14306, and requirements for CSPP programs specified in 5 CCR 18000-18308.

District preschool programs shall comply with all health and safety laws and regulations, including, when applicable, licensure requirements pursuant to 22 CCR 101156.

Note: 5 CCR 18130 specifies the state regulations for child care and development programs that are applicable to CSPP programs, including the requirement in 5 CCR 18271 that the Board approve a written philosophical statement, goals, and objectives addressing each program component specified in 5 CCR 18272-18281. See the accompanying administrative regulation and AR 5148 - Child Care and Development for further information about these required program components.

The Board shall approve, for the district's preschool program, a written philosophical statement, goals, and objectives that reflect the cultural and linguistic characteristics of the families to be served and address the program components specified in 5 CCR 18272-18281 and the accompanying administrative regulation. (5 CCR 18271)

The Board shall set priorities for establishing or expanding services as resources become available, giving consideration to the benefits of providing early education programs for at-risk children and/or children residing in the attendance areas of the lowest performing district schools.

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

(cf. 6171 - Title I Programs)

Preschool classroom needs shall be addressed in the district's facilities master plan, including an assessment as to whether adequate and appropriate space exists on school sites. As necessary, the Superintendent or designee shall provide information to the Board regarding facilities financing options for preschool classrooms and/or facilities available through partnering organizations or agencies.

(cf. 1330.1 - Joint Use Agreements)

(cf. 7110 - Facilities Master Plan)

(cf. 7210 - Facilities Financing)

Because parents/guardians are essential partners in supporting the development of their children, the Superintendent or designee shall involve them in program planning.

(cf. 5020 - Parent Rights and Responsibilities)

(cf. 6020 - Parent Involvement)

Note: The following **optional** paragraph provides for coordination of the preschool program with the transitional kindergarten (TK) program and may be revised to reflect district practice. Pursuant to Education Code 48000, children whose fifth birthday is between September 2 and December 2 must be offered a TK program which operates as the first year of a two-year kindergarten program; see BP 6170.1 - Transitional Kindergarten.

The Superintendent or designee shall coordinate the district's preschool program, transitional kindergarten program (TK), and elementary education program to provide a developmental continuum that builds upon children's growing skills and knowledge.

(cf. 6011 - Academic Standards)

(cf. 6170.1 - Transitional Kindergarten)

Note: CDE has developed voluntary "preschool learning foundations" which describe the knowledge, skills, and competencies that children are expected to exhibit as they complete their first or second year of preschool. These standards address essential skills in the subject areas listed below. The standards and companion preschool curriculum frameworks are available on CDE's web site.

The district's program shall be aligned with preschool learning foundations and curriculum frameworks developed by CDE which identify the knowledge, skills, and competencies that children typically attain as they complete their first or second year of preschool. The program shall be designed to facilitate children's development in essential skills in the areas of language and literacy, mathematics, physical development, health, visual and performing arts, science, history-social science, English language development, and social-emotional development.

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

The district's preschool program shall provide appropriate services to support the needs of at-risk children.

- (cf. 0415 - Equity)*
- (cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*
- (cf. 6173 - Education for Homeless Children)*
- (cf. 6173.1 - Education for Foster Youth)*
- (cf. 6173.2 - Education of Children of Military Families)*
- (cf. 6174 - Education for English Learners)*
- (cf. 6175 - Migrant Education Program)*

To maximize the ability of children to succeed in the preschool program, the program shall support children's health through proper nutrition and physical activity and shall provide or make referrals to available health and social services as needed.

- (cf. 3550 - Food Services/Child Nutrition Program)*
- (cf. 5030 - Student Wellness)*
- (cf. 5141.31 - Immunizations)*
- (cf. 5141.32 - Health Screening for School Entry)*
- (cf. 5141.6 - School Health Services)*

The district shall encourage volunteerism in the program and shall communicate frequently with parents/guardians of enrolled children regarding their child's progress.

- (cf. 1240 - Volunteer Assistance)*

Note: The Commission on Teacher Credentialing issues permits for child development program directors, site supervisors, master teachers, teachers, associate teachers, and assistants pursuant to criteria established in Education Code 8360-8370 and 5 CCR 80105-80125. The district may request from CDE a waiver of the qualification requirements for a site supervisor upon demonstration of a compelling need, in accordance with Education Code 8208(aa) and 5 CCR 18295.

Health and Safety Code 1596.7995 requires that employees and volunteers at a day care center be immunized against influenza, pertussis, and measles, with specified exemptions. In addition, Health and Safety Code 1597.055 requires that teachers in a day care center obtain a tuberculosis clearance. See the accompanying administrative regulation.

Education Code 8450 authorizes the district to create a reserve fund and use 10 percent of it for purposes of professional development for CSPP instructional staff. Professional development resources pertaining to preschool/early childhood education are available through CDE and organizations such as the California Preschool Instructional Network.

The Superintendent or designee shall ensure that administrators, teachers, and paraprofessionals in district preschool programs possess the appropriate permit(s) issued by the Commission on Teacher Credentialing, meet any additional qualifications established by the Board, and participate in professional development opportunities designed to continually enhance their knowledge and skills.

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

- (cf. 4112.2 - Certification)*
- (cf. 4112.4/4212.4/4312.4 - Health Examinations)*
- (cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*
- (cf. 4131 - Staff Development)*
- (cf. 4222 - Teacher Aides/Paraprofessionals)*
- (cf. 4231 - Staff Development)*
- (cf. 4331 - Staff Development)*

Note: Pursuant to 5 CCR 18130, CSPP programs are subject to the requirements of 5 CCR 18105. 5 CCR 18105 **mandates** that districts offering a CSPP program develop written admissions policies and procedures that conform to the requirements of 22 CCR 101218, as provided in the following paragraph. See the accompanying administrative regulation for additional language that fulfills this mandate.

Preschool admissions policies and procedures shall be in writing and available to the public. Such policies and procedures shall include criteria designating those children whose needs can be met by the program and services, the ages of children who will be accepted, program activities, any supplementary services provided, any field trip provisions, any transportation arrangements, food service provisions, and a health examination requirement. (CCR 18105; 22 CCR 101218)

Note: Education Code 8263 and 5 CCR 18106 establish eligibility criteria and priorities for subsidized preschool services, as provided below and in the accompanying administrative regulation.

Eligibility is generally limited to children who reside within district boundaries. However, Education Code 8322 and 5 CCR 18107 authorize the Board to enter into an agreement with the boards of other districts to serve children who reside within those districts. The district may revise the following paragraph to reflect any such agreement approved by the Board.

The Superintendent or designee shall ensure that subsidized preschool is provided to eligible families to the extent that state and/or federal funding is available and shall establish enrollment priorities in accordance with Education Code 8263 and 5 CCR 18106.

Note: The following paragraph is **optional**. Pursuant to Education Code 8235, programs operated under the CSPP are part-day programs only. Education Code 8239 encourages the provision of "wraparound child care services" which combine part-day preschool and general child care services to provide a full day of services for qualifying families. See the accompanying administrative regulation for program requirements.

The Superintendent or designee shall recommend strategies to link the district's preschool program with other available child care and development programs in the district or community in order to assist families whose child care needs extend beyond the length of time that the district's part-day preschool program is offered.

Note: 5 CCR 18279-18281 require an annual evaluation using CDE's standardized "Desired Results for Children and Families" system. The system requires a self-evaluation that includes, but is not limited to, an assessment of the program by staff and the Board, a parent survey, and an environment rating scale using

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

forms selected by CDE. In addition, every three years, CDE conducts a Federal Program Monitoring/Contract Monitoring Review (FPM/CMR) process with each contract agency which reviews compliance with program requirements. The FPM/CMR instrument is available on CDE's web site.

Education Code 8203.1 establishes the early learning quality rating and improvement system (QRIS) block grant to support continuous local improvement efforts that increase the number of low-income children in high-quality preschool programs. Grant funds may be awarded to eligible local consortia, which then allocate funds to districts and other agencies contracting to provide CSPP programs. Pursuant to Education Code 8203.1, QRIS is based on a tiered rating structure with progressively higher quality standards for each tier. It is designed to (1) provide supports and incentives for programs, teachers, and administrators to reach higher levels of quality; (2) monitor and evaluate program impacts on child outcomes; and (3) disseminate information to parents/guardians and the public about program quality. For further information about the QRIS block grant, see CDE's web site and its publication Dream Big for Our Youngest Children.

The Superintendent or designee shall develop and implement an annual plan of evaluation which conforms to state requirements. (5 CCR 18279)

Note: ~~The following paragraph may be revised to reflect programs offered by the district. Education Code 8235.5, as added by AB 1808 (Ch. 32, Statutes of 2018), requires CSPP programs that are exempt from licensing pursuant to Health and Safety Code 1596.792 to utilize district complaint procedures, with modifications as necessary, to resolve any deficiencies related to the CSPP health and safety requirements of Health and Safety Code 1596.7925. The bill summary clarifies that the Williams uniform complaint procedures established pursuant to 5 CCR 4680-4687 are the applicable procedures. See BP/AR 1312.4 - Williams Uniform Complaint Procedures. The following paragraph is for use by districts that offer a CSPP program and may be revised to reflect the type(s) of programs offered by the district. Education Code 8235.5 requires districts to use the uniform complaint procedures, with modifications as necessary, to investigate and resolve health and safety complaints in license-exempt CSPP programs. 5 CCR 4610 requires that such complaints be addressed through the procedures described in 5 CCR 4690-4694, as added by Register 2020, No. 21. See BP/AR 1312.3 - Uniform Complaint Procedures.~~

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The district's Williams uniform complaint procedures, with modifications as necessary, shall be used to investigate and resolve complaints alleging violation of applicable health or safety requirements for license-exempt programs operating under the California State Preschool Program. However, licensed programs shall refer complaints alleging health and safety violations to the California Department of Social Services. (Education Code 8235.5; 5 CCR 4610, 4611, 4690-4694)

~~(cf. 1312.4 - Williams Uniform Complaint Procedures)~~
(cf. 1312.3 - Uniform Complaint Procedures)

The Superintendent or designee shall regularly report to the Board regarding enrollment in district preschool programs and the effectiveness of the programs in preparing preschoolers for transition into the elementary education program.

(cf. 0500 - Accountability)

Legal Reference: (see next page)

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

Legal Reference:

EDUCATION CODE

8200-8499.10 *Child Care and Development Services Act, especially:*
8200-8209 *General provisions for child care and development services*
8230-8233 *Migrant child care and development program*
8235-8239.1 *California State Preschool Program*
8240-8244 *General child care and development programs*
8250-8252 *Programs for children with special needs*
8263 *Eligibility and priorities for subsidized child development services*
8263.3 *Disenrollment of families due to reduced funding levels*
8264.8 *Center-based child care programs, staffing ratios*
8273.1 *Family fees*
8360-8370 *Personnel qualifications*
8400-8409 *Contracts, administrative appeal procedure*
8493-8498 *Facilities, capital outlay*
8499.3-8499.7 *Local child care and development planning councils*
44065 *Interchange between certificated and classified positions*
44256 *Credential types*
48000 *Transitional kindergarten*
48985 *Notification, primary language other than English*

HEALTH AND SAFETY CODE

1596.70-1596.895 *California Child Day Care Act*
1596.90-1597.21 *Day care centers*
120325-120380 *Immunization requirements*

CODE OF REGULATIONS, TITLE 5

~~4680-4687 *Williams uniform complaint procedures*~~
4600-4670 *Uniform complaint procedures*
4690-4694 *Health and safety complaints in license-exempt preschool programs*

18000-18434 *Child care and development programs, especially:*
18130-18136 *California State Preschool Program*
18295 *Waiver of qualifications for site supervisor*
80105-80125 *Permits authorizing service in child development programs*

CODE OF REGULATIONS, TITLE 22

101151-101239.2 *General requirements, licensed child care centers, especially:*
101151-101163 *Licensing and application procedures*
101212-101231 *Continuing requirements*
101237-101239.2 *Facilities and equipment*

UNITED STATES CODE, TITLE 20

1400-1482 *Individuals with Disabilities Education Act*
6311-6322 *Title I, relative to preschool*
6371-6376 *Early Reading First*
6381-6381k *Even Start family literacy programs*
6391-6399 *Education of migratory children*

UNITED STATES CODE, TITLE 42

9831-9852c *Head Start programs*
9857-9858r *Child Care and Development Block Grant*

CODE OF FEDERAL REGULATIONS, TITLE 45

1301.1-1305.2 *Head Start*

Management Resources: (see next page)

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

Management Resources:

CSBA PUBLICATIONS

What Boards of Education Can Do About Kindergarten Readiness, Governance Brief, May 2016

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Preschool Learning Foundations

Dream Big for Our Youngest Children: Final Report of the California Early Learning Quality Improvement System Advisory Committee, 2010

Preschool English Learners: Principles and Practices to Promote Language, Literacy, and Learning, 2nd ed., 2009

Prekindergarten Learning Development Guidelines, 2000

First Class: A Guide for Early Primary Education, 1999

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings, 2016

Good Start, Grow Smart, April 2002

WEB SITES

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

California Association for the Education of Young Children: <http://www.caeyc.org>

California County Superintendents Educational Services Association: <http://www.ccsesa.org>

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

California Head Start Association: <http://caheadstart.org>

California Preschool Instructional Network: <http://www.cpin.us>

Child Development Policy Institute: <http://www.cdpi.net>

Cities, Counties, and Schools Partnership: <http://www.ccspartnership.org>

First 5 Association of California: <http://www.ccfc.ca.gov>

National Institute for Early Education Research: <http://nieer.org>

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

(7/15 10/18) 12/20

CSBA Sample Administrative Regulation

Delete - ^{ages} not
Policy operate a
state-sponsored
preschool

Students

AR 5148.3(a)

PRE-SCHOOL/EARLY CHILDHOOD EDUCATION

Note: The following administrative regulation reflects the major requirements of the California State Preschool Program (CSPP) pursuant to Education Code 8235-8239.1. The CSPP consolidates state preschool programs (Education Code 8235-8237), family literacy programs (Education Code 8238-8238.4), and general child care and development programs to the extent that they serve children 3-4 years of age (Education Code 8240-8244).

The following administrative regulation does not reflect all requirements for other state and federally funded preschool program(s). The district may revise this administrative regulation to reflect other preschool program(s) it offers, such as the state migrant child care and development program (Education Code 8230-8233), child care and development services for children with special needs program (Education Code 8250-8252), federal Head Start program (42 USC 9831-9852), Title I preschool program (20 USC 6311-6322), or preschool program developed and funded by the district.

In addition to the program requirements described below, preschool programs may be subject to other policies contained throughout the district's policy manual (e.g., BP/AR 1240 - Volunteer Assistance, AR 3514.2 - Integrated Pest Management, BP/AR 3550 - Food Service/Child Nutrition Program, and BP/AR 5148 - Child Care and Development). Districts should consult legal counsel if they have questions regarding the applicability of other laws to the district's preschool program.

When approved by the California Department of Education (CDE) under the California State Preschool Program (CSPP), the district may operate one or more part-day preschool programs in accordance with law and the terms of its contract with CDE.

(cf. 5148 - Child Care and Development)

Note: 5 CCR 18130 specifies the state regulations for child care and development programs that are applicable to CSPP programs. These requirements include, but are not limited to, the program components listed in 5 CCR 18272-18281. See AR 5148 - Child Care and Development for details regarding these required program components.

The district's preschool program shall include all required program components, as described in 5 CCR 18272-18281 and AR 5148 - Child Care and Development, for the educational program, the creation of a developmental profile for each child, staff development, parent involvement and education, community involvement, health and social services, nutrition, and program evaluation. (5 CCR 18271-28281)

Minimum Hours/Days of Operation

The district's part-day preschool program shall operate a minimum of three hours per day, excluding time for home-to-school transportation, and for a minimum of 175 days per year unless otherwise specified in the program's contract. (Education Code 8235; 5 CCR 18136)

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)**Staffing**

The preschool program shall maintain an adult-child ratio of at least one adult for every eight children and a teacher-child ratio of at least one teacher for every 24 children. If the district cannot recruit a sufficient number of parents/guardians or volunteers to meet the required adult-child ratio, teacher aides shall be hired as necessary. (5 CCR 18135, 18290)

(cf. 1240 - Volunteer Assistance)

(cf. 6020 - Parent Involvement)

Note: Health and Safety Code 1596.7995 requires employees and volunteers at a day care center to be immunized against influenza, pertussis, and measles, with specified exemptions. Health and Safety Code 1597.055 adds a requirement for such teachers to obtain a tuberculosis clearance. Pursuant to Health and Safety Code 1596.76, a day care center includes a preschool. See AR 5148 - Child Care and Development for further information regarding immunization requirements for staff and volunteers. Districts that have not adopted AR 5148 - Child Care and Development may revise the following paragraph accordingly and expand it to include the exemptions specified in Health and Safety Code 1596.7995.

Any person employed at a district preschool and any volunteer who provides care and supervision to children at a preschool shall, unless exempted by law, be immunized against influenza, pertussis, and measles in accordance with Health and Safety Code 1596.7995 and AR 5148 - Child Care and Development. Documentation of required immunizations, or applicable exemptions, shall be maintained in the employee's personnel file. (Health and Safety Code 1596.7995)

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

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

In addition, preschool teachers shall present evidence of a current tuberculosis clearance and meet other requirements as specified in Health and Safety Code 1597.055.

Wraparound Child Care Services

Note: The following section is **optional**. Because preschool programs operated under the CSPP are part-day programs only, Education Code 8329 encourages districts to contract with the California Department of Education (CDE) to offer "wraparound child care services" which combine preschool and general child care services to provide a full day of services for eligible families. Such programs must be consistent with requirements for general child care and development programs offered pursuant to Education Code 8240-8244; see BP/AR 5148 - Child Care and Development.

In accordance with its contract with CDE, the district may offer full-day services to meet the needs of eligible families through a combination of part-day preschool and wraparound child care services that are offered for the remaining portion of the day or year following

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

completion of the preschool services. Child care and development services offered through this program shall meet the requirements of general child care and development programs pursuant to Education Code 8240-8244. (Education Code 8239)

Wraparound services shall operate a minimum of 246 days per year unless otherwise specified in the contract. Within this period of time, the part-day preschool program shall operate 175-180 days. After the completion of the preschool program, a part-time general child care and development program may operate a full day for the remainder of the year. (Education Code 8239)

Family Literacy Services

Note: The following section is **optional**. Contingent upon funding in the state Budget Act, Education Code 8238 and 8238.4 provide for the Superintendent of Public Instruction to distribute family literacy supplemental grant funds to qualifying CSPP contractors for the purposes described below.

When any district preschool program receives funding for family literacy services pursuant to Education Code 8238.4, the Superintendent or designee shall coordinate the provision of: (Education Code 8238)

1. Opportunities for parents/guardians to work with their children on interactive literacy activities, including activities in which parents/guardians actively participate in facilitating their children's acquisition of prereading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development
2. Parenting education for parents/guardians of children in participating classrooms to support their child's development of literacy skills, including, but not limited to, parent education in:
 - a. Providing support for the educational growth and success of their children
 - b. Improving parent-school communications and parental understanding of school structures and expectations
 - c. Becoming active partners with teachers in the education of their children
 - d. Improving parental knowledge of local resources for the identification of and services for developmental disabilities, including, but not limited to, contact information for the district special education referral
3. Referrals to providers of adult education and instruction in English as a second language as necessary to improve academic skills of parents/guardians

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

4. Staff development for teachers in participating classrooms that includes, but is not limited to:
- a. Development of a pedagogical knowledge, including, but not limited to, improved instructional and behavioral strategies
 - b. Knowledge and application of developmentally appropriate assessments of the prereading skills of children in participating classrooms
 - c. Information on working with families, including the use of on-site coaching, for guided practice in interactive literacy activities
 - d. Providing targeted interventions for all young children to improve kindergarten readiness upon program completion

(cf. 4131 - Staff Development)

Eligibility and Enrollment

Note: The following section reflects eligibility criteria and enrollment priorities for the CSPP pursuant to state law and regulations. 5 CCR 18105 **mandates** that a district operating a CSPP program develop written admissions policies and procedures that conform to the requirements of 22 CCR 101218, including, but not limited to, criteria designating those children whose needs can be met by the program and services and the ages of children who will be accepted. **AB 2626 (Ch. 945, Statutes of 2018) amended Education Code 8208 to change the birthdate by which children are eligible for CSPP, as provided below.**

Children eligible for the district's CSPP program include those who will have their third or fourth birthday on or before December 1 of the fiscal year that they are being served. Children who have their third birthday on or after December 2 may be enrolled on or after their third birthday. (Education Code 8208, 8235, 8236)

Note: Pursuant to 5 CCR 18082-18083, the parent/guardian must submit an application for services which contains specified information and documentation. The application form is available on CDE's web site. Upon receiving an application, a person designated by the district must certify the family's or child's eligibility.

Eligibility for the CSPP program shall be as follows: To be eligible for subsidized services, families shall meet at least one requirement in each of the following areas: (Education Code 8235, 8239, 8263, 8263.1)

1. **Children shall be eligible for subsidized preschool services if their** The family is a current aid recipient, income eligible, **or homeless, and/or one whose** the children are recipients of protective services or have been identified as being, or at risk of being, abused, neglected, or exploited. **(Education Code 8235, 8263, 8263.1)**

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

2. Children shall be eligible for subsidized wraparound preschool and child care services if their **The family meets at least one of the criteria specified in item #1 above and needs child care services due to either of the following circumstances: (Education Code 8239, 8263)**

- a. The child is identified by a legal, medical, or social services agency, the district liaison for homeless students, a Head Start program, or an emergency or transitional shelter as being a recipient of protective services, as being or at risk of being neglected, abused, or exploited, or as being homeless.

(cf. 6173 - Education for Homeless Children)

Note: Education Code 8263, as amended by AB 273 (Ch. 689, Statutes of 2017), provides that eligibility for child care and development programs may be established by parent/guardian engagement in an educational program for English learners or for attainment of a high school diploma or general educational development certificate.

- b. The parents/guardians are engaged in vocational training leading directly to a recognized trade, paraprofession, or profession; are engaged in an educational program for English language learners or for the attainment of a high school diploma or general educational development certificate; are employed or seeking employment; are seeking permanent housing for family stability; or are incapacitated.

Note: Pursuant to Education Code 8263, as amended by SB 75 (Ch. 51, Statutes of 2019), a family may be eligible for a full-day CSPP program without meeting the requirements related to the need for child care services if all families meeting those requirements have been enrolled.

If all families meeting at least one of the criteria specified in item #2 have been enrolled, a full-day CSPP program may provide services to families who do not meet any of those criteria, provided the criteria in item #1 are met. (Education Code 8263)

Enrollment Priority

Note: The following paragraph may be revised to reflect district practice. Unless state funding is allocated to support the "centralized eligibility list" established in each county pursuant to Education Code 8499.5, such lists will be maintained only if locally funded. In situations where there is no locally funded centralized eligibility list or the district elects not to participate in the local list, the district must establish its own waiting list in accordance with admission priorities pursuant to 5 CCR 18106.

The Superintendent or designee shall consult the county's centralized eligibility list, when available, or shall maintain a district waiting list in accordance with admission priorities. As vacancies occur, applicants shall be contacted in order of their priority. (5 CCR 18106)

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

First priority for enrollment in a preschool program shall be given to neglected or abused children ages 3-4 who are recipients of child protective services or who, based upon written referral from a legal, medical, or social service agency, are at risk of being neglected, abused, or exploited. If unable to enroll a child in this category, the district shall refer the child's parent/guardian to local resource and referral services so that services for the child can be located. (Education Code 8236, **8236.3**; 5 CCR 18131)

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

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

Note: Pursuant to Education Code 8236, second priority for enrollment must be granted to children 4 years of age who are not enrolled in a transitional kindergarten (TK) program, as provided in the following paragraph.

Education Code 8236, as amended by AB 2626 (Ch. 945, Statutes of 2018), eliminates the requirement, for CSPP programs operating with funding that was initially allocated in a prior fiscal year, that at least one-half of the children enrolled at a preschool must be children who are age 4 years.

After all children with first priority are enrolled, the district shall give second priority to eligible children 4 years of age who are not enrolled in a transitional kindergarten (TK) program prior to enrolling eligible children 3 years of age. (Education Code 8236, **8236.3**)

Note: Education Code 8236.3, as added by SB 75, establishes enrollment priorities for schools where at least 80 percent of students are eligible for free or reduced-price meals. First and second priority for enrollment in such programs is the same as for other programs as described in the preceding two paragraphs.

If a CSPP program is operating within the attendance boundaries of a school where at least 80 percent of the students are eligible for free or reduced-price meals, third priority for enrollment shall be for families who meet the criteria of Education Code 8263 specified in items #1-2 in the section "Eligibility" above. Any remaining slots may be open to any families not otherwise eligible, provided that the families prove residency within the attendance boundary of the school and priority is given to families with the lowest income. (Education Code 8236.3)

Note: Education Code 8235, as amended by AB 99 (Ch. 15, Statutes of 2017), allows CSPP programs to provide services to children with disabilities whose family income is above the income eligibility threshold. Such children do not count towards the 10 percent limitation for otherwise ineligible children as described below.

After all otherwise eligible children have been enrolled, the program may provide services to children with disabilities who are ages 3-4 and whose family income is above the income eligibility threshold. (Education Code 8235)

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

In addition, after enrolling all eligible children, up to 10 percent of the program's enrollment, calculated throughout the entire contract, may be filled with children who exceed the age limitations and children whose family income exceeds the income eligibility threshold by no more than 15 percent. (Education Code 8235; 5 CCR 18133)

The district may certify eligibility and enrollment up to 120 calendar days prior to the first day of the beginning of the preschool year. After establishing eligibility at the time of initial enrollment, a child shall remain eligible for the remainder of the program year. (Education Code 8237; 5 CCR 18082)

Notice of Action

Note: Pursuant to 5 CCR 18082-18083, the parent/guardian must submit an application for services which contains specified information and documentation. The application form is available on CDE's web site. Upon receiving an application, a person designated by the district must certify the family's or child's eligibility.

Upon receiving a parent/guardian's application for services, the Superintendent or designee shall review the application and documentation and shall certify the eligibility of the family or child.

Note: Pursuant to 5 CCR 18130, CSPP programs are subject to 5 CCR 18094 and 18118, which require the district to provide written notification to parents/guardians as to whether their application for subsidized services has been approved or denied. For this purpose, the district should use the Notice of Action form available on CDE's web site. If the services are denied, the parent/guardian may appeal the decision in accordance with 5 CCR 18120-18122; see section "Parent Hearing" below.

The district's decision to approve or deny a child's enrollment shall be communicated to the family through a written Notice of Action mailed or delivered within 30 days from the date the application is signed by the parent/guardian. (5 CCR 18094, 18095, 18118)

(cf. 5145.6 - Parental Notifications)

Note: 5 CCR 18095 and 18119 require the district to notify a parent/guardian of any change in services or fees as described below. For such notification, the district should use the Notice of Action form available on CDE's web site. Parents/guardians may appeal such actions pursuant to 5 CCR 18120-18122; see section "Parent Hearing" below.

Subsequently, the Superintendent or designee shall mail or deliver a Notice of Action to a parent/guardian at least 14 calendar days before any intended change in services, including, but not limited to, an increase or decrease in fees, an increase or decrease in the amount of services, or termination of services, due to any of the following circumstances: (5 CCR 18095, 18119)

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PRESCCHOOL/EARLY CHILDHOOD EDUCATION (continued)

1. A determination during recertification or update of the application that the need or eligibility requirements are no longer being met or the fee or amount of service needs to be modified
2. Failure of the parent/guardian to document the family's need or eligibility after the district requested such documentation in writing
3. An indication by the parent/guardian that ~~he/she~~ **the parent/guardian** no longer wants the service
4. The death of a parent/guardian or child
5. The conclusion of a limited-term agreement, provided that the parent/guardian has been informed in writing of the date that the services would terminate

For each child enrolled in the district's preschool program, the Superintendent or designee shall maintain a family data file including, but not limited to, a completed and signed application for services, documentation of income eligibility, and a copy of all Notices of Action. For each child not receiving subsidized services, the family data file shall also include records of the specific reason(s) for enrolling each child, the child's family income, and evidence that the district has made a diligent search for children eligible for subsidized services. (5 CCR 18130, 18133, 18081, 18084)

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

(cf. 5125 - Student Records)

Combined Preschool/Transitional Kindergarten Classroom

Note: **AB 1808 (Ch. 32, Statutes of 2018) amended** Education Code 8235 and 48000 to allow districts to place 4-year-old children enrolled in a CSPP program into a TK program and to commingle children from both programs in the same classroom as long as all of the requirements of each program are met and the district adheres to the requirements listed in the following section. See BP 6170.1 - Transitional Kindergarten for eligibility requirements pertaining to the TK program pursuant to Education Code 48000.

When a child is eligible for both the preschool program and the district's TK program, the district may place the child in a classroom which is commingled with children from both programs as long as the commingled program meets all of the requirements of each program as well as the following requirements: (Education Code 8235, 48000)

1. An early childhood environment rating scale, as specified in 5 CCR 18281, shall be completed for the classroom.

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PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

2. All children enrolled for 10 or more hours per week shall be evaluated using the Desired Results Developmental Profile, as specified in 5 CCR 18272.
3. The classroom shall be taught by a teacher who holds a credential issued by the Commission on Teacher Credentialing in accordance with Education Code 44065 and 44256.
4. The classroom shall comply with the adult-child ratio specified in Education Code 8264.8.
5. Contractors of the district shall report the services, revenues, and expenditures for children in the preschool program in accordance with 5 CCR 18068.
6. The classroom shall not include children enrolled in TK for a second year or children enrolled in a regular kindergarten classroom.

(cf. 5111 - Admission)

(cf. 6170.1 - Transitional Kindergarten)

Fees and Charges

Fees for participation in the district's preschool program shall be assessed and collected in accordance with the fee schedule established by the Superintendent of Public Instruction (SPI). (Education Code 8273; 5 CCR 18078)

(cf. 3260 - Fees and Charges)

However, no fee shall be charged to an income-eligible family whose child is enrolled in a part-day preschool program or a family that is receiving CalWORKs cash aid. (Education Code 8273.1; 5 CCR 18110)

Note: Education Code 8273.1, as amended by AB 99 (Ch. 15, Statutes of 2017), extends the length of time, from three months to 12 months, for which a family who establishes preschool eligibility on the basis of abuse or neglect may be exempt from family fees.

A family may be exempt from the fees for up to 12 months if the child qualifies for preschool on the basis of being the recipient of child protective services or as being, or at risk of being, abused or neglected. (Education Code 8273.1)

Note: Education Code 8273.3 authorizes a district offering a CSPP program to charge a fee for field trips and/or to require parents/guardians to provide diapers, but **mandates** that the district adopt policy to include parents/guardians in the decision-making about such fees, as provided below. Pursuant to Education Code 8273.3, the fees cannot exceed \$25 per child in the contract year. The following paragraph may be modified to delete diapers as appropriate for the age of the children served.

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

The Superintendent or designee shall establish a process that involves parents/guardians in determining whether to require parents/guardians to provide diapers and/or whether and how much to charge parents/guardians for field trip expenses, within the limit specified in law. A child shall not be denied participation in a field trip due to the parent/guardian's inability or refusal to pay the fee, and no adverse action shall be taken against a parent/guardian for that inability or refusal. (Education Code 8273.3)

Disenrollment Based on Reduced Funding

Note: Education Code 8263.3 specifies the order by which families will be disenrolled from child care and development services when funding levels are reduced. The following list applies that order of disenrollment to CSPP programs but takes into account the priority specified in Education Code 8236 to enroll children 4 years of age before enrolling children 3 years of age.

When necessary due to a reduction in state reimbursements, families shall be disenrolled in the following order: (Education Code 8236, 8263.3)

1. Children 3 years of age whose families have the highest income in relation to family size shall be disenrolled first, followed by children 4 years of age whose families have the highest income in relation to family size.

At each age level, if two or more families have the same income ranking, the child with disabilities shall be disenrolled last. If there are no families that have a child with disabilities, the child who has received services the longest shall be disenrolled first.

2. Families of children 3 or 4 years of age who are receiving child protective services or who have been documented to be at risk of being neglected or abused, regardless of income, shall be disenrolled last.

Expulsion/Unenrollment Based on Behavior

Note: Education Code 8239.1, as added by AB 752 (Ch. 708, Statutes of 2017), prohibits the expulsion or unenrollment of a child from a CSPP program because of the child's behavior unless the district has followed the steps specified below.

A district preschool program shall not expel or unenroll a child based on the child's behavior, unless the district first takes the following actions to address the child's behavior: (Education Code 8239.1)

1. Inform the parents/guardians of the child's persistent and serious challenging behaviors and consult with the parents/guardians and teacher in an effort to maintain the child's safe participation in the program

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

2. If the child has an individualized family service plan (IFSP) or individualized education program (IEP), with written parent/guardian consent, contact the agency or district employee responsible for such plan or program to seek consultation in regard to serving the child

(cf. 6159 - Individualized Education Program)

3. If the child does not have an IFSP or IEP, consider if it is appropriate to complete a universal screening of the child, including, but not limited to, screening the child's social and emotional development, referring the parents/guardians to community resources, implementing behavior supports within the program, and considering an IEP for the child

If the district has taken the actions specified in items #1-3 above and the child's continued enrollment would present a serious safety threat to the child or other enrolled children, the district shall refer the parents/guardians to other potentially appropriate placements, the local child care resource and referral agency, or any other referral service available in the local community. Within 180 days of the start of the process, the district may unenroll the child. (Education Code 8239.1)

Note: A joint statement by the U.S. Department of Education and U.S. Department of Health and Human Services, Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings, clarifies that preschool children with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482) are entitled to the same disciplinary protections that apply to all other IDEA-eligible students with disabilities, may not be subjected to impermissible disciplinary changes of placement for misconduct that is caused by or related to their disability, and must continue to receive educational services consistent with their right to a free appropriate public education. The statement indicates the need for the child's individualized education program (IEP) team to consider the use of positive behavioral interventions and supports when developing or modifying the IEP to reduce the need for discipline of a child with disabilities and avoid suspension or expulsion from a preschool program.

Children with disabilities may only be suspended or expelled in conformance with the procedures and limitations of the Individuals with Disabilities Education Act.

Parent Hearing

Note: Pursuant to 5 CCR 18130, districts are subject to the requirements of 5 CCR 18120-18122 to provide due process to parents/guardians who disagree with certain district actions, such as when services are denied, there is a change in services or fees, or their child is disenrolled.

If a parent/guardian disagrees with any district action to deny **his/her** the child's eligibility for subsidized preschool services, disenroll the child due to a funding shortage, increase or decrease fees, increase or decrease the amount of services, terminate services, or otherwise change the level of services, **he/she the parent/guardian** may file a request for a hearing

PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)

with the Superintendent or designee within 14 calendar days of the date the Notice of Action was received. Within 10 calendar days of receiving the request for a hearing, the Superintendent or designee shall notify the parent/guardian of the time and place of the hearing, which, to the extent possible, shall be convenient for the parent/guardian. (5 CCR 18120)

The hearing shall be conducted in accordance with the procedures specified in 5 CCR 18120 by a district administrator who is at a staff level higher in authority than the staff person who made the contested decision. Within 10 calendar days after the hearing, the district administrator shall mail or deliver a written decision to the parent/guardian. If the parent/guardian disagrees with the written decision, he/she **the parent/guardian** may, within 14 calendar days, appeal the decision to CDE. (5 CCR 18120-18122)

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Delete HS policy

CSBA Sample Board Policy

Instruction

BP 6146.1(a)

HIGH SCHOOL GRADUATION REQUIREMENTS

Note: The following policy is for use by districts that maintain grades 9-12.

The Governing Board desires to prepare all students to **successfully complete the high school course of study and obtain a high school diploma that represents their educational achievement and increases their** ~~so that they can take advantage of~~ opportunities for postsecondary education and employment.

(cf. 5127 - Graduation Ceremonies and Activities)
(cf. 5147 - Dropout Prevention)
(cf. 6011 - Academic Standards)
(cf. 6143 - Courses of Study)
(cf. 6146.3 - Reciprocity of Academic Credit)

Course Requirements

Note: Education Code 51225.3 specifies the courses that a student is required to complete in order to graduate from high school as listed in items #1-6 below.

Pursuant to Education Code 66204, each district that maintains a high school is also required to develop a process for submitting courses to the University of California to ensure that they align with the "a-g" course requirements for college admission.

To obtain a high school diploma, students shall complete the following courses in grades 9-12, with each course being one year unless otherwise specified:

1. Three courses in English (Education Code 51225.3)

(cf. 6142.91 - Reading/Language Arts Instruction)

2. Two courses in mathematics (Education Code 51225.3)

At least one mathematics course, or a combination of the two mathematics courses, shall meet or exceed state academic content standards for Algebra I or Mathematics I. Completion of such coursework prior to grade 9 shall satisfy the Algebra I or Mathematics I requirement, but shall not exempt a student from the requirement to complete two mathematics courses in grades 9-12. (Education Code 51224.5)

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HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

Note: **The following optional paragraph is for use only by districts that require more than two courses in mathematics for graduation and should be deleted by other districts.** Pursuant to Education Code 51225.3 and 51225.35, a district that requires more than two courses in mathematics may award up to one mathematics course credit for an approved computer science course, as defined. Any such course must have been approved by the University of California as a "category c" (mathematics) course in the university's "a-g" course admission criteria; see BP 6143 - Courses of Study.

Students may be awarded up to one mathematics course credit for successful completion of an approved computer science course that is classified as a "category c" course based on the "a-g" course requirements for college admission. (Education Code 51225.3, 51225.35)

(cf. 6142.92 - Mathematics Instruction)

(cf. 6152.1 - Placement in Mathematics Courses)

3. Two courses in science, including biological and physical sciences (Education Code 51225.3)

(cf. 6142.93 - Science Instruction)

4. Three courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics; and a one-semester course in economics (Education Code 51225.3)

(cf. 6142.3 - Civic Education)

(cf. 6142.94 - History-Social Science Instruction)

Note: Education Code 51225.3 authorizes the Board to include a course in career technical education (CTE) as an alternative to the visual or performing arts or **foreign world** language course requirement for high school graduation. If the Board chooses to do so, it must, at a regular Board meeting prior to allowing a CTE course as an alternative, notify parents/guardians, students, teachers, and the public of information specified in Education Code 51225.3. In addition, the information must be included in the district's annual notification to parents/guardians pursuant to Education Code 48980; see the accompanying administrative regulation. Districts that do not allow this alternative course requirement should delete references to CTE in item #5 below.

The CTE course may be offered through different means, including a district-operated program, regional occupational center or program, or county office of education program pursuant to a joint powers agreement. See BP/AR 6178 - Career Technical Education and BP 6178.2 - Regional Occupational Center/Program for program details pertaining to CTE.

5. One course in visual or performing arts; **foreign world language, or career technical education (CTE).** For purposes of this requirement, a course in including American Sign Language; **shall be deemed a course in world language.** **or career technical education (CTE)** (Education Code 51225.3)

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HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

To be counted towards meeting graduation requirements, a CTE course shall be aligned to the CTE model curriculum standards and framework adopted by the State Board of Education. **(Education Code 51225.3)**

(cf. 6142.2 - World/Foreign Language Instruction)
(cf. 6142.6 - Visual and Performing Arts Education)
(cf. 6178 - Career Technical Education)
(cf. 6178.2 - Regional Occupational Center/Program)

6. Two courses in physical education, unless the student has been otherwise exempted pursuant to other sections of the Education Code (Education Code 51225.3)

(cf. 6142.7 - Physical Education and Activity)

Note: Pursuant to Education Code 51225.3, the Board may prescribe additional coursework (e.g., health education, service learning) or other requirements (e.g., portfolios or senior projects) that district students must complete in order to obtain a diploma. If the Board does so, such courses or projects should be listed below.

If the district requires a course in health education for graduation, Education Code 51225.36 requires that the district include instruction in sexual harassment and violence, including, but not limited to, information on the affirmative consent standard pursuant to Education Code 67386. See BP 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction. In addition, pursuant to Education Code 51225.6, a district that requires a course in health education for graduation is required to include instruction in compression-only cardiopulmonary resuscitation. See AR 6143 - Courses of Study.

Pursuant to Education Code 51230, if the district requires the completion of community service hours for high school graduation, the district may provide a student with credit towards that requirement for completion of a course in community emergency response training. However, if the district chooses to offer credit for the completion of such a course, the Board is still obligated to notify parents/guardians, students, teachers, and the public of information specified in Education Code 51225.3.

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)
(cf. 6142.4 - Service Learning/Community Service Classes)
(cf. 6142.8 - Comprehensive Health Education)

Note: Education Code 51225.3 requires the Board to adopt alternative means for students to complete the prescribed course of study. See BP/AR 6146.11 - Alternative Credits Toward Graduation.

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HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

Because the prescribed course of study may not accommodate the needs of some students, the Board shall provide alternative means for the completion of prescribed courses in accordance with law.

(cf. 6146.11 - Alternative Credits Toward Graduation)

(cf. 6146.2 - Certificate of Proficiency/High School Equivalency)

(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)

Exemptions from District-Adopted Graduation Requirements

Note: Education Code 51225.1 requires the district to exempt from any district-adopted graduation requirements **that are in addition to the state requirements specified in Education Code 51225.3** a foster youth, homeless student, former juvenile court school student, child of a military family, or migrant student who transfers into the district or between district high schools any time after completing the second year of high school, or an immigrant student who is in the third or fourth year of high school and is participating in a newcomer program (i.e., a program designed to meet the academic and transitional needs of newly arrived immigrant students that has as a primary objective the development of English language proficiency). This exemption does not apply if the Superintendent or designee makes a finding that the student is reasonably able to complete the requirements in time to graduate by the end of the fourth year of high school. Also see AR 6173 - Education for Homeless Children, AR 6173.1 - Education for Foster Youth, AR 6173.2 - Education of Children of Military Families, AR 6173.3 - Education for Juvenile Court School Students, and AR 6175 - Migrant Education Program.

Pursuant to Education Code 51225.1, within 30 calendar days of the transfer of a foster youth, homeless student, former juvenile court school student, child of a military family, or migrant student, or within 30 days of a student beginning participation in a newcomer program, the district is required to provide notice to the student, **the person holding the right to make education decisions for the student, and the student's social worker or probation officer** of the availability of the exemption and whether the student qualifies for it. If the district fails to provide that notification, the student will be eligible for the exemption once notified, even if the notification is received after the termination of the court's jurisdiction over the foster youth or former juvenile court school student, after the homeless student ceases to be homeless, or after the student no longer meets the definition of a child of a military family, a migrant student, or a student participating in a newcomer program, as applicable.

Education Code 51225.1 also provides that, if an exempted student completes the statewide coursework requirements before the end of the fourth year of high school, the district or a district school must not require or request that the student graduate before the end of the fourth year of high school.

Any complaint alleging the district's failure to comply with the requirements of Education Code 51225.1 may be filed using the district's uniform complaint procedures pursuant to 5 CCR 4600-4670. See BP/AR 1312.3 - Uniform Complaint Procedures.

District students are required to complete graduation course requirements specified above, including the requirements imposed by Education Code 51225.3 and those adopted by the Board. However, a foster youth, homeless student, former juvenile court school student, child of a military family, or migrant student who transfers into the district or between district schools any time after completing the second year of high school, or a newly arrived immigrant student who is in the third or fourth year of high school and is participating in a

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HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

newcomer program, shall be exempted from any graduation requirements adopted by the Board that are in addition to statewide course requirements. This exemption shall not apply if the Superintendent or designee makes a finding that the student is reasonably able to complete the requirements in time to graduate by the end of the fourth year of high school. Within 30 days of the transfer or of the commencement of participation in a newcomer program, as applicable, the Superintendent or designee shall notify any eligible student of the availability of the exemption and whether the student qualifies for it. (Education Code 51225.1)

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5145.6 - Parental Notifications)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education of Children of Military Families)
(cf. 6173.3 - Education for Juvenile Court School Students)
(cf. 6175 - Migrant Education Program)

Retroactive Diplomas

Any student who completed grade 12 in the 2003-04 through 2014-15 school year and met all applicable graduation requirements other than the passage of the high school exit examination shall be granted a high school diploma. (Education Code 51413)

Note: Items #1-3-4 below are **optional** and may be revised to reflect district practice.

In addition, the district may retroactively grant high school diplomas to **former students who**: (Education Code 48204.4, 51430, 51440)

1. **Persons who dD**eparted California against their will while in grade 12 and did not receive a diploma because the departure interrupted their education, provided that they were in good academic standing at the time of the departure

Persons may be considered to have departed California against their will if they were in custody of a government agency and were transferred to another state, were subject to a lawful order from a court or government agency that authorized their removal from California, were subject to a lawful order and were permitted to depart California before being removed from California pursuant to the lawful order, were removed or were permitted to depart voluntarily pursuant to the federal Immigration and Nationality Act, or departed due to other circumstances determined by the district that are consistent with the purposes of Education Code 48204.4.

In determining whether to award a diploma under these circumstances, the Superintendent or designee shall consider any coursework that may have been completed outside of the United States or through online or virtual courses.

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HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

2. **Former students who were** interned by order of the federal government during World War II or **who** are honorably discharged veterans of World War II, the Korean War, or the Vietnam War, provided that they were enrolled in a district school immediately preceding the internment or military service and did not receive a diploma because their education was interrupted due to the internment or military service in those wars

Deceased former students who satisfy these conditions may be granted a retroactive diploma to be received by their next of kin.

3. **Are v**eterans who entered the military service of the United States while in grade 12 and who had satisfactorily completed the first half of the work required for grade 12 in a district school

Note: Education Code 51430, as amended by AB 1350 (Ch. 66, Statutes of 2020), authorizes districts to award a retroactive diploma under the circumstances described in item #4 below.

4. **Were in their senior year of high school during the 2019-20 school year, were in good academic standing and on track to graduate at the end of the 2019-20 school year as of March 1, 2020, and were unable to complete the statewide graduation requirements as a result of the COVID-19 crisis**

Honorary Diplomas

Note: The following optional section reflects the Board's authority to confer honorary high school diplomas pursuant to Education Code 51225.5 and may be revised to reflect district practice.

The Board may grant an honorary high school diploma to: (Education Code 51225.5)

1. An international exchange student who has not completed the course of study ordinarily required for graduation and who is returning to the **student's** home country following the completion of one academic school year in the district

(cf. 6145.6 - International Exchange)

2. A student who is terminally ill

The honorary diploma shall be clearly distinguishable from the regular diploma of graduation awarded by the district. (Education Code 51225.5)



HIGH SCHOOL GRADUATION REQUIREMENTS (continued)

Legal Reference:

EDUCATION CODE

- 47612 Enrollment in charter school
 - 48200 Compulsory attendance
 - 48204.4 Parents/guardians departing California against their will
 - 48412 Certificate of proficiency
 - 48430 Continuation education schools and classes
 - 48645.5 Acceptance of coursework
 - 48980 Required notification at beginning of term
 - 49701 Interstate Compact on Educational Opportunity for Military Children
 - 51224 Skills and knowledge required for adult life
 - 51224.5 Algebra instruction
 - 51225.1 Exemption from district graduation requirements
 - 51225.2 Student in foster care defined; acceptance of coursework, credits, retaking of course
 - 51225.3 High school graduation
 - 51225.35 Mathematics course requirements; computer science
 - 51225.36 Instruction in sexual harassment and violence; districts that require health education for graduation
 - 51225.5 Honorary diplomas
 - 51225.6 Compression-only cardiopulmonary resuscitation
 - 51228 Graduation requirements
 - 51230 Credit for community emergency response training**
 - 51240-51246 Exemptions from requirements
 - 51250-51251 Assistance to military dependents
 - 51410-51413 Diplomas
 - 51420-51427 High school equivalency certificates
 - 51430 Retroactive high school diplomas
 - 51440 Retroactive high school diplomas
 - 51450-51455 Golden State Seal Merit Diploma
 - 51745 Independent study restrictions
 - 56390-56392 Recognition for educational achievement, special education
 - 66204 Certification of high school courses as meeting university admissions criteria
 - 67386 Student safety; affirmative consent standard
- CODE OF REGULATIONS, TITLE 5
- 1600-1651 Graduation of students from grade 12 and credit toward graduation
 - 4600-4670 Uniform complaint procedures
- COURT DECISIONS
- O'Connell v. Superior Court (Valenzuela), (2006) 141 Cal.App.4th 1452

Management Resources:

WEB SITES

- CSBA: <http://www.csba.org>
- California Department of Education, High School: <http://www.cde.ca.gov/ci/g/hs>
- University of California, List of Approved a-g Courses: <http://www.universityofcalifornia.edu/admissions/freshman/requirements>

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Policy Reference UPDATE Service

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Delete HS policy

CSBA Sample Board Policy

Instruction

BP 6146.2(a)

CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY

Note: The following Board policy is for use by districts that maintain grades 9-12.

The Governing Board desires that every student have the opportunity to earn a high school diploma through successful completion of ~~class work and examination~~ **district graduation requirements**. However, when a student is unable to do so, the Board encourages completion of an alternative program that allows ~~him/her~~ **the student** to obtain an equivalent certificate.

(cf. 5147 - Dropout Prevention)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6200 - Adult Education)

Eligible persons ~~may obtain a certificate of proficiency or a high school equivalency certificate in accordance with law, Board policy and administrative regulation.~~ **who pass the California High School Proficiency Examination may obtain a certificate of proficiency from the State Board of Education (SBE). Eligible persons who pass a general educational development test designated by the SBE may obtain a high school equivalency certificate from the testing service.**

The Superintendent or designee shall make information available to interested persons regarding the eligibility and examination requirements of each program.

(cf. 6164.2 - Guidance/Counseling Services)

Interested persons shall register for the test directly with the testing service and pay the applicable fee. However, the fee shall be waived for a homeless or foster youth who is under age 25 years, meets all other registration requirements, and submits certification of homeless or foster youth status. (Education Code 48412; 5 CCR 11524-11526, 11533-11534.1)

Legal Reference: (see next page)

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CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY (continued)

Legal Reference:

EDUCATION CODE

48400-48403 Persons subject to compulsory continuation education

48410 Persons exempt from continuation classes

48412 Certificate of proficiency; examination fees

48413 Enrollment in continuation classes

48414 Reenrollment in district

51420-51427 High school equivalency certificate

52052 Accountability; numerically significant student subgroups

CODE OF REGULATIONS, TITLE 5

11520-11523 Proficiency examination and certificate

11530-11532 High school equivalency certificate

Management Resources:

CDE PUBLICATIONS

Adult Education Handbook for California, 1997

WEB SITES

CDE California Department of Education, California High School Proficiency Examination:

<http://www.cde.ca.gov/ta/tg/sp>

CDE California Department of Education, High School Equivalency Tests:

<http://www.cde.ca.gov/ta/tg/gd>

California High School Proficiency Examination: <https://www.chspe.net>

General Educational Development Test: <https://ged.com>

High School Equivalency Test: <https://hiset.ets.org>

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CSBA Sample Administrative Regulation

Instruction

AR 6146.2(a)

CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY

Certificate of Proficiency

Note: Pursuant to Education Code 48412, the State Board of Education (SBE) will award a "certificate of proficiency" to persons who pass the California High School Proficiency Examination (CHSPE) established by the California Department of Education (CDE) to assess proficiency in reading, writing, and mathematics skills. A list of test centers and testing dates ~~(once in the fall and once in the spring)~~ is available on the CHSPE web site. **As amended by SB 820 (Ch. 110, Statutes of 2020), Education Code 48412 requires CDE to schedule testing dates at least once in the fall semester and once in the spring semester.** The CDE will keep a permanent record of the issuance of all certificates.

5 CCR 11523 requires the principal of each high school to distribute information about the exam to students in grades 11-12. A flyer that may be used for this purpose is available on CDE's web site in both English and Spanish. At their discretion, districts may revise the following paragraph to require distribution of such information to students in grade 10.

The principal of each **high** school ~~maintaining grades 11 and 12~~ shall distribute to each student in ~~these~~ grades **11-12** an announcement explaining the California High School Proficiency Examination (CHSPE). Announcements from the California Department of Education (CDE) or its contractor shall be distributed early enough to enable interested students to register for the test to be given in the fall of that year. (5 CCR 11523)

(cf. 5145.6 - Parental Notifications)

Note: The following **optional** paragraph reflects CHSPE's Frequently Asked Questions on **the** CDE's web site.

The principal also shall advise students that the certificate of proficiency awarded upon passing the CHSPE, while equivalent to a high school diploma, is not the equivalent of completing all coursework required for high school graduation and therefore students should contact the admissions office of the college or university they are interested in attending to determine if the certificate satisfies college admission requirements.

Any student may take the CHSPE if ~~he/she~~ **the student** meets one of the following conditions: (Education Code 48412)

1. Is age 16 or older
2. Has been enrolled in the 10th grade for one school year or longer
3. Will complete one school year of enrollment in 10th grade at the end of the semester during which the CHSPE will be administered

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CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY (continued)

If a student receives the certificate of proficiency, the district shall indicate the student's accomplishment and the date of the award on the student's official transcript. (5 CCR 11521)

(cf. 5125 - Student Records)

Note: Pursuant to 5 CCR 11522, the district must develop a consent form that may be used by persons receiving the certificate of proficiency to be exempted from compulsory school attendance. See the accompanying exhibit for a sample consent form.

Any student who has received the certificate of proficiency may be exempted from compulsory school attendance upon **his/her the student's** request, with verified parent/guardian consent as appropriate. **For this purpose, the Superintendent or designee shall provide a consent form which contains at least the following information:** (Education Code 48410; 5 CCR 11522)

(cf. 5112.1 - Exemptions from Attendance)

~~The consent form to be exempted from compulsory school attendance shall be provided by the Superintendent or designee and shall contain at least the following information: (5 CCR 11522)~~

1. A general explanation of the student's rights of exemption from compulsory attendance and of re-enrollment in the public **high** schools
2. The date of issuance of the certificate of proficiency
3. The signature of the parent/guardian and the date
4. The signature of the school administrator who has personally confirmed the authenticity of the parent/guardian's signature and the date

(cf. 5112.1 - Exemptions from Attendance)

If a student age 16 or 17 terminates **his/her** enrollment after receiving the high school proficiency certificate, **he/she the student** may re-enroll in the district. If **he/she the student** subsequently terminates enrollment again, **he/she the student** may be denied re-enrollment until the beginning of the following semester. (Education Code 48414)

(cf. 6184 - Continuation Education)

High School Equivalency Certificate

Note: Education Code 51420-51427 provide that persons may be awarded the California High School

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CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY (continued)

Equivalency Certificate by taking a general educational development test and receiving a score that is at least as high as that determined by SBE to be equal to the standard of performance expected from high school graduates. ~~5 CCR 11530-11532, as amended by Register 2013, No. 39, delete the requirement to use only the General Educational Development (GED) test adopted by the General Educational Development Testing Service for the purpose of awarding a high school equivalency certificate. Subsequently, in March 2014, the~~ **As of January 1, 2020, SBE has approved the use of three two tests for this purpose: the General Educational Development (GED) test adopted by the General Educational Development Testing Service and the High School Equivalency Test (HiSET) provided by the Educational Testing Service, and the Test Assessing Secondary Completion (TASC) provided by CTB/McGraw Hill. Local testing centers will have the option to offer one or more of these tests.**

An eligible person may earn a high school equivalency certificate by passing a general educational development test designated by the State Board of Education pursuant to Education Code 51420, including the General Educational Development (GED) test, **or the High School Equivalency Test (HiSET), or the Test Assessing Secondary Completion (TASC).**

Any person is eligible to take a test leading to a high school equivalency certificate if **he/she the person** is a resident of California or a member of the armed forces assigned to duty in California and meets any one of the following criteria: (Education Code 51420; 5 CCR 11532)

1. Is 18 years of age or older, or is within 60 days of ~~his/her~~ **the person's** 18th birthday, regardless of enrollment status
2. Is not currently enrolled in school and is within 60 days of when ~~he/she~~ **the person** would have graduated from high school had ~~he/she~~ **the person** remained in school and followed the usual course of study
3. Is 17 years of age, has been out of school for at least 60 consecutive days, and provides a letter of request for the test from the military, a postsecondary educational institution, or a prospective employer
4. Is 17 years of age, has accumulated fewer than 100 units of high school credit, is confined to a state or county hospital or to an institution maintained by a state or county correctional facility, and meets other criteria listed in 5 CCR 11532
5. Is 17 years of age, has accumulated fewer than 100 units of high school credit prior to enrollment in an academic program offered by a dropout recovery high school as defined in Education Code 52052, and has successfully completed the dropout recovery high school's instructional program which is aligned to state standards, offers the opportunity for a high school diploma, and provides services for at least one year

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Delete - HS Exhibit

CSBA Sample Exhibit

Instruction

E 6146.2(a)

CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY

Note: The following exhibit is for use by districts that maintain grades 9-12. Pursuant to Education Code 48410, any student who passes the California High School Proficiency Examination and receives a certificate of proficiency may be exempted from compulsory school attendance upon request by the student and, if the student is under age 18 years, with the consent of the student's parent/guardian. 5 CCR 11522 requires the district to develop a consent form for this purpose. The following exhibit may be revised to reflect district practice.

NOTICE AND CONSENT TO DISCONTINUE SCHOOL ATTENDANCE FOR STUDENTS WITH A CERTIFICATE OF PROFICIENCY

Notice of Student Rights: Students who pass the California High School Proficiency Examination (CHSPE) and receive a Certificate of Proficiency issued by the State Board of Education may continue to attend school, but upon request will be exempted from compulsory school attendance pursuant to Education Code 48410. If the student is under 18 years of age, the student's parent/guardian must also provide approval in order for the student to discontinue school attendance.

If the student leaves school after receiving a Certificate of Proficiency and is under 18 years of age, the student may later decide to re-enroll in the district with no adverse consequences. In this case, the student may be required to meet new or additional requirements established since the student was previously enrolled. If the student re-enrolls and then leaves school again, the student may be denied re-admittance until the beginning of the following semester.

For further information about leaving school after obtaining the Certificate of Proficiency, contact the principal or school guidance counselor.

Student's name: _____

School: _____

Date on which the Certificate of Proficiency was issued: _____

To be completed by student: I understand the rights granted to students who are awarded the Certificate of Proficiency to disenroll from school, and to re-enroll if desired before the age of 18. I hereby notify the school district of my intent to disenroll from school.

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CERTIFICATE OF PROFICIENCY/HIGH SCHOOL EQUIVALENCY (continued)

Student's signature: _____ **Date:** _____

To be completed by parent/guardian: I hereby grant consent for my minor child to disenroll from school.

Parent/guardian's name (please print): _____

Signature: _____ **Date:** _____

To be completed by school administrator: I hereby verify the parent/guardian's signature and date recorded above.

Name of school administrator (please print): _____

Position: _____

Signature: _____ **Date:** _____



CSBA Sample Board Policy

Instruction

BP 6170.1(a)

TRANSITIONAL KINDERGARTEN

Note: The following policy is for use by districts that maintain kindergarten and may be revised to reflect district practice. Education Code 48000 provides that children are eligible for kindergarten enrollment if they have their fifth birthday on or before September 1 in that school year; see AR 5111 - Admission. Pursuant to Education Code 48000, any child whose fifth birthday is between September 2 and December 2 must be offered a transitional kindergarten (TK) program.

Education Code 48000 defines TK as the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate. Many of the requirements applicable to kindergarten (e.g., class size, minimum school day, facilities) are also applicable to TK. The district will receive funding based on average daily attendance (ADA) for students in a TK program that meets the requirements specified in Education Code 48000.

For guidance on implementing TK programs, see the Transitional Kindergarten Implementation Guide: A Resource for California Public School District Administrators and Teachers, published by the California Department of Education (CDE).

The Governing Board desires to offer a high-quality transitional kindergarten (TK) program for eligible children who do not yet meet the minimum age criterion for kindergarten. The TK program shall assist students in developing the academic, social, and emotional skills **they need needed** to succeed in kindergarten and beyond.

The district's TK program shall be the first year of a two-year kindergarten program. (Education Code 48000)

The Board encourages ongoing collaboration among district preschool staff, other preschool providers, elementary teachers, administrators, and parents/guardians in the development, implementation, and evaluation of the district's TK program.

(cf. 1220 - Citizen Advisory Committees)

(cf. 6020 - Parent Involvement)

Eligibility

The district's TK program shall admit children whose fifth birthday is from September 2 through December 2. (Education Code 48000)

Note: **The**—CDE's "Transitional Kindergarten FAQs" clarify that children are required to have documentation of required immunizations or a valid exemption prior to admission to TK. For information about required immunizations and exemptions, see BP/AR 5141.31 - Immunizations.

Parents/guardians of eligible children shall be notified of the availability of the TK program

TRANSITIONAL KINDERGARTEN (continued)

and **of the** age, residency, immunization, and any other enrollment requirements. Enrollment in the TK program shall be voluntary.

(cf. 5111 - Admission)

(cf. 5111.1 - District Residency)

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.3 - Health Examinations)

(cf. 5141.31 - Immunizations)

(cf. 5141.32 - Health Screening for School Entry)

Note: The following paragraph is **optional**. If the district chooses to allow kindergarten-eligible children to enroll in the TK program, CDE recommends that the district establish criteria to determine selection requirements. The parent/guardian of a kindergarten-eligible child who is enrolled in TK must, at the end of the year, sign a Kindergarten Continuance Form verifying **that he/she agrees to have agreement with** the child enrolling in kindergarten the following year; see section "Continuation in Kindergarten" below.

On a case-by-case basis, a child whose fifth birthday is on or before September 1 **may be admitted into the district's TK program** ~~Upon request of a child's parents/guardians, the district may, on a case-by-case basis after~~ **if** the Superintendent or designee determines that it is in the child's best interest, ~~admit into the district's TK program a child whose fifth birthday is on or before September 1 and who is therefore eligible for kindergarten.~~

Note: The following paragraph is **optional**. Pursuant to Education Code 48000, the district may, at its discretion, determine whether to allow admittance of children whose fifth birthday is after December 2. Such students may be admitted at any time during the school year, including at the beginning of the year. Education Code 48000 provides that districts will not receive ADA apportionment for a child whose birthday is after December 2 until the child's **reaches his/her** fifth birthday.

At any time during the school year, the district may admit into the TK program a child whose fifth birthday is after December 2 of that same school year, provided that the Superintendent or designee recommends that enrollment in a TK program is in the child's best interest and the child's parents/guardians approve. Prior to such enrollment, the child's parents/guardians shall be provided information regarding the advantages and disadvantages and any other explanatory information about the effect of early admittance. (Education Code 48000)

Curriculum and Instruction

The district's TK program shall be based on a modified kindergarten curriculum that is age and developmentally appropriate. (Education Code 48000)

(cf. 6141 - Curriculum Development and Evaluation)

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

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TRANSITIONAL KINDERGARTEN (continued)

Note: Education Code 48000 states the Legislature's intent that the TK curriculum be aligned to the California Preschool Learning Foundations developed by CDE. These standards address essential **knowledge and** skills in the subject areas listed below. The standards and companion preschool curriculum frameworks are available on CDE's web site.

The program shall be aligned with the preschool learning foundations and preschool curriculum frameworks developed by the California Department of Education (CDE). It shall be designed to facilitate students' development in essential **knowledge and** skills related to language and literacy, mathematics, physical development, health, visual and performing arts, science, history-social science, English language development, and social-emotional development.

(cf. 5148.3 - Preschool/Early Childhood Education)

(cf. 6011 - Academic Standards)

(cf. 6174 - Education for English Learners)

Note: The following **optional** paragraph may be revised to reflect district practice. Education Code 37202 permits districts to maintain TK and kindergarten classes for different lengths of time during the school day, either at the same or a different school site. Districts offering TK classes for different lengths of time are still required to meet the minimum and maximum length of school day provided in law. Pursuant to Education Code 46111, 46115, and 46117, at the kindergarten and TK level the minimum school day is three hours (180 minutes), including recess but excluding noon intermission, and the maximum school day is four hours (240 minutes), excluding recess, unless the district has adopted an extended-day kindergarten pursuant to Education Code 8973. However, pursuant to Education Code 46119, if the district has fewer than 40 kindergarten students, the Governing Board may apply to the Superintendent of Public Instruction to maintain two kindergarten classes of 150 minutes each, including recesses, taught on the same day by the same teacher. Also see AR 6112 - School Day.

Pursuant to Education Code 48003, districts are required to provide an annual report to CDE regarding the type of kindergarten program offered by the district, including part day, full day, or both. The **California Basic Educational Data System (CBEDS)** School Information Form ~~2017~~, located on ~~the~~ CDE's web site, requires a report on the type of TK program offered.

The Board shall establish the length~~(s)~~ of the school day in the district's TK program, **which shall be at least three hours but no more than four hours long. If the district has adopted an extended-day kindergarten, the length of the school day for the TK program may be different than the length of the school day for the kindergarten program** ~~TK programs may be maintained for different lengths of time either at the same or different school sites, as long as the school day is at least three hours but no more than four hours.~~ The Superintendent or designee shall annually report to CDE as to whether the district's TK programs are offered full day, part day, or both. (Education Code **8973**, 37202, 46111, 46115, 46117, 48003)

(cf. 6111 - School Calendar)

(cf. 6112 - School Day)

TRANSITIONAL KINDERGARTEN (continued)

Note: The following **optional** paragraph may be revised to reflect district practice. According to CDE's "Transitional Kindergarten FAQs," it is the intent of the law to provide separate and unique experiences for TK and kindergarten students. However, districts have flexibility to determine how best to meet the curricular needs of each child and whether TK and kindergarten students may be enrolled in the same classrooms.

TK students may be placed in the same classrooms as kindergarten students when necessary, provided that the instructional program is differentiated to meet student needs.

Note: AB 1808 (Ch. 32, Statutes of 2018) amended Education Code 8235 and 48000 to allow districts to place 4-year-old children enrolled in a California State Preschool Program into a TK program and to commingle children from both programs in the same classroom as long as all of the requirements of each program are met and the district adheres to specified requirements, including that the classroom does not contain children enrolled in TK for a second year or children enrolled in a regular kindergarten. Also see BP/AR 5148.3 - Preschool/Early Childhood Education.

TK students may be placed in a classroom commingled in the same classroom with 4 four-year-old students from a California State Preschool Program as long as all of the requirements of each program are met and the classroom does not include students enrolled in TK for a second year or students enrolled in a regular kindergarten. (Education Code 8235, 48000)

(cf. 5148.3 - Preschool/Early Childhood Education)

Staffing

Note: To be qualified to teach a TK class, the teacher must possess an appropriate multiple subjects or early childhood education credential issued by the Commission on Teacher Credentialing authorizing instruction in TK. Education Code 48000 establishes additional requirements for credentialed teachers who are first assigned to a TK class after July 1, 2015, as provided below.

TK assignments are subject to assignment monitoring and reporting by the County Superintendent of Schools in accordance with Education Code 44258.9.

The Superintendent or designee shall ensure that teachers assigned to teach in TK classes possess a teaching credential or permit from the Commission on Teacher Credentialing (CTC) that authorizes such instruction.

(cf. 4112.2 - Certification)

Note: Education Code 48000, as amended by SB 98 (Ch. 24, Statutes of 2020), extends until August 1, 2021, the requirement for credentialed teachers who are first assigned to a transitional kindergarten class to meet additional qualifications, as described below.

TRANSITIONAL KINDERGARTEN (continued)

A credentialed teacher who is first assigned to a TK class after July 1, 2015, shall, by August 1, ~~2020~~ **2021**, have at least 24 units in early childhood education and/or child development, comparable experience in a preschool setting, and/or a child development teacher permit issued by CTC. (Education Code 48000)

The Superintendent or designee may provide professional development as needed to ensure that TK teachers are knowledgeable about the standards and effective instructional methods for teaching young children.

(cf. 4131 - Staff Development)

Continuation to Kindergarten

Note: The following section is consistent with guidance in CDE's "Transitional Kindergarten FAQs."

Students who complete the TK program shall be eligible to continue in kindergarten the following school year. Parents/guardians of such students shall not be required to submit a signed Kindergarten Continuance Form for kindergarten attendance.

Note: The following **optional** paragraph is for use by districts that allow kindergarten-eligible children to enroll in TK; see "Eligibility" section above. When such students are subsequently enrolled in kindergarten, the district is required to obtain a signed Kindergarten Continuance Form in order to receive kindergarten ADA for those children since they would otherwise be age-eligible for first grade. CDE recommends that approval for a student to continue in kindergarten not be sought until near the end of the year of TK, since permission obtained unreasonably far in advance could be found invalid.

However, whenever children who would otherwise be age-eligible for kindergarten are enrolled in TK, the Superintendent or designee shall obtain a Kindergarten Continuance Form signed by the parent/guardian near the end of the TK year consenting to the child's enrollment in kindergarten the following year.

Note: Pursuant to Education Code 46300, the district may not include for ADA purposes the attendance of any student for more than two years in **kindergarten or for more than two years in** a combination of TK and kindergarten.

A student shall not attend more than two years in a combination of TK and kindergarten. (Education Code 46300)

(cf. 5123 - Promotion/Acceleration/Retention)

Assessment

Note: The following section may be revised to reflect district practice. One assessment resource for TK students is CDE's Desired Results Developmental Profile, which is designed to assess the developmental progression of all children from early infancy to kindergarten entry.

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TRANSITIONAL KINDERGARTEN (continued)

The Superintendent or designee may develop or identify appropriate formal and/or informal assessments of TK students' development and progress. **He/she The Superintendent or designee** shall monitor and regularly report to the Board regarding program implementation, and the progress of students in meeting related academic standards, **and student preparedness for future education.**

(cf. 0500 - Accountability)

(cf. 6162.5 - Student Assessment)

Legal Reference:

EDUCATION CODE

8235 California State Preschool Program

8970-897473 **Early primary programs**; ~~Extended-day kindergarten~~

37202 School calendar; equivalency of instructional minutes

44258.9 Assignment monitoring by county superintendent of schools

46111 Kindergarten, hours of attendance

46114-46119 Minimum school day, kindergarten

46300 Computation of ADA, inclusion of kindergarten and transitional kindergarten

48000 Age of admission, kindergarten and transitional kindergarten

48002 Evidence of minimum age required to enter kindergarten or first grade

48003 Kindergarten annual report

48200 Compulsory education, starting at age six

Management Resources:

CSBA PUBLICATIONS

What Boards of Education Can Do About Kindergarten Readiness, Governance Brief, May 2016

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Transitional Kindergarten FAQs

Desired Results Developmental Profile, 2015

Transitional Kindergarten Implementation Guide: A Resource for California Public School District Administrators and Teachers, 2013

California Preschool Curriculum Framework, Vol. 3, 2013

California Preschool Learning Foundations, Vol. 3, 2012

California Preschool Curriculum Framework, Vol. 2, 2011

California Preschool Learning Foundations, Vol. 2, 2010

California Preschool Curriculum Framework, Vol. 1, 2010

California Preschool Learning Foundations, Vol. 1, 2008

WEB SITES

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

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

California Kindergarten Association: <http://www.ckanet.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

Transitional Kindergarten California: <https://www.tkcalifornia.org>

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CSBA Sample Board Bylaw

Board Bylaws

BB 9012(a)

BOARD MEMBER ELECTRONIC COMMUNICATIONS

Note: The following **optional** Board bylaw should be modified to reflect district practice. The Brown Act (Government Code 54950-54963) requires that Governing Board members conduct district business at properly noticed and agendized public meetings. In general, Board members should keep in mind that, for purposes of the Brown Act, electronic communications are subject to the same conditions and the same rules of confidentiality that are applicable to other forms of communication, such as individual conversations, telephone calls, or paper copies of documents. However, the ease with which electronic communication can be shared and forwarded requires extra caution.

Furthermore, although Board members are not considered employees, there may be tax implications if the district provides Board members with laptop computers or subsidies for an Internet connection. In some circumstances, such provision or reimbursement may be considered a taxable benefit. Also see AR 3513.1 - Cellular Phone Reimbursement.

The Governing Board recognizes that electronic communication is an efficient and convenient way for Board members to communicate and expedite the exchange of information within the district and with members of the public. Board members shall exercise caution so as to ensure that electronic communications are not used as a means for the Board to deliberate outside of an agendized Board meeting, **not to circumvent the public's right to access records regarding district business, or restrict access to a public forum.**

(cf. 1100 - Communication with the Public)

(cf. 9000 - Role of the Board)

(cf. 9322 - Agenda/Meeting Materials)

Note: Government Code 54952.2 defines a "meeting" as any congregation of a majority of the members of the Board at the same time and **location place, including teleconference location as permitted by Government Code 54953,** to hear, discuss, ~~or~~ deliberate, **or take action** upon any item that is within the subject matter jurisdiction of the Board. Government Code 54952.2 prohibits a serial meeting, defined as a series of communications **of any kind, directly or through intermediaries,** involving a majority of the Board to discuss, deliberate, or take action on any item of district business outside of an authorized meeting. Thus, a series of emails, as well as other electronic communications such as postings on an online forum, that ultimately include a majority of the Board could lead to a Brown Act violation. While the safest course of action is to not send an email to another Board member that, if forwarded, could lead to a discussion about district business by a majority of the Board, given the prevalence of email, such a practice may not be practical. However, in order to help prevent an inadvertent violation, Board members may wish to consider including a "do not reply/forward alert" in the subject line of emails, as appropriate.

A majority of the Board shall not, outside of an authorized meeting, use a series of electronic communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. (Government Code 54952.2)

(cf. 9320 - Meetings and Notices)

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BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

Note: CSBA's **Agenda-Online GAMUT Meetings** is an electronic board meeting **management application agenda service** for use by districts and county offices of education **that streamlines meeting preparation and provides easy and secure access to meeting materials, including** ~~which allows development of and access to~~ Board meeting agendas, supporting documents, and minutes ~~from any computer that has Internet access~~. Further information **can be found is available** on CSBA's web site.

Examples of permissible electronic communications concerning district business include, but are not limited to, dissemination of Board meeting agendas and agenda packets, reports of activities from the Superintendent, and reminders regarding meeting times, dates, and places.

Note: Pursuant to Government Code 54952.2, as amended by AB 992 (Ch. 89, Statutes of 2020), Board members may engage in separate conversations or communications with members of the public on an Internet-based social media platform that is open and accessible to the public as long as a majority of the Board does not use the platform to discuss among themselves business within the subject matter jurisdiction of the Board and members do not comment on or use digital icons (e.g., "likes" or emojis) to express reactions to communications made by other Board members. Consequently, a Board member is prohibited from responding directly to any communication from other members of the Board on a social media platform regarding matters that are within the subject matter jurisdiction of the Board.

Board members may engage in separate conversations or communications with members of the public on a social media platform to answer questions, provide information, or solicit information regarding a matter that is within the subject matter jurisdiction of the Board, as long as a majority of the Board does not use the platform to discuss among themselves any business of a specific nature that is within the subject matter jurisdiction of the Board. A Board member is prohibited from responding directly to any communication from other Board members regarding matters that are within the subject matter jurisdiction of the Board or using digital icons (e.g., "likes" or emojis) to express reactions to communications made by other Board members. (Government Code 54952.2)

Note: Board members who use a social media platform to communicate with the public about district business or Board activities should be cautious about blocking access to members of the public. In Knigh First Amendment Institute at Columbia University v. Trump, the court held that President Donald Trump's twitter account was a public forum from which the government may not exclude people based on their views and that blocking critics from viewing and replying to the account excluded individuals from a public forum in violation of the First Amendment. While there is not a clearly defined rule as to whether a board member's social media account is a public forum, the holding has been used in cases restricting school board members from blocking members of the public from their social media. See Garnier v. Poway Unified School District.

Whenever a Board member uses a social media platform to communicate with the public about district business or Board activities, the Board member shall not block access to a member of the public based on the viewpoint expressed by that individual.

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BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

Note: The prohibitions in the Brown Act apply only to discussions regarding district business. Like other citizens, Board members are permitted to use email to discuss personal, nondistrict matters.

In addition, Board members may use electronic communications to discuss matters that do not pertain to district business, regardless of the number of Board members participating in the discussion.

Note: The following **optional** paragraph may be revised to reflect district practice. Many districts have established bylaws or other protocols describing how the Board has agreed to handle questions, concerns, or complaints received from members of the community. For example, see BB 9200 - Limits of Board Member Authority and BP 1112 - Media Relations.

Board members shall make every effort to ensure that their electronic communications conform to the same standards and protocols established for other forms of communication. A Board member may respond, as appropriate, to an electronic communication received from a member of the community and should make clear that **the his/her** response does not necessarily reflect the views of the Board as a whole. Any complaint or request for information should be forwarded to the Superintendent in accordance with Board bylaws and protocols so that the issue may receive proper consideration and be handled through the appropriate district process. As appropriate, communication received from the media shall be forwarded to the designated district spokesperson.

(cf. 1112 - Media Relations)
(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.2 - Complaints Concerning Instructional Materials)
(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 1312.4 - Williams Uniform Complaint Procedures)
(cf. 3320 - Claims and Actions Against the District)
(cf. 9005 - Governance Standards)
(cf. 9121 - President)
(cf. 9200 - Limits of Board Member Authority)

Note: Electronic communications received and sent by Board members are subject to disclosure upon request pursuant to the California Public Records Act (CPRA) (Government Code 6250-6270) depending on the content of the communication and whether it is "prepared, owned, used, or retained" by the district in its normal course of business. District legal counsel should be consulted as appropriate. Also see BP/AR 1340 - Access to District Records and BP/AR 3580 - District Records.

In City of San Jose v. Superior Court, the California Supreme Court held that a public official's communications about public business, even if sent or received on the official's personal account or device, are public records and are not categorically excluded from disclosure under the CPRA. The court observed that the CPRA requires public agencies to use "reasonable effort" to locate existing records in response to a public records request, but that such searches need not be extraordinarily **extensive** or intrusive. For further information, see CSBA's Legal Alert: Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications.

BOARD MEMBER ELECTRONIC COMMUNICATIONS (continued)

To the extent possible, electronic communications regarding any district-related business shall be transmitted through a district-provided device or account. When any such communication is transmitted through a Board member's personal device or account, **the Board member he/she** shall copy the communication to a district electronic storage device for easy retrieval.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

35140 Time and place of meetings

35145 Public meetings

35145.5 Agenda; public participation; regulations

35147 Open meeting law exceptions and applications

GOVERNMENT CODE

6250-6270 California Public Records Act

11135 State programs and activities, discrimination

54950-54963 The Ralph M. Brown Act, especially:

54952.2 Meeting, defined

54953 Meetings to be open and public; attendance

54954.2 Agenda posting requirements, board actions

COURT DECISIONS

Garnier v. Poway Unified School District, No. 17-cv-2215-W (JLB), 2019 WL 4736208 (S.D. Cal. September 26, 2019)

Knight First Amendment Institute at Columbia University v. Trump, 928 F.3d 226 (2019)

City of San Jose v. Superior Court (2017) 2 Cal.5th 608

Management Resources:

CSBA PUBLICATIONS

Legal Alert: Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications, March 2017

The Brown Act: School Boards and Open Meeting Laws, rev. 2014 2019

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, 2003

WEB SITES

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

CSBA, Agenda Online-GAMUT Meetings:

<https://www.csba.org/ProductsAndServices/AllServices/AgendaOnline.aspx> **GamutMeetingsPolicy**

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

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CSBA Sample Board Bylaw

Board Bylaws

BB 9320(a)

MEETINGS AND NOTICES

Meetings of the Governing Board are conducted for the purpose of accomplishing district business. In accordance with state open meeting laws (Brown Act), the Board shall hold its meetings in public and shall conduct closed sessions during such meetings only as authorized by law. To encourage community involvement in the schools, Board meetings shall provide opportunities for questions and comments by members of the public. All meetings shall be conducted in accordance with law and the Board's bylaws, policies, and administrative regulations.

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

(cf. 9322 - Agenda/Meeting Materials)

(cf. 9323 - Meeting Conduct)

A Board meeting exists whenever a majority of Board members gather at the same time and **location** ~~place~~, **including teleconference location**, to hear, discuss, ~~or deliberate~~, **or take action** upon any item within the subject matter jurisdiction of the Board or district. (Government Code 54952.2)

Note: The Brown Act prohibits serial meetings, defined under Government Code 54952.2 as a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of district business. ~~However, Government Code 54952.2 specifies that briefings between staff and Board members are permissible in order to answer questions or to provide information, as long as the briefing is not used to communicate the comments or position of any other Board member. Thus, Superintendent briefings involving less than a majority of the Board are allowed, but participants must ensure that the comments or positions of one member are not shared with other members.~~

This prohibition against serial meetings also applies to communications via technology. Email exchanges, chat room threads, or comments posted on a blog **or social media account** that result in a majority of the Board "discussing" an item within the subject matter jurisdiction of the Board could result in a Brown Act violation. **Pursuant to Government Code 54952.2, as amended by AB 992 (Ch. 89, Statutes of 2020), Board members may engage in separate conversations or communications with members of the public on an Internet-based social media platform that is open and accessible to the public as long as a majority of the Board does not use the platform to discuss among themselves business within the subject matter jurisdiction of the Board and members do not comment on or use digital icons (e.g., "likes" or emojis) to express reactions to communications made by other Board members. Consequently, a Board member is prohibited from responding directly to any communication from other members of the Board on a social media platform regarding matters that are within the subject matter jurisdiction of the Board.** See BB 9012 - Board Member Electronic Communications.

In 84 Ops.Cal.Atty.Gen. 30 (2001), the Attorney General opined that Government Code 54952.2 prohibits a majority of the Board from sending emails to each other to develop a collective concurrence as to action to be taken by the Board even if the emails are (1) sent to the secretary and chairperson, (2) posted on the

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MEETINGS AND NOTICES (continued)

district's web site, and (3) distributed at the next meeting. Although the Attorney General recognized that those three conditions would allow the deliberations to be conducted, to some extent, "in public," the emails were prohibited by the Brown Act because all debate would be completed before the meeting and members of the public who did not have Internet access would be excluded from the debate.

A majority of the Board shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, **including social media and other electronic communications**, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. **(Government Code 54952.2)**

Note: Government Code 54952.2 specifies that briefings between staff and Board members are permissible in order to answer questions or to provide information, as long as the briefing is not used to communicate the comments or position of any other Board member. Thus, Superintendent briefings involving less than a majority of the Board are allowed, but participants must ensure that the comments or positions of one member are not shared with other members.

However, an employee or district official may engage in separate conversations with Board members in order to answer questions or provide information regarding an item within the subject matter jurisdiction of the Board, as long as that employee or district official does not communicate the comments or position of any Board members to other Board members. (Government Code 54952.2)

(cf. 9012 - Board Member Electronic Communications)

Note: Government Code 54953.2 requires that all Board meetings meet the protections of the Americans with Disabilities Act (42 USC 12132) and implementing regulations (28 CFR 35.160, 36.303). Such protections require the district to ensure that the meeting is accessible to persons with disabilities and, upon request, to provide disability-related accommodations, such as auxiliary aids and services. Auxiliary aids and services may include accommodations at the actual meeting, such as a sign-language interpreter, or accommodations to the supporting documentation, such as Braille translation of the agenda packet. Government Code 54954.2 requires that the agenda specify how, when, and to whom a request for accommodation should be made; see BB 9322 - Agenda/Meeting Materials.

In order to help ensure the participation of individuals with disabilities at Board meetings, the Superintendent or designee shall provide appropriate disability-related accommodations or modifications upon request in accordance with the Americans with Disabilities Act. (Government Code 54953.2, 54954.1, **54954.2**)

Regular Meetings

Note: Education Code 35140 and Government Code 54954 **mandate** the Board to fix the time and place for its regular meetings by rule and regulation.

The Board shall hold one (1) regular meeting(s) each month. Regular meetings shall be held at 5:30 p.m. on the _____ (day) at the San Pasquel Union School.
2nd Tuesday of each month 15305 Rockwood Rd

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MEETINGS AND NOTICES (continued)

Note: Pursuant to Government Code 54954.2, the agenda for a regular meeting must be posted at least 72 hours prior to the meeting, at a location that is freely accessible to the public. **As amended by AB 1344 (Ch. 692, Statutes of 2011)**, Government Code 54954.2 also requires that the agenda be posted on the district's Internet web site, if it has one. Any district that does not have a web site should delete the reference to it in the following paragraph.

The Attorney General has determined in 78 Ops.Cal.Atty.Gen. 327 (1995) that weekend hours may be counted as part of the 72-hour period for posting of the agenda prior to a regular meeting. In the same opinion, the Attorney General found that the term "freely accessible" requires that the agenda be posted in a location where it can be read by the public at any time during the 72 hours immediately preceding the meeting. For example, if a building where the agenda is posted is closed during the evening hours, the agenda must also be posted in a location accessible during evening hours, such as a lighted display case outside of the building. The Attorney General also opined in 88 Ops.Cal.Atty.Gen. 218 (2005) that the agenda may be posted on a touch screen electronic kiosk, in lieu of a paper copy on a bulletin board, as long as the kiosk is accessible without charge to the public 24 hours a day, seven days a week.

At least 72 hours prior to a regular meeting, the agenda shall be posted at one or more locations freely accessible to members of the public and on the district's Internet web site. (Government Code 54954.2)

(cf. 1113 - District and School Web Sites)

Note: Pursuant to Government Code 54957.5, the agenda must list any address where the public can inspect agenda materials that are distributed to Board members less than 72 hours before a regular meeting; see BB 9322 - Agenda/Meeting Materials. In addition, pursuant to the California Public Records Act (Government Code 6252-6270), agenda materials related to an open session of a Board's regular meeting are "public records" and are subject to the inspection of any member of the public. For a list of documents subject to disclosure by the district, see BP/AR 1340 - Access to District Records.

Whenever agenda materials relating to an open session of a regular meeting are distributed to the Board less than 72 hours before the meeting, the Superintendent or designee shall make the materials available for public inspection at a public office or location designated for that purpose. (Government Code 54957.5)

(cf. 1340 - Access to District Records)

Special Meetings

Note: Education Code 35144 and Government Code 54956 allow the Board to hold special meetings to address any matter that requires timely action. For example, the Board may hold a special meeting to discuss the need for an emergency state apportionment when the district is in financial distress; see AR 3460 - Financial Reports and Accountability. However, pursuant to Government Code 54956, **as amended by AB 1344 (Ch. 692, Statutes of 2011)**, certain specified matters, as described below, may not be addressed in a special meeting.

MEETINGS AND NOTICES (continued)

Special meetings of the Board may be called at any time by the presiding officer or a majority of the Board members. However, a special meeting shall not be called regarding the salary, salary schedule, or other compensation of the Superintendent, assistant superintendent, or other management employee as described in Government Code 3511.1. (Government Code 54956)

(cf. 2121 - Superintendent's Contract)

Note: Pursuant to Government Code 54956, written notice of a special meeting may be delivered personally or by other means, including email or fax. AB 1344 (Ch. 692, Statutes of 2011) amended Government Code 54956 to require any district that has its own Internet web site to also post the notice on its web site. Any district that does not have its own web site should delete reference to it in the following paragraph.

Written notice of special meetings shall be delivered personally or by any other means to all Board members and the local media who have requested such notice in writing. The notice also shall be posted on the district's Internet web site. The notice shall be received at least 24 hours before the time of the meeting. The notice shall also be posted at least 24 hours before the meeting in a location freely accessible to the public. The notice shall specify the time and **place location** of the meeting and the business to be transacted or discussed. No other business shall be considered at this meeting. (Education Code 35144; Government Code 54956)

Any Board member may waive the 24-hour written notice requirement prior to the time of the meeting by filing a written waiver of notice with the clerk or secretary of the Board or by being present at the meeting at the time it convenes. (Government Code 54956)

Every notice of a special meeting shall provide an opportunity for members of the public to directly address the Board concerning any item that has been described in the meeting notice, before or during the item's consideration. (Government Code 54954.3)

Emergency Meetings

Note: Government Code 54956.5 authorizes a closed session during emergency meetings, as long as two-thirds of the members present at the meeting agree on the need for the closed session **or, if less than two-thirds of the members are present, by unanimous vote of the members present.** See BB 9321 - Closed Session ~~Purposes and Agendas~~ and E(1) 9323.2 - Actions by the Board.

In the case of an *emergency situation* for which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may hold an emergency meeting without complying with the 24-hour notice and/or 24-hour posting requirement for special meetings pursuant to Government Code 54956. The Board shall comply with all other requirements for special meetings during an emergency meeting. (Government Code 54956.5)

MEETINGS AND NOTICES (continued)

An *emergency situation* means either of the following: (Government Code 54956.5)

1. An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety as determined by a majority of the members of the Board

(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)

2. A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist activity, or threatened terrorist act that poses peril so immediate and significant that requiring the Board to provide one-hour notice before holding an emergency meeting may endanger the public health and/or safety as determined by a majority of the members of the Board

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

Except in the case of a dire emergency, the Board president or designee shall give notice of the emergency meeting by telephone at least one hour before the meeting to the local media that have requested notice of special meetings. All telephone numbers provided by the media in the most recent request for notification must be exhausted. If telephone services are not functioning, the notice requirement of one hour is waived and, as soon after the meeting as possible, the Board shall notify those media representatives of the meeting and shall describe the purpose of the meeting and any action taken by the Board. In the case of a dire emergency, the Board president or designee shall give such notice at or near the time **he/she notifies notification is given to** the other members of the Board about the meeting. (Government Code 54956.5)

The minutes of the meeting, a list of persons the Board president or designee notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for at least 10 days in a public place as soon after the meeting as possible. (Government Code 54956.5)

Adjourned/Continued Meetings

A majority vote by The Board may adjourn/continue any regular or special meeting to a later time and **place location** that shall be specified in the order of adjournment. Less than a quorum of the Board may adjourn such a meeting. If no Board members are present, the secretary or the clerk may declare the meeting adjourned to a later time and shall give notice in the same manner required for special meetings. (Government Code 54955)

Within 24 hours after the time of adjournment, a copy of the order or notice of adjournment/continuance shall be conspicuously posted on or near the door of the place where the meeting was held. (Government Code 54955)

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MEETINGS AND NOTICES (continued)

Study Sessions, Retreats, Public Forums, and Discussion Meetings

Note: The following section is **optional** and may be revised to reflect district practice. Pursuant to Government Code 54954.2, the Board must still comply with the **72-hour** public notice requirements when holding a study session, retreat, public forum or other such meeting.

The Board may occasionally convene a study session or public forum to study an issue in more detail or to receive information from staff or feedback from members of the public.

The Board may also convene a retreat or discussion meeting to discuss Board roles and relationships.

(cf. 2000 - Concepts and Roles)

(cf. 2111 - Superintendent Governance Standards)

(cf. 9000 - Role of the Board)

(cf. 9005 - Governance Standards)

(cf. 9400 - Board Self-Evaluation)

Public notice shall be given in accordance with law when a quorum of the Board is attending a study session, retreat, public forum, or discussion meeting. All such meetings shall comply with the Brown Act and shall be held in open session and within district boundaries. Action items shall not be included on the agenda for these meetings.

Other Gatherings

Attendance by a majority of Board members at any of the following events is not subject to the Brown Act provided that a majority of the Board members do not discuss specific district business among themselves other than as part of the scheduled program: (Government Code 54952.2)

1. A conference or similar public gathering open to the public that involves a discussion of issues of general interest to the public or to school board members
2. An open, publicized meeting organized by a person or organization other than the district to address a topic of local community concern
3. An open and noticed meeting of another body of the district
4. An open and noticed meeting of a legislative body of another local agency
5. A purely social or ceremonial occasion

MEETINGS AND NOTICES (continued)

6. An open and noticed meeting of a standing committee of the Board, provided that the Board members who are not members of the standing committee attend only as observers

(cf. 9130 - Board Committees)

Individual contacts or conversations between a Board member and any other person are not subject to the Brown Act. (Government Code 54952.2)

Location of Meetings

Meetings shall not be held in a facility that prohibits the admittance of any person on the basis of ancestry or any characteristic listed in Government Code 11135, ~~including, but not limited to, religion, sex, or sexual orientation~~. In addition, meetings shall not be held in a facility which is inaccessible to individuals with disabilities or where members of the public must make a payment or purchase in order to be admitted. (Government Code 54961)

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

Meetings shall be held within district boundaries, except to do any of the following: (Government Code 54954)

1. Comply with state or federal law or court order or attend a judicial or administrative proceeding to which the district is a party
2. Inspect real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property
3. Participate in meetings or discussions of multiagency significance, provided these meetings are held within one of the other agencies' boundaries, with all participating agencies giving the notice required by law
4. Meet in the closest meeting facility if the district has no meeting facility within its boundaries or if its principal office is located outside the district
5. Meet with elected or appointed state or federal officials when a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the district over which the state or federal officials have jurisdiction
6. Meet in or near a facility owned by the district but located outside the district, provided the meeting agenda is limited to items directly related to that facility

MEETINGS AND NOTICES (continued)

7. Visit the office of the district's legal counsel for a closed session on pending litigation, when doing so would reduce legal fees or costs
8. Attend conferences on nonadversarial collective bargaining techniques
9. Interview residents of another district regarding the Board's potential employment of an applicant for Superintendent of the district
10. Interview a potential employee from another district

Meetings exempted from the boundary requirements, as specified in items #1-10 above, shall still be subject to the notice and open meeting requirements for regular and special meetings when a quorum of the Board attends the meeting.

If a fire, flood, earthquake, or other emergency renders the regular meeting place unsafe, meetings shall be held for the duration of the emergency at a **place location** designated by the Board president or designee, who shall so inform all news media who have requested notice of special meetings by the most rapid available means of communication. (Government Code 54954)

Teleconferencing

A teleconference is a meeting of the Board in which Board members are in different locations, connected by electronic means through audio and/or video. (Government Code 54953)

The Board may use teleconferences for all purposes in connection with any meeting within the Board's subject matter jurisdiction. All votes taken during a teleconference meeting shall be by roll call. (Government Code 54953)

During the teleconference, at least a quorum of the members of the Board shall participate from locations within district boundaries. (Government Code 54953)

Agendas shall be posted at all teleconference locations and shall list all teleconference locations whenever they are posted elsewhere. Additional teleconference locations may be provided to the public. (Government Code 54953)

Note: In 84 Ops.Cal.Atty.Gen. 181 (2001), the Attorney General opined that a city is not required under the Americans with Disabilities Act to provide, as an accommodation for a **disabled** city council member **with disabilities** who was unable to attend a regularly scheduled meeting, a teleconference connection to the member's house where the public would not be permitted to be present. According to the Attorney General, Government Code 54953 requires that members of the public be permitted to be present at any teleconference location.

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MEETINGS AND NOTICES (continued)

All teleconference locations shall be accessible to the public. All teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board, including the right of the public to address the Board directly at each teleconference location. (Government Code 54953)

All Board policies, administrative regulations, and bylaws shall apply equally to meetings that are teleconferenced. The Superintendent or designee shall facilitate public participation in the meeting at each teleconference location.

*Legal Reference:*EDUCATION CODE

- 35140 *Time and place of meetings*
- 35143 *Annual organizational meeting, date, and notice*
- 35144 *Special meeting*
- 35145 *Public meetings*
- 35145.5 *Agenda; public participation; regulations*
- 35146 *Closed sessions in connection with a student*
- 35147 *Open meeting law exceptions and applications*

GOVERNMENT CODE

- 3511.1 *Local agency executives*
- 11135 *State programs and activities; prohibition of discrimination*
- 54950-54963 *The Ralph M. Brown Act, especially:*
- 54953 *Meetings to be open and public; attendance*
- 54954 *Time and place of regular meetings*
- 54954.2 *Agenda posting requirements, board actions*
- 54956 *Special meetings; call; notice*
- 54956.5 *Emergency meetings*

UNITED STATES CODE, TITLE 42

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

- 35.160 *Effective communications for individuals with disabilities*
- 36.303 *Auxiliary aids and services for individuals with disabilities*

COURT DECISIONS

Garnier v. Poway Unified School District, No. 17-cv-2215-W (JLB), 2019 WL 4736208 (S.D. Cal. September 26, 2019)

Knight First Amendment Institute at Columbia University v. Trump, 928 F.3d 226 (2019)

Wolfe v. City of Fremont, (2006) 144 Cal.App. 4th 54433

ATTORNEY GENERAL OPINIONS

- 88 *Ops.Cal.Atty.Gen. 218 (2005)*
- 84 *Ops.Cal.Atty.Gen. 181 (2001)*
- 84 *Ops.Cal.Atty.Gen. 30 (2001)*
- 79 *Ops.Cal.Atty.Gen. 69 (1996)*
- 78 *Ops.Cal.Atty.Gen. 327 (1995)*

Management Resources: (see next page)

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MEETINGS AND NOTICES (continued)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2014 2019

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

The ABCs of Open Government Laws

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

Open and Public IV: A Guide to the Ralph M. Brown Act, 2nd Ed., 2010

WEB SITES

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

CSBA, *GAMUT Meetings Agenda Online:*

<https://www.csba.org/ProductsAndServices/AllServices/GamutMeetingsPolicy>

<http://www.csba.org/Services/Services/GovernanceTechnology/AgendaOnline.aspx>

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

Institute for Local Government: <http://www.ca-ilg.org>

League of California Cities: <http://www.cacities.org>

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