

# POLICY GUIDE SHEET

May 2018  
Page 1 of 3

Note: Descriptions below identify revisions made to CSBA's sample board policies, administrative regulations, board bylaws, and/or exhibits. Editorial changes have also been made. Districts and county offices of education should review the sample materials and modify their own policies accordingly.

✓ **BP 0410 - Nondiscrimination in District Programs and Activities**  
(BP revised)

Policy updated to reflect **NEW LAW (AB 699)** which (1) adds immigration status to the categories of characteristics that are protected against discrimination, (2) requires parent/guardian notification of their child's right to a free public education regardless of immigration status or religious beliefs, and (3) mandates that districts adopt policy consistent with a model policy developed by the California Attorney General, which includes a statement regarding equitable services. Policy also reflects provisions of the Attorney General's model policy and **NEW LAW (SB 31)** which prohibit districts from compiling or assisting in the compilation of a registry based on immigration status, religion, or other specified characteristics.

✓ **E 0420.41 - Charter School Oversight**  
(E revised)

Exhibit updated to reflect **NEW LAWS** affecting requirements for charter schools, including **AB 1360** which clarifies that the charter school's admission preferences must be approved by the district board, **AB 830** which repeals the high school exit examination requirement, **AB 1360** which requires parental notification that parent/guardian involvement is not a requirement for enrollment at the charter school, **AB 699** which requires charter schools to adopt policy consistent with the model policy on immigration enforcement developed by the California Attorney General, **AB 2097 (2016)** which prohibits the collection of social security numbers, **AB 841** which prohibits advertising or promotion of non-nutritious foods or beverages, **SB 250** which requires parental notification within 10 days of a negative meal account balance and prohibits different treatment of students with unpaid meal fees, and **SB 138** which requires "very high poverty schools" to apply to provide lunch and/or breakfast free of charge to all students under a federal universal service provision.

✓ **BP/AR 3514 - Environmental Safety**  
(BP/AR revised)

Policy and regulation updated to reflect **NEW LAW (AB 746)** which provides that, if a community water system finds lead above specified levels in a school's potable water system, the district must notify parents/guardians, shut down fountains and faucets, and provide a source of drinking water to students. Policy also deletes details regarding district strategies that are duplicated in the AR. Regulation also updates material related to particulate filters in school buses and carbon monoxide detectors to reflect current law.

✓ **BP 3514.1 - Hazardous Substances**  
(BP revised)

Policy updated to reflect legal requirements regarding toxic art and craft supplies, formerly in BP 6161.3 - Toxic Art Supplies.

✓ **BP/AR 3516 - Emergencies and Disaster Preparedness Plan**  
(BP/AR revised)

Policy expands paragraph on the involvement of staff and community groups in plan development, consistent with U.S. Department of Education recommendation. Policy also adds training on staff responsibilities in an emergency or disaster, clarifies staff's legal obligation to serve as disaster service workers, and clarifies that board members are not considered disaster service workers. Regulation expands

prevention strategies to include measures to increase the security of school facilities, expands crisis communications methods to include social media and electronic communications, and adds assembly of key information into a "crisis response box" that can be easily accessed in an emergency.

## **POLICY GUIDE SHEET**

**May 2018**

**Page 2 of 3**

### **AR 3541 - Transportation Routes and Services**

(AR revised)

Regulation updated to reflect **NEW LAW (AB 1453)** which authorizes districts to provide for the transportation of adult volunteers to and from educational activities. Regulation also reflects requirement to provide transportation consistent with a student's Section 504 plan, and clarifies the district's responsibility with respect to transportation for homeless students and foster youth.

### **BP/AR 4158/4258/4358 - Employee Security**

(BP/AR revised)

Policy updated to add staff training on procedures for responding to an active shooter situation, condense options on pepper spray to recommend that any possession of pepper spray by employees require advance written permission, and reflect renumbering of legal cite pertaining to pepper spray. Regulation updated to clarify the reporting of an attack, assault, or threat and to modify section on pepper spray consistent with revisions to the BP.

### **BP/AR 4161.9/4261.9/4361.9 - Catastrophic Leave Program**

(BP/AR revised)

Policy and regulation substantially revised and reorganized to clarify requirements for the catastrophic leave program. Policy recommends that donated leave be placed into a pool for eligible employees rather than earmarked for particular employees, and adds notification to employees regarding the program. Regulation provides that donation of leave be made in writing to the superintendent rather than the board, encourages employees to retain sufficient leave for their own potential use, establishes a maximum amount of catastrophic leave that may be used by an individual employee, and provides that employees will be ineligible for catastrophic leave while receiving workers' compensation benefits.

### **BP/AR 5111 - Admission**

(BP/AR revised)

Policy updated to reflect state law prohibiting the collection of social security numbers or the last four digits of the social security numbers of students or their parents/guardians, unless otherwise required by law. Policy also reflects **NEW LAW (AB 699)** which prohibits districts from inquiring into students' citizenship or immigration status and the California Attorney General's model policy which provides that, under the limited circumstances when such information must be collected to comply with eligibility requirements for special state or federal programs, such information should be collected separately from the school enrollment process. Regulation updated to reflect a requirement of the Attorney General's model policy that prohibits districts from requiring documentation that may indicate a student's national origin or immigration status, such as a passport, to the exclusion of other permissible documentation. Regulation also reflects the authority to accept a parent/guardian affidavit as evidence of a child's age when other documentation is not available.

### **BP/AR 5111.1 - District Residency**

(BP/AR revised)

Policy and regulation updated to reflect **NEW LAW (AB 699)** which prohibits districts from collecting information or documents regarding the citizenship or immigration status of students or their family members. Regulation also updated to reflect **NEW LAWS** providing that a student meets district residency requirements if the student's parent/guardian is transferring or pending transfer to a military installation within the state (**SB 455**), or the student's parent/guardian was a resident of California who departed the

state against his/her will pursuant to a transfer by a government agency, a court order, or the federal Immigration and Nationality Act (SB 257).

## **POLICY GUIDE SHEET**

**May 2018**

**Page 3 of 3**

### **BP/AR 5125 - Student Records**

(BP/AR revised)

Policy updated to reflect the California Attorney General's model policy, developed pursuant to **NEW LAW (AB 699)**, which (1) prohibits districts from collecting information regarding students' citizenship or immigration status, and (2) requires district staff to receive training in the gathering and handling of sensitive student information. Policy also reflects state law limiting the collection of students' social security numbers or the last four digits of the social security numbers, and **NEW LAW (SB 31)** which prohibits districts from assisting in the compilation of a list, registry, or database based on students' national origin, ethnicity, or religion. Regulation updated to reflect **NEW LAW (SB 233)** which expands the types of records related to foster youth that must be made accessible to specified agencies, and a requirement of the Attorney General's model policy that the annual parental notification include a statement that a student's citizenship, place of birth, or national origin will not be released without parental consent or a court order.

### **AR/E 5125.1 - Release of Directory Information**

(AR/E revised)

Regulation and exhibit updated to reflect the California Attorney General's model policy, developed pursuant to **NEW LAW (AB 699)**, which requires that the annual parental notification include a statement that directory information does not include citizenship status, immigration status, place of birth, or national origin.

### **BP 5131.2 - Bullying**

(BP revised)

Policy updated to reflect **NEW LAW (AB 699)** which requires districts to educate students about the negative impact of bullying based on actual or perceived immigration status or religious beliefs and customs. Policy also reflects the California Attorney General's model policy developed pursuant to **AB 699**, which requires staff training with specified components related to bullying prevention and response.

### **BP/AR 5145.13 - Response to Immigration Enforcement**

(BP/AR added)

New policy and regulation reflect **NEW LAW (AB 699)** which mandates districts to adopt, by July 1, 2018, policy consistent with the model policy developed by the California Attorney General, including policy related to the district's response to requests by law enforcement for access to information, students, or school grounds for immigration enforcement purposes and actions to be taken in the event that a student's family member is detained or deported. Policy also reflects **NEW LAW (SB 31)** which prohibits districts from compiling or assisting federal government authorities with compiling a list, registry, or database based on students' national origin, ethnicity, or religion.

### **BP/AR 5145.3 - Nondiscrimination/Harassment**

(BP/AR revised)

Minor revisions made in policy and regulation to reflect **NEW LAW (AB 699)** which prohibits discrimination based on immigration status.

### **BP 5145.9 - Hate-Motivated Behavior**

(BP revised)

Policy updated to define hate-motivated behavior and expand material related to collaboration, staff training, and enforcement of rules regarding student conduct. Policy also provides for the use of uniform complaint procedures when the behavior is determined to be based on unlawful discrimination.

**BP 6161.3 - Toxic Art Supplies**

(BP deleted)

Policy deleted and key concepts incorporated into BP 3514.1 - Hazardous Substances.

# CSBA Sample Board Policy

## Philosophy, Goals, Objectives, and Comprehensive Plans

BP 0410(a)

### NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES

Note: ~~Government Code 11138~~ **Education Code 234.1** mandates districts to adopt **rules policy** and regulations to ensure that district programs and activities are free from unlawful discrimination. In accordance with various provisions of state and federal law, discrimination in education programs and activities is unlawful when it is based on certain actual or perceived characteristics of an individual. Education Code 220, **as amended by AB 699 (Ch. 493, Statutes of 2017)**, prohibits discrimination based on race or ethnicity, nationality, **immigration status**, sex, sexual orientation, gender, gender identity, gender expression, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55. Government Code 11135 prohibits discrimination based on all the foregoing characteristics and on age, disability, and an individual's genetic information. Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7) prohibits discrimination on the basis of race, color, and national origin. Title IX (20 USC 1681-1688) prohibits discrimination on the basis of sex. The Americans with Disabilities Act (ADA) (42 USC 12101-12213) and Section 504 of the Rehabilitation Act of 1973 (29 USC 794) prohibit discrimination on the basis of disability. For policy language protecting students against discrimination and harassment, see BP/AR 5145.3 - Nondiscrimination/Harassment and BP/AR 5145.7 - Sexual Harassment.

Education Code 260 and 5 CCR 4900-4965 require the Governing Board to monitor district compliance with these state and federal laws. The federal laws are enforced by the Office for Civil Rights of the U.S. Department of Education, and the California Department of Education may investigate complaints regarding discrimination pursuant to 5 CCR 4600-~~4687~~ **4670**.

Similarly, Government Code 12940 provides protections for employees, job applicants, unpaid interns, and volunteers against unlawful discrimination and harassment. For policy language addressing these protections as they relate to volunteers, see BP 1240 - Volunteer Assistance, and in relation to employees, unpaid interns, and job applicants, see BP 4030 - Nondiscrimination in Employment.

The Governing Board is committed to providing equal opportunity for all individuals in **education-district programs and activities**. District programs, activities, and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race, color, ancestry, nationality, national origin, **immigration status**, ethnic group identification, **ethnicity**, age, religion, marital **status**, pregnancy, ~~or~~ parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, **gender** ~~or~~ expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

*(cf. 1240 - Volunteer Assistance)*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4033 - Lactation Accommodation)*

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

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

*(cf. 5131.2 - Bullying)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

***(cf. 5145.9 - Hate-Motivated Behavior)***

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

MS

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)**

*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*  
*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*  
*(cf. 6164.6 - Identification and Education Under Section 504)*  
*(cf. 6178 - Career Technical Education)*  
*(cf. 6200 - Adult Education)*

**Note: Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), mandates that districts adopt policy consistent with the California Attorney General's model policy contained in the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues. That model policy includes statements regarding the equitable provision of services and a prohibition against the use of school resources or data for creating a registry based on specific characteristics. In addition, Government Code 8310.3, as added by SB 31 (Ch. 826, Statutes of 2017), prohibits districts from disclosing information about immigration status or religion to federal government authorities for use in the compilation of a registry for immigration enforcement or otherwise assisting in the creation of such a registry.**

**All individuals shall be treated equitably in the receipt of district and school services. Personally identifiable information collected in the implementation of any district program, including, but not limited to, student and family information for the free and reduced-price lunch program, transportation, or any other educational program, shall be used only for the purposes of the program, except when the Superintendent or designee authorizes its use for another purpose in accordance with law. Resources and data collected by the district shall not be used, directly or by others, to compile a list, registry, or database of individuals based on race, gender, sexual orientation, religion, ethnicity, national origin, or immigration status or any other category identified above.**

*(cf. 3540 - Transportation)*  
*(cf. 3553 - Free and Reduced Price Meals)*  
*(cf. 5145.13 - Response to Immigration Enforcement)*

**Note: Education Code 221.2-221.3 (the California Racial Mascot Act), as added by AB 30 (Ch. 767, Statutes of 2015), declare the use of racially derogatory or discriminatory school or athletic team names, mascots, or nicknames in public schools to be contrary to an equal education and specifically prohibit public schools from using the term "Redskins" as a school or athletic team name, mascot, or nickname beginning January 1, 2017. The following paragraph expands this prohibition to include any racially derogatory or discriminatory athletic team name, mascot, or nickname and may be revised to reflect district practice.**

District programs and activities shall **also** be free of any racially derogatory or discriminatory school or athletic team names, mascots, or nicknames.

**Note: Pursuant to Education Code 221.5, a district is required to permit a student to participate in sex-segregated school programs and activities, including athletic teams and competitions, and to use facilities consistent with the student's gender identity, regardless of his/her gender as listed on his/her educational records. See BP/AR 5145.3 - Nondiscrimination/Harassment. For further information, see CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender Nonconforming Students and its Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination.**

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES** (continued)

~~Annually,~~ The Superintendent or designee shall **annually** review district programs and activities to ensure the removal of any derogatory or discriminatory name, image, practice, or other barrier that may unlawfully prevent an individual or group in any of the protected categories stated above from accessing district programs and activities. He/she shall take prompt, reasonable actions to remove any identified barrier. The Superintendent or designee shall report his/her findings and recommendations to the Board after each review.

*(cf. 1330 - Use of Facilities)*

All allegations of unlawful discrimination in district programs and activities shall be investigated and resolved in accordance with the procedures specified in AR 1312.3 - Uniform Complaint Procedures.

*(cf. 1312.3 - Uniform Complaint Procedures)*

Note: Many nondiscrimination laws and regulations contain a notification requirement. For example, pursuant to 34 CFR 104.8 and 106.9, a district that receives federal aid is required to take "continuing steps" to notify students, parents/guardians, employees, employee organizations, and applicants for admission and employment that it does not discriminate on the basis of disability **and or sex** in its educational programs or activities. In addition, Education Code 221.61, ~~as added by SB 1375 (Ch. 655, Statutes of 2016),~~ requires **that, on or before July 1, 2017,** districts **must to** post specified information relating to Title IX on their web sites. To ensure consistent implementation of the laws, the same notification requirement should be adopted for all the protected categories as provided in the following paragraph.

Pursuant to 34 CFR 104.8 and 34 CFR 106.9, the Superintendent or designee shall notify students, parents/guardians, employees, employee organizations, applicants for admission and employment, and sources of referral for applicants about the district's policy on nondiscrimination and related complaint procedures. Such notification shall be included in **each the annual parental notification distributed pursuant to Education Code 48980 and, as applicable, in** announcements, bulletins, catalogs, handbooks, application forms, or other materials **distributed by the district.** ~~to these groups and, as applicable, to the public. As appropriate, such~~ The notification shall **also** be posted on the district's web site and, ~~when available, district-supported social media~~ **and shall be posted** in district schools and offices, including staff lounges, student government meeting rooms, and other prominent locations **as appropriate and shall be posted on the district's web site and, when available, district-supported social media.**

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

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

*(cf. 5145.6 - Parental Notifications)*

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)**

**Note: Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), requires the following notification. Information about the educational rights of all students is contained in the appendix of the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.**

**In addition, the annual parental notification shall inform parents/guardians of their children's right to a free public education regardless of immigration status or religious beliefs, including information on educational rights issued by the California Attorney General. Alternatively, such information may be provided through any other cost-effective means determined by the Superintendent or designee. (Education Code 234.7)**

Note: Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to the parents/guardians of these students must also be written in the primary language and may be answered by the parent/guardian in English or the primary language. In addition, 20 USC 6311 and 6312 require that districts receiving Title I funds provide parent/guardian notices in an understandable and uniform format and, to the extent practicable, in a language that parents/guardians understand.

The district's nondiscrimination policy and related informational materials shall be published in a format that parents/guardians can understand. In addition, when 15 percent or more of a school's students speak a single primary language other than English, those materials shall be translated into that other language.

**Access for Individuals with Disabilities**

Note: Pursuant to the ADA and its implementing regulations, 28 CFR 35.150 and 35.151, district facilities must be accessible to and usable by individuals with disabilities. Compliance methods may include equipment redesign, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, and alteration of existing facilities and construction of new facilities. In achieving compliance, a district need not make structural changes to existing facilities if other methods are effective and the district can demonstrate that the structural change would result in a fundamental alteration in the nature of the activity or an undue financial or administrative burden. However, pursuant to 28 CFR 35.151, all newly constructed facilities must comply with the 2010 ADA Standards for Accessible Designs issued by the U.S. Department of Justice.

In addition, pursuant to 28 CFR 35.136, a district must permit an individual with a disability to be accompanied by a service animal on district premises when, without the animal's assistance, the individual with a disability will not be able to access or participate in a district program or activity. For language addressing this mandate, see AR 6163.2 - Animals at School. Districts with questions about compliance with the ADA should consult with legal counsel as appropriate.

District programs and facilities, viewed in their entirety, shall be in compliance with the Americans with Disabilities Act (ADA) and any implementing standards and/or regulations.

105



**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES** (continued)

When structural changes to existing district facilities are needed to provide individuals with disabilities access to programs, services, activities, or facilities, the Superintendent or designee shall develop a transition plan that sets forth the steps for completing the changes.

*(cf. 6163.2 - Animals at School)*

*(cf. 7110 - Facilities Master Plan)*

*(cf. 7111 - Evaluating Existing Buildings)*

Note: Pursuant to 28 CFR 35.130 and 35.160, the ADA requires districts to provide services and aids to ensure that a disabled individual is not excluded from participation or denied a benefit, service, or program on the basis of a disability. However, if the district can show that providing such aids and services would fundamentally alter the nature of the function, program, or meeting or would be an undue burden, then the district need not provide them.

In addition, Government Code 54953.2 requires that all Board meetings meet the protections of the ADA and implementing regulations (28 CFR 35.160 and 36.303). In effect, the district must ensure that such meetings are accessible to persons with disabilities and that, upon the request of any person with a disability, disability-related accommodations, such as auxiliary aids and services, are made available.

A U.S. Department of Justice technical assistance publication, Accessibility of State and Local Government Websites to People with Disabilities, affirms that the ADA applies to district-sponsored web sites. Examples of technical standards for web site accessibility are available from the World Wide Web Consortium, California Department of Education's standards for state web sites, and other sources; **The U.S. Department of Education's Office for Civil Rights (OCR) has interpreted the ADA and Section 504 of the Rehabilitation Act of 1973 to include the requirement that district web sites be accessible to individuals with disabilities. See the OCR's June 2010 and May 2011 Dear Colleague Letters and see BP 1113 - District and School Web Sites.**

The Superintendent or designee shall ensure that the district provides appropriate auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program, or activity. These aids and services may include, but are not limited to, qualified interpreters or readers, assistive listening devices, assistive technologies or other modifications to increase accessibility to district and school web sites, notetakers, written materials, taped text, and Braille or large-print materials. Individuals with disabilities shall notify the Superintendent or principal if they have a disability that requires special assistance or services. Reasonable notification should be given prior to a school-sponsored function, program, or meeting.

*(cf. 6020 - Parent Involvement)*

*(cf. 9320 - Meetings and Notices)*

*(cf. 9322 - Agenda/Meeting Materials)*

Note: Pursuant to 28 CFR 35.107, a district that has 50 or more employees is required to designate at least one employee to coordinate the district's efforts to comply with the ADA. The designated employee could be the same individual or position responsible for the district's compliance with state and federal laws and regulations governing educational programs as identified in the district's uniform complaint procedures. The

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)**

following paragraph, which identifies the person or position identified in the AR 1312.3 - Uniform Complaint Procedures as the responsible employee, may be modified if the district chooses to designate another person or position.

The individual identified in AR 1312.3 - Uniform Complaint Procedures as the employee responsible for coordinating the district's response to complaints and for complying with state federal civil rights laws is hereby designated as the district's ADA coordinator. He/she shall receive and address requests for accommodation submitted by individuals with disabilities, and shall investigate and resolve complaints regarding their access to district programs, services, activities, or facilities.

Superintendent  
(title or position)  
15305 Rockwood Rd, Escondido, CA 92027  
(address)  
760.745.4931  
(telephone number)  
spusch@sanproquestunion.net  
(email)

*Legal Reference: (see next page)*

MS

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)***Legal Reference:*EDUCATION CODE

200-262.4 Prohibition of discrimination

**48980 Parental notifications**

48985 Notices to parents in language other than English

51007 Legislative intent: state policy

GOVERNMENT CODE**8310.3 California Religious Freedom Act**

11000 Definitions

11135 Nondiscrimination in programs or activities funded by state

~~11138 Rules and regulations~~

12900-12996 Fair Employment and Housing Act

54953.2 Brown Act compliance with Americans with Disabilities Act

PENAL CODE

422.55 Definition of hate crime

422.6 Interference with constitutional right or privilege

CODE OF REGULATIONS, TITLE 54600-4687 **4670** Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1400-1482 Individuals with Disabilities in Education Act

1681-1688 Discrimination based on sex or blindness, Title IX

2301-2415 Carl D. Perkins Vocational and Applied Technology Act

6311 State plans

6312 Local education agency plans

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

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

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

2000h-2000h-6 Title IX

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

36.303 Auxiliary aids and services

CODE OF FEDERAL REGULATIONS, TITLE 34

100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI

104.1-104.39 Section 504 of the Rehabilitation Act of 1973

106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:

106.9 Dissemination of policy

*Management Resources:*CSBA PUBLICATIONSUpdated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, July 2016~~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~~

Management Resources continued: (see next page)

176

**NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES (continued)**

Management Resources: (continued)

**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS**

**Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018**

**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS**

**California Law Prohibits Workplace Discrimination and Harassment**

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

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

**Dear Colleague Letter: Title IX Coordinators, April 2015**

**Dear Colleague Letter, May 26, 2011**

**Dear Colleague Letter: Harassment and Bullying, October 2010**

**Notice of Non-Discrimination, Fact Sheet, August 2010**

**Dear Colleague Letter: Electronic Book Readers, June 29, 2010**

**Notice of Non-Discrimination, January 1999**

**Protecting Students from Harassment and Hate Crime, January 1999**

**Nondiscrimination in Employment Practices in Education, August 1991**

**U.S. DEPARTMENT OF JUSTICE PUBLICATIONS**

**2010 ADA Standards for Accessible Design, September 2010**

**Accessibility of State and Local Government Websites to People with Disabilities, June 2003**

**WORLD WIDE WEB CONSORTIUM PUBLICATIONS**

**Web Content Accessibility Guidelines, December 2008**

**WEB SITES**

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

**California Office of the Attorney General: <http://oag.ca.gov>**

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

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

Safe Schools Coalition: <http://www.casafeschools.org>

Pacific ADA Center: <http://www.adapacific.org>

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

U.S. Department of Justice, Civil Rights Division, Americans with Disabilities Act: <http://www.ada.gov>

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

World Wide Web Consortium, Web Accessibility Initiative: <http://www.w3.org/wai>

(2/14 10/16) 5/18

113

# CSBA Sample Exhibit

## Philosophy, Goals, Objectives, and Comprehensive Plans

E 0420.41(a)

### CHARTER SCHOOL OVERSIGHT

#### REQUIREMENTS FOR CHARTER SCHOOLS

Note: Pursuant to Education Code 47610, charter schools are exempt from Education Code provisions governing school districts unless otherwise specified in law. The following Exhibit lists some, but not necessarily all, legal requirements that apply to charter schools and may be used by districts to monitor a charter school's compliance with law. Violation of any law may subject the charter school to revocation pursuant to Education Code 47607; see BP 0420.43 - Charter School Revocation.

Charter schools shall be subject to the terms of their charters, any memorandum of understanding with their chartering authority, and other legal requirements that are expressly applicable to charter schools, including, but not limited to, requirements that each charter school:

1. Be nonsectarian in its programs, admission policies, employment practices, and all other operations (Education Code 47605)
2. Not discriminate against any student on the basis of the characteristics listed in Education Code 220 (Education Code 47605)
3. Not charge tuition (Education Code 47605)

Note: Education Code 47605 specifically prohibits a charter school from charging tuition, but does not mention fees or other charges. As clarified in the California Department of Education's (CDE) advisory Pupil Fees, Deposits, and Other Charges, because charter schools are subject to the California Constitution, the free school guarantee of the California Constitution, Article 9, Section 5, applies to charter schools. Charter schools may only charge fees which are explicitly authorized by law for charter schools. For example, charter schools may charge fees for meals and field trips pursuant to Education Code 35330, 38082, and 38084 because those provisions apply to charter schools, but charter schools may not necessarily charge other fees authorized by law for school districts. ~~In addition, Education Code 49011 prohibits all public schools from requiring services or donations as a condition of enrollment or continued enrollment.~~

4. Not charge student fees for any activity that is an integral component of the educational program, except as authorized by those Education Code provisions that explicitly apply to charter schools
5. Adhere to all laws establishing the minimum age for public school attendance (Education Code 47610)
6. Serve students who are California residents and who, if over 19 years of age, are continuously enrolled in a public school and making "satisfactory progress" toward a high school diploma as defined in 5 CCR 11965 (Education Code 47612)

MB

**CHARTER SCHOOL OVERSIGHT** (continued)

Note: Education Code 56145 requires charter schools to serve students with disabilities in the same manner as other public schools. Pursuant to Education Code 47646, districts must ensure that each charter school that is deemed to be a public school of the district, and is not its own local educational agency (LEA) for special education purposes, receives an equitable share of special education funding and services for students with disabilities who are enrolled in the charter school.

If a charter school is operating as a public school of the district for purposes of special education, the district retains responsibility and must determine how to ensure that students with disabilities receive a free appropriate public education (FAPE). However, as indicated in the California Office of Administrative Hearings ruling in Student v. Horizon Instructional Systems Charter School, a charter school operating as its own LEA for purposes of special education, including a charter school offering an independent study program, is the entity responsible for providing FAPE.

7. Serve students with disabilities in the same manner as such students are served in other **public district** schools (Education Code 47646, 56145)
8. Admit all students who wish to attend the school, according to the following criteria and procedures:
  - a. Admission to the charter school shall not be determined according to the student's **or parent/guardian's** place of residence, ~~or that of his/her parents/guardians,~~ within the state, except that any existing public school converting partially or entirely to a charter school shall adopt and maintain a policy giving admission preference to students who reside within the school's former attendance area. (Education Code 47605)
 

If a charter school will be physically located in a public elementary school attendance area in which 50 percent or more of the student enrollment is eligible for free or reduced-price meals, it may also establish an admission preference for students who are currently enrolled in the public elementary school and for students who reside in the public school attendance area. (Education Code 47605.3)
  - b. If the number of students who wish to attend the charter school exceeds the school's capacity, attendance, ~~except for existing students of the charter school,~~ shall be determined by a public random drawing, ~~Preference shall be~~ **with preference** extended to students currently attending the charter school and students who reside in the district, except as provided for in Education Code 47614.5. (Education Code 47605)
  - c. Other admission preferences may be permitted by the **Governing Board of the chartering** district on an individual school basis consistent with law. (Education Code 47605)

**CHARTER SCHOOL OVERSIGHT** (continued)

9. Immediately enroll a homeless student, except where such enrollment would conflict with Education Code 47605(d) (Education Code 48850; 42 USC 11431-11435)
10. Comply with the requirements of Education Code 48850-48859 regarding the enrollment and placement of foster youth (Education Code 48853.5, 48859)
11. If the school offers a kindergarten program: (Education Code 48000)
  - a. Offer a transitional kindergarten (TK) program to students whose fifth birthday is from September 2 through December 2
  - b. Ensure that any credentialed teacher first assigned to teach a TK class after July 1, 2015 meets the qualifications specified in Education Code 48000 by August 1, 2020
12. Require its teachers to hold a certificate, permit, or other document issued by the Commission on Teacher Credentialing (CTC) equivalent to that which a teacher in other public schools would be required to hold (Education Code 47605)
13. Provide annual training on child abuse and neglect reporting requirements to employees and persons working on the school's behalf who are mandated reporters, within the first six weeks of each school year or within six weeks of employment (Education Code 44691)

Note: Education Code 44830.1 and 45122.1 prohibit charter schools from hiring any person who has been convicted of a violent or serious felony as defined in Penal Code 667.5 and 1192.7, unless that person has received a certificate of rehabilitation and a pardon. Schools also may not retain in employment any temporary, substitute, or probationary employee who has been convicted of a violent or serious felony. See AR 4112.5/4212.5/4312.5 — Criminal Record Check. Education Code 45125.1 requires a criminal background check for certain employees of an entity contracting with a charter school. See AR 3515.6 — Criminal Background Checks for Contractors.

14. Not hire any person who has been convicted of a violent or serious felony except as otherwise provided by law, and, if the school contracts with an entity for specified services, verify that any employee of that entity who will have contact with students has had a criminal background check (Education Code 44830.1, 45122.1, 45125.1)

Note: Education Code 44030.5 requires charter schools to report to the CTC any change in employment status due to an allegation of misconduct. See AR 4117.7/4317.7 — Employment Status Reports for further information about these reports.

15. Report to the CTC any change in a certificated employee's employment status (dismissal, nonreelection, resignation, suspension, unpaid administrative leave for

MS

**CHARTER SCHOOL OVERSIGHT** (continued)

more than 10 days, retirement, or other decision not to employ or reemploy) as a result of an allegation of misconduct or while an allegation of misconduct is pending (Education Code 44030.5)

16. Meet the requirements of Education Code 47611 regarding the State Teachers' Retirement System (Education Code 47610)
17. Meet the requirements of Government Code 3540-3549.3 related to collective bargaining in public education employment (Education Code 47611.5)

Note: Education Code 215, as added by AB 2246 (Ch. 642, Statutes of 2016), requires charter schools that serve students in grades 7-12 to adopt a policy on student suicide prevention, intervention, and postvention (i.e., intervention conducted after a suicide) with specified components. See BP/AR 5141.52—Suicide Prevention for further information regarding these requirements. Also see the CDE's Model Youth Suicide Prevention Policy.

18. If the school serves students in grades 7-12, adopt a policy on suicide prevention, intervention, and postvention with specified components (Education Code 215)
19. If the school serves students in grade 9, adopt a fair, objective, and transparent mathematics placement policy with specified components (Education Code 51224.7)
20. Meet all statewide standards and conduct any statewide assessments applicable to noncharter public schools (Education Code 47605, 47612.5, 60605, ~~60850-60859~~)
21. ~~Until July 31, 2018, g~~Grant a high school diploma to any student who completed grade 12 in the 2003-04 school year or a subsequent **through 2014-15** school year and ~~who has~~ met all applicable graduation requirements other than the passage of the high school exit examination (Education Code ~~60851.6-60851.7~~ **51413**)

Note: Education Code 47612.5 specifies, by grade level, the minimum number of instructional minutes that must be offered each fiscal year. Any charter school that fails to meet the requirement will have its state apportionment reduced in proportion to the percentage of instructional minutes that the school fails to offer. Education Code 47612.5 and 47612.6 provide that neither the State Board of Education nor the Superintendent of Public Instruction may waive the required number of instructional minutes but may waive the fiscal penalties under specified conditions.

22. Offer at least the number of instructional minutes required by law for the grade levels provided by the charter school (Education Code 47612.5)

Note: Education Code 47612.5 provides that charter schools offering independent study are subject to Education Code 51745-51749.3. Education Code 51745 requires that no course included among the courses required for graduation may be offered solely through independent study. However, pursuant to 5 CCR 11705, a charter school offering grades 9-12 shall be deemed to be an "alternative school" for purposes of



**CHARTER SCHOOL OVERSIGHT** (continued)

independent study and thus, according to the CDE, would comply with this provision because students in such alternative schools are enrolled voluntarily and, if they wished, could attend any other district high school in which the courses were offered via classroom instruction.

23. If the school provides independent study, meet the requirements of Education Code 51745-51749.3, except that the school may be allowed to offer courses required for graduation solely through independent study as an exception to Education Code 51745(e) (Education Code 47612.5, 51747.3; 5 CCR 11705)
24. Identify and report to the Superintendent of Public Instruction (SPI) any portion of its average daily attendance that is generated through nonclassroom-based instruction, including, but not limited to, independent study, home study, work study, and distance and computer-based education (Education Code 47612.5, 47634.2; 5 CCR 11963.2)
25. If the school offers competitive athletics, annually post on the school's web site or on the web site of the charter operator the total enrollment of the school classified by gender, the number of students 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)

Note: Education Code 33479.1, and 33479.3, and 49475 as added by AB 1639 (Ch. 792, Statutes of 2016), require charter schools that elect to conduct athletic activities to provide student athletes and their parents/guardians with information on the nature and warning signs of concussions/head injuries and sudden cardiac arrest. Such information is available ~~from the~~ **on the web site of the** California Interscholastic Federation. (CIF) ~~or, if the athletic activity is not governed by the CIF, on the CDE's web site.~~ Additionally, Education Code 33479.5, as added by AB 1639, and CIF bylaws provide for a student's removal from participation in an athletic activity if he/she passes out or faints. See BP/AR 6145.2 – Athletic Competition.

26. If the school offers an athletic program, annually provide information sheets about concussions/head injuries and sudden cardiac arrest to athletes and their parents/guardians, which must be signed and returned to the school before the athlete initiates practice or competition. In the event that an athlete is suspected of sustaining a concussion or head injury, passes out, or faints during or immediately after participation in an athletic activity, he/she shall be immediately removed from the activity for the remainder of the day and shall not be permitted to return to the activity until he/she is evaluated by a licensed health care provider and receives written clearance to do so. (Education Code 33479-33479.5, 49475)
27. On a regular basis, consult with parents/guardians and teachers regarding the school's educational programs (Education Code 47605)

## CHARTER SCHOOL OVERSIGHT (continued)

- 28. Notify parents/guardians of applicant students and currently enrolled students that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school (Education Code 47605)**

Note: Education Code 48907 requires charter schools to establish a written "publications code" related to students' rights to freedom of speech and of the press. These written rules and regulations must include reasonable provisions for the time, place, and manner in which free expression may take place within the charter school's jurisdiction.

- ~~28.~~ **29.** Provide students the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards; the distribution of printed materials or petitions; the wearing of buttons, badges, and other insignia; and the right of expression in official publications (Education Code 48907, 48950)
- 30. Adopt policy that is consistent with the model policy developed by the California Attorney General addressing the school's response to immigration enforcement, notify parents/guardians of their children's right to a free public education regardless of immigration status or religious beliefs, prohibit the collection of information or documents regarding the immigration status of students or their family members, and fulfill other requirements of Education Code 234.7**
- 31.** Not collect or solicit social security numbers or the last four digits of social security numbers from students or their parents/guardians unless otherwise required to do so by state or federal law (Education Code 49076.7)
- ~~29.~~ **32.** Maintain written contemporaneous records that document all student attendance and make these records available for audit and inspection (Education Code 47612.5)
- ~~30.~~ **33.** If a student subject to compulsory full-time education is expelled or leaves the charter school without graduating or completing the school year for any reason, notify the Superintendent of the school district of the student's last known address within 30 days and, upon request, provide that district with a copy of the student's cumulative record, including a transcript of grades or report card, and health information (Education Code 47605)
- ~~31.~~ **34.** If the school serves high school students, submit to the Student Aid Commission, for use in the Cal Grant program, the grade point average (GPA) of all students in grade 12 and verification of high school graduation or its equivalent for students who graduated in the prior academic year. However, such information shall not be submitted when students opt out or are permitted by the rules of the Student Aid Commission to provide test scores in lieu of the GPA. (Education Code 69432.9, 69432.92)

**CHARTER SCHOOL OVERSIGHT (continued)**

Note: Education Code 39831.3, as amended by SB 1072 (Ch. 721, Statutes of 2016), requires charter schools to develop a transportation plan that includes procedures to ensure that a student is not left unattended on a bus. See AR 3543—Transportation Safety and Emergencies for more information regarding transportation safety plans.

In addition, pursuant to Vehicle Code 28160, as added by SB 1072, on or before the beginning of the 2018-19 school year, each school bus, school activity bus, youth bus, and child care motor vehicle, as defined, must be equipped with a "child safety alert system" (i.e., a device located at the interior rear of a vehicle that requires the driver to either manually contact or scan the device before exiting the vehicle).

- 32-35.** Develop a transportation safety plan that includes procedures to ensure that a student is not left unattended on a school bus, student activity bus, youth bus, or child care motor vehicle and procedures and standards for designating an adult chaperone, other than the driver, to accompany students on a school activity bus (Education Code 39831.3)
- 33-36.** Comply with the California Building Standards Code as adopted and enforced by the local building enforcement agency with jurisdiction over the area in which the charter school is located, unless the charter school facility meets either of the following conditions: (Education Code 47610, 47610.5)
- a. The facility complies with the Field Act pursuant to Education Code 17280-17317 and 17365-17374.
  - b. The facility is exclusively owned or controlled by an entity that is not subject to the California Building Standards Code, including, but not limited to, the federal government.
- 34-37.** Provide reasonable accommodations on campus to a lactating student to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding (Education Code 222)
- 35-38.** Ensure the availability and proper use of emergency epinephrine auto-injectors by: (Education Code 49414)
- a. Providing school nurses or other voluntary, trained personnel with at least one regular and one junior device for elementary schools and, for secondary schools, one regular device if there are no students who require a junior device
  - b. Distributing a notice at least once per school year to all staff requesting volunteers and describing the training that volunteers will receive
  - c. Providing defense and indemnification to volunteers for any and all civil liability from such administration

## CHARTER SCHOOL OVERSIGHT (continued)

Note: Education Code 49414.3, as added by AB 1748 (Ch. 557, Statutes of 2016), authorizes charter schools to make emergency naloxone hydrochloride or another opioid antagonist available to school nurses or trained personnel who have volunteered to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an opioid overdose. See BP/AR 5141.21 — Administering Medication And Monitoring Health Conditions.

- ~~36.~~ **39.** If the school chooses to make an opioid antagonist available to persons suffering, or reasonably believed to be suffering, from an opioid overdose, comply with the requirements of Education Code 49414.3, including, but not limited to, providing training to personnel who volunteer to administer the opioid antagonist
- 40.** If the school participates in the National School Lunch and/or Breakfast program, not promote any food or beverage during the school day that does not comply with state nutritional standards pursuant to Education Code 49430-49434, and not participate in a corporate incentive program that offers free or discounted non-nutritious foods or beverages as rewards for students who reach certain academic goals (Education Code 49431.9)
- 41.** If the school participates in the National School Lunch and/or Breakfast program, notify parents/guardians within 10 days of their child's meal account reaching a negative balance; ensure that a student with unpaid school meal fees is not shamed, treated differently, or served a meal that differs from other students; and prohibit student discipline from resulting in the denial or delay of a nutritionally adequate meal (Education Code 49557.5)
- 42.** If the school participates in the National School Lunch and/or Breakfast program and is a very high poverty school, as defined, apply to the California Department of Education (CDE) to provide lunch and/or breakfast free of charge to all students under a federal universal service provision (Education Code 49564)
- ~~37.~~ **43.** Promptly respond to all reasonable inquiries from the district, the county office of education, or the SPI, including, but not limited to, inquiries regarding the school's financial records (Education Code 47604.3)
- ~~38.~~ **44.** Annually prepare and submit financial reports to the district Governing Board and the County Superintendent of Schools in accordance with the following reporting cycle:
- a. By July 1, a preliminary budget for the current fiscal year. For a charter school in its first year of operation, financial statements submitted with the charter petition pursuant to Education Code 47605(g) will satisfy this requirement. (Education Code 47604.33)

**CHARTER SCHOOL OVERSIGHT** (continued)

- b. By July 1 ~~each year~~, an update of the school's goals and the actions to achieve those goals as identified in the charter, developed using the local control and accountability plan template adopted by the State Board of Education. This report shall include a review of the progress toward the goals, an assessment of the effectiveness of the specific actions toward achieving the goals, a description of changes the school will make to the specific actions as a result of the review and assessment, and a listing and description of expenditures for the fiscal year implementing the specific actions. (Education Code 47604.33, 47606.5, 52064)

When conducting this review, the governing body of the school may consider qualitative information including, but not limited to, findings that result from any school quality reviews conducted pursuant to Education Code 52052 or any other reviews. To the extent practicable, data shall be reported in a manner consistent with how information is reported on a school accountability report card. The update shall be developed in consultation with teachers, principals, administrators, other school personnel, parents/guardians and students. (Education Code 47606.5)

- c. By December 15, an interim financial report for the current fiscal year reflecting changes through October 31. (Education Code 47604.33)
- d. By March 15, a second interim financial report for the current fiscal year reflecting changes through January 31. (Education Code 47604.33)
- e. By September 15, a final unaudited report for the full prior year. The report submitted to the Board shall include an annual statement of all the charter school's receipts and expenditures for the preceding fiscal year. (Education Code 42100, 47604.33)
- f. By December 15, a copy of the charter school's annual, independent financial audit report for the preceding fiscal year, unless the charter school's audit is encompassed in the district's audit. The audit report shall also be submitted to the State Controller and the California Department of Education. (Education Code 47605)

Note: Education Code 221.61, as added by SB 1375 (Ch. 655, Statutes of 2016), requires charter schools to post specified information related to the prohibition against discrimination under Title IX (20 USC 1681-1688) on school web sites. Required information includes the name and contact information of the Title IX coordinator for the school, the rights of a student and the public and the responsibilities of the charter school under Title IX, and a description of how to file a complaint under Title IX. See AR 5145.3—Nondiscrimination/Harassment.

**CHARTER SCHOOL OVERSIGHT (continued)**

- 39. 45.** Post specified information related to the prohibition against discrimination under Title IX of the Education Amendments of 1972 in a prominent and conspicuous location on the school web site or on the web site of the charter operator (Education Code 221.61)

~~Note: Pursuant to 5 CCR 4600, direct-funded charter schools are subject to state requirements to adopt uniform complaint procedures for investigating and resolving specified types of complaints in accordance with 5 CCR 4600-4670. See BP/AR 1312.3 – Uniform Complaint Procedures for further information about types of complaints addressed through these procedures, required notifications, timelines, and other requirements.~~

- 40. 46.** If a direct-funded charter school, adopt and implement uniform complaint procedures to resolve complaints of unlawful discrimination or alleged violation of a state or federal law or regulation governing educational programs, in accordance with 5 CCR 4600-4670 (5 CCR 4600)

- 41. 47.** Annually adopt a school accountability report card (Education Code 47612; California Constitution, Article 16, Section 8.5)

Note: Districts should consult with legal counsel regarding the applicability of state law other than the Education Code to charter schools.

In addition, charter schools shall comply with the state and federal constitutions, applicable federal laws, and state laws that apply to governmental agencies in general, such as the Brown Act requirements in Government Code 54950-54963 and the conflict of interest laws in Government Code 1090-1099 and 87100-91014.

(5/16 7/17) 5/18

AS

# CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3514(a)

## ENVIRONMENTAL SAFETY

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

Education Code 17070.75 requires **any each** district participating in the state's School Facility Program ~~or Deferred Maintenance Program~~ to have a facility inspection system ~~in place~~ to ensure that facilities are **each school facility** is kept in good repair. ~~as defined in~~ Pursuant to Education Code 17002, a facility is in "good repair" when it is maintained in a manner that ensures that it is clean, safe, and functional in accordance with criteria set forth in ~~and determined according to~~ the Facility Inspection Tool developed by the Office of Public School Construction. ~~This tool includes a number of environmental safety conditions;~~ See AR 3517 - Facilities Inspection. In addition, the U.S. Environmental Protection Agency (EPA) has developed the Healthy School Environments Assessment Tool (HealthySEAT), a software program designed to be customized by districts to conduct voluntary self-assessments of environmental conditions, such as chemical management, hazardous materials and waste, indoor and outdoor air quality, moisture/mold control, pest control, ultraviolet radiation, and construction/renovation of school facilities. For further information, see EPA's web site.

The Governing Board recognizes its obligation to provide a safe and healthy environment at school facilities for students, staff, and community members. The Superintendent or designee shall regularly assess school facilities to identify environmental health risks **and** ~~He/she~~ shall ~~establish a comprehensive plan~~ **develop strategies** to prevent and/or mitigate environmental hazards. **He/she shall consider** ~~based on a consideration of~~ the proven effectiveness of various options, anticipated short-term and long-term costs and/or savings to the district, and the potential impact on staff **and students, including the impact on student achievement and attendance.** ~~attendance, student attendance, and student achievement.~~

*(cf. 0200 - Goals for the School District)*

*(cf. 0400 - Comprehensive Plans)*

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

*(cf. 3516.3 - Earthquake Emergency Procedure System)*

*(cf. 3517 - Facilities Inspection)*

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

*(cf. 5030 - Student Wellness)*

*(cf. 5142 - Safety)*

*(cf. 7111 - Evaluating Existing Buildings)*

~~Strategies addressed in the district's plan shall include, but not necessarily be limited to, the following:~~ **Such strategies shall focus on maximizing healthy indoor air quality; monitoring the quality of outdoor air and adjusting outdoor activities as necessary; reducing exposure to vehicle emissions; minimizing exposure to lead and mercury; reducing the risk of unsafe drinking water; inspecting and properly abating asbestos; appropriately storing, using, and disposing of potentially hazardous substances; using effective least toxic pest management practices; reducing the risk of foodborne illness; and addressing any other environmental hazards identified during facilities inspections.**

MS

**ENVIRONMENTAL SAFETY (continued)**

**(cf. 3510 - Green School Operations)**

(cf. 3513.3 - Tobacco-Free Schools)

(cf. 3514.1 - Hazardous Substances)

(cf. 3514.2 - Integrated Pest Management)

(cf. 3516.5 - Emergency Schedules)

(cf. 3540 - Transportation)

(cf. 3541.1 - Transportation for School-Related Trips)

(cf. 3542 - School Bus Drivers)

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

(cf. 5141.23 - Asthma Management)

(cf. 5141.7 - Sun Safety)

**(cf. 5142.2 - Safe Routes to School Program)**

(cf. 6142.7 - Physical Education and Activity)

(cf. 6163.2 - Animals at School)

(cf. 7150 - Site Selection and Development)

Note: Districts that select optional item #1 below to require strategies for indoor air quality are encouraged to review CSBA's policy briefs on Indoor Air Quality: Governing Board Actions for Creating Healthy School Environments and Asthma Management in the Schools. Also see the accompanying administrative regulation.

1. Ensuring good indoor air quality by maintaining adequate ventilation; using effective maintenance operations to reduce dust, mold, mildew, and other indoor air contaminants; and considering air quality in the site selection, design, and furnishing of new or remodeled facilities

(cf. 3513.3 - Tobacco-Free Schools)

(cf. 5141.23 - Asthma Management)

(cf. 6163.2 - Animals at School)

(cf. 7150 - Site Selection and Development)

Note: In order to determine when poor outdoor air quality necessitates limiting outdoor activities, as provided in optional item #2 below, districts may use local or online resources to obtain forecasts of air quality and ultraviolet radiation. See the accompanying administrative regulation, BP 5141.7 - Sun Safety, and CSBA's policy brief on Sun Safety in Schools.

2. Limiting outdoor activities when necessary due to poor outdoor air quality, including excessive smog, smoke, or ozone, or when ultraviolet radiation levels indicate a high risk of harm

(cf. 3516.5 - Emergency Schedules)

(cf. 5141.7 - Sun Safety)

(cf. 6142.7 - Physical Education and Activity)

Note: 13 CCR 2480 establishes requirements for limiting idling by school buses and other commercial motor vehicles in order to reduce exposure to diesel exhaust and other air contaminants as provided in optional item #3 below; see the accompanying administrative regulation.



## ENVIRONMENTAL SAFETY (continued)

3. Reducing exposure to diesel exhaust and other air contaminants by limiting unnecessary idling of school buses and other commercial motor vehicles

*(cf. 3540 – Transportation)*

*(cf. 3541.1 – Transportation for School-Related Trips)*

*(cf. 3542 – School Bus Drivers)*

Note: According to the EPA and the Centers for Disease Control and Prevention, exposure to lead, which may be particularly hazardous for young children, can occur through multiple means as described in **optional** item #4 below and in the accompanying administrative regulation.

4. Minimizing exposure to lead in paint, soil, and drinking water

Note: Education Code 49410.5 requires districts to comply with EPA guidelines for inspection and management of asbestos-containing materials, as provided in **optional** item #5 below and the accompanying administrative regulation. Naturally occurring asbestos may be found in rocks or soil and released into the air by routine human activities or weathering processes. According to the EPA, asbestos-containing materials and naturally occurring asbestos that are intact generally do not pose a health risk, but these materials may become hazardous if they are disturbed and thereby released into the air.

5. Inspecting facilities for naturally occurring asbestos and asbestos-containing building materials that pose a health hazard due to damage or deterioration and safely removing, encapsulating, enclosing, or repairing such materials

Note: 8 CCR 5194 requires that a written hazard communication program be developed and implemented by employers whose employees may have potential exposure to hazardous substances, as provided in **optional** item #6 below; see BP/AR 3514.1 – Hazardous Substances for further information.

6. Ensuring the proper storage, use, and disposal of potentially hazardous substances

*(cf. 3514.1 – Hazardous Substances)*

*(cf. 6161.3 – Toxic Art Supplies)*

Note: Education Code 17608-17613 require the use of effective least toxic pest management practices for the management of pests at school sites, as provided in **optional** item #7 below; see AR 3514.2 – Integrated Pest Management for further information.

7. Ensuring the use of effective least toxic pest management practices

*(cf. 3514.2 – Integrated Pest Management)*

Note: State and federal law (Health and Safety Code 113700-114437 and 42 USC 1758) establish sanitation and safety requirements for food services, as provided in **optional** item #8 below; see BP/AR 3550 – Food Service/Child Nutrition Program and CSBA's fact sheet on Food Safety Requirements.

**ENVIRONMENTAL SAFETY** (continued)

8. — Instituting a food safety program for the storage, preparation, delivery, and service of school meals in order to reduce the risk of foodborne illnesses

*(cf. 3550 – Food Service/Child Nutrition Program)*

**Note: Health and Safety Code 116277, as added by AB 746 (Ch. 746, Statutes of 2017), requires a community water system serving a school to test for lead in the potable water system of the school and, if the school's lead level exceeds a defined level, the district must notify parents/guardians, take immediate steps to shut down all fountains and faucets where the excess lead levels may exist, and provide a potable source of drinking water to students. Schools that have their own water supply, such as a well, are required to test for lead, copper, and other contaminants in tap water pursuant to other state and federal law and regulations, including 22 CCR 64670-64679 and 40 CFR 141.80-141.91. See the California Water Boards' "Frequently Asked Questions about Lead Testing of Drinking Water in California Schools: Updated for Assembly Bill 746/Health and Safety Code 116277." For more information in regard to lead exposure and remediation, see the accompanying administrative regulation.**

In developing strategies to promote healthy school environments, the Superintendent or designee may consult and collaborate with local environmental protection agencies, health agencies, **water boards**, and other community organizations.

*(cf. 1020 - Youth Services)*

The Superintendent or designee shall provide the district's maintenance and facilities staff, bus drivers, food services staff, teachers, and other staff as appropriate with professional development regarding their responsibilities in implementing strategies to improve and maintain environmentally **safety safe and healthy at the** schools.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

The Superintendent or designee shall notify the Board, staff, parents/guardians, students, and/or governmental agencies, as appropriate, if an environmental hazard is discovered at a school site. The notification shall provide information about the district's actions to remedy the hazard and may recommend health screening of staff and students.

*(cf. 5141.6 - School Health Services)*

*Legal Reference: (see next page)*

**ENVIRONMENTAL SAFETY (continued)***Legal Reference:*EDUCATION CODE

17002 Definition of "good repair"

17070.75 Facilities inspection

17582 Deferred maintenance fund

17590 Asbestos abatement fund

17608-~~17613~~-**17614** Healthy Schools Act of 2000, least toxic pest management practices

32080-32081 Carbon monoxide devices

32240-32245 Lead-Safe Schools Protection Act

48980.3 Notification of pesticides

49410-49410.7 Asbestos materials containment or removal

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000, least toxic pest management practices

GOVERNMENT CODE

3543.2 Scope of representation; right to negotiate safety conditions

HEALTH AND SAFETY CODE

105400-105430 Indoor environmental quality

113700-114437 California Retail Food Code, sanitation and safety requirements

**116277 Lead testing of potable water at schools and requirements to remedy**CODE OF REGULATIONS, TITLE 5

14010 Standards for school site selection

CODE OF REGULATIONS, TITLE 8

337-339 Hazardous substances list

340-340.2 Occupational safety and health, rights of employees

1528-~~1533~~-**1537** Construction safety orders; exposure to hazards

5139-5223 Control of hazardous substances

CODE OF REGULATIONS, TITLE 13

2025 Retrofitting of diesel school buses

2480 Vehicle idling

CODE OF REGULATIONS, TITLE 17

35001-36100 Lead abatement services

CODE OF REGULATIONS, TITLE 22

64670-64679 Lead and copper in drinking water

**CODE OF REGULATIONS, TITLE 24****915.1-915.7 California Building Standards Code; carbon monoxide devices**UNITED STATES CODE, TITLE 7

136-136y Use of pesticides

UNITED STATES CODE, TITLE 15

2601-2629 Control of toxic substances

2641-2656 Asbestos Hazard Emergency Response Act

UNITED STATES CODE, TITLE 42

1758 Food safety and inspections

CODE OF FEDERAL REGULATIONS, TITLE 40

141.1-141.723 Drinking water standards

745.61-745.339 Lead-based paint standards

763.80-763.99 Asbestos-containing materials in schools

763.120-763.123 Asbestos worker protections

*Management Resources: (see next page)*

MB

**ENVIRONMENTAL SAFETY (continued)***Management Resources:***CSBA PUBLICATIONS**

*Indoor Air Quality: Governing Board Actions for Creating Healthy School Environments, Policy Brief, July 2008*

*Asthma Management in the Schools, Policy Brief, March 2008*

*Food Safety Requirements, Fact Sheet, October 2007*

*Sun Safety in Schools, Policy Brief, July 2006*

**CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

*School Site Selection and Approval Guide, 2000*

*Indoor Air Quality, A Guide for Educators, 1995*

**CALIFORNIA DEPARTMENT OF HEALTH SERVICES PUBLICATIONS**

*Report to the Legislature: Lead Hazards in California's Public Elementary Schools and Child Care Facilities, April 1998*

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY: AIR RESOURCES BOARD PUBLICATIONS**

*Facts about Truck and Bus Regulation School Bus Provisions, rev. March 22, 2011*

**CALIFORNIA STATE WATER RESOURCES CONTROL BOARD PUBLICATIONS**

*Frequently Asked Questions about Lead Testing of Drinking Water in California Schools; Updated for Assembly Bill 746/Health and Safety Code 116277, December 15, 2017*

**DIVISION OF THE STATE ARCHITECT PUBLICATIONS**

*K-12 Occupancy Classification and Load Factors, IR A-26, rev. April 18, 2012*

**U.S. ENVIRONMENTAL PROTECTION AGENCY PUBLICATIONS**

*A Citizen's Guide to Radon: The Guide to Protecting Yourself and Your Family from Radon, 2016*

*Healthy School Environments Assessment Tool, rev. 2015*

*Indoor Air Quality Tools for Schools, rev. 2007-2009*

*Healthy School Environments Assessment Tool, 2007*

*Mold Remediation in Schools and Commercial Buildings, September 2008*

*The ABCs of Asbestos in Schools, rev. August 2003*

*Mold Remediation in Schools and Commercial Buildings, March 2004*

*How to Manage Asbestos in School Buildings: AHERA Designated Person's Self-Study Guide, 1996*

**WEB SITES**

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

AirNow: <http://www.airnow.gov>

American Association of School Administrators: <http://www.aasa.org>

California Air Resources Board: <http://www.arb.ca.gov>

**California Building Standards: <http://www.bsc.ca.gov/codes.aspx>**

California Department of Education, Health and Safety: <http://www.cde.ca.gov/ls/fa/hs>

California Department of Pesticide Regulation: <http://www.cdpr.ca.gov>

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

**California State Water Resources Control Board: <https://www.waterboards.ca.gov>**

~~California Indoor Air Quality Program: <http://www.cal-iaq.org>~~

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

Consumer Product Safety Commission: <http://www.cpsc.gov>

National Center for Environmental Health: <http://www.cdc.gov/nceh>

Occupational Safety and Health Administration: <http://www.osha.gov>

U.S. Environmental Protection Agency: <http://www.epa.gov>

(7/01 7/08) 5/18

# CSBA Sample Administrative Regulation

**Business and Noninstructional Operations**

AR 3514(a)

## ENVIRONMENTAL SAFETY

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

The following paragraph may be revised to reflect the job position(s) designated to coordinate the district's environmental safety programs.

The Superintendent may designate and train one or more employees to oversee and coordinate the district's environmental safety program(s). The responsibilities of the coordinator(s) shall include, but are not limited to, overseeing assessments of district facilities, recommending strategies for the prevention and mitigation of environmental health risks, ensuring effective implementation of environmental safety strategies, and reporting to the Superintendent regarding the district's progress in addressing environmental safety concerns.

*(cf. 3510 - Green School Operations)*  
*(cf. 3511 - Energy and Water Management)*  
*(cf. 3517 - Facilities Inspection)*  
*(cf. 4157/4257/4357 - Employee Safety)*  
~~*(cf. 5030 - Student Wellness)*~~  
*(cf. 5142 - Safety)*  
*(cf. 7111 - Evaluating Existing Buildings)*  
*(cf. 7150 - Site Selection and Development)*

### Indoor Air Quality

Note: The following ~~optional~~ section addresses strategies for maintaining healthy indoor air quality and may be revised to reflect district practice. For further information, see the U.S. Environmental Protection Agency's (EPA) Indoor Air Quality Tools for Schools and CSBA's policy briefs on Indoor Air Quality: Governing Board Actions for Creating Healthy School Environments and Asthma Management in the Schools.

In order to provide proper ventilation, humidity, and temperature in school facilities and to reduce indoor air contaminants, the Superintendent or designee shall ensure that the following strategies are implemented:

1. Mechanically driven heating, ventilation, and air conditioning systems shall be operated continuously during working hours except under the circumstances specified in 8 CCR 5142. The systems shall be inspected at least annually and problems corrected within a reasonable time. Where the air supply is filtered, the filters shall be replaced or cleaned regularly to prevent significant reductions in airflow. Documentation of inspections, tests of ventilation rates, and maintenance shall be retained for at least five years. (8 CCR 5142-5143)

*(cf. 3580 - District Records)*

MS

**ENVIRONMENTAL SAFETY** (continued)

Staff shall ensure that airflow is not obstructed by the blocking of ventilators with posters, furniture, books, or other obstacles.

2. School facilities shall be regularly inspected for water damage, spills, leaks in plumbing and roofs, poor drainage, and improper ventilation so as to preclude the buildup of mold and mildew. Wet building materials and furnishings shall be dried within 48 hours if possible to prevent mold growth. When evidence of mold or mildew is found, maintenance staff shall locate and repair the source of water intrusion and remove or clean moldy materials.
3. Exterior wall and foundation cracks and openings shall be sealed as soon as possible to minimize seepage of radon into buildings from surrounding soils.
4. Least toxic pest management practices shall be used to control and manage pests at school sites. **(Education Code 17608-17614; Food and Agriculture Code 13182)**

*(cf. 3514.2 - Integrated Pest Management)*

Note: Pursuant to Education Code 32080-32081, as added by AB 56 (Ch. 475, Statutes of 2013), the California Building Code scheduled to be adopted in 2016 and effective January 1, 2017 must require carbon monoxide devices to be installed in school buildings constructed after that date which contain a fossil fuel burning furnace. School buildings built prior to that date are encouraged, but not required, to install carbon monoxide devices.

5. ~~In any new school construction, and in all existing schools when feasible, the Superintendent or designee shall install a carbon monoxide detector or alarm in all school buildings that contain a each school building that contains a fossil fuel-burning appliance, fireplace, or forced-air furnace. The device or alarm shall be placed located in close proximity to the furnace appliance in order to accurately detect and alert school personnel of any leakage of carbon monoxide. (24 CCR 915.1-915.7)~~
6. Schedules and practices for routine housekeeping and maintenance shall be designed to effectively reduce levels of dust, dirt, and debris. Plain water, soap and water, or low-emission cleaning products shall be used whenever possible. Aerosols, including air fresheners and other products containing ozone, shall be avoided to the extent possible.

*(cf. 5141.23 - Asthma Management)*

7. Painting of school facilities and maintenance or repair **duties activities** that require the use of potentially harmful substances shall be limited to those times when school is not in session. Following any such activity, the facility shall be properly ventilated with adequate time allowed prior to reopening for use by any person.

**ENVIRONMENTAL SAFETY** (continued)

8. Paints, adhesives, and solvents shall be used and stored in well-ventilated areas. These items shall be purchased in small quantities to avoid storage exposure.

*(cf. 3514.1 - Hazardous Substances)*

*(cf. ~~6161.3 - Toxic Art Supplies~~)*

9. To the extent possible, printing and duplicating equipment that may generate indoor air pollutants, such as methyl alcohol or ammonia, shall be placed in locations that are well ventilated and not frequented by students and staff.

10. The district's tobacco-free schools policy shall be consistently enforced in order to reduce the health risks caused by second-hand smoke.

*(cf. 3513.3 - Tobacco-Free Schools)*

11. Staff and students shall be asked to refrain from bringing common irritants such as furred or feathered animals, stuffed toys that may collect dust mites, scented candles, incense, or air fresheners and from using perfume or cologne, scented lotion or hair spray, nail polish or nail polish remover, or other personal care products that are not fragrance-free in classrooms or other enclosed areas or buildings.

*(cf. 6163.2 - Animals at School)*

**Outdoor Air Quality**

Note: The following **optional** section may be revised to reflect district practice. Forecasts of ozone levels and particle pollution are available through the federal AirNow web site and may be printed in local newspapers. The district may monitor ultraviolet radiation levels through the EPA's UV Index web site; see BP 5141.7 - Sun Safety **and CSBA's policy brief on Sun Safety in Schools.**

The Superintendent or designee may monitor local health advisories and outdoor air quality alerts, including forecasts of ozone levels, particle pollution, **and/or** ultraviolet radiation levels, **and/or temperature and humidity.**

Whenever these measures indicate a significant health risk, the Superintendent or designee shall communicate with each principal so that outdoor activities, especially those requiring prolonged or heavy exertion, may be avoided, limited in duration, or modified as necessary for all persons or for persons who may be particularly susceptible to the health risk involved.

*(cf. 5141.7 - Sun Safety)*

*(cf. 6142.7 - Physical Education and Activity)*

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

*(cf. 6145.2 - Athletic Competition)*

AB

## ENVIRONMENTAL SAFETY (continued)

### Vehicle Emissions

Note: 13 CCR 2480 prohibits idling of school buses, student activity buses, and other commercial motor vehicles within 100 feet of a school except under specified conditions; see AR 3542 - School Bus Drivers for additional language reflecting these requirements.

In order to reduce public exposure to toxic air contaminants, school bus drivers and other drivers of commercial motor vehicles shall limit unnecessary idling of vehicles at or near schools in accordance with 13 CCR 2480. **The Superintendent or designee may also request parents/guardians to turn off their vehicles when they are idling on school grounds and encourage students to walk and/or bicycle to school.**

*(cf. 3540 - Transportation)*

*(cf. 3541.1 - Transportation for School-Related Trips)*

*(cf. 3542 - School Bus Drivers)*

***(cf. 5142.2 - Safe Routes to School Program)***

Note: Pursuant to 13 CCR 2025, any district that owns, operates, leases, or rents a diesel-fueled, **dual-fueled, or alternative diesel-fueled** school bus with a gross vehicle weight rating over 14,000 pounds that was manufactured on or after April 1, 1977 is required to **have** installed a particulate filter in the bus that reduces diesel particulate matter emissions by 85 percent. ~~The district must ensure that 100 percent of its fleet complies with this requirement by January 1, 2014.~~ An exception exists for any school bus that operates fewer than 1,000 miles per year. ~~In the event that the filter cannot be installed (i.e., if doing so would void the engine warranty, if no appropriate filter is commercially available, or if the manufacturer or installer does not deem the filter to be technologically feasible for the school bus), the district may receive an extension until January 1, 2018 by providing specified information to the Air Resources Board each year.~~ Any school bus manufactured before April 1, 1977 ~~must~~ **should already** be retired.

Any diesel-fueled, **dual-fueled, or alternative diesel-fueled** school bus with a gross vehicle weight rating over 14,000 pounds ~~manufactured on or after April 1, 1977~~ shall be equipped with a particulate filter designed to reduce particulate matter emissions, oxides of nitrogen emissions, and other pollutants. (13 CCR 2025)

### Drinking Water

Note: The following **optional** section addresses the quality of tap water available in schools. See AR 3550 - Food Service/Child Nutrition Program for information about requirements to make fresh drinking water available during mealtimes.

**The quality and safety of the district's drinking water sources shall be regularly assessed, and drinking fountains shall be regularly cleaned and maintained to avoid the presence of dirt, mold, or other impurities or health concerns.**

Whenever **levels of arsenic, bacteria, or other any** contaminants in the drinking water are determined to be a concern, the Superintendent or designee **shall take reasonable steps to**

MS



**ENVIRONMENTAL SAFETY (continued)**

**identify the source and mitigate the concern to ensure the availability of safe drinking water** may recommend basic filtration or pipe flushing when feasible. Until drinking water is assured to be safe **As needed**, the Superintendent or designee may explore **shall provide alternatives sources of drinking water**, such as bottled water, to ensure that students have access to fresh drinking water at mealtimes and at other times throughout the day. **As needed**, he/she also may encourage appropriate governmental agencies to conduct regular testing of the water quality in district schools and to implement strategies to improve water quality in the community.

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

**Drinking fountains in district schools shall be regularly cleaned and maintained to avoid the presence of dirt, mold, or other impurities or health concerns.**

Note: State and federal law require public water systems, including any schools and child care facilities that are nontransient noncommunity water systems as defined in 40 CFR 141.2, to regularly test water samples for lead. Pursuant to the standards established in 40 CFR 141.80 and 22 CCR 64678, the district may need to take action whenever notified by the public water system, or by its own testing, that lead concentrations exceed .015 milligrams per liter. Health and Safety Code 116277, as added by AB 746 (Ch. 746, Statutes of 2017), requires a community water system serving a school constructed before January 1, 2010 to test for lead in the potable water system of the school. If the school's lead level exceeds 15 parts per billion (equivalent to .015 milligrams per liter), the district must notify parents/guardians, take immediate steps to shut down all fountains and faucets where the excess lead levels may exist, and provide a potable source of drinking water to students. See the California Water Boards' "Frequently Asked Questions about Lead Testing of Drinking Water in California Schools: Updated for Assembly Bill 746/Health and Safety Code 116277." Schools that have their own water supply, such as a well, are required to test for lead, copper, and other contaminants in tap water pursuant to other state and federal law and regulations, including 22 CCR 64670-64679 and 40 CFR 141.80-141.91, and may revise the following paragraph to reflect applicable requirements.

Whenever testing of drinking water finds concentrations of lead that exceed federal and state standards, in 40 CFR 141.80 and 22 CCR 64678, water outlets shall be flushed thoroughly each day before use or made inoperable until a plan for remediation can be implemented **the Superintendent or designee shall notify parents/guardians and take immediate steps to make inoperable any fountains or faucets where excess lead levels may exist. (Health and Safety Code 116277)**

**Lead Exposure**

Note: The following **optional** section reflects recommendations of the EPA. For further information, the district may contact its city or county lead poisoning prevention program.

In addition to keeping school facilities as dust-free and clean as possible, the following steps shall be taken to minimize potential exposure to lead in school facilities:

## ENVIRONMENTAL SAFETY (continued)

1. Lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall not be used in the construction of any new school facility or the modernization or renovation of any existing school facility. (Education Code 32244)
2. Lead exposure hazards shall be evaluated before any renovation or remodeling is begun, and children shall not be allowed in or near buildings in which these activities may create lead dust. Contractors and workers shall comply with state and federal standards related to the handling and disposal of lead debris and the clean-up and containment of dust within the construction area.

Note: 17 CCR 35001-36100 contain state standards for lead abatement services. In addition, 40 CFR 745.61-745.339 extend federal standards for renovations involving lead-based paint to child-occupied facilities, which include preschools and elementary schools.

3. Lead-based painted surfaces that are in good condition shall be kept intact. If lead-based paint is peeling, flaking, or chalking, contractors or workers shall follow state and federal standards for safe work practices to minimize contamination when removing the paint.
4. Soil with **high low** lead content may be covered with grass, other plantings, concrete, or asphalt. **For soil with high lead content, removal and abatement are required.**
5. Drinking water shall be regularly tested for lead and remediated as provided in the section "Drinking Water" above.

Any action to abate existing lead hazards, excluding containment or cleaning, shall be taken only by contractors, inspectors, and workers certified by the California Department of Public Health in accordance with 17 CCR 35001-35099. (Education Code 32243)

**The Superintendent or designee shall notify parent/guardians, teachers, and staff members if significant risk factors for lead exposure are found. (Education Code 32243)**

## Mercury Exposure

Note: The following **optional** section may be revised to reflect district practice. Mercury may exist in schools in thermometers, barometers, switches, thermostats, flowmeters, lamps, and other sources. Although devices containing mercury are considered safe as long as the mercury is sealed, if a device is broken and mercury spills, the health of students and staff may be endangered.

The Superintendent or designee shall identify any products containing mercury that are present in district facilities and, to the extent possible, shall replace them with mercury-free alternatives.

MS

**ENVIRONMENTAL SAFETY** (continued)

Note: The EPA's web site contains detailed procedures for cleaning up a small mercury spill, actions that should never be taken in the event of a spill, and items that should be assembled in a mercury spill kit.

Staff shall receive information about proper procedures to follow in the event of a mercury spill. Clean-up instructions, a clearly labeled kit with necessary clean-up supplies, and a list of local resources shall be readily accessible.

In the event of a spill, staff shall evacuate all students from the immediate area of the spill, ensure that any clothing or other items with mercury on them remain in the room, open windows to the outside, and close doors to other parts of the school. Staff who are trained in proper clean-up procedures may carefully clean a small spill. As needed for larger or difficult-to-clean spills, the Superintendent or designee shall use an experienced professional referred by the local health department or environmental agency.

Any products containing mercury shall be properly disposed at an appropriate hazardous waste collection facility.

**Asbestos Management**

Note: **The following section is optional.** Education Code 49410-49410.7 and the federal Asbestos Hazard Emergency Response Act (AHERA) (15 USC 2641-2656; 40 CFR 763.80-763.99) contain requirements for asbestos inspection and abatement which are applicable to school districts. For further information, consult the local air quality management district or air pollution control district.

40 CFR 763.84 requires the district to designate a person who will be responsible for ensuring that federal and state requirements are properly implemented. According to the EPA, this designated person is not required to be a licensed asbestos consultant, but the district must verify that he/she has received proper training. The specific knowledge that the designated person must have is described in the EPA's publication How to Manage Asbestos in School Buildings: AHERA Designated Person's Self-Study Guide. The following section may be revised to reflect the position designated to fulfill this responsibility, who may be the same person designated above to coordinate all of the district's environmental safety programs.

The Superintendent shall designate an employee who shall ensure that the district's responsibilities related to asbestos inspection and abatement are implemented in accordance with federal and state regulations. This employee shall receive adequate training to perform these duties, including, as necessary, training on the health effects of asbestos; detection, identification, and assessment of asbestos-containing materials; options for controlling asbestos-containing building materials; **asbestos management programs**; and relevant federal and state regulations. (40 CFR 763.84)

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

The designated employee shall ensure that the district complies with the following requirements:

**ENVIRONMENTAL SAFETY (continued)**

1. School facilities shall be inspected for asbestos-containing materials as necessary in accordance with the following:
  - a. Any school building that is leased, acquired, or otherwise used by the district shall be inspected for asbestos-containing materials prior to its use as a school building, unless exempted by federal regulations. (40 CFR 763.85, 763.99)
  - b. At least once every six months, the district shall conduct a periodic surveillance consisting of a visual inspection of each school building that contains or is assumed to contain asbestos-containing building materials. (40 CFR 763.92)
  - c. At least once every three years, the district shall conduct a re-inspection of all known or assumed asbestos-containing building materials in each school building. (40 CFR 763.85)
2. Based on the results of the inspection, an appropriate response which is sufficient to protect human health and the environment shall be determined from among the options specified in 40 CFR 763.90. The district may select the least burdensome response, taking into consideration local circumstances, including occupancy and use patterns within the school building and economic concerns such as short-term and long-term costs. (40 CFR 763.90)
3. An asbestos management plan for each school site shall be maintained and regularly updated to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, re-inspection, and response action activities. (15 USC 2643; 40 CFR 763.93)

The asbestos management plan shall be available for inspection in district and school offices during normal business hours. Parent/guardian, teacher, and employee organizations shall be annually informed of the availability of these plans. (40 CFR 763.84, **763.93**)

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*  
*(cf. 5145.6 - Parental Notifications)*

4. Staff, students, and parents/guardians shall be informed at least once each school year about any inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities, that are planned or in progress. (40 CFR 763.84)
5. Inspections, re-inspections, periodic surveillance, and response actions, including operations and maintenance, shall be conducted in compliance with state and federal

**ENVIRONMENTAL SAFETY** (continued)

regulations for the protection and safety of workers and all other individuals. (Education Code 49410.5; 40 CFR 763.84)

Asbestos inspection and abatement work, **preparation of a management plan**, and any maintenance activities that may disturb asbestos-containing building materials, except for emergency repairs or small-scale, short-duration maintenance activities, shall be completed by state-certified asbestos inspectors or contractors. (15 USC 2646; 40 CFR 763.84, 763.85, 763.91)

6. All custodial and maintenance employees shall be properly trained in accordance with applicable federal and/or state regulations. (40 CFR 763.84)

All district maintenance and custodial staff who may work in a building that contains asbestos-containing materials, regardless of whether they are required to work with such materials, shall receive at least two hours of related asbestos awareness training. New maintenance and custodial staff shall receive such training within 60 days after beginning employment. Any maintenance or custodial staff who conduct activities that will disturb asbestos-containing materials shall receive 14 hours of additional training. The trainings shall address the topics specified in 40 CFR 763.92. (15 USC 2655; 40 CFR 763.84, 763.92)

7. Short-term workers, such as telephone repair workers, utility workers, or exterminators, who may come in contact with asbestos in a school shall be provided information regarding the locations of known or suspected asbestos-containing building materials. (40 CFR 763.84)
8. Warning labels shall be posted immediately adjacent to any known or suspected asbestos-containing building material located in routine maintenance areas in accordance with 40 CFR 763.95. (40 CFR 763.84)

The district shall maintain, in both the district and school offices and for a period of three years, records pertaining to each preventive measure and response action taken; staff training; periodic surveillances conducted; cleaning, operations, and maintenance activities; and any fiber release episode. (40 CFR 763.94)

(7/08 8/13) 5/18

MS

# CSBA Sample Board Policy

## Business and Noninstructional Operations

BP 3514.1(a)

### HAZARDOUS SUBSTANCES

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

The Governing Board desires to provide a safe school environment that protects students and employees from exposure to **any** potentially hazardous substances ~~that may be~~ used in the district's educational program and in the maintenance and operation of district facilities and equipment.

*(cf. 3514 - Environmental Safety)*

*(cf. 4119.42/4219.42/~~4219.42~~**4319.42** - Exposure Control Plan for Bloodborne Pathogens)*

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

*(cf. 5141.22 - Infectious Diseases)*

*(cf. 5142 - Safety)*

*(cf. ~~6161.3 - Toxic Art Supplies~~)*

Insofar as reasonably possible, the Superintendent or designee shall minimize the quantities of hazardous substances stored and used on school property. When hazardous substances must be used, the Superintendent or designee shall give preference to materials that cause the least risk to people and the environment.

*(cf. 3510 - Green School Operations)*

*(cf. 3514.2 - Integrated Pest Management)*

Note: Pursuant to Education Code 49401.5, districts may request consultation services from the Department of Industrial Relations, Division of Occupational Safety and Health, to ensure that hazardous materials are being used and stored safely in schools. See the accompanying administrative regulation for legal requirements related to storage and disposal of hazardous substances.

The Superintendent or designee shall ensure that all potentially hazardous substances on district properties are inventoried, used, stored, and regularly disposed of in a safe and legal manner.

Note: ~~8 CCR 5194 requires that employers develop and implement a written hazard communication program to inform and train employees who may be exposed to hazardous substances. See the accompanying administrative regulation for required program components. The following paragraph also requires communication with students and others as necessary and may be revised to reflect district practice.~~

The Superintendent or designee shall develop, implement, and maintain a written hazard communication program in accordance with 8 CCR 5194 and shall ensure that employees, students, and others as necessary are fully informed about the properties and potential hazards of substances to which they may be exposed.

*(cf. 1240 - Volunteer Assistance)*

**HAZARDOUS SUBSTANCES (continued)**

Note: The following paragraph is for use by districts that offer science laboratory classes, at any grade level, that expose employees to hazardous substances. Pursuant to 8 CCR 5191, any employer that maintains a workplace where there is laboratory use of hazardous chemicals (i.e., where relatively small quantities of hazardous chemicals are used but not produced) is required to have a written chemical hygiene plan to protect employees. See the accompanying administrative regulation for required program components.

In addition, Education Code 49340-49341 encourage educational efforts to increase awareness of students and staff dealing with hazardous materials in school laboratories in order to minimize injuries, loss of property, and classroom disruptions. For further information about safe handling of potentially hazardous substances in science laboratory classes, see the California Department of Education's Science Safety Handbook for California Public Schools.

The Superintendent or designee shall develop specific measures to ensure the safety of students and staff in school laboratories where hazardous chemicals are used. Such measures shall include the development and implementation of a chemical hygiene plan in accordance with 8 CCR 5191 and instruction to students about proper handling of hazardous substances.

*(cf. 6142.93 - Science Instruction)*

**Note: The following paragraph may be revised to reflect the grade levels offered by the district. Education Code 32064 prohibits the use of arts and crafts materials containing toxic substances in grades K-6, and requires that any materials with toxic substances used in grades 7-12 meet specified labeling standards that inform users of the long-term health risks and provide instructions for safe use. For additional information and a list of materials prohibited in grades K-6, see the California Office of Environmental Health Hazard Assessment publication Art and Craft Materials in Schools: Guidelines for Purchasing and Safe Use.**

**The Superintendent or designee shall not order or purchase for use in grades K-6 any arts and crafts materials containing a substance determined by the California Office of Environmental Health Hazard Assessment to be toxic. The Superintendent or designee shall not purchase any such toxic material for use in grades ~~7-12~~ unless it includes a warning label as specified in Education Code 32065 that identifies any toxic ingredients, warns of potential adverse health effects, and describes procedures for safe use and storage. (Education Code 32064)**

8

*Legal Reference: (see next page)*

AB

## HAZARDOUS SUBSTANCES (continued)

### Legal Reference:

#### EDUCATION CODE

**32060-32066 Toxic art supplies in schools**

49340-49341 Hazardous substances education

49401.5 Legislative intent; consultation services

49411 Chemical listing; compounds used in school programs; determination of shelf life; disposal

#### FOOD AND AGRICULTURAL CODE

12981 Regulations re pesticides and worker safety

#### HEALTH AND SAFETY CODE

25163 Transportation of hazardous wastes; registration; exemptions; inspection

25500-25520 Hazardous materials release response plans; inventory

**108100-108515 California Hazardous Substances Act**

#### LABOR CODE

6360-6363 Hazardous Substances Information and Training Act

6380-6386 List of hazardous substances

#### CODE OF REGULATIONS, TITLE 8

339 List of hazardous substances

3203 Illness and injury prevention program

3204 Records of employee exposure to toxic or harmful substances

5139-5230 Control of hazardous substances, especially

5154.1-5154.2 Ventilation

5161 Definitions

5162 Emergency eyewash and shower equipment

5163 Control of spills

5164 Storage of hazardous substances

5191 Occupational exposure to hazardous chemicals in laboratories; chemical hygiene plan

5194 Hazard communication

#### CODE OF REGULATIONS, TITLE 22

67450.40-67450.49 School hazardous waste collection, consolidation, and accumulation facilities

### Management Resources:

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Science Safety Handbook for California Public Schools, 2012

#### **CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT PUBLICATIONS**

**Art and Craft Materials in Schools: Guidelines for Purchasing and Safe Use, September 17, 2016**

#### WEB SITES

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

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

**California Office of Environmental Health Hazard Assessment: <http://www.oehha.ca.gov>**

Department of Industrial Relations, Cal/OSHA: <http://www.dir.ca.gov/dosh>

(2/97 4/13) 5/18

### Policy Reference UPDATE Service

Copyright 2018 by California School Boards Association, West Sacramento, California 95691

All rights reserved.

MS



# CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3516(a)

## EMERGENCIES AND DISASTER PREPAREDNESS PLAN

Note: 5 CCR 560 mandates that the **Governing** Board adopt policy for use by district schools in formulating individual civil defense and disaster preparedness plans.

The Governing Board recognizes that all district staff and students must be prepared to respond quickly and responsibly to emergencies, disasters, and threats of disaster. **The district shall take all reasonable steps to prevent and/or mitigate the impact of a disaster on district students, staff, and schools.**

Note: Education Code 32282 requires that emergency disaster procedures, including, but not limited to, earthquake emergency procedures, be incorporated into the comprehensive school safety plan. ~~including earthquake emergency procedures (see AR 3516.3 - Earthquake Emergency Procedure System and See BP/AR 0450 - Comprehensive Safety Plan). See BP/AR 0450 - Comprehensive Safety Plan and AR 3516.3 - Earthquake Emergency Procedure System.~~ For districts with an average daily attendance (ADA) over 2,500, the comprehensive safety plan is a school-level plan developed by the school site council or school safety planning committee. Districts with an ADA of 2,500 or less may instead choose to develop a districtwide plan. The following paragraph may be revised to reflect district practice and the individuals or groups responsible for developing the disaster preparedness plan.

The Superintendent or designee shall develop and maintain a disaster preparedness plan which details provisions for handling emergencies and disasters **contains routine and emergency disaster procedures, including, but not limited to, earthquake emergency procedures, and adaptations for individuals with disabilities in accordance with the Americans with Disabilities Act.** ~~and which~~ Such procedures shall be included in incorporated into the district's comprehensive school safety plan. (Education Code 32282)

*(cf. 0400 - Comprehensive Plans)*

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3516.3 - Earthquake Emergency Procedure System)*

The Superintendent or designee shall also develop and maintain emergency plans for each school site.

Note: The following optional paragraph reflects a recommendation from the U.S. Department of Education's Practical Information on Crisis Planning Guide for Developing High-Quality School Emergency Operations Plans, which is available on its web site, and may be revised to reflect district practice. ~~to provide guidance for schools in developing crisis plans. This document recommends that districts work with city and county emergency planners to help integrate resources and that school staff participate in local emergency planning so that the district perspective is addressed by the local government. In addition, as part of the Pandemic Influenza Planning Checklist, the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention recommend that local public health administrators be involved in the district's planning process.~~

NB

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

In developing the ~~district and school emergency disaster preparedness~~ plans, the Superintendent or designee shall ~~collaborate with~~ **involve district staff at all levels, including administrators, district police or security officers, facilities managers, transportation managers, food services personnel, school psychologists, counselors, school nurses, teachers, classified employees, and public information officers. As appropriate, he/she shall also collaborate with city and county emergency responders, including local public health administrators, law enforcement, fire safety officials, emergency medical services, health and mental health professionals, parents/guardians, and students.**

*(cf. 0420 - School Plans/Site Councils)*

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 3513.3 - District Police/Security Department)*

Note: Government Code 8607 and 19 CCR 2400-2450 created the Standardized Emergency Management System (SEMS). While SEMS must still be used to coordinate emergency operations, by 2006, pursuant to an Executive Order signed by the Governor, each local agency must integrate the National Incident Management System (NIMS) with the SEMS. Districts should work with their local emergency management agency to assist with this integration. In order to be eligible for reimbursement of response-related personnel costs due to a Governor-proclaimed disaster, each district must follow the **Standardized Emergency Management System (SEMS) guidelines (Government Code 8607; 19 CCR 2400-2450)** to coordinate multiple-jurisdiction or multiple-agency operations. The guidelines urge districts to formally adopt policy language giving clear direction to staff to meet SEMS requirements. Districts may contact the California Governor's Office of Emergency Services (**Cal OES**) for more information.

**In addition, public agencies must comply with the National Incident Management System (NIMS). See the Federal Emergency Management Agency's publication National Incident Management System. In accordance with the State of California Emergency Plan, Cal OES is the principal coordinator for NIMS implementation statewide and will annually communicate, monitor, and implement NIMS requirements in cooperation with state and local agencies.**

~~The Superintendent or designee~~ **The plan shall use comply with state-approved Standardized Emergency Management System (SEMS) guidelines established for multiple-jurisdiction or multiple-agency operations and with the National Incident Management System.** and the National Incident Command System when updating district and site-level emergency and disaster preparedness plans

**The Superintendent or designee shall provide training to employees regarding their responsibilities, including periodic drills and exercises to test and refine staff's responsiveness in the event of an emergency.**

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

Note: Pursuant to Education Code 32282, requires that emergency procedures be incorporated into the comprehensive school safety plan, including a procedure to allow the use of school facilities for mass care and welfare shelters during disasters or other emergencies **must be incorporated into the comprehensive school safety plan**. See AR 0450 - Comprehensive Safety Plan.

The Board shall grant the use of school buildings, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The Board shall cooperate with such agencies in furnishing and maintaining whatever services **they the district may** deem necessary to meet the community's needs. (Education Code 32282)

*(cf. 1330 - Use of School Facilities)*

Note: Pursuant to Government Code 3100, all public employees are declared to be disaster service workers. As such, in the event that a local or state emergency has been proclaimed or a federal disaster declaration has been made, district staff may be directed to perform jobs other than their usual duties for periods of time exceeding their normal working hours. In those cases, their workers' compensation insurance coverage becomes the responsibility of Cal OES, but their overtime is paid by the district. For further information, see the Cal OES publication School Emergency Response: Using SEMS at Districts and Sites.

Government Code 3100-3109 require all disaster service workers to take the oath or affirmation of allegiance to the U.S. Constitution contained in the California Constitution, Article 20, Section 3; see AR/E 4112.3/4212.3/4312.3 - Oath or Affirmation. Although Board members are required to take the same oath upon entering office (see BB 9224 - Oath or Affirmation), they are not considered disaster service workers according to the definition in Government Code 3101.

**School District** employees are considered disaster service workers and are subject to disaster service activities assigned to them. (Government Code 3100)

*(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)*

*(cf. 4119.3/4219.3/4319.3 - Duties of Personnel)*

*Legal Reference: (see next page)*

MB

## EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)

### Legal Reference:

#### EDUCATION CODE

- 32001 Fire alarms and drills
- 32040 Duty to equip school with first aid kit
- 32280-32289 School safety plans
- 32290 Safety devices
- 39834 Operating overloaded bus
- 46390-46392 Emergency average daily attendance in case of disaster
- 49505 Natural disaster; meals for homeless students; reimbursement

#### CIVIL CODE

**1714.5 Release from liability for disaster service workers and shelters**

#### GOVERNMENT CODE

- 3100-3109 Public employees as disaster service workers; **oath or affirmation**
- 8607 Standardized emergency management system

#### CALIFORNIA CONSTITUTION

**Article 20, Section 3 Oath or affirmation**

#### CODE OF REGULATIONS, TITLE 5

- 550 Fire drills
- 560 Civil defense and disaster preparedness plans

#### CODE OF REGULATIONS, TITLE 19

- 2400-2450 Standardized emergency management system

#### UNITED STATES CODE, TITLE 42

- 12101-12213 Americans with Disabilities Act

### Management Resources:

#### CSBA PUBLICATIONS

- Avian Influenza, Governance and Policy Services Fact Sheet, April 2006
- 911! A Manual for Schools and the Media During a Campus Crisis, 2004

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Crisis Response Box, 2000

#### CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES PUBLICATIONS

Active Shooter Awareness Guidance, February 2018

State of California Emergency Plan, 2017

School Emergency Response: Using SEMS at Districts and Sites, June 1998

#### CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS

Pandemic Influenza Planning Checklist, 2006

#### CONTRA COSTA COUNTY OFFICE OF EDUCATION

Pandemic Flu School Action Kit, June 2006

#### FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLICATIONS

National Incident Management System, 3rd ed., October 2017

#### U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Guide for Developing High-Quality School Emergency Operations Plans, 2013

Practical Information on Crisis Planning: A Guide for Schools and Communities, May 2003

Management Resources continued: (see next page)

MS

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

*Management Resources: (continued)*

WEB SITES

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

American Red Cross: <http://www.redcross.org>

**California Attorney General's Office: <https://oag.ca.gov>**

California Department of Education, Crisis Preparedness: <http://www.cde.ca.gov/ls/ss/cp>

California Governor's Office of Emergency Services: <http://www.caloes.ca.gov>

California Seismic Safety Commission: <http://www.seismic.ca.gov>

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

~~Contra Costa County Office of Education, Pandemic influenza resources:~~

~~[http://www.cccoe.k12.ca.us/about/flu/resources\\_flu\\_action\\_kit](http://www.cccoe.k12.ca.us/about/flu/resources_flu_action_kit)~~

Federal Emergency Management Agency: <http://www.fema.gov>

U.S. Department of Education, Emergency Planning:

<http://www2.ed.gov/admins/lead/safety/emergencyplancrisisplanning.html>

U.S. Department of Homeland Security: <http://www.dhs.gov>

(11/04 7/06) 5/18

MB

# CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3516(a)

## EMERGENCIES AND DISASTER PREPAREDNESS PLAN

### Components of the Plan

Note: The following administrative regulation should be modified to reflect district practice.

The Superintendent or designee shall ensure that district and/or school site plans address, at a minimum, the following types of emergencies and disasters:

1. Fire on or off school grounds which endangers students and staff

*(cf. 3516.1 - Fire Drills and Fires)*

2. Earthquake, **flood**, or other natural disasters

*(cf. 3516.3 - Earthquake Emergency Procedure System)*

3. Environmental hazards, **such as leakages or spills of hazardous materials**

*(cf. 3514 - Environmental Safety)*

*(cf. 3514.2 - Integrated Pest Management)*

4. Attack or disturbance, or threat of attack or disturbance, by an individual or group

~~*(cf. 3515 - Campus Security)*~~

~~*(cf. 3515.2 - Disruptions)*~~

~~*(cf. 3515.7 - Firearms on School Grounds)*~~

~~*(cf. 5131.4 - Student Disturbances)*~~

5. Bomb threat or actual detonation

*(cf. 3516.2 - Bomb Threats)*

6. Biological, radiological, chemical, and other activities, or heightened warning of such activities

Note: ~~As part of its Pandemic Influenza Planning Checklist, the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention recommend that a district's emergency and disaster preparedness plan include procedures for dealing with medical emergencies, such as a pandemic flu outbreak.~~

7. Medical emergencies and quarantines, such as a pandemic influenza outbreak

*(cf. 5141.22 - Infectious Diseases)*

105

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN** (continued)

The Superintendent or designee shall ensure that the district's procedures include strategies and actions for prevention/mitigation, preparedness, response, and recovery, including, but not limited to, the following:

1. Regular inspection of school facilities and equipment, **and** identification of risks, **and implementation of strategies and measures to increase the safety and security of school facilities**

*(cf. 3513.3 - District Police/Security Department)*

*(cf. 3515 - Campus Security)*

*(cf. 3517 - Facilities Inspection)*

*(cf. 3530 - Risk Management/Insurance)*

2. Instruction ~~and practice~~ for **district staff and** students ~~and employees~~ regarding emergency plans, including:
  - a. Training of staff in first aid and cardiopulmonary resuscitation
  - b. Regular practice of emergency procedures by students and staff

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

3. Specific determination of roles and responsibilities of staff during a disaster or other emergency, including determination of:
  - a. The appropriate chain of command at the district and, if communication between the district and site is not possible, at each site
  - b. Individuals responsible for specific duties
  - c. Designation of the principal for the overall control and supervision of activities at each school during **the an** emergency, including authorization to use his/her discretion in situations which do not permit execution of prearranged plans
  - d. Identification of at least one person at each site who holds a valid certificate in first aid and cardiopulmonary resuscitation
  - e. Assignment of responsibility for identification of injured persons and administration of first aid
4. Personal safety and security, including:

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

- a. Identification of areas of responsibility for **the** supervision of students
- b. Procedures for **the** evacuation of students and staff, including posting of evacuation routes
- c. Procedures for **the** release of students, including a procedure to release students when reference to the emergency card is not feasible

*(cf. 5141 - Health Care and Emergencies)*

*(cf. 5142 - Safety)*

Note: Although loading a school bus in excess of capacity is generally prohibited, Education Code 39834 allows the **Governing** Board to adopt a policy or rule permitting such overloading for the evacuation of students in case of an emergency, as provided in the following paragraph.

- d. Identification of transportation needs, including a plan which allows bus seating capacity limits to be exceeded when a disaster or hazard requires students to be moved immediately to ensure their safety

*(cf. 3543 - Transportation Safety and Emergencies)*

- e. Provision of a first aid kit to each classroom
- f. Arrangements for students and staff with special needs

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 6159 - Individualized Education Program)*

***(cf. 6164.6 - Identification and Education Under Section 504)***

- g. Upon notification that a pandemic situation exists, adjustment of attendance policies for students and sick leave policies for staff with known or suspected pandemic influenza or other infectious disease

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

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*(cf. 5113 - Absences and Excuses)*

*(cf. 6183 - Home and Hospital Instruction)*

5. Closure of schools, including an analysis of:

- a. The impact on student learning and methods to ensure continuity of instruction
- b. How to provide for continuity of operations for essential central office functions, such as payroll and ongoing communication with students and parents/guardians

AB



**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

*(cf. 3516.5 - Emergency Schedules)*

6. Communication among staff, parents/guardians, the Governing Board, other governmental agencies, and the media during an emergency, including:

a. Identification of spokesperson(s)

*(cf. 1112 - Media Relations)*

b. Development and testing of communication platforms, such as hotlines, telephone trees, and web sites, **social media, and electronic notifications**

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

c. Development of methods to ensure that communications are, to the extent practicable, in a language and format that is easy for parents/guardians to understand

d. Distribution of information about district and school site emergency procedures to staff, students, and parents/guardians

7. Cooperation with other state and local agencies, including:

a. Development of guidelines for law enforcement involvement and intervention

b. Collaboration with the local health department, including development of a tracking system to alert the local health department ~~to~~ **of** a substantial increase of student or staff absenteeism as indicative of a potential outbreak of an infectious disease

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

8. Steps to be taken after the disaster or emergency, including:

a. Inspection of school facilities

b. Provision of mental health services for students and staff, as needed

*(cf. 6164.2 - Guidance/Counseling Services)*

**Note: The following optional paragraph reflects a recommendation of the California Office of the Attorney General and the California Department of Education (CDE) in their joint publication Crisis Response Box, which is available on the CDE's web site.**

MS

**EMERGENCIES AND DISASTER PREPAREDNESS PLAN (continued)**

**The Superintendent or designee shall assemble key information that would be needed in an emergency. Such information may include, but is not limited to, a list of individuals and organizations who should be contacted for assistance in an emergency, current layouts and blueprints of school buildings, aerial photos of the campus, maps of evacuation routes and alternate routes, a roster of employees with their work locations, student photographs and their emergency contact information, a clearly labeled set of keys, location of first aid supplies, and procedures and locations for turning off fire alarms, sprinklers, utilities, and other systems. Such information shall be stored in a box in a secure, easily accessible location, with a duplicate kept at another location in case the primary location is inaccessible.**

(11/04 7/06) 5/18

# CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3541(a)

## TRANSPORTATION ROUTES AND SERVICES

Note: The following administrative regulation is for use by districts that choose to provide transportation services for students to and from school, either through their own transportation system, contracting out, or other methods, as authorized by Education Code 39800.

### Routes and Bus Stops

The Superintendent or designee shall design transportation routes and stops **within district boundaries that** to promote the **student safety**, ~~of students and~~ maximum efficiency in the use of buses, **and decreased traffic in and around the schools.**

*(cf. 3510 - Green School Operations)*

*(cf. 3514 - Environmental Safety)*

*(cf. 3540 - Transportation)*

Note: 5 CCR 15241 establishes minimum transportation distances for determining district reimbursement for transportation expenses. These distances are measured from the point the student boards the bus at the regular stop to the school by the shortest traveled road.

The numbers listed below reflect reimbursement minimums pursuant to 5 CCR 15241. Districts should revise the following **section list** to reflect appropriate grades and applicable distances.

Students shall be eligible for transportation service to and from school if the distance between their school-established bus stop and the school is beyond the minimum listed below:

1. For elementary school students:

Grades K-3: three-fourths mile

Grades 4-8: one mile

- ~~2. For students attending a three-year junior high school:~~

~~Grades 7-9: one mile~~

- ~~3. For students attending a four-year high school:~~

~~Grades 9-12: two miles~~

The Superintendent or designee may authorize transportation **within the walking distance** below **these limits** when safety problems or hazards exist.

*(cf. 5142.2 - Safe Routes to School)*

MB

**TRANSPORTATION ROUTES AND SERVICES** (continued)

Students who attend a school outside their attendance area may be eligible for transportation services in accordance with Board policy.

*(cf. 5116.1—Intradistrict Open Enrollment)*

*(cf. 5117—Interdistrict attendance)*

Note: The following optional paragraph should be modified to reflect district practice:

The Superintendent or designee shall communicate in writing to parents/guardians regarding bus routes, schedules, and stops. ~~and/or shall~~ He/she may also arrange for local media to publish such information.

*(cf. 1112 - Media Relations)*

**Transportation Services**

Note: Items #1-10 below should be revised to reflect services provided or contracted for by the district.

With the Governing Board's authorization, transportation services may be provided or arranged by the district for:

1. Students traveling to and from school during the regular school day (Education Code 39800)
2. Field trips and excursions (Education Code 35330)

*(cf. 3541.1 - Transportation for School-Related Trips)*

3. School activities, expositions or fairs, or other activities determined to be for the benefit of students (Education Code 39860)

Note: Education Code 39837.5, as amended by AB 1453 (Ch. 173, Statutes of 2017), authorizes districts to provide for the transportation of adult volunteers to and from educational activities.

4. District employees, ~~and~~ parents/guardians, **and adult volunteers** traveling to and from educational activities authorized by the district (Education Code 39837.5)
5. Preschool or nursery school students (Education Code 39800)

*(cf. 5148.3 - Preschool/Early Childhood Education)*

6. Students traveling to full-time occupational classes provided by a ~~R~~regional ~~O~~ccupational ~~c~~enter ~~o~~r ~~P~~rogram ~~o~~r ~~C~~enter (Education Code 39807.5, 41850)

MB

**TRANSPORTATION ROUTES AND SERVICES (continued)**

**(cf. 6178.2 - Regional Occupation Center/Program)**

7. Students traveling to and from their places of employment during the summer in connection with a summer employment program for youth (Education Code 39837)
8. Matriculated or enrolled adults traveling to and from school, or adults for educational purposes other than to and from school (Education Code 39801.5)

**(cf. 6200 - Adult Education)**

9. Private school students, **upon the same terms**, in the same manner, and on the same routes provided for district students (Education Code 39808)
10. Nonschool purposes as allowed by law, such as:
  - a. Community recreation (Education Code 39835)
  - b. Public transportation (Education Code 39841)

Note: Item #10c is for use only by districts that normally transport to and from school, students residing on property belonging to a federal, state or local agency; have entered into a contract with a federal, state, or local agency pursuant to Education Code 39840 to grant the use of a school bus to transport employees of that agency to and from their places of employment, provided that the district already provides transportation to and from school for students residing on the government agency's property, public transportation is not reasonably available to the agency's employees, and the transportation of agency employees does not interfere with the district's use of school buses for school transportation purposes.

- ~~c. Transportation of government employees to and from their places of employment (Education Code 39840)~~

Students who attend a school outside of their **school** attendance area or district boundaries may be eligible for transportation services in accordance with ~~Board~~ **district** policy.

**(cf. 5116.1 - Intradistrict Open Enrollment)**

**(cf. 5117 - Interdistrict Attendance)**

The district shall provide home-to-school transportation and additional transportation services as needed for students with disabilities as specified in their individualized education programs or **Section 504 plan**. (Education Code 41850; 20 USC 1400-1482; 34 CFR 104.4, **300.17, 300.34**)

**(cf. 3541.2 - Transportation for Students with Disabilities)**

**(cf. 6159 - Individualized Education Program)**

**(cf. 6164.6 - Identification and Education under Section 504)**

MB

**TRANSPORTATION ROUTES AND SERVICES (continued)**

Note: The McKinney-Vento Homeless Assistance Act (42 USC 11432) mandates that the district adopt policies and practices to ensure that transportation is provided to homeless **children students** who have moved, but have decided to continue to attend their school of origin. See BP/AR 6173 - Education for Homeless Children for language implementing this mandate.

The Superintendent or designee shall provide transportation to homeless **children students** in accordance with law, Board policy, and administrative regulation. **When the student resides outside of district boundaries, the Superintendent or designee shall consult with the superintendent of the district of residence to apportion the responsibility and costs of transportation. (42 USC 11432)**

*(cf. 6173 - Education for Homeless Children)*

**The Superintendent or designee shall collaborate with the local child welfare agency to determine the provision, arrangement, and funding of transportation to enable foster youth to attend their school of origin when it is in the student's best interest to do so. (20 USC 6312)**

*(cf. 6173.1 - Education for Foster Youth)*

*Legal Reference: (see next page)*

MS

**TRANSPORTATION ROUTES AND SERVICES (continued)***Legal Reference:*EDUCATION CODE10900.5 *Use of school buses for community recreation*35330 *Excursions and field trips*35350 *Authority to transport pupils*39800-39809.5 *Transportation, general provisions, especially:*39800 *Powers of governing board to provide transportation to and from school*39801.5 *Transportation for adults*39808 *Transportation for private school students*39830-~~39842~~ **39843** *School buses, especially:*39835 *Use of school buses for community recreation*39837 *Transportation to summer employment program*39837.5 *Transportation of employees, ~~and~~ parents/guardians, and adult volunteers to school activities*39860 *Transportation to school activities*41850-41856 *Allowances for transportation*41860-41863 *Supplementary allowances for transportation***48853.5** *Educational placement of students residing in licensed children's institutions*CODE OF REGULATIONS, TITLE 515240-15244 *Allowances for student transportation, definitions*UNITED STATES CODE, TITLE 201400-1482 *Individuals with Disabilities Education Act***6312** *Transportation to maintain children in foster care in school of origin*UNITED STATES CODE, TITLE 4211432 *McKinney-Vento Homeless Assistance Act*CODE OF FEDERAL REGULATIONS, TITLE 34104.4 *Equal opportunity under the Rehabilitation Act of 1973, Section 504***300.17** *Free appropriate public education***300.34** *Special education related services**Management Resources:*CSBA PUBLICATIONS***Special Education Pupil Transportation: Considerations in the Era of LCFE, Governance Brief, April 2014***WEB SITES

California Department of Education, Office of School Transportation:

~~<http://www.cde.ca.gov/bus/index.html>~~ <https://www.cde.ca.gov/ls/tn/or/assignment.asp>Pupil Transportation Safety Institute: <http://www.ptsi.org>

(10/97 3/04) 5/18

# CSBA Sample Board Policy

All Personnel

BP 4158(a)

4258

EMPLOYEE SECURITY

4358

Note: Pursuant to Government Code 3543.2, safety conditions in employment are a mandatory subject of collective bargaining. The following Board policy and accompanying administrative regulation are **optional** and may be revised to reflect district practice.

The Governing Board desires to provide a safe and orderly work environment for all employees. As part of the district's comprehensive safety plan, the Superintendent or designee shall develop strategies for protecting employees from potentially dangerous persons and situations and for providing **them with** necessary assistance and support when emergency situations occur.

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

*(cf. 5131.4 - Student Disturbances)*

Note: Code of Civil Procedure 527.8 allows **an employer the district** to seek a temporary restraining order and injunction on behalf of an employee against any other individual who has subjected the employee to unlawful violence or a credible threat of violence in the workplace. ~~Penal Code 601 makes it illegal for someone who has made such a threat to enter the threatened person's workplace within 30 days of the threat, seeking to locate that person without lawful purpose and in order to carry out the threat.~~ In *City of San Jose v. William Garbett*, a California Court of Appeal held that a court's issuance of a temporary restraining order and injunction against a person who had verbally threatened a city official was not a violation of that person's right to free speech and right of access to a public place.

In addition, Education Code 48905 provides that an employee who is injured or whose property is damaged by willful misconduct of a district student may request that the district pursue legal action against the student or his/her parent/guardian.

Any employee against whom violence or any threat of violence has been directed in the workplace shall notify the Superintendent or designee immediately. **As appropriate,** ~~the~~ Superintendent or designee shall initiate legal and security measures to protect the employee and others in the workplace.

Note: Education Code 48905 provides that an employee who is injured or whose property is damaged by willful misconduct of a district student **under the conditions described below** may request that the district pursue legal action against the student, or his/her parent/guardian **pursuant to Education Code 48904. Education Code 48904 provides that a parent/guardian will be liable for damages caused by his/her minor child's willful misconduct resulting in injury to a district student, employee, or volunteer or damage to district or employee property.** Also see BP 3515.4 - Recovery for Property Loss or Damage and AR 5125.2 - Withholding Grades, Diploma or Transcripts. **The district should consult legal counsel when considering whether to pursue legal action.**

~~In addition, the Superintendent or designee may initiate legal proceedings against any~~

MB



## EMPLOYEE SECURITY (continued)

individual to recover damages for injury caused by the willful misconduct of that individual to the person or property of an employee or another person on district premises. **The Superintendent or designee may pursue legal action on behalf of an employee against a student or his/her parent/guardian to recover damages to the employee or his/her property caused by the student's willful misconduct that occurred on district property, at a school or district activity, or in retaliation for lawful acts of the employee in the performance of his/her duties. (Education Code 48904, 48905)**

*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 3515.4 - Recovery for Property Loss or Damage)*  
*(cf. 4156.3/4256.3/4356.3 - Employee Property Reimbursement)*  
*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*

The Superintendent or designee shall ensure that employees **are trained receive training** in crisis prevention and intervention techniques in order to protect themselves and students. Staff development may include training in classroom management, effective communication techniques, **procedures for responding to an active shooter situation**, and crisis resolution.

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

The Superintendent or designee also shall **ensure that employees are informed inform teachers**, in accordance with law, of crimes and offenses committed by students who may pose a danger in the classroom. **(Education Code 48201, 49079; Welfare and Institutions Code 827)**

The Superintendent or designee may make available at appropriate locations, including, but not limited to, district and school offices, gyms, and classrooms, communication devices that would enable two-way communication with law enforcement and others when emergencies occur.

*(cf. 5141 - Health Care and Emergencies)*

## Use of Pepper Spray

Note: The following section is **optional** and may be revised to reflect district practice. Penal Code ~~42403.7~~ **22810** authorizes adults, with certain exceptions, to carry **an approved tear gas weapon such as pepper spray** for purposes of self-defense ~~an approved tear gas weapon in which the active ingredient is oleoresin capsicum, a peppery type substance which causes physical discomfort when discharged on a sensitive part of the body.~~ Penal Code 626.9 and 626.10, which prohibit the possession of weapons on school grounds, do not prohibit the possession of pepper spray on school grounds. Thus, the Governing Board may determine whether to allow **(Option 1)** or disallow with certain exceptions **(Option 2)** the possession of pepper spray

MS

## EMPLOYEE SECURITY (continued)

on school property or at school activities. See the accompanying administrative regulation for related procedures. Districts that prohibit employees from possessing pepper spray on school property or at school activities without exception should delete this section.

**OPTION 1:** Employees may possess pepper spray that meets the requirements of Penal Code 12403.7 on school property and at school activities for their own safety. Any employee who is negligent or careless in the possession or handling of pepper spray shall be subject to appropriate disciplinary measures.

**OPTION 2:** Employees may **shall** not carry or possess pepper spray on school property or at school activities, **except when authorized by**. On a case-by-case basis, however, the Superintendent or designee **for self-defense purposes**, may allow an employee to possess pepper spray that meets the requirements of Penal Code 12403.7 when justified by unusual dangerous circumstances. **When allowed, an employee may only possess pepper spray in accordance with administrative regulations and Penal Code 22810.** Any employee who is negligent or careless in the possession or handling of pepper spray shall be subject to appropriate disciplinary measures.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

## Reporting of Injurious Objects

Note: The following **optional** section specifies actions to be taken in the event an employee becomes aware ~~that~~ of any person **who** is in possession of an injurious object, and is consistent with the actions described in AR 5131.7 - Weapons and Dangerous Instruments related to student possession.

Pursuant to Education Code 49334, a school employee who notifies law enforcement regarding a student or adult who is in possession of an injurious object while on school grounds or under the **authority jurisdiction** of school personnel ~~is immune from civil liability or discipline by the district~~ **cannot be subject to any civil or administrative proceeding, including disciplinary action, for such action.**

The Board requires employees to take immediate action upon being made aware that any person is in possession of **a weapon or an** unauthorized injurious object on school grounds or at a school-related or school-sponsored activity. The employee shall use his/her own judgment as to the potential danger involved and, ~~based upon this analysis,~~ shall do one of the following:

1. Confiscate the object and deliver it to the principal immediately
2. Immediately notify the principal, who shall take appropriate action
3. Immediately call 911 and the principal

MS

**EMPLOYEE SECURITY (continued)**

***(cf. 3515.7 - Firearms on School Grounds)***

*(cf. 5131.7 - Weapons and Dangerous Instruments)*

*(cf. 5144 - Discipline)*

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

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

When informing the principal about the possession or seizure of a weapon or dangerous device, the employee shall report the name(s) of persons involved, witnesses, location, and the circumstances of any seizure.

*Legal Reference: (see next page)*

## EMPLOYEE SECURITY (continued)

### Legal Reference:

#### EDUCATION CODE

- 32210-32212 *Willful disturbance, public schools or meetings*
- 32225-32226 *Communication devices*
- 35208 *Liability insurance*
- 35213 *Reimbursement for loss, destruction or damage of school property*
- 44014 *Report of assault by pupil against school employee*
- 44807 *Duty concerning conduct of students*
- 48201 *Transfer of student records*
- 48900-48926 *Suspension or expulsion*
- 49079 *Notification to teacher; student who has engaged in acts re: grounds suspension or expulsion*
- 49330-49335 *Injurious objects*

#### CIVIL CODE

- 51.7 *Freedom from violence or intimidation*

#### CODE OF CIVIL PROCEDURE

- 527.8 *Workplace violence safety*

#### GOVERNMENT CODE

- 995-996.4 *Defense of public employees*
- 3543.2 *Scope of representation*

#### PENAL CODE

- 71 *Threatening public officers and employees and school officials*
- 240-246.3 *Assault and battery, including especially:*
- 241.3 *Assault against school bus drivers*
- 241.6 *Assault on school employee including board member*
- 243.3 *Battery against school bus drivers*
- 243.6 *Battery against school employee including board member*
- 245.5 *Assault with deadly weapon, against school employee including board member*
- 290 *Registration of sex offenders*
- 601 *Trespass by person making credible threat*
- 626-626.11 *School crimes*
- 646.9 *Stalking*
- ~~12403.7 *Weapons approved for self defense*~~
- 22810 *Purchase, possession, and use of tear gas***

#### WELFARE AND INSTITUTIONS CODE

- 827 *Juvenile court proceedings; reports; confidentiality*
- 828.1 *District police or security department, disclosure of juvenile records*

#### COURT DECISIONS

- City of San Jose v. William Garbett, (2010) 190 Cal. App. 4th 526*

### Management Resources:

#### WEB SITES

- CSBA: <http://www.csba.org>
- California Department of Education, Safe Schools and Violence Prevention Office:  
<http://www.cde.ca.gov/lss>

(7/01 3/11) 5/18

### Policy Reference UPDATE Service

Copyright 2018 by California School Boards Association, West Sacramento, California 95691  
All rights reserved.

105

# CSBA Sample Administrative Regulation

All Personnel

AR 4158(a)

4258

EMPLOYEE SECURITY

4358

An employee may use reasonable and necessary force for ~~his/her~~ self-defense or defense of another person, ~~or protection of property;~~ to quell a disturbance threatening physical injury to others ~~or damage to property;~~ or to obtain possession of weapons or other dangerous objects within the control of a student. (Education Code 44807, 49001)

*(cf. 5131.7 - Weapons and Dangerous Instruments)*

*(cf. 5144 - Discipline)*

Note: Pursuant to Education Code 44014, it is the duty of an employee and his/her immediate supervisor to report to law enforcement any attack, assault, or physical threat made against the employee by a student. Failure to report such an attack, assault, or physical threat ~~an employee or principal/supervisor's failure to report to law enforcement an assault, attack, or physical threat by a student~~ is an infraction punishable by a fine of not more than \$1,000. It is also an infraction for any person, including a Governing Board members or employee to prevent the filing of the report or to impose any sanction against an employee for so doing.

Although the law only requires employees to report attacks, assaults, or threats made by students, the following paragraph requires employees to report any attack, assault, or threat made against them by any other individual on school grounds.

**Employees** An employee shall promptly report to the principal or other immediate supervisor any attack, assault, or physical threat made against ~~them~~ him/her by a student, or by any other individual in relation to the employee's performance of his/her duties, and any action the employee took in response. When appropriate, the employee and the principal or other immediate supervisor shall report the incident to law enforcement.

~~Both the employee and the principal or other immediate supervisor shall promptly report such instances to the appropriate local law enforcement agency. (Education Code 44014)~~

~~In addition, employees shall promptly report to the principal or supervisor, and may report to law enforcement, any attack, assault, or threat made against them on school grounds by any other individual.~~

*(cf. 3515.2 - Disruptions)*

Reports of attack, assault, or threat shall be forwarded immediately to the Superintendent or designee.

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

*(cf. 3515.4 - Recovery for Property Loss or Damage)*

*(cf. 3530 - Risk Management/Insurance)*

MB

## EMPLOYEE SECURITY (continued)

### Notice Regarding Student Offenses Committed While Under School Jurisdiction

Note: Education Code 49079 requires the district to inform teachers of students who have committed specified acts that constitute grounds for suspension or expulsion. School district officers or employees who knowingly fail to provide this information are guilty of a misdemeanor punishable by a fine and/or imprisonment.

The Superintendent or designee shall inform the teacher(s) of each student who, **during the previous three school years**, has engaged in, or is reasonably suspected of **to have engaged in**, any act, **except** the possession or use of tobacco products, ~~during the previous three school years which could~~ **that would** constitute a grounds for suspension or expulsion as **specified in AR 5144.1 - Suspension and Expulsion/Due Process**, ~~under Education Code 48900, with the exception of the possession or use of tobacco products, or Education Code 48900.2, 48900.3, 48900.4, or 48900.7~~ This information shall be based upon district records maintained in the ordinary course of business or records received from a law enforcement agency. (Education Code 49079)

(cf. 5125 - Student Records)

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

Note: Education Code 48201 requires districts to request records of a transferring student regarding acts that resulted in the student's suspension or expulsion from the previous school, as specified below; see AR 5125 - Student Records. Once the record is received, the Superintendent or designee must inform the student's teacher(s) of the acts as specified below.

Upon receiving a transfer student's record regarding acts committed by the student that resulted in his/her suspension or expulsion, the Superintendent or designee shall inform the student's teacher(s) that the student was suspended **from school** or expelled from his/her former district and of the act that resulted in the suspension or expulsion. (Education Code 48201)

Information received by teacher(s) shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher. (Education Code 49079)

### Notice Regarding Student Offenses Committed While Outside School Jurisdiction

Note: The following **optional** paragraph is for use by districts maintaining a district police or security department. Welfare and Institutions Code 828 specifies that information gathered by a law enforcement agency relating to a minor taken into custody may be disclosed to a school district police or security department. The following paragraph addresses ~~what~~ the **authority of the** district police department **to utilize** ~~may do with~~ such information as it pertains to certain offenses committed by students.

AB

## EMPLOYEE SECURITY (continued)

~~When a minor student has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance or committed specified crimes involving serious acts of violence, the district police or security department may provide written notification to the Superintendent. (Welfare and Institutions Code 828.1)~~

~~(cf. 3515.3 - District Police/Security Department)~~

When informed by the court that a minor student has been found by a court to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Penal Code 290, assault or battery, larceny, vandalism, or graffiti, the Superintendent or designee shall so inform the school principal. (Welfare and Institutions Code 827)

The principal shall disseminate this information to any counselor who directly supervises or reports on the student's behavior or progress. The principal shall also ~~may~~ inform any teacher or administrator **directly supervising or reporting on the student's behavior or progress whom** he/she thinks may need the information so as to work with the student appropriately, avoid being needlessly vulnerable, or protect others from vulnerability. (Welfare and Institutions Code 827)

Any court-initiated information that a teacher, counselor, or administrator receives shall be kept confidential and used only to rehabilitate the student and protect other students and staff. The information shall be further disseminated only when communication with the student, parent/guardian, law enforcement staff, and probation officer is necessary to rehabilitate the student or to protect students and staff. (Welfare and Institutions Code 827)

When a student is removed from school as a result of his/her offense, the Superintendent shall hold the court's information in a separate confidential file until the student is returned to the district. If the student is returned to a different district, the Superintendent shall transmit the information provided by the student's parole or probation officer to the superintendent of the new district of attendance. (Welfare and Institutions Code 827)

Any confidential file of court-initiated information shall be kept until the student becomes 18, graduates from high school, or is released from juvenile court jurisdiction, whichever occurs first, and shall then be destroyed. (Welfare and Institutions Code 827)

### Procedures to Maintain Confidentiality of Student Offenses

Note: The following ~~optional~~ section describes procedures for maintaining confidentiality of student records and documenting the district's good faith effort to notify counselors or teachers about student offenses. Intentional violation of the confidentiality provisions of Welfare and Institutions Code 827 is a misdemeanor punishable by a fine. This section may be modified to reflect district practice.

## EMPLOYEE SECURITY (continued)

In order to maintain confidentiality when providing information about student offenses to counselors and teachers of classes/programs to which a student is assigned, the principal or designee shall send the staff member a written notification that one of his/her students has committed an offense that requires his/her review of a student's file in the school office. This notice shall not name or otherwise identify the student. The staff member shall be asked to initial the notification and return it to the principal or designee. **The staff member He/she shall also initial the student's file when reviewing it in the school office. Once the district has made a good faith effort to comply with the notification requirement of Education Code 49079 and Welfare and Institutions Code 827, an employee's failure to review the file constitutes district compliance with the requirement to provide notice to the teacher.**

### Use of Pepper Spray

Note: The following **optional section may be revised to reflect district practice.** ~~is for use by districts that allow all or individual any employees to carry pepper spray on school property or at school activities; see the accompanying Board policy. Districts that prohibit all employees from possessing pepper spray on school property or at school activities should delete this section.~~

**The Superintendent or designee shall notify employees of the district's policy prohibiting the possession of pepper spray on school property or at school-related activities without prior approval of the Superintendent or designee.** ~~Employees wishing to carry pepper spray on school property or to a school-related activity shall submit to the Superintendent or designee a written request setting forth the need for the pepper spray. Should~~ **The Superintendent or designee shall notify the employee in writing as to whether the request was approved or denied.** ~~determines that the employee may not carry pepper spray, the employee shall receive a written statement of the reason for this determination.~~

~~Employees who possess pepper spray on school property shall be notified~~ **When approving an employee's request, the Superintendent or designee shall inform the employee of the following conditions:**

1. The pepper spray shall be used only in self-defense.
2. An employee who uses pepper spray other than in self-defense shall be subject to disciplinary action by the district and, in accordance with law, a fine and/or imprisonment.

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

MB



**EMPLOYEE SECURITY** (continued)

3. ~~Employees shall ensure that~~ The pepper spray is **must be** stored in a secure place and not **be** accessible to students or other individuals. ~~An employee who is negligent in the~~ **Negligent** storage of **the** pepper spray may ~~be~~ subject **the employee** to disciplinary action.

(11/00 3/11) 5/18

MS

# CSBA Sample Board Policy

All Personnel

BP 4161.9(a)

4261.9

CATASTROPHIC LEAVE PROGRAM

4361.9

Note: The following policy is **optional** and should be revised to reflect district practice and/or collective bargaining agreements. Education Code 44043.5 authorizes the Governing Board to establish a catastrophic leave program which permits employees to donate accrued vacation and sick leave credits to other employees who experience a catastrophic personal or family illness or injury. **If the district limits such donations to vacation leave only and does not allow donations of sick leave, the following policy should be revised accordingly.** ~~The following optional policy is for districts that choose to offer such a program and may be subject to collective bargaining agreements.~~

**The Governing Board recognizes that district employees may desire to assist other employees who have an urgent need for a leave of absence but do not have sufficient accrued leave to cover their absence. The Superintendent or designee shall establish a catastrophic leave program by which employees may donate accrued vacation and/or sick leave credits, which shall be placed into a pool for use by eligible employees.**

Donations made under the catastrophic leave program shall be strictly voluntary.

**The district's policy and procedures regarding catastrophic leave shall be included in the employee handbook. The Superintendent or designee may notify employees annually, or more frequently if the need arises, of the process for donating leave for this purpose.**

~~When a catastrophic illness or injury incapacitates an employee or a member of his/her family for an extended period of time and the employee has exhausted all paid leaves of absence, other employees may donate accrued vacation and/or sick leave credits to that employee under the specific requirements of the district's catastrophic leave program. An employee may apply to use donated leave credits in accordance with the accompanying administrative regulation when he/she has exhausted all applicable paid leaves of absence and a catastrophic illness or injury incapacitates the employee or a member of his/her family for an extended period of time. (Education Code 44043.5)~~

*(cf. 4161/4261/4361 - Leaves)*

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

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

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*Legal Reference: (see next page)*



BP 4161.9(b)  
4261.9  
4361.9

## CATASTROPHIC LEAVE PROGRAM (continued)

*Legal Reference:*

EDUCATION CODE

44043.5 *Catastrophic leave*

44977 *Salary deduction during sick leave, certificated employees*

44978 *Sick leave, certificated employees*

44983 *Compensation during leave, certificated employees*

45190-45191 *Sick leave and vacation, classified employees*

45196 *Salary deductions during sick leave, classified employees*

LABOR CODE

245-249 *Healthy Workplaces, Healthy Families Act*

(3/92 10/98) 5/18

# CSBA Sample Administrative Regulation

All Personnel

AR 4161.9(a)

4261.9

CATASTROPHIC LEAVE PROGRAM

4361.9

Note: Education Code 44043.5 authorizes the Governing Board to establish a catastrophic leave program which permits employees to donate accrued vacation and sick leave credits to other employees who experience a catastrophic personal or family illness or injury. If the Board elects to offer a catastrophic leave program (see the accompanying Board policy), the district is mandated pursuant to Education Code 44043.5 ~~mandates that a Governing Board providing a catastrophic leave program~~ to adopt administrative rules and regulations which include, at a minimum, provisions setting the maximum amount of time for which donated leave credits may be used, requiring verification of the illness or injury, and making all transfers of leave credit irrevocable. These components may be specified in collective bargaining agreements. The following regulation includes the required components ~~and may be expanded as desired.~~

The district should revise the following regulation if the Board has determined that donations of leave will be limited to vacation leave only and does not allow sick leave to be donated. The district may also revise the following administrative regulation as appropriate if it chooses to establish separate pools of leave credits, such as for each school or for certificated and classified employees, or if it chooses to allow employees to specify a particular employee to whom they wish to donate such leave.

## Donations to Catastrophic Leave Program

Note: Education Code 44043.5 requires that donations of leave be made through written notice to the Board. The following optional paragraph delegates the authority to receive such written notice to the Superintendent or designee. The district may provide a form to be used for notification purposes.

~~Upon determination that the employee is unable to work due to his/her own or a family member's catastrophic illness or injury, any other employee, upon written notice to the Governing Board, may donate accrued vacation and/or sick leave credits to the requesting employee.~~ An employee who chooses to donate accrued vacation and/or sick leave credits to the district's catastrophic leave program shall provide written notice to the Superintendent or designee of the amount and type of leave he/she wishes to donate. The Superintendent or designee shall review the donor's available leave and transfer the leave credits to a district pool of leave credits designated for this purpose.

Donations shall be at a minimum of eight hours, and in hour increments thereafter. (Education Code 44043.5)

All transfers of eligible leave credit shall be irrevocable. (Education Code 44043.5)

Note: The following optional paragraph limits the amount of accrued sick leave that can be given away by any one employee (e.g., requiring employees to maintain one year's worth of sick leave). The following paragraph is optional. Districts may choose to revise the following paragraph to limit the amount of leave that may be donated by an individual employee, so that his/her own account does not go below a specified number of hours that may be needed by the employee for his/her own potential use. Before instituting such a limit, the district should consult with legal counsel.

## CATASTROPHIC LEAVE PROGRAM (continued)

To ensure that employees retain sufficient accrued sick leave to meet their own needs, donors shall not reduce their accumulated sick leave to fewer than \_\_\_ hours. **Employees should be cautious in making large donations of leave that they may need for their own use in the future.**

Note: The following paragraph is optional.

The Superintendent or designee shall ensure that all donations are confidential.

### Requests for Catastrophic Leave

Note: The following section may be revised to reflect the district's eligibility criteria for the catastrophic leave program.

When an employee or a member of his/her family experiences a catastrophic illness or injury which requires the employee to take time off from work for an extended period of time, and the employee has exhausted all available sick leave and other paid time off, he/she may request donations of accrued vacation or sick leave credits. (Education Code 44043.5) **A full-time or part-time employee may apply to the Superintendent or designee to use paid leave from the catastrophic leave program if he/she earns paid time off but has exhausted all his/her accrued paid leave and needs to take time off from work for an extended period of time due to his/her or a family member's catastrophic illness or injury. If the employee is incapacitated, a family member or caretaker may apply on his/her behalf.**

*(cf. 4161/4261/4361 - Leaves)*

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

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

*(cf. 4261.1 - Personal Illness/Injury Leave)*

~~In making such a request, t~~The employee shall provide verification of the **catastrophic illness or injury** ~~or illness~~. (Education Code 44043.5)

Note: The following paragraph may be revised as desired to reflect district practice.

Verification shall be made by means of a letter, dated and signed by the **sick or injured person's physician individual's health care provider**, indicating the incapacitating nature and probable duration of the illness or injury.

Note: The following optional paragraph establishes a maximum amount of leave credits that may be donated to an individual employee and should be revised to reflect district practice and/or collective bargaining agreements.



**CATASTROPHIC LEAVE PROGRAM (continued)**

**An employee may apply to receive up to 20 days of paid leave from the catastrophic leave program per school year. At the end of the 20-day period, he/she may apply for up to 20 days of additional leave credits.**

**Employees receiving compensation under worker's compensation provisions are not eligible to receive leave from the catastrophic leave program until exhausting such benefit.**

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

Note: Education Code 44043.5 requires the district to indicate the maximum amount of time for which donated leave credits may be used, not to exceed a period of 12 consecutive months. **If desired, the** following paragraph may be revised to indicate a time period of less than 12 months.

**The An** employee who is the recipient of **the** donated leave credits shall use those credits within 12 consecutive months. **(Education Code 44043.5)**

Note: The following paragraph is **optional**.

If donated **leave** credits are not used by the employee within 12 consecutive months, the credits shall be ~~placed in a pool that will be available to the next eligible employee who requests catastrophic leave~~ **returned to the pool of catastrophic leave for use by other eligible employees.**

An employee who receives **paid** catastrophic leave shall use any leave credits that he/she continues to accrue on a monthly basis before receiving paid leave pursuant to this program. (Education Code 44043.5)

(3/92 10/98) 5/18



# CSBA Sample Board Policy

Students

BP 5111(a)

## ADMISSION

Note: Pursuant to Education Code 48200, all children ages 6-18 years are subject to compulsory full-time education, unless specifically exempted. See BP/AR 5112.1 - Exemptions from Attendance for further information about such exemptions.

Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), districts are mandated to adopt policy, equivalent to a model policy developed by the California Attorney General, which prohibits the solicitation or collection of information regarding the immigration or citizenship status of students and their families, unless otherwise required by law. See the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, available on its web site. These requirements are addressed in the following policy and BP/AR 5111.1 - District Residency.

In Plyler v. Doe, the U.S. Supreme Court ruled that, under the Fourteenth Amendment to the U.S. Constitution, students cannot be denied a free public education on the basis of their citizenship or immigration status, including their status as undocumented children. As discussed in a Dear Colleague Letter and fact sheet, Information on the Rights of All Children to Enroll in School, jointly issued by the U.S. Department of Justice's Civil Rights Division and U.S. Department of Education's Office for Civil Rights, it may be a violation of federal law for districts to adopt a policy or procedure that prohibits or discourages children from enrolling in school because they or their parents/guardians are not United States citizens or are undocumented. For further discussion of these issues, see CSBA's Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status. CSBA's legal guidance also includes a sample board resolution that may be used to inform students, parents/guardians, and the community of students' rights under current law to attend a district school regardless of their citizenship or immigration status.

The Governing Board encourages the enrollment and appropriate placement of all school-aged children in school. The Superintendent or designee shall inform parents/guardians of children **entering-seeking admission to** a district school at any grade level about admission requirements and shall assist them with enrollment procedures.

Note: The following **optional** paragraph may be revised to reflect district practice. ~~Education Code 48354 requires the district to give priority for enrollment to students residing in the district, including students applying for intradistrict open enrollment, over students transferring from a school identified under the Open Enrollment Act (Education Code 48350-48361). Thus, the district should align the application windows for various attendance options in a manner that will allow the district to meet legal requirements pertaining to admissions priorities. See BP/AR 5116.1 - Intradistrict Open Enrollment, AR 5117 - Interdistrict Attendance, and BP/AR 5118 - Open Enrollment Act Transfers for application windows applicable to those options.~~

~~When enrolling in any district school, including a school in their attendance area, children whose parents/guardians reside within district boundaries shall be subject to the timelines established by the Board for open enrollment. Children whose parents/guardians do not~~

MB

**ADMISSION** (continued)

reside within the district or who are not otherwise eligible for enrollment in the district may apply for interdistrict attendance in accordance with **The Superintendent or designee shall announce and publicize the timeline and process for registration of students at district schools. Applications for intradistrict or interdistrict enrollment shall be subject to the timelines specified in applicable Board policies and administrative regulations.**

*(cf. 1112 - Media Relations)*

*(cf. 1113 - District and School Web Sites)*

*(cf. 1114 - District-Sponsored Social Media)*

*(cf. 5116.1 - Intradistrict Open Enrollment)*

*(cf. 5117 - Interdistrict Attendance)*

*(cf. 5118 - Open Enrollment Act Transfers)*

**All appropriate staff shall receive training on district admission policies and procedures, including information regarding the types of documentation that can and cannot be requested.**

Note: Education Code 49452.9, as amended by AB 2308 (Ch. 570, Statutes of 2016), extends beyond the 2017-18 school year the requirement requires that district enrollment forms include an informational item about affordable health care options and available enrollment assistance. Pursuant to Education Code 49452.9, the district could accomplish this by developing **an its own** informational item or **amending its existing forms, or by using a template or attaching a fact sheet to be using a flier** developed by the California Department of Education.

The district's enrollment application shall include information about the health care options and enrollment assistance available to families within the district. The district shall not discriminate against any child for not having health care coverage and shall not use any information relating to a child's health care coverage or his/her interest in learning about health care coverage in any manner that would harm the child or his/her family. (Education Code 49452.9)

**Verification of Admission Eligibility**

Note: Admission requirements include age criteria for grades K-1; see the accompanying administrative regulation. Other admission requirements are addressed in AR 5111.1 - District Residency, BP/AR 5141.31 - Immunizations, and AR 5141.32 - Health Screening for School Entry.

Before enrolling any child in a district school, the Superintendent or designee shall verify the child's age, residency, immunization, and other applicable eligibility criteria specified in law, the accompanying administrative regulation, or other applicable Board policy or administrative regulation.

*(cf. 5111.1 - District Residency)*

*(cf. 5125 - Student Records)*

*(cf. 5141.3 - Health Examinations)*

*(cf. 5141.31 - Immunizations)*

*(cf. 5141.32 - Health Screening for School Entry)*



## ADMISSION (continued)

Note: In *Plyler v. Doe*, the U.S. Supreme Court ruled that, under the Fourteenth Amendment of the U.S. Constitution, students cannot be denied a free public education on the basis of their citizenship or immigration status, including their status as undocumented children. As discussed in a Dear Colleague Letter and fact sheet, *Information on the Rights of All Children to Enroll in School*, jointly issued by the U.S. Department of Justice's Civil Rights Division and U.S. Department of Education's Office for Civil Rights, it may be a violation of federal law for districts to adopt a policy or procedure that prohibits or discourages children from enrolling in school because they or their parents/guardians are not United States citizens or are undocumented.

Undocumented children in California not only have a right to attend school, but are mandated to do so under state compulsory education laws (Education Code 48200). Furthermore, every student has a right to attend school free from discrimination, harassment, violence, intimidation, and bullying; see BP 0410 - Nondiscrimination in District Programs and Activities and BP/AR 5145.3 - Nondiscrimination/Harassment.

Although districts may require proof of residency within the district (e.g., utility or phone bill, property tax payment receipt, rental property lease agreement, etc.), they ~~should not request~~ **are prohibited, pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), from inquiring into the citizenship or immigration status of students and their families. Consequently, consistent with the Attorney General's model policy, districts may not request a student's or parent/guardian's green card, visas, passports, voter registration, or other documentation that would indicate citizenship status and could discourage undocumented children from enrolling in school.**; Also see BP/AR 5111.1 - District Residency.

**In addition, pursuant to Education Code 49076.7, a district is prohibited from soliciting or collecting social security numbers or the last four digits of social security numbers of students or their parents/guardians, unless otherwise required to do so by state or federal law. One such exception is the collection of the last four digits of the social security number for the purpose of establishing eligibility for a federal benefit program. Also see BP/AR 5125 - Student Records.**

~~If the district becomes aware of the citizenship or immigration status of any student, it is prohibited from disclosing such information to U.S. Immigration and Customs Enforcement, as such disclosure is not among the limited exceptions specified in law for which student records may be released without parental consent or a lawful judicial order.~~

**The Superintendent or designee district shall not inquire into or request documentation of a student's social security number or the last four digits of the social security number or the citizenship or immigration status of the student or his/her family members. (Education Code 234.7, 49076.7) ; and shall not deny a student enrollment in a district school on the basis of the citizenship or immigration status of the student or his/her parents/guardians. Any information obtained about a student's or parent/guardian's citizenship or immigration status shall not be shared without parent/guardian consent or a lawful judicial order, in accordance with laws pertaining to the confidentiality of student records.**

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

*(cf. 5145.13 - Response to Immigration Enforcement)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

NAB

## ADMISSION (continued)

Note: The following **optional** paragraph is for use by districts that request the social security number of a student or his/her parent/guardian for enrollment purposes. 5 USC 552a Note provides that a district may not deny enrollment to a student if he/she or his/her parent/guardian chooses not to provide a social security number. Thus, while CSBA's Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status recommends against requesting social security numbers, a district that chooses to do so must inform the enrolling student or parent/guardian that the disclosure is voluntary.

A student shall not be denied enrollment based on the parent/guardian's refusal to provide the student's or parent/guardian's social security number. During the enrollment process, students and parents/guardians shall be informed that disclosure of their social security number is voluntary. (5 USC 552a Note)

Note: The following paragraph reflects the Attorney General's model policy developed pursuant to Education Code 234.7. Information regarding national origin (e.g., place of birth, date of entry into the United States, and date the student first attended school in the United States) may be collected only when required to comply with state or federal reporting requirements for special programs, such as language instruction programs for English learners, but should not be collected during the admission process to avoid deterring initial school enrollment of immigrant students.

**However, such information may be collected when required by state or federal law or to comply with requirements for special state or federal programs. In any such situation, the information shall be collected separately from the school enrollment process and the Superintendent or designee shall explain the limited purpose for which the information is collected. Enrollment in a district school shall not be denied on the basis of any such information of the student or his/her parents/guardians obtained by the district, or the student's or parent/guardian's refusal to provide such information to the district.**

Note: The following paragraph is for use by districts that maintain grades K-1. In addition to the methods specified in Education Code 48002 for documenting a child's age for admittance to kindergarten or first grade, as listed in the accompanying administrative regulation, the Governing Board is authorized to prescribe alternative means for proof of a child's age. The following paragraph may be revised to reflect any such alternative means approved by the Board. The following paragraph also reflects the Attorney General's model policy, developed pursuant to Education Code 234.7, requiring that such alternative means be available to all persons regardless of immigration status, citizenship status, or national origin.

**School registration information shall list all possible means of documenting a child's age for grades K-1 as authorized by Education Code 48002 or otherwise prescribed by the Board. Any alternative document allowed by the district shall be one that all persons can obtain regardless of immigration status, citizenship status, or national origin and shall not reveal information related to citizenship or immigrant status.**

Note: State and federal law require the immediate enrollment of homeless youth (Education Code 48850, 48852.7; 42 USC 11432), and foster youth (Education Code 48853.5), and former juvenile court school students (Education Code 48645.5) regardless of their ability to provide the school with records normally

MB

**ADMISSION** (continued)

required for enrollment; see BP/AR 6173 - Education for Homeless Children, and AR 6173.1 - Education for Foster Youth, and **AR 6173.3 - Education for Juvenile Court School Students**. In addition, Education Code 49701 requires the district to facilitate the enrollment of children of military families and to ensure that they are not placed at a disadvantage due to difficulty in the transfer of their records from previous school districts and/or variations in entrance or age requirements; see BP/AR 6173.2 - Education of Children of Military Families.

The Superintendent or designee shall **immediately enroll** ~~ensure that the enrollment of a homeless student, or foster child youth, student who has had contact with the juvenile justice system, or a child of a military family is not delayed because~~ **regardless** of outstanding fees or fines owed to the ~~child's~~ **student's** last school, **lack of clothing normally required by the school, such as school uniforms,** or ~~for~~ his/her inability to produce previous academic, medical, or other records normally required for enrollment. **(Education Code 48645.5, 48850, 48852.7, 48853.5, 49701; 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)*

*(cf. 6173.3 - Education for Juvenile Court School Students)*

~~Note: Education Code 48645.5 prohibits the district from denying enrollment to a child solely for reason of his/her contact with the juvenile justice system as specified in the following paragraph. Also see AR 6173.3 - Education for Juvenile Court School Students. Pursuant to Education Code 48647, districts are strongly encouraged to work together with other agencies, including, but not limited to, the county office of education and the county probation department, to facilitate smooth transition of children from the juvenile court schools into regular schools.~~

~~In addition, no child shall be denied enrollment in a district school solely on the basis of his/her arrest, adjudication by a juvenile court, formal or informal supervision by a probation officer, detention in a juvenile facility, enrollment in a juvenile court school, or other contact with the juvenile justice system. (Education Code 48645.5)~~

~~*(cf. 5119 - Students Expelled from Other Districts)*~~

*Legal Reference: (see next page)*

**ADMISSION** (continued)

*Legal Reference:*

EDUCATION CODE

**234.7 Student protections relating to immigration and citizenship status**

46300 Computation of average daily attendance, inclusion of kindergarten and transitional kindergarten

46600 Agreements for admission of students desiring interdistrict attendance

48000 Minimum age of admission (kindergarten)

48002 Evidence of minimum age required to enter kindergarten or first grade

48010 Minimum age of admission (first grade)

48011 Admission from kindergarten or other school; minimum age

48050-48053 Nonresidents

48200 Children between ages of 6 and 18 years (compulsory full-time education)

48350-48361 Open Enrollment Act

**48645.5 Enrollment of former juvenile court school students**

48850-48859 Educational placement of homeless and foster youth

~~48645.5 Enrollment of former juvenile court school students~~

49076 Access to records by persons without written consent or under judicial order

**49076.7 Student records; data privacy; social security numbers**

49408 Information of use in emergencies

49452.9 Health care coverage options and enrollment assistance

49700-~~49704~~ **49703** Education of children of military families

HEALTH AND SAFETY CODE

120325-120380 Education and child care facility immunization requirements

121475-121520 Tuberculosis tests for students

CODE OF REGULATIONS, TITLE 5

200 Promotion from kindergarten to first grade

201 Admission to high school

CODE OF REGULATIONS, TITLE 17

6000-6075 School attendance immunization requirements

UNITED STATES CODE, TITLE 5

552a Note Refusal to disclose social security number

UNITED STATES CODE, TITLE 42

11431-11435 McKinney-Vento Homeless Assistance Act

COURT DECISIONS

*Plyler v. Doe*, 457 U.S. 202 (1982)

*Management Resources: (see next page)*

MB

**ADMISSION** (continued)

*Management Resources:*

CSBA PUBLICATIONS

Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status, February 2017

**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS**

**Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018**

U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION AND U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS JOINT PUBLICATIONS

Fact Sheet: Information on the Rights of All Children to Enroll in School

Dear Colleague Letter: School Enrollment Procedures, May 8, 2014

Fact Sheet: Information on the Rights of All Children to Enroll in School, May 8, 2014

**Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, May 8, 2014**

WEB SITES

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

California Department of Education, **Health Care Coverage and Enrollment Assistance:**

<http://www.cde.ca.gov/ls/he/hc>

**California Office of the Attorney General: <http://oag.ca.gov>**

U.S. Department of Education, Office for Civil Rights: <http://www2.ed.gov/about/offices/list/ocr>

U.S. Department of Justice: <https://www.justice.gov>

(4/15 3/17) 5/18

# CSBA Sample Administrative Regulation

Students

AR 5111(a)

## ADMISSION

Note: The following **optional** administrative regulation is for use by districts offering grades K-1.

### Age of Admittance to Kindergarten and First Grade

Note: Pursuant to Education Code 48200, a parent/guardian's obligation to enroll his/her child in school begins with the child's eligibility to be enrolled in first grade once he/she has his/her sixth birthday, as specified in Education Code 48010. However, a district that offers kindergarten is obligated to enroll a child in kindergarten at the beginning of the school year in which the child will have his/her fifth birthday, if his/her birthday is on or before September 1, pursuant to Education Code 48000.

At the beginning of each school year, the Superintendent or designee shall enroll any **otherwise** eligible child who will have his/her fifth or sixth birthday on or before September 1 of that year into kindergarten or first grade, as applicable. (Education Code 48000, 48010)

Note: Pursuant to Education Code 48000, a district that offers kindergarten must, each year, offer transitional kindergarten (TK) to children who will have their fifth birthday between September 2 and December 2. See BP 6170.1 – Transitional Kindergarten for details of the program.

Any child who will have his/her fifth birthday from September 2 through December 2 of the school year shall be offered a transitional kindergarten (TK) program in accordance with law and Board policy. (Education Code 48000)

(cf. 5123 - Promotion/Acceleration/Retention)  
(cf. 6170.1 - Transitional Kindergarten)

Note: The following paragraph is **optional**. Education Code 48000 authorizes the district, at its discretion, to allow enrollment into kindergarten during the school year on a case-by-case basis, under the conditions described below. According to the "Transitional Kindergarten FAQs" issued by the California Department of Education (CDE), enrollment into TK during the school year is also permitted on a case-by-case basis and under the same conditions. CDE information on "Kindergarten in California," available on its web site, cautions that any district utilizing this option must ensure that the child has turned age five or else may jeopardize its apportionments as auditors may impose fiscal sanctions. The CDE also cautions that the district may risk being challenged by parents/guardians if it bases early admission on test results, maturity of the child, or preschool records. The district might consider establishing a process for parents/guardians to challenge denial of early entry.

On a case-by-case basis, a child who will turn five years old in a given school year may be enrolled in kindergarten or TK at any time during that school year with the approval of the child's parent/guardian, provided that: (Education Code 48000)

Note: Education Code 48000 requires the Governing Board to make a determination that the admittance is in the best interests of the child.

AB

**ADMISSION** (continued)

1. The Governing Board determines that the admittance is in the best interests of the child.
2. The parent/guardian is given information regarding the advantages and disadvantages and any other explanatory information about the effect of this early admittance.

*(cf. 5145.6 - Parental Notifications)*

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

The Superintendent or designee shall make a recommendation to the Board regarding whether a child should be granted early entry to kindergarten. In doing so, the Superintendent or designee shall consider various factors including the availability of classroom space and any negotiated maximum class size.

*(cf. 6151 - Class Size)*

*(cf. 7111 - Evaluating Existing Buildings)*

**Documentation of Age/Grade**

Prior to the admission of a child to kindergarten or first grade, the parent/guardian shall present proof of the child's age. (Education Code 48002)

Note: Education Code 48002 specifies that the method of proof of age, when admitting children to grades K-1, may include any appropriate means prescribed by the Governing Board. The following items reflect examples in Education Code 48002 and may be revised to reflect district practice.

Although Education Code 48002 includes a passport as a possible means for determining a child's age, the California Attorney General's model policy developed pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), states that districts should not require documentation that may indicate a student's national origin or immigration status, such as a passport, to the exclusion of other permissible documentation. See the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.

Evidence of the child's age may include: (Education Code 48002)

1. A certified copy of a birth certificate or a statement by the local registrar or county recorder certifying the date of birth
2. A duly attested baptism certificate
3. A passport
4. When none of the above documents is obtainable, an affidavit of the parent/guardian

MB

**ADMISSION** (continued)

**5. Other means prescribed by the Board**

~~When none of the foregoing is obtainable, the parent/guardian may provide any other appropriate means of proving the age of the child. (Education Code 48002)~~

(11/11 4/15) 5/18

13



# CSBA Sample Board Policy

Students

BP 5111.1(a)

## DISTRICT RESIDENCY

Note: Education Code 48200 requires the district to provide an education to any student who resides within the district's attendance area. Education Code 48204, ~~as amended by AB 224 (Ch. 554, Statutes of 2015)~~, specifies additional circumstances under which students will be deemed to meet the residency requirements for school attendance, including, but not limited to, ~~through~~ parent/guardian employment within district boundaries under certain conditions and interdistrict transfers; see the accompanying administrative regulation.

If the Governing Board elects to authorize investigations to verify students' residency, it is **mandated** to adopt policy with specified components pursuant to Education Code 48204.2, ~~as added by AB 1101 (Ch. 170, Statutes of 2015)~~. See sections "Investigation of Residency" and "Appeal of Enrollment Denial" below.

The Governing Board desires to admit all students who reside within district boundaries or who fulfill the district residency requirements through other means as allowed by law. The Superintendent or designee shall develop procedures to facilitate the receipt and verification of students' proof of residency.

*(cf. 5116 - School Attendance Boundaries)*

The Superintendent or designee shall annually notify parents/guardians of all existing attendance options available in the district, including, but not limited to, all options for meeting residency requirements for school attendance. (Education Code 48980)

*(cf. 5116.1 - Intradistrict Open Enrollment)*

*(cf. 5117 - Interdistrict Attendance)*

*(cf. 5145.6 - Parental Notifications)*

The Superintendent or designee shall require parents/guardians to provide documentation of the student's residency upon admission to a district school. A copy of the document or written statement offered as verification of residency shall be maintained in the student's mandatory permanent record. (5 CCR 432)

*(cf. 5111 - Admission)*

*(cf. 5125 - Student Records)*

Note: In Plyler v. Doe, the U.S. Supreme Court ruled that, under the Fourteenth Amendment to the U.S. Constitution, students cannot be denied a free public education on the basis of their citizenship or immigration status, including their status as undocumented children. As discussed in a Dear Colleague Letter and fact sheet, Information on the Rights of All Children to Enroll in School, jointly issued by the U.S. Department of Justice's Civil Rights Division and U.S. Department of Education's Office for Civil Rights, it may be a violation of federal law for districts to adopt a policy or procedure that prohibits or discourages children from enrolling in school because they or their parents/guardians are not United States citizens or are undocumented.

**DISTRICT RESIDENCY (continued)**

Consistent with this guidance, Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), prohibits districts from collecting information or documents regarding citizenship or immigration status of students or their family members. See the accompanying administrative regulation and guidance provided by the California Office of the Attorney General, Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, available on its web site. Thus, while the district may require proof that a student resides within the district (see accompanying administrative regulation for allowable evidence of residency), it should not request visas, passports, or other documentation that would discourage undocumented children from enrolling in school. Also see BP 5111 – Admission and CSBA's Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status.

When establishing a student's students' residency for enrollment purposes, the Superintendent or designee shall not inquire into a student's the citizenship or immigration status of students or their family members.

*(cf. 5145.13 - Response to Immigration Enforcement)*

Note: When a district chooses to grant residency status to students whose parent/guardian is employed authorizes residency status on the basis of the parent/guardian's employment within district boundaries for at least 10 hours per school week (see section "Residency Based on Parent/Guardian Employment (Allen Bill Transfers)" in the accompanying administrative regulation), Education Code 48204 encourages the district to notify the parent/guardian in writing when admission is denied and to provide reasons for the denial. The following optional paragraph provides that written notice will be provided to parents/guardians whenever enrollment is denied on any basis related to residency and may be revised to reflect district practice.

A student's enrollment may be denied when the submitted documentation is insufficient to establish district residency. In any such case, the Superintendent or designee shall notify the parent/guardian in writing, including specific reasons for the denial.

**Investigation of Residency**

Note: The following section should be revised to reflect district practice. To conduct an investigation into the residency claim of a student as authorized by Education Code 48204.1, a district is mandated, pursuant to Education Code 48204.2, as added by AB 1101 (Ch. 170, Statutes of 2015), to adopt a policy with specified components. The policy must (1) identify the circumstances under which the district may initiate an investigation, including, at a minimum, a requirement that the district is able to identify specific, articulable facts supporting the belief that the parent/guardian has provided false or unreliable evidence of residency; (2) describe the investigatory methods that may be used, including whether the district may employ the services of a private investigator; (3) require staff to make reasonable efforts to determine whether the student resides in the district before hiring a private investigator (if allowed at all); (4) prohibit surreptitious photographing or video-recording of students who are being investigated; and (5) provide for an appeals process. The district should consult legal counsel if questions arise regarding the appropriateness of efforts to verify residency.

**DISTRICT RESIDENCY (continued)**

When the Superintendent or designee reasonably believes that a student's parent/guardian has provided false or unreliable evidence of residency, he/she may make reasonable efforts to determine that the student meets district residency requirements. An investigation may be initiated when the Superintendent or designee is able to identify specific, articulable facts supporting the belief that the parent/guardian has provided false or unreliable evidence of residency. (Education Code 48204.1, 48204.2)

The Superintendent or designee may assign a trained district employee to conduct the investigation. The investigation may include the examination of records, including public records, and/or interviews of persons who may have knowledge of the student's residency.

If necessary, the Superintendent or designee may employ the services of a private investigator to conduct the investigation. Before hiring a private investigator, the Superintendent or designee shall make other reasonable efforts to determine whether the student resides in the district. (Education Code 48204.2)

The investigation shall not include the surreptitious collection of photographic or videographic images of persons or places subject to the investigation. However, the use of technology is not prohibited if done in open and public view. (Education Code 48204.2)

Any employee or contractor engaged in the investigation shall truthfully identify himself/herself as an investigator to individuals contacted or interviewed during the course of the investigation. (Education Code 48204.2)

**Appeal of Enrollment Denial**

Note: If the district chooses to authorize investigations into the residency claim of a student as described in the section "Investigation of Residency" above, it is **mandated** pursuant to Education Code 48204.2, ~~as added by AB 1101 (Ch. 170, Statutes of 2015)~~, to adopt a policy which provides for an appeals process. The timelines specified in the following section may be revised to reflect district practice.

If the Superintendent or designee, upon investigation, determines that a student does not meet district residency requirements and denies the student's enrollment in the district, he/she shall provide the student's parent/guardian an opportunity to appeal that determination. (Education Code 48204.2)

The Superintendent or designee shall send the student's parent/guardian written notice specifying the basis for the district's determination. This notice shall also inform the parent/guardian that he/she may, within 10 school days, appeal the decision and provide new evidence of residency.

The burden shall be on the parent/guardian to show why the district's determination to deny enrollment should be overruled. (Education Code 48204.2)

**DISTRICT RESIDENCY** (continued)

A student who is currently enrolled in the district shall be allowed to remain in attendance at his/her school pending the results of the appeal. A student who is not currently enrolled in the district shall not be permitted to attend any district school unless his/her appeal is successful.

Note: The district may select and/or revise either of the following options to indicate who will be responsible for making the final decision regarding the student's residency claim. Option 1 is for use by districts that assign a district employee other than the Superintendent to make the initial residency determination, and provides that the Superintendent will make the final decision following the appeals process. Option 2 is for use by districts in which the Superintendent is responsible for the initial residency determination, and provides that the decision may be appealed to the **Governing** Board.

**OPTION 1:** In an appeal to the Superintendent of a determination that district residency requirements were not met, the Superintendent shall review any evidence provided by the parent/guardian or obtained during the district's investigation and shall make a decision within 10 school days of receipt of the parent/guardian's request for the appeal. The Superintendent's decision shall be final.

**OPTION 2:** In an appeal of the Superintendent's determination that district residency requirements were not met, the Board shall review any evidence provided by the parent/guardian or obtained during the district's investigation and shall make a decision at its next regularly scheduled meeting following the parent/guardian's request for the appeal. The Board's decision shall be final.

**Enrollment Not Requiring District Residency**

Note: The following **optional** paragraph is for use by any district maintaining grades 9-12 that (1) has petitioned for certification from the U.S. Department of Homeland Security's Student and Exchange Visitor Program to enroll a nonimmigrant foreign student who is in the United States on an F-1 visa and/or (2) admits high school students from other countries through an international exchange program under the sponsorship of a government-approved agency. For further information about enrollment of nonresident foreign students, see AR 5111.2 - Nonresident Foreign Students, BP/AR 6145.6 - International Exchange, and CSBA's Legal Guidance Regarding International Student Exchange Placement Organizations.

When approved by the Board and the appropriate agency, the district may enroll students from other countries who are in the United States on an F-1 visa or are participating in an international exchange program under the sponsorship of a government-approved agency.

*(cf. 5111.2 - Nonresident Foreign Students)*  
*(cf. 6145.6 - International Exchange)*

Note: The following **optional** paragraph is for use by any district adjacent to another state or foreign country from which students may commute to the district and should be revised to reflect district circumstances. Pursuant to Education Code 48050 and 48052, any district that admits such students must be reimbursed by the parents/guardians of the students or by the district of residence for the total cost of educating the student and may not include such students in computing average daily attendance for the purpose of obtaining apportionment of state funds.

**DISTRICT RESIDENCY** (continued)

The district may enroll a nonresident student living in an adjoining state or foreign country in accordance with Education Code 48050-48052.

District residency is not required for enrollment in a regional occupational center or program if there are openings in the program or class. (Education Code 52317)

(cf. 6178.2 - Regional Occupational Center/Program)

*Legal Reference:*

EDUCATION CODE

220 Prohibition of discrimination

**234.7 Student protections relating to immigration and citizenship status**

35160.5 Intradistrict open enrollment

35351 Assignment of students to particular schools

46600-46611 Interdistrict attendance permits

48050-48054 Nonresidents

48200-48208 Compulsory education law, especially:

48204 Residency requirements

48204.1-48204.2 **48204.4** Evidence of residency

48300-~~48316~~ **48317** Student attendance alternatives, school district of choice program

48350-48361 Open Enrollment Act transfers

48645.5 Former juvenile court school students, enrollment

48852.7 Education of homeless students; immediate enrollment

48853.5 Education of foster youth; immediate enrollment

48980 Notifications at beginning of term

52317 Regional occupational program, admission of persons including nonresidents

FAMILY CODE

6550-6552 Caregivers

GOVERNMENT CODE

6205-6210 Confidentiality of residence for victims of domestic violence

CODE OF REGULATIONS, TITLE 5

432 Retention of student records

**UNITED STATES CODE, TITLE 8**

**1229c Immigration and Nationality Act**

UNITED STATES CODE, TITLE 42

11431-11435 McKinney-Vento Homeless Assistance Act

COURT DECISIONS

Katz v. Los Gatos-Saratoga Joint Union High School District, (2004) 117 Cal.App.4th 47

**Plyler v. Doe, 457 U.S. 202 (1982)**

*Management Resources: (see next page)*

**DISTRICT RESIDENCY (continued)**

*Management Resources:*

CSBA PUBLICATIONS

*Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status, February 2017*

*Legal Guidance Regarding International Student Exchange Placement Organizations, April 2014*

**CALIFORNIA ATTORNEY GENERAL'S OFFICE PUBLICATIONS**

***Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018***

U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION AND U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS JOINT PUBLICATIONS

*Dear Colleague Letter: School Enrollment Procedures, May 8, 2014*

*Fact Sheet: Information on the Rights of All Children to Enroll in School, May 8, 2014*

***Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, May 8, 2014***

WEB SITES

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

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

**California Office of the Attorney General: <http://oag.ca.gov>**

California Secretary of State, Safe at Home Program: <http://www.sos.ca.gov/safeathome>

U.S. Department of Education, Office for Civil Rights: <http://www2.ed.gov/ocr>

U.S. Department of Justice: <https://www.justice.gov>

(12/15 3/17) 5/18

*NBS*

# CSBA Sample Administrative Regulation

Students

AR 5111.1(a)

## DISTRICT RESIDENCY

### Criteria for Residency

A student shall be deemed to have complied with district residency requirements for enrollment in a district school if he/she meets any of the following criteria:

1. The student's parent/guardian resides within district boundaries. (Education Code 48200)
2. The student is placed within district boundaries in a regularly established licensed children's institution, a licensed foster home, or a family home pursuant to a court-ordered commitment or placement. (Education Code 48204)

Note: State law provides a number of options under which a student may attend school in a district other than the district where he/she resides. For instance, a student attending a school identified as low achieving on the state's Open Enrollment List may transfer to a school in any other district in the state subject to certain conditions, pursuant to Education Code 48350-48361; see BP/AR 5118 - Open Enrollment Act Transfer. If the district chooses to enter into an interdistrict attendance agreement pursuant to Education Code 46600-46611, a student may request a permit to attend school in a different district when both the district of residence and the district of proposed attendance have agreed to allow interdistrict attendance. If the Governing Board has declared the district to be a "school district of choice" pursuant to Education Code 48300-~~48316~~ 48317, the district may accept a specific number of interdistrict transfers into the district through a random, unbiased selection process. See BP/AR 5117 - Interdistrict Attendance for further information about these options. Pursuant to Education Code 48204, 48301, and 48356, students admitted under any of these options are deemed to have met district residency requirements. The district may revise item #3 as appropriate to reflect options provided by the district.

3. The student is admitted through an interdistrict attendance option, ~~such as an interdistrict attendance agreement, "school district of choice" transfer, or Open Enrollment Act transfer.~~ (Education Code 46600, 48204, 48301, 48356)

*(cf. 5117 - Interdistrict Attendance)*

*(cf. 5118 - Open Enrollment Act Transfers)*

4. The student is an emancipated minor residing within district boundaries. (Education Code 48204)
5. The student lives with a caregiving adult within district boundaries and the caregiving adult submits an affidavit to that effect. (Education Code 48204)
6. The student resides in a state hospital located within district boundaries. (Education Code 48204)

AB

**DISTRICT RESIDENCY (continued)**

7. The student is confined to a hospital or other residential health facility within district boundaries for treatment of a temporary disability. (Education Code 48204, 48207)

*(cf. 6183 - Home and Hospital Instruction)*

8. The student's parent/guardian resides outside district boundaries but is employed within district boundaries and lives with the student at the place of employment for a minimum of three days during the school week. (Education Code 48204)

Note: Pursuant to Education Code 48204.3, as added by SB 1455 (Ch. 312, Statutes of 2016), amended by SB 455 (Ch. 239, Statutes of 2017), a student will be deemed to meet district residency requirements if his/her parent/guardian is transferred or is pending transfer to a military installation (i.e., a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense or the U.S. Coast Guard) within **district boundaries the state**.

9. The student's parent/guardian, while on active military duty pursuant to an official military order, is transferred or is pending transfer to a military installation within **district boundaries the state**. (Education Code 48204.3)

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

Note: Education Code 48204.4, as added by SB 257 (Ch. 498, Statutes of 2017), provides that a student complies with residency requirements if his/her parent/guardian was a resident of California and departed against his/her will, as defined. See the section "Proof of Residency" below for information about the documentation required to be submitted to the district under such circumstances. The district may not require any fee or charge for the enrollment of such students in a district school.

10. The student's parent/guardian was a resident of California who departed the state against his/her will due to a transfer by a government agency that had custody of the parent/guardian, a lawful order from a court or government agency authorizing his/her removal, or removal or departure pursuant to the federal Immigration and Nationality Act, and the student lived in California immediately before moving out of state as a result of his/her parent/guardian's departure. (Education Code 48204.4)

*(cf. 5145.13 - Response to Immigration Enforcement)*

**Residency Based on Parent/Guardian Employment (Allen Bill Transfers)**

Note: The following section is **optional**. Education Code 48204 permits, but does not require, districts to admit a student whose parent/guardian is employed within district boundaries for a minimum of 10 hours during the school week (so-called "Allen bill transfers"). If the district chooses to grant residency status to such students, it may nevertheless deny enrollment to students under the circumstances identified in items #1-3 below. AB 2537 (Ch. 106, Statutes of 2016) amended Education Code 48204 to indefinitely extend the district's authority to grant residency under these circumstances.

MS



**DISTRICT RESIDENCY (continued)**

District residency status may be granted to a student if at least one of his/her parents/guardians is physically employed within district boundaries for a minimum of 10 hours during the school week. No student seeking residency on this basis shall be denied enrollment based on race, ethnicity, sex, parental income, scholastic achievement, or any of the individual characteristics set forth in Education Code 220. However, the Superintendent or designee may deny enrollment into the district if any of the following circumstances is present: (Education Code 48204)

1. The additional cost of educating the student would exceed the amount of additional state aid received as a result of the transfer.
2. Enrollment of the student would adversely affect the district's court-ordered or voluntary desegregation plan as determined by the Governing Board.
3. Other circumstances exist that are not arbitrary.

Note: The following paragraph is **optional**. In 84 Ops.Cal.Atty.Gen. 198 (2001), the Attorney General opined that overcrowding is not an "arbitrary consideration" within the meaning of Education Code 48204. Therefore, a district may deny an application when the district's school facilities are overcrowded at the relevant grade level. The Attorney General also clarified that, once a student is admitted, he/she must be allowed to continue to attend school in the district through the highest grade level offered by the district, even if the school subsequently becomes overcrowded at the relevant grade level. Although Attorney General opinions are not binding on the courts, they are generally afforded deference when there is no specific statutory or case law to the contrary. The following paragraph is based on this Attorney General opinion.

OK

Such circumstances may include, but are not limited to, overcrowding of school facilities at the relevant grade level.

Once a student establishes residency on this basis, he/she shall not be required to reapply for enrollment in subsequent years. The student may continue to attend school in the district through the highest grade level offered by the district if the parent/guardian so chooses and if at least one parent/guardian of the student continues to be physically employed by an employer situated within district boundaries, subject to the exceptions in items #1-3 above. (Education Code 48204)

Note: Education Code 48204 prescribes limits on the number of net Allen bill transfers out of the district (the difference between the number of students entering and exiting the district) ~~that a district may allow~~ each fiscal year, unless waived by the sending district. The limits are based on the average daily attendance (ADA) of the district, as follows: five percent of ADA for districts with 500 or less ADA; three percent of ADA or 25 students, whichever is greater, for districts with an ADA of 501-2,500; and one percent of ADA or 75 students, whichever is greater, for districts with an ADA of 2,501 or more. The following paragraph may be modified to specify the percentage that applies to the district's ADA.

MS

**DISTRICT RESIDENCY** (continued)

Even if the district has not authorized Allen bill transfers into the district, Education Code 48204 provides that the district may disallow transfers out of the district, within the specified limits, by students whose parent/guardian is employed within the boundaries of another district.

The Superintendent or designee may deny a transfer out of the district by a student whose parent/guardian is employed within the boundaries of another district if the difference between the number of students entering and exiting the district on the basis of parent/guardian employment exceeds the limits prescribed in Education Code 48204. (Education Code 48204)

**Proof of Residency**

**Note: Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), prohibits districts from collecting information or documents regarding the citizenship or immigration status of students or their family members. The California Office of the Attorney General, in its guidance Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, clarifies that, even though districts have discretion to accept proof of residency other than the forms listed in items #1-9 below, any alternative documents must be ones that are available to all persons regardless of citizenship or immigration status and that do not reveal information related to citizenship or immigration status. Thus, the district must not require visas, passports, green cards, voter registration, or other documentation that would discourage undocumented children from enrolling in school. Pursuant to Education Code 234.7, districts are mandated to adopt the following paragraph consistent with the Attorney General's model policy. Also see BP 5111 - Admission.**

**The district shall not solicit or collect information or documents regarding the citizenship or immigration status of students or their family members for the purpose of determining residency within the district. (Education Code 234.7)**

Evidence of residency may be established by documentation showing the name and address of the parent/guardian within the district, including, but not limited to, any of the following: (Education Code 48204.1)

1. Property tax payment receipt
2. Rental property contract, lease, or payment receipt
3. Utility service contract, statement, or payment receipt
4. Pay stub
5. Voter registration
6. Correspondence from a government agency

**DISTRICT RESIDENCY** (continued)

7. Declaration of residency executed by the student's parent/guardian
8. If the student is an unaccompanied youth as defined in 42 USC 11434a, a declaration of residency executed by the student

Note: Pursuant to Education Code 48204, a student shall be deemed a resident of the district if he/she lives with a caregiving adult within district boundaries; see item #5 in section "Criteria for Residency" above. Family Code 6552 provides an affidavit which authorizes a caregiver 18 years of age or older to enroll a minor in school and requires the caregiver's attestation that the student lives with the caregiver. If the student stops living with the caregiver, Family Code 6550 requires the caregiver to so notify the school.

9. If the student is residing in the home of a caregiving adult within district boundaries, an affidavit executed by the caregiving adult in accordance with Family Code 6552

*(cf. 5141 - Health Care and Emergencies)*

A parent/guardian seeking residency status on the basis of his/her employment within district boundaries shall submit proof of the employment which may include, but not be limited to, a paycheck stub or letter from his/her employer listing a physical address within district boundaries. Such evidence shall also indicate the number of hours or days per school week that the parent/guardian is employed at that location.

Note: ~~The following paragraph is for use by districts in which there is a military installation within district boundaries.~~ Pursuant to Education Code 48204.3, as added by SB 1455 (Ch. 312, Statutes of 2016) **amended by SB 455 (Ch. 239, Statutes of 2017)**, a parent/guardian who is seeking residency status based on his/her transfer or pending transfer to a military installation within **district boundaries the state** may provide any of the following types of proof of residence **within district boundaries**.

A parent/guardian who is transferred or pending transfer into a military installation within **district boundaries the state** shall provide proof of residence **in the district** within 10 days after the published arrival date provided on official documentation. For this purpose, he/she may use as his/her address a temporary on-base billeting facility, a purchased or leased home or apartment, or federal government or public-private venture off-base military housing. (Education Code 48204.3)

Note: Pursuant to Education Code 48204.4, as added by SB 257 (Ch. 498, Statutes of 2017), the following evidence must be provided to prove compliance with residency requirements when a student's parent/guardian departed the state against his/her will, as provided in item #10 of the section "Criteria for Residency" above.

**A student whose parent/guardian's departure from the state occurred against his/her will pursuant to item #10 in the section "Criteria for Residency" above shall be in compliance with district residency requirements if he/she provides official documentation of the parent/guardian's departure and evidence demonstrating that the student was enrolled in a public school in California immediately before moving outside the state. (Education Code 48204.4)**

MB

**DISTRICT RESIDENCY (continued)**

Note: Federal and state law require the immediate enrollment of a homeless youth student (Education Code 48852.7; 42 USC 11432), foster youth (Education Code 48853.5), or a student who has had contact with the juvenile justice system (Education Code 48645.5), regardless of his/her ability to provide the school with records normally required for enrollment, including proof of residency. If a dispute arises over the enrollment of a homeless or foster youth, the student must be allowed to attend school while the district liaison conducts a dispute resolution process. See BP/AR/E 6173 - Education for Homeless Children and AR 6173.1 - Education for Foster Youth.

The California Department of Education's web site provides sample forms to obtain a declaration and affidavit from the parent/guardian or other qualified adult relative of a homeless child attesting that the family does not have a fixed, regular, adequate nighttime residence and indicating the current location where the family lives.

Any homeless or foster youth or student who has had contact with the juvenile justice system shall be immediately enrolled in school even if he/she is unable to provide proof of residency. (Education Code 48645.5, 48852.7, 48853.5; 42 USC 11432)

*(cf. 6173 - Education for Homeless Children)*

*(cf. 6173.1 - Education for Foster Youth)*

*(cf. 6173.3 - Education for Juvenile Court School Students)*

**Safe at Home/Confidential Address Program**

Note: Government Code 6205-6210 authorize the Secretary of State to provide victims of domestic violence, stalking, or sexual assault with a substitute address to use in place of their residence, work, or school address in all public records. Under this program, the Secretary of State receives any mail sent to the substitute address and forwards it to the program participant's confidential address. Pursuant to Government Code 6207, the district must accept and use the substitute address designated by the Secretary of State as a participant's substitute address for all communication and correspondence with program participants. The participant will present a laminated identification card containing his/her substitute address and a four-digit authorization number. The district may verify the enrollment of a student in the program by contacting the Safe at Home program.

Program participants have been advised by the Secretary of State to provide administrators with their actual residence location only for school emergency purposes and to establish residency within the district.

When a student or parent/guardian participating in the Safe at Home program requests that the district use the substitute address designated by the Secretary of State, the Superintendent or designee may request the actual residence address for the purpose of establishing residency within district boundaries but shall use the substitute address for all future communications and correspondence and shall not include the actual address in the student's file or any other public record. (Government Code 6206, 6207)

*(cf. 3580 - District Records)*

(12/15 12/16) 5/18

**Policy Reference UPDATE Service**

Copyright 2018 by California School Boards Association, West Sacramento, California 95691  
All rights reserved.

MB

# CSBA Sample Board Policy

Students

BP 5125(a)

## STUDENT RECORDS

Note: Student records are governed by both federal and state law (Family Educational Rights and Privacy Act (FERPA) pursuant to ~~20 USC 1232g, 34 CFR 99.1-99.8,~~ Education Code 49069, and 5 CCR 430-433, 20 USC 1232g, and 34 CFR 99.1-99.8).

Note: Pursuant to 5 CCR 431, districts are **mandated** to establish policies and procedures to implement state law and regulations regarding student records, including policies and procedures which enumerate and describe the student records collected and maintained by the district, ensure security of the records, and guarantee access to authorized persons within five days of a request. Education Code 49069 **mandates** procedures related to parental review of student records. See the accompanying administrative regulation for additional language implementing these mandates.

The privacy of **student online information of students in prekindergarten through grade 12** is addressed in Business and Professions Code ~~22580-22582-22587, as added by SB 568 (Ch. 336, Statutes of 2013),~~ which prohibit an operator of a web site, online service or application, or mobile application from knowingly using, disclosing, ~~or compiling, or allowing a third party to use, disclose, or compile~~ the personal information of a minor for the purpose of marketing or advertising specified types of products or services; **allowing a third party to use, disclose, or compile such information; or** ~~In addition, effective January 1, 2016, Business and Professions Code 22584-22585, as added by SB 1177 (Ch. 839, Statutes of 2014), prohibit the operator of a web site, online service or application, or mobile application that provides services to K-12 students from selling or disclosing specified student information or knowingly using that such~~ student information to engage in targeted advertising to students or parents/guardians or to amass a profile about a **preK-12** student. Covered student information includes any personally identifiable information or materials created or provided by a student, parent/guardian, or district employee (e.g., name, contact information, educational record, discipline records, test results, health records, socioeconomic information). Pursuant to Business and Professions Code ~~22580 and 22584~~ **and 22586,** ~~the an~~ operator must delete a ~~student's information~~ **data under the control of the school or district** upon the request of the ~~minor,~~ school, or district.

The Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. ~~The Superintendent or designee shall ensure that the district's administrative regulation and school site procedures for maintaining the confidentiality of student records are consistent with state and federal law.~~ The Superintendent or designee shall establish administrative regulations governing the identification, **collection,** retention, and security of student records. These regulations shall ensure the rights of authorized persons to have timely access to student records ~~and shall protect students and their families from invasion of privacy while maintaining the confidentiality of student records~~ **consistent with state and federal law.**

*(cf. 3580 - District Records)*

*(cf. 4040 - Employee Use of Technology)*

*(cf. 5125.1 - Release of Directory Information)*

*(cf. 5125.3 - Challenging Student Records)*

**STUDENT RECORDS** (continued)

The Superintendent or designee shall designate a certificated employee to serve as custodian of records with responsibility for student records at the district level. At each school, the principal or a certificated employee shall be designated as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR 431)

**Note:** Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), districts are mandated to adopt policy consistent with a model policy developed by the California Attorney General, which includes the following statement. See the Office of the Attorney General publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.

**All appropriate personnel shall receive training regarding district policies and procedures for gathering and handling sensitive student information.**

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

**Note:** Pursuant to Education Code 49076.7, a district is prohibited from soliciting or collecting social security numbers or the last four digits of social security numbers of students or their parents/guardians, unless otherwise required to do so by state or federal law. One such exception is the collection of the last four digits of the social security number for the purpose of establishing eligibility for a federal benefit program.

**The district shall not collect or solicit social security numbers or the last four digits of social security numbers of students or their parents/guardians, unless otherwise required to do so by state or federal law. (Education Code 49076.7)**

**Note:** Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), prohibits the collection of information or documents regarding the citizenship or immigration status of students or their family members, as provided below. If the district becomes aware of the citizenship or immigration status of any student, it is prohibited from disclosing that information to U.S. Immigration and Customs Enforcement, as such disclosure is not among the limited exceptions specified in law for which student records may be released without parental consent or a lawful judicial order.

Pursuant to Education Code 234.7, districts are mandated to adopt the following paragraphs consistent with the model policy developed by the California Attorney General.

**No information or documents regarding the citizenship or immigration status of students or their family members shall be collected, except as required by state or federal law or as required to administer a state or federally supported educational program. The Superintendent or designee shall not disclose student records to a person, agency, or organization for immigration enforcement purposes without parental consent, a court order, or judicial subpoena. If a district employee receives such a**

AB

**STUDENT RECORDS** (continued)

**request, he/she shall immediately report the request to the Superintendent. The Superintendent shall report the request to the Board in a timely manner that ensures the confidentiality and privacy of any potentially identifying information. (Education Code 234.7)**

*(cf. 5145.13 - Response to Immigration Enforcement)*

**Note: The following paragraph reflects a requirement of Government Code 8310.3, as added by SB 31 (Ch. 826, Statutes of 2017).**

**The Superintendent or designee shall not compile a list, registry, or database based on students' national origin, ethnicity, or religious belief, practice, or affiliation, nor shall he/she disclose student information to federal government authorities for the purpose of compiling such a list, registry, or database for purposes of immigration enforcement. Such information may only be compiled or exchanged with other local, state, or federal agencies if the information is aggregated and is not personally identifiable. (Government Code 8310.3)**

**Student Records from Social Media**

Note: The following section is **optional**. Pursuant to Education Code 49073.6, **as added by AB 1442 (Ch. 799, Statutes of 2014)**, any district considering a program to gather information from students' social media activity, as defined, must first notify students and parents/guardians and provide an opportunity for public comment. The notification may be provided as part of the annual parental notification required pursuant to Education Code 48980. If such a program is then adopted, the district must comply with program requirements reflected in the section "Student Records from Social Media" in the accompanying administrative regulation.

The district should consult legal counsel before gathering any other online information that does not meet the definition of social media in Education Code 49073.6.

The Superintendent or designee may gather and maintain information from the social media of any district student, provided that the district first notifies students and parents/guardians about the proposed program, offers an opportunity for public comment at a regularly scheduled Board meeting, and gathers only information that directly pertains to school safety or student safety. (Education Code 49073.6)

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 5131.2 - Bullying)*

*(cf. 5145.6 - Parental Notifications)*

*(cf. 9322 - Agenda/Meeting Materials)*

*(cf. 9323 - Meeting Conduct)*

**STUDENT RECORDS** (continued)**Contract for Digital Storage, Management, and Retrieval of Student Records**

Note: Education Code 49073.1, ~~as added by AB 1584 (Ch. 800, Statutes of 2014)~~, authorizes districts to enter into a contract with a third party for the digital storage, management, and retrieval of student records and/or for software designed for this purpose. A district that chooses to enter into such a contract is **mandated** to adopt policy allowing such contracts and must ensure that the contract includes all the provisions specified in Education Code 49073.1. Also see BP 3312 - Contracts.

The Superintendent or designee may enter into a contract with a third party for the digital storage, management, and retrieval of student records and/or to authorize a third party provider of digital software to access, store, and use student records, provided that the contract meets the requirements of Education Code 49073.1 and other applicable state and federal laws.

(cf. 3312 - Contracts)

*Legal Reference:*EDUCATION CODE**234.7 Student protections relating to immigration and citizenship status**

17604 Contracts

48201 Student records for transfer students who have been suspended/expelled

48853.5 Foster youth; placement, immunizations

48902 Notification of law enforcement of specified violations

48904-48904.3 Withholding grades, diplomas, or transcripts

48918 Rules governing expulsion procedures

48980 Parental notifications

48985 Notices in parent/guardian's primary language

49060-49079 Student records

49091.14 Parental review of curriculum

51747 Independent study

56041.5 Rights of students with disabilities

56050 Surrogate parents

56055 Foster parents

69432.9 Cal Grant program; notification of grade point average

BUSINESS AND PROFESSIONS CODE

22580-22582 Digital privacy

22584-22585 Student Online Personal Information Protection Act

**22586-22587 Early Learning Personal Information Protection Act**

CODE OF CIVIL PROCEDURE

1985.3 Subpoena duces tecum

FAMILY CODE

3025 Access to records by noncustodial parents

6552 Caregiver's authorization affidavit

*Legal Reference: (see next page)*



**STUDENT RECORDS** (continued)*Legal Reference: (continued)*GOVERNMENT CODE6252-6260 *Inspection of public records*HEALTH AND SAFETY CODE120440 *Immunizations; disclosure of information*PENAL CODE245 *Assault with deadly weapon*WELFARE AND INSTITUTIONS CODE681 *Truancy petitions*701 *Juvenile court law*16010 *Health and education records of a minor*CODE OF REGULATIONS, TITLE 5430-438 *Individual student records*16020-16027 *Destruction of records of school districts*UNITED STATES CODE, TITLE 201232g *Family Educational Rights and Privacy Act*1232h *Protection of Pupil Rights Amendment*UNITED STATES CODE, TITLE 26152 *Definition of dependent child*UNITED STATES CODE, TITLE 4211434a *McKinney-Vento Homeless Assistance Act; definitions*CODE OF FEDERAL REGULATIONS, TITLE 16Part 312 *Children's Online Privacy Protection Rule*CODE OF FEDERAL REGULATIONS, TITLE 3499.1-99.67 *Family Educational Rights and Privacy*300.501 *Opportunity to examine records for parents of student with disability**Management Resources:***CSBA PUBLICATIONS****Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status, February 2017****CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS****Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018****FEDERAL REGISTER***Final Rule and Analysis of Comments and Changes, Family Educational Rights and Privacy, December 9, 2008, Vol. 73, No. 237, pages 74806-74855***NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS***Data in the Cloud: A Legal and Policy Guide for School Boards on Student Data Privacy in the Cloud Computing Era, April 2014***U.S. DEPARTMENT OF EDUCATION PUBLICATIONS****IDEA and FERPA Confidentiality Provisions, 2014***Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, 2008*  
*Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools, October 2007**Management Resources continued: (see next page)*

MS

**STUDENT RECORDS** (continued)

*Management Resources: (continued)*

WEB SITES

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

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

*National School Boards Association:* <http://www.nsba.org>

*U.S. Department of Education, Family Policy Compliance,* <http://www.ed.gov/policy/gen/guid/fpco>

(3/09 12/14) 5/18

**Policy Reference UPDATE Service**

Copyright 2018 by **California School Boards Association**, West Sacramento, California 95691

All rights reserved.

NS

# CSBA Sample Administrative Regulation

Students

AR 5125(a)

## STUDENT RECORDS

### Definitions

*Student* means any individual who is or has been in attendance at the district and regarding whom the district maintains student records. (34 CFR 99.3)

*Attendance* includes, but is not limited to, attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunication technologies for students who are not physically present in the classroom, and the period during which a person is working under a work-study program. (34 CFR 99.3)

Note: Guidance issued by the U.S. Department of Education (USDOE) and U.S. Department of Health and Human Services clarifies that a student's immunization and health record maintained by the district is a "student record" subject to the Family Educational Rights and Privacy Act (FERPA). Also see BP/AR 5141.6 - School Health Services.

*Student records* are any items of information (in handwriting, print, tape, film, computer, or other medium) gathered within or outside the district that are directly related to an identifiable student and maintained by the district, required to be maintained by an employee in the performance of his/her duties, or maintained by a party acting for the district. Any information maintained for the purpose of second-party review is considered a student record. Student records include the student's health record. (Education Code 49061, 49062; 5 CCR 430; 34 CFR 99.3)

Student records do not include: (Education Code 49061, 49062; 5 CCR 430; 34 CFR 99.3)

1. Directory information

(cf. 5125.1 - Release of Directory Information)

2. Informal notes compiled by a school officer or employee which remain in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a substitute employee

Note: USDOE guidance ([Balancing Student Privacy and School Safety](#)) clarifies that records created by the district's law enforcement unit, such as student images appearing on security videotapes, are not considered student records under FERPA as long as the records are created for a law enforcement purpose.

3. Records of the law enforcement unit of the district, subject to 34 CFR 99.8

(cf. 3515 - Campus Security)

(cf. 3515.3 - District Police/Security Department)

MB

**STUDENT RECORDS** (continued)

4. Records created or received by the district after an individual is no longer a student and that are not directly related to the individual's attendance as a student
5. Grades on peer-graded papers before they are collected and recorded by a teacher

*Mandatory permanent student records* are those records which are maintained in perpetuity and which schools have been directed to compile by state law, regulation, or administrative directive. (5 CCR 430)

*Mandatory interim student records* are those records which the schools are directed to compile and maintain for specified periods of time and are then destroyed in accordance with state law, regulation, or administrative directive. (5 CCR 430)

*Permitted student records* are those records having clear importance only to the current educational process of the student. (5 CCR 430)

*Disclosure* means to permit access to, or the release, transfer, or other communication of, personally identifiable information contained in student records to any party, except the party that provided or created the record, by any means including oral, written, or electronic. (34 CFR 99.3)

*Access* means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record or an oral description or communication of a record, and a request to release a copy of any record. (Education Code 49061)

*Personally identifiable information* includes, but is not limited to: (34 CFR 99.3)

1. The student's name
2. The name of the student's parent/guardian or other family members
3. The address of the student or student's family

**Note: Pursuant to 34 CFR 99.3, the definition of "personally identifiable information" includes a personal identifier such as a student's social security number. Education Code 49076.7 prohibits districts from collecting or soliciting social security numbers, or the last four digits of social security numbers, from students or their parents/guardians unless otherwise required to do so by state or federal law. If a social security number is collected under such circumstances, it must be classified as personally identifiable information and is subject to the restrictions related to access or de-identification of records specified in 34 CFR 99.30-99.39 and this administrative regulation.**

4. A personal identifier, such as the student's social security number, student number, or biometric record (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting)

**STUDENT RECORDS** (continued)

5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty
7. Information requested by a person who the district reasonably believes knows the identity of the student to whom the student record relates

*Adult student* is a person who is or was enrolled in school and who is at least 18 years of age. (5 CCR 430)

*Parent/guardian* means a natural parent, an adopted parent, legal guardian, surrogate parent, or foster parent. (Education Code 49061, 56050, 56055)

Note: Education Code 49063 requires districts to include the criteria for defining "legitimate educational interest" and "school officials and employees" in their annual notification; see section "Notification of Parents/Guardians" below.

*Legitimate educational interest* is an interest held by any school official, employee, contractor, or consultant whose duties, responsibilities, or contractual obligations to the district, whether routine or as a result of special circumstances, require him/her to have access to student records.

*School officials and employees* are officials or employees whose duties and responsibilities to the district, whether routine or as a result of special circumstances, require that they have access to student records.

Note: Pursuant to Education Code 49076, the district may allow any "contractor or consultant" with whom it has a formal written agreement to access information in student records without parent/guardian consent, when the contractor or consultant has a "legitimate educational interest" in that information. However, contrary to 34 CFR 99.31, Education Code 49076 prohibits release of student records to volunteers.

*Contractor or consultant* is anyone with a formal written agreement or contract with the district regarding the provision of services or functions outsourced to him/her by the district. Contractor or consultant shall not include a volunteer or other party. (Education Code 49076)

*Custodian of records* is the employee responsible for the security of student records maintained by the district and for devising procedures for assuring that access to such records is limited to authorized persons. (5 CCR 433)

**STUDENT RECORDS** (continued)

*County placing agency* means the county social service department or county probation department. (Education Code 49061)

**Persons Granted Absolute Access**

In accordance with law, absolute access to any student records shall be granted to:

1. Parents/guardians of students younger than age 18 years, including the parent who is not the student's custodial parent (Education Code 49069; Family Code 3025)
2. An adult student, or a student under the age of 18 years who attends a postsecondary institution, in which case the student alone shall exercise rights related to his/her student records and grant consent for the release of records (34 CFR 99.3, 99.5)

Note: Pursuant to Education Code 56041.5, all the rights accorded to the parent/guardian of a student with disabilities, including the right to access student records, are transferred to the student when he/she reaches 18 years of age except when the student has been declared incompetent under state law.

3. Parents/guardians of an adult student with disabilities who is age 18 years or older and has been declared incompetent under state law (Education Code 56041.5)

*(cf. 6159 - Individualized Education Program)*

**Access for Limited Purpose/Legitimate Educational Interest**

The following persons or agencies shall have access to those particular records that are relevant to their legitimate educational interest or other legally authorized purpose:

Note: Education Code 49076 and 34 CFR 99.31 require that access to relevant records be given to parents/guardians of a dependent child, defined by 26 USC 152 as one who lives with his/her parent/guardian for more than half the taxable year, has not provided more than half of his/her own support during that year, and has not filed a joint tax return with a spouse.

1. Parents/guardians of a student age 18 or older who is a dependent child as defined under 26 USC 152 (Education Code 49076; 34 CFR 99.31)
2. Students who are age 16 or older or who have completed the 10th grade (Education Code 49076; 34 CFR 99.31)
3. School officials and employees, consistent with the definition provided in the section "Definitions" above (Education Code 49076; 34 CFR 99.31)
4. Members of a school attendance review board (SARB) who are authorized representatives of the district and any volunteer aide age 18 or older who has been

**STUDENT RECORDS** (continued)

investigated, selected, and trained by the SARB to provide follow-up services to a referred student (Education Code 49076)

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5113.12 - District School Attendance Review Board)

5. Officials and employees of other public schools, school systems, or postsecondary institutions where the student intends or is directed to enroll, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided, or where the student is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer (Education Code 49076; 34 CFR 99.31)

Note: 34 CFR 99.34 requires the district to make a reasonable attempt to notify the parent/guardian or adult student when the district discloses certain information as described in the following paragraph. However, if the district includes a statement in its annual parental notification that the district may forward education records under these circumstances, it is not obligated to individually notify parents/guardians or adult students. The following **optional** paragraph may be deleted by districts that include such a statement in their annual parental notification. See section below entitled "Notification of Parents/Guardians."

Unless the annual parent/guardian notification issued pursuant to Education Code 48980 includes a statement that the district may disclose students' personally identifiable information to officials of another school, school system, or postsecondary institution where the student seeks or intends to enroll, the Superintendent or designee shall, when such a disclosure is made, make a reasonable attempt to notify the parent/guardian or adult student at his/her last known address, provide a copy of the record that is disclosed, and give the parent/guardian or adult student an opportunity for a hearing to challenge the record. (34 CFR 99.34)

OK

Note: Item #6 below is for use by districts that maintain high schools. Education Code 69432.9 provides that all students in grade 12 will be considered Cal Grant applicants and will have their grade point average (GPA) submitted to the Student Aid Commission, unless they opt out or are permitted under Commission rules to submit test scores in lieu of the GPA. **AB 1091 (Ch. 637, Statutes of 2015) amended** Education Code 69432.9 **to require requires** that the report be submitted on a standardized form provided by the Commission. Pursuant to Education Code 69432.92, **as added by AB 1091**, the Commission may also require that districts submit verification of high school graduation or its equivalent for all students who graduated in the prior academic year, except for students who have opted out.

Education Code ~~69432.9~~ requires that parents/guardians be notified that their child's GPA will be forwarded unless they opt out within the time period specified in the notice. This notification could be included in the annual parental notification issued pursuant to Education Code 48980.

6. The Student Aid Commission, to provide the grade point average (GPA) of all district students in grade 12 and, when requested, verification of high school graduation or its of all students who graduated in the prior academic year, for use in the Cal Grant postsecondary financial aid program. However, such information shall not be

MS

**STUDENT RECORDS** (continued)

submitted when students opt out or are permitted by the rules of the Student Aid Commission to provide test scores in lieu of the GPA. (Education Code 69432.9, 69432.92)

No later than October 15 each year, the Superintendent or designee shall notify each student in grade 12, and his/her parents/guardians if the student is under age 18 years, that the student's GPA will be forwarded to the Student Aid Commission unless he/she opts out within a period of time specified in the notice, which shall not be less than 30 days. (Education Code 69432.9)

Students' social security numbers shall not be included in the submitted information unless the Student Aid Commission deems it necessary to complete the financial aid application and the Superintendent or designee obtains permission from the student's parent/guardian, or from the adult student, to submit the social security number. (Education Code 69432.9)

6

7. Federal, state, and local officials, as needed for an audit, evaluation, or compliance activity related to a state or federally funded education program and in accordance with a written agreement developed pursuant to 34 CFR 99.35 (Education Code 49076; 34 CFR 99.3, 99.31, 99.35)

Note: Pursuant to Education Code 49076, county placing agencies authorized to assess the effectiveness of a state or federally funded program on behalf of federal, state, or local officials and agencies may be allowed access to student records. Education Code 49076 also authorizes districts, county offices of education, and county placing agencies to develop cooperative agreements to facilitate confidential access to and exchange of student information by email, facsimile, electronic format, or other secure means, provided the agreement complies with the requirements of 34 CFR 99.35.

7

8. Any county placing agency acting as an authorized representative of a state or local educational agency which is required to audit or evaluate a state or federally supported education program pursuant to item #7 above (Education Code 49076)

8

9. Any person, agency, or organization authorized in compliance with a court order or lawfully issued subpoena (Education Code 49077; 5 CCR 435; 34 CFR 99.31)

Unless otherwise instructed by the court, the Superintendent or designee shall, prior to disclosing a record pursuant to a court order or subpoena, give the parent/guardian or adult student at least three days' notice of the name of the requesting agency and the specific record requested, if lawfully possible within the requirements of the judicial order. (Education Code 49077; 5 CCR 435; 34 CFR 99.31)

10

Any district attorney who is participating in or conducting a truancy mediation program or participating in the presentation of evidence in a truancy petition (Education Code 49076)

AB



**STUDENT RECORDS** (continued)

10 ✓ 11. A district attorney's office for consideration against a parent/guardian for failure to comply with compulsory education laws (Education Code 49076)

11 ✓ 12. Any probation officer, district attorney, or counsel of record for a minor student for the purposes of conducting a criminal investigation or an investigation in regards to declaring the minor student a ward of the court or involving a violation of a condition of probation, subject to evidentiary rules specified in Welfare and Institutions Code 701 (Education Code 49076)

When disclosing records for these purposes, the Superintendent or designee shall obtain written certification from the recipient of the records that the information will not be disclosed to another party without prior written consent of the student's parent/guardian or the holder of the student's educational rights, unless specifically authorized by state or federal law. (Education Code 49076)

12 ✓ 13. Any judge or probation officer for the purpose of conducting a truancy mediation program for a student or for the purpose of presenting evidence in a truancy petition pursuant to Welfare and Institutions Code 681 (Education Code 49076)

In such cases, the judge or probation officer shall certify in writing to the Superintendent or designee that the information will be used only for truancy purposes. Upon releasing student information to a judge or probation officer, the Superintendent or designee shall inform, or provide written notification to, the student's parent/guardian within 24 hours. (Education Code 49076)

**Note: SB 233 (Ch. 829, Statutes of 2017) amended Education Code 49069.3 and 49076 to make certain types of records related to foster youth, including records related to attendance, discipline, online communications, and Section 504 plans, accessible to specified agencies and individuals.**

13 ✓ 14. **Any foster family agency with jurisdiction over a currently enrolled or former students; short-term residential treatment program staff responsible for the education or case management of a student; or a caregiver who has direct responsibility for the care of a student, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined (Education Code 49076)**

**Such individuals shall have access to the student's** ~~for purposes of accessing those students' current or most recent~~ records of grades, ~~and~~ transcripts, **attendance, discipline, online communication on platforms established by schools for students and parents/guardians,** and any individualized education program **or Section 504 plan** developed and maintained by the district (Education Code 49069.3)

**STUDENT RECORDS** (continued)

*(cf. 6173.1 - Education for Foster Youth)*

Note: AB 1068 (Ch. 713, Statutes of 2013) amended Education Code 49076 to add authorization to disclose records pursuant to items #15-17 below.

- 14 ✓ 15. A student age 14 years or older who is both a homeless student and an unaccompanied minor as defined in 42 USC 11434a (Education Code 49076)

*(cf. 6173 - Education for Homeless Children)*

- 15 ✓ 16. An individual who completes items #1-4 of the caregiver's authorization affidavit pursuant to Family Code 6552 and signs the affidavit for the purpose of enrolling a minor in school (Education Code 49076)

- 16 ✓ 17. A caseworker or other representative of a state or local child welfare agency or tribal organization that has legal responsibility for the care and protection of a student, provided that the information is directly related to providing assistance to address the student's educational needs (Education Code 49076; 20 USC 1232(g))

- 17 ✓ 18. Appropriate law enforcement authorities, in circumstances where Education Code 48902 requires that the district provide special education and disciplinary records of a student with disabilities who is suspended or expelled for committing an act violating Penal Code 245 (Education Code 48902, 49076)

When disclosing such records, the Superintendent or designee shall obtain written certification by the recipient of the records as described in item #12 above. (Education Code 49076)

- 18 ✓ 19. Designated peace officers or law enforcement agencies in cases where the district is authorized by law to assist law enforcement in investigations of suspected criminal conduct or kidnapping and a written parental consent, lawfully issued subpoena, or court order is submitted to the district, or information is provided to it indicating that an emergency exists in which the student's information is necessary to protect the health or safety of the student or other individuals (Education Code 49076.5; 34 CFR 99.1-99.67)

In such cases, the Superintendent or designee shall provide information about the identity and location of the student as it relates to the transfer of that student's records to another public school district or California private school. (Education Code 49076.5)

When disclosing records for the above purposes, the Superintendent or designee shall obtain the necessary documentation to verify that the person, agency, or organization is a person, agency, or organization that is permitted to receive such records.

MS

**STUDENT RECORDS** (continued)

Any person, agency, or organization granted access is prohibited from releasing information to another person, agency, or organization without written permission from the parent/guardian or adult student unless specifically allowed by state law or the federal Family Educational Rights and Privacy Act. (Education Code 49076)

In addition, the parent/guardian or adult student may provide written consent for access to be granted to persons, agencies, or organizations not afforded access rights by law. The written consent shall specify the records to be released and the party or parties to whom they may be released. (Education Code 49075)

Only a parent/guardian having legal custody of the student may consent to the release of records to others. Either parent/guardian may grant consent if both parents/guardians notify the district, in writing, that such an agreement has been made. (Education Code 49061)

*(cf. 5021 - Noncustodial Parents)*

**Discretionary Access**

At his/her discretion, the Superintendent or designee may release information from a student's records to the following:

1. Appropriate persons, including parents/guardians of a student, in an emergency if the health and safety of the student or other persons are at stake (Education Code 49076; 34 CFR 99.31, 99.32, 99.36)

When releasing information to any such appropriate person, the Superintendent or designee shall record information about the threat to the health or safety of the student or any other person that formed the basis for the disclosure and the person(s) to whom the disclosure was made. (Education Code 49076; 34 CFR 99.32)

|  |
|--|
| Note: The following <b>optional</b> paragraph may be revised to reflect district practice. |
|--|

Unless it would further endanger the health or safety of the student or other persons, the Superintendent or designee shall inform the parent/guardian or adult student within one week of the disclosure that the disclosure was made, of the articulable and significant threat to the health or safety of the student or other individuals that formed the basis for the disclosure, and of the parties to whom the disclosure was made.

2. Accrediting associations (Education Code 49076; 34 CFR 99.31)
3. Under the conditions specified in Education Code 49076 and 34 CFR 99.31, organizations conducting studies on behalf of educational institutions or agencies for

**STUDENT RECORDS** (continued)

the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction, provided that: (Education Code 49076; 34 CFR 99.31)

- a. The study is conducted in a manner that does not permit personal identification of parents/guardians and students by individuals other than representatives of the organization who have legitimate interests in the information.
  - b. The information is destroyed when no longer needed for the purposes for which the study is conducted.
  - c. The district enters into a written agreement with the organization that complies with 34 CFR 99.31.
4. Officials and employees of private schools or school systems where the student is enrolled or intends to enroll, subject to the rights of parents/guardians as provided in Education Code 49068 and in compliance with 34 CFR 99.34 (Education Code 49076; 34 CFR 99.31, 99.34)
  5. Local health departments operating countywide or regional immunization information and reminder systems and the California Department of Public Health, unless the parent/guardian has requested that no disclosures of this type be made (Health and Safety Code 120440)

Note: Education Code 49076 includes "contractors" and "consultants," as defined in the section "Definitions" above, among the categories of individuals to whom a student's personally identifiable information may be disclosed under certain circumstances. Unlike 34 CFR 99.34, however, Education Code 49076 prohibits disclosure of such information to volunteers and other parties.

6. Contractors and consultants having a legitimate educational interest based on services or functions which have been outsourced to them through a formal written agreement or contract by the district, excluding volunteers or other parties (Education Code 49076)

*(cf. 3600 - Consultants)*

Note: Items #7 and 8 below are for use by districts that maintain high schools.

7. Agencies or organizations in connection with the student's application for or receipt of financial aid, provided that information permitting the personal identification of a student or his/her parents/guardians for these purposes is disclosed only as may be necessary to determine the eligibility of the student for financial aid, determine the

AB

**STUDENT RECORDS** (continued)

amount of financial aid, determine the conditions which will be imposed regarding the financial aid, or enforce the terms or conditions of the financial aid (Education Code 49076; 34 CFR 99.31, 99.36)

8. County elections officials for the purpose of identifying students eligible to register to vote or offering such students an opportunity to register, subject to the provisions of 34 CFR 99.37 and under the condition that any information provided on this basis shall not be used for any other purpose or transferred to any other person or agency (Education Code 49076; 34 CFR 99.31, 99.37)

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

When disclosing records for the above purposes, the Superintendent or designee shall obtain the necessary documentation to verify that the person, agency, or organization is a person, agency, or organization that is permitted to receive such records.

**De-identification of Records**

Note: 20 USC 1232(g) and Education Code 49076 authorize the district to release student records for specified purposes (e.g., to federal and state officials conducting program audits or to organizations conducting studies) without parent/guardian consent after the removal of all "personally identifiable information" as defined in the section entitled "Definitions" above and provided that the district has made a reasonable determination that a student's identity will not be personally identifiable through single or multiple releases. Education Code 49074 further authorizes the district to provide de-identified statistical data to public or private agencies, postsecondary institutions, or research organizations when such actions would be "in the best educational interests of students."

34 CFR 99.31 lists objective standards under which districts may release information from de-identified records. These standards are applicable to both requests for individual, redacted records and requests for statistical information from multiple records.

When authorized by law for any program audit, educational research, or other purposes, the Superintendent or designee may release information from a student record without prior consent of the parent/guardian or adult student after the removal of all personally identifiable information. Prior to releasing such information, the Superintendent or designee shall make a reasonable determination that the student's identity is not personally identifiable, whether through single or multiple releases and taking into account other reasonably available information. (Education Code 49074, 49076; 34 CFR 99.31)

**Process for Providing Access to Records**

Note: Education Code 49069 **mandates** procedures for notifying parents/guardians of the location of student records if not centrally located. The following paragraph may be expanded to include notification procedures.

115

**STUDENT RECORDS** (continued)

Student records shall be maintained in a central file at the school attended by the student or, when records are maintained **in at** different locations, a notation shall be placed in the central file indicating where other records may be found. Parents/guardians shall be notified of the location of student records if not centrally located. (Education Code 49069; 5 CCR 433)

The custodian of records shall be responsible for the security of student records and shall ensure that access is limited to authorized persons. (5 CCR 433)

Note: 5 CCR 431 **mandates** districts to establish written procedures to ensure the security of student records. The following three paragraphs reflect this mandate and should be modified to reflect any specific physical, technological, or administrative controls developed by the district.

34 CFR 99.31 requires districts to use "reasonable methods" to (1) ensure that school officials, employees, and outside contractors obtain access to only those records, both paper and electronic, in which they have a legitimate educational interest and (2) identify and authenticate the identity of parents/guardians, students, school officials, and any other party to whom the district discloses personally identifiable information from education records. In addition, 34 CFR 99.31 specifies that a district which does not use physical or technological access controls (e.g., a locked file cabinet or computer security limiting access) must ensure that its administrative policy for controlling access is effective and remains in compliance with the "legitimate educational interest" requirement.

The Analysis to Comments and Changes (73 Fed. Reg. 237, page 74817) suggests a balance of physical, technological, and administrative controls to prevent unauthorized access and to ensure that school officials do not have unrestricted access to the records of all students. The Analysis also clarifies that the reasonableness of the method depends, in part, on the potential harm involved. For example, high-risk records, such as social security numbers or other information that could be used for identity theft, should receive greater and more immediate protection.

In addition, as a condition of participation in an interagency data information system (e.g., California Longitudinal Pupil Achievement Data System), Education Code 49076 requires that the district develop security procedures or devices by which unauthorized personnel cannot access data in the system and procedures or devices to secure privileged or confidential data from unauthorized disclosure.

The custodian of records shall develop reasonable methods, including physical, technological, and administrative controls, to ensure that school officials and employees obtain access to only those student records in which they have legitimate educational interests. (34 CFR 99.31)

To inspect, review, or obtain copies of student records, authorized persons shall submit a request to the custodian of records. Prior to granting the request, the custodian of records shall authenticate the individual's identity. For any individual granted access based on a legitimate educational interest, the request shall specify the interest involved.

**Note: 34 CFR 99.30 specifies information that must be included in the parent/guardian consent form, as provided below. The provisions in the following two paragraphs are required pursuant to the California Attorney General's model policy developed pursuant to Education Code 234.7, as added by**

**STUDENT RECORDS** (continued)

**AB 699 (Ch. 493, Statutes of 2017). See the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.**

When ~~prior written consent from a parent/guardian is~~ required by law, the parent/guardian shall provide ~~a~~-written, signed, and dated consent before the district discloses the student record. Such consent may be given through electronic means in those cases where it can be authenticated. The district's consent form shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. Upon request by the parent/guardian, the district shall provide him/her a copy of the records disclosed. (34 CFR 99.30)

**If the parent/guardian refuses to provide written consent for the release of student information, the Superintendent or designee shall not release the information, unless it is otherwise subject to release based on a court order or a lawful subpoena.**

Note: Education Code 49069 and 5 CCR 431 **mandate** that the district adopt procedures for granting parent/guardian requests to inspect, review, and obtain copies of records.

Within five business days following the date of request, a parent/guardian or other authorized person shall be granted access to inspect, review, and obtain copies of student records during regular school hours. (Education Code 49069)

Note: Education Code 49069 **mandates** procedures for the availability of qualified certificated personnel to interpret records when requested. The following paragraph may be expanded to include specific procedures for persons to request and receive the assistance of certificated personnel.

Qualified certificated personnel shall be available to interpret records when requested. (Education Code 49069)

The custodian of records or the Superintendent or designee shall prevent the alteration, damage, or loss of records during inspection. (5 CCR 435)

**Access Log**

A log shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the records and the legitimate educational interest of the requester. (Education Code 49064)

In every instance of inspection by persons who do not have assigned educational responsibility, the custodian of records shall make an entry in the log indicating the record inspected, the name of the person granted access, the reason access was granted, and the time and circumstances of inspection. (5 CCR 435)

## STUDENT RECORDS (continued)

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

**The custodian of records shall also make an entry in the log regarding any request for records that was denied and the reason for the denial.**

Note: Although Education Code 49064 does not require the district to record access by individuals specified in items #1-5 below, the district may consider recording access by all individuals as part of the reasonable administrative controls required by 34 CFR 99.31; see section above entitled "Process for Providing Access to Records." **The following paragraph is optional.**

The log ~~may~~ **shall** include **requests for access to records of access** by: ~~(Education Code 49064)~~

1. Parents/guardians or adult students
2. Students who are 16 years of age or older or who have completed the 10th grade
3. Parties obtaining district-approved directory information
4. Parties who provide written parental consent, in which case the consent notice shall be filed with the record pursuant to Education Code 49075
5. School officials and employees who have a legitimate educational interest

**Note: Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), any request for student records by a law enforcement agency for the purpose of enforcing immigration laws must be reported to the Superintendent and the Board; see the accompanying Board policy. Therefore, it is recommended that the custodian of records make an entry in the log regarding any such requests, as provided in item #6 below.**

### **6. Law enforcement personnel seeking to enforce immigration laws**

The log shall be accessible only to the parent/guardian, adult student, dependent adult student, student who is age 16 years or older or who has completed the 10th grade, custodian of records, and certain state or federal officials. (Education Code 49064; 5 CCR 432)

### **Duplication of Student Records**

Note: Education Code 49069 **mandates** that the district adopt procedures for granting parent/guardian requests for copies of student records pursuant to Education Code 49065.

To provide copies of any student record, the district shall charge a reasonable fee not to exceed the actual cost of providing the copies. No charge shall be made for providing up to two transcripts or up to two verifications of various records for any former student. No charge shall be made to locate or retrieve any student record. (Education Code 49065)

MB



## STUDENT RECORDS (continued)

*(cf. 3260 - Fees and Charges)*

### Changes to Student Records

Only a parent/guardian having legal custody of a student or an adult student may challenge the content of a record or offer a written response to a record. (Education Code 49061)

*(cf. 5125.3 - Challenging Student Records)*

No additions except routine updating shall be made to a student's record after high school graduation or permanent departure without prior consent of the parent/guardian or adult student. (5 CCR 437)

A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed **pursuant to a court order with proper documentation**. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.

*(cf. 5145.3 - Nondiscrimination/Harassment)*

### Retention and Destruction of Student Records

Note: 5 CCR 431 **mandates** that the district establish written policies and procedures regarding the signing and dating of anecdotal information, as specified below.

All anecdotal information and assessment reports maintained as student records shall be dated and signed by the individual who originated the data. (5 CCR 431)

The following mandatory permanent student records shall be kept indefinitely: (5 CCR 432, 437)

1. Legal name of student
2. Date and place of birth and method of verifying birth date

*(cf. 5111 - Admission)*

3. Sex of student
4. Name and address of parent/guardian of minor student
  - a. Address of minor student if different from the above

MB

**STUDENT RECORDS** (continued)

- b. Annual verification of parent/guardian's name and address and student's residence

*(cf. 5111.1 - District Residency)*

5. Entrance and departure dates of each school year and for any summer session or other extra session
6. Subjects taken during each year, half-year, summer session, or quarter, and marks or credits given

*(cf. 5121 - Grades/Evaluation of Student Achievement)*

7. Verification of or exemption from required immunizations

*(cf. 5141.31 - Immunizations)*

8. Date of high school graduation or equivalent

Mandatory interim student records, unless forwarded to another district, shall be maintained subject to destruction during the third school year after the school year in which they originated, following a determination that their usefulness has ceased or the student has left the district. These records include: (Education Code 48918, 51747; 5 CCR 432, 437, 16027)

1. Expulsion orders and the causes therefor

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

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

2. A log identifying persons or agencies who request or receive information from the student record
3. Health information, including verification or waiver of the health screening for school entry

*(cf. 5141.32 - Health Screening for School Entry)*

4. Information on participation in special education programs, including required tests, case studies, authorizations, and evidence of eligibility for admission or discharge

*(cf. 6159 - Individualized Education Program)*

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*

5. Language training records

**STUDENT RECORDS** (continued)

*(cf. 6174 - Education for English Learners)*

6. Progress slips/notices required by Education Code 49066 and 49067
7. Parental restrictions/stipulations regarding access to directory information
8. Parent/guardian or adult student rejoinders to challenged records and to disciplinary action
9. Parent/guardian authorization or denial of student participation in specific programs
10. Results of standardized tests administered within the past three years

*(cf. 6162.51 - State Academic Achievement Tests)*

*(cf. 6162.52 - High School Exit Examination)*

11. Written findings resulting from an evaluation conducted after a specified number of missed assignments to determine whether it is in a student's best interest to remain in independent study

*(cf. 6158 - Independent Study)*

Permitted student records may be destroyed six months after the student completes or withdraws from the educational program, including: (5 CCR 432, 437)

1. Objective counselor and/or teacher ratings
2. Standardized test results older than three years
3. Routine disciplinary data

*(cf. 5144 - Discipline)*

4. Verified reports of relevant behavioral patterns
5. All disciplinary notices
6. Supplementary attendance records

Records shall be destroyed in a way that assures they will not be available to possible public inspection in the process of destruction. (5 CCR 437)

MS

**STUDENT RECORDS** (continued)**Transfer of Student Records**

When a student transfers into this district from any other school district or a private school, the Superintendent or designee shall inform the student's parent/guardian of his/her rights regarding student records, including the right to review, challenge, and receive a copy of student records. (Education Code 49068; 5 CCR 438)

Note: Education Code 48201 requires districts to request records of a transferring student regarding acts that resulted in the student's suspension or expulsion from the previous school, as specified below. Once the record is received, the Superintendent or designee must inform the student's teachers of the acts; see AR 4158/4258/4358 - Employee Security.

When a student transfers into this district from another district, the Superintendent or designee shall request that the student's previous district provide any records, either maintained by that district in the ordinary course of business or received from a law enforcement agency, regarding acts committed by the transferring student that resulted in his/her suspension or expulsion. (Education Code 48201)

*(cf. 4158/4258/4358 - Employee Security)*  
*(cf. 5119 - Students Expelled From Other Districts)*

Note: Pursuant to Education Code 49068, a district is required to transfer a copy of a student's records to another school in which the student is enrolled or intends to enroll within 10 school days of receiving a request for the records. However, this would not affect a situation where a more restrictive timeline is required. For example, a district is required to transfer the records of a student who is a foster youth to the new school within two business days, pursuant to Education Code 48853.5.

When a student transfers from this district to another school district or to a private school, the Superintendent or designee shall forward a copy of the student's mandatory permanent record within 10 school days of the district's receipt of the request for the student's records. The original record or a copy shall be retained permanently by this district. If the transfer is to another California public school, the student's entire mandatory interim record shall also be forwarded. If the transfer is out of state or to a private school, the mandatory interim record may be forwarded. Permitted student records may be forwarded to any other district or private school. (Education Code 48918, 49068; 5 CCR 438)

Upon receiving a request from a county placing agency to transfer a student in foster care out of a district school, the Superintendent or designee shall transfer the student's records to the next educational placement within two business days. (Education Code 49069.5)

All student records shall be updated before they are transferred. (5 CCR 438)

Student records shall not be withheld from the requesting district because of any charges or fees owed by the student or parent/guardian. (5 CCR 438)

**STUDENT RECORDS** (continued)

If the district is withholding grades, diploma, or transcripts from the student because of his/her damage or loss of school property, this information shall be sent to the requesting district along with the student's records.

*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*

**Notification of Parents/Guardians**

Upon any student's initial enrollment, and at the beginning of each school year thereafter, the Superintendent or designee shall notify parents/guardians and eligible students, in writing, of their rights related to student records. If 15 percent or more of the students enrolled in the district speak a single primary language other than English, then the district shall provide these notices **to in** that language. Otherwise, the district shall provide these notices in the student's home language insofar as practicable. The district shall effectively notify parents/guardians or eligible students with disabilities. (Education Code 49063, 48985; 34 CFR 99.7)

*(cf. 5145.6 - Parental Notifications)*

The notice shall include: (Education Code 49063; 34 CFR 99.7, 99.34)

1. The types of student records kept by the district and the information contained therein
2. The title(s) of the official(s) responsible for maintaining each type of record
3. The location of the log identifying those who request information from the records
4. District criteria for defining school officials and employees and for determining legitimate educational interest
5. District policies for reviewing and expunging student records
6. The right to inspect and review student records and the procedures for doing so
7. The right to challenge and the procedures for challenging the content of a student record that the parent/guardian or student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights
8. The cost, if any, charged for duplicating copies of records
9. The categories of information defined as directory information pursuant to Education Code 49073

MS

**STUDENT RECORDS** (continued)

10. The right to consent to disclosures of personally identifiable information contained in the student's records except when disclosure without consent is authorized by law
11. Availability of the curriculum prospectus developed pursuant to Education Code 49091.14 containing the titles, descriptions, and instructional aims of every course offered by the school

*(cf. 5020 - Parent Rights and Responsibilities)*

12. Any other rights and requirements set forth in Education Code 49060-49078, and the right of parents/guardians to file a complaint with the U.S. Department of Education concerning an alleged failure by the district to comply with 20 USC 1232g

Note: Pursuant to 34 CFR 99.34, if the district's annual parental notification contains the information described in **optional** item #13 below, the district does not need to attempt to individually notify a parent/guardian or adult student when the district discloses an education record to officials of another school, school system, or postsecondary institution (see item #5 in the list of persons/agencies with legitimate educational interests in the section entitled "Persons Granted Access" above).

13. A statement that the district forwards education records to other agencies or institutions that request the records and in which the student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment

Note: The following paragraph reflects the Attorney General's model policy developed pursuant to Education Code 234.7.

**In addition, the annual parental notification shall include a statement that a student's citizenship status, immigration status, place of birth, or any other information indicating national origin will not be released without parental consent or a court order.**

**Student Records from Social Media**

Note: The following **optional** section is for use by districts that have adopted a program, pursuant to Education Code 49073.6, **as added by AB 1442 (Ch. 799, Statutes of 2014)**, to gather or maintain any information obtained from students' social media activity that pertains directly to school safety or student safety. Districts that adopt such a program, as specified in the accompanying Board policy, must comply with the requirements described below. Districts that have not adopted such a program should delete the following section.

For the purpose of gathering and maintaining records of students' social media activity, the Superintendent or designee shall: (Education Code 49073.6)

1. Gather or maintain only information that pertains directly to school safety or student safety

MB

**STUDENT RECORDS** (continued)

2. Provide a student with access to any information that the district obtained from his/her social media activity and an opportunity to correct or delete such information
3. Destroy information gathered from social media and maintained in student records within one year after a student turns 18 years of age or within one year after the student is no longer enrolled in the district, whichever occurs first
4. Notify each parent/guardian that the student's information is being gathered from social media and that any information maintained in the student's records shall be destroyed as provided in item #3 above. The notification shall also include, but is not limited to, an explanation of the process by which a student or his/her parent/guardian may access the student's records for examination of the information gathered or maintained and the process by which removal of the information may be requested or corrections to the information may be made. The notification may be provided as part of the annual parental notification required pursuant to Education Code 48980.
5. If the district contracts with a third party to gather information on a student from social media, ensure that the contract:
  - a. Prohibits the third party from using the information for purposes other than those specified in the contract or from selling or sharing the information with any person or entity other than the district, the student, or his/her parent/guardian
  - b. Requires the third party to destroy the information immediately upon satisfying the terms of the contract, or when the district notifies the third party that the student has turned 18 years of age or is no longer enrolled in the district, whichever occurs first

(12/14 12/15) 5/18



# CSBA Sample Administrative Regulation

Students

AR 5125.1(a)

## RELEASE OF DIRECTORY INFORMATION

### Definition

Note: Education Code 49073 and 20 USC 1232g, the Family Educational Rights and Privacy Act (FERPA), **mandate** that school districts adopt a policy identifying those categories of student records considered to be "directory information," which may generally be released unless the parent/guardian notifies the district of his/her refusal. "Directory information" is defined in Education Code 49061 and 34 CFR 99.3 **and listed in the following section. The district may not expand the list, but may modify it to remove any** However, the following section should be modified to reflect those categories of information defined by the district as "directory information"; those items the district does not intend to release as directory information should be deleted. Also see AR 5125 - Student Records.

~~AB 143 (Ch. 434, Statutes of 2011) amended Education Code 49061 to redefine directory information to include the student's email address (see item #4 below), thereby aligning state law with 34 CFR 99.3. However, Education Code 49061, as amended, does not include three types of information defined as directory information in 34 CFR 99.3: the student's place of birth, grade level, and photograph. Thus, these types of information are not reflected in the following list. Districts that receive any request for such information about student(s) based on federal law should consult legal counsel prior to releasing the information.~~

*Directory information* means information contained in a student record that would not generally be considered harmful or an invasion of privacy if disclosed. Such student information includes: (Education Code 49061; 20 USC 1232g; 34 CFR 99.3)

1. Name
2. Address
3. Telephone number
4. Email address
5. Date of birth
6. Major field of study
7. Participation record in officially recognized activities and sports
8. Weight and height of athletic team members
9. Dates of attendance
10. Degrees and awards received



**RELEASE OF DIRECTORY INFORMATION** (continued)

## 11. Most recent previous school attended

*(cf. 1113 - District and School Web Sites)**(cf. 1114 - District-Sponsored Social Media)*

*Directory information* does not include a student's social security number or student identification number. However, **for purposes of accessing or communicating in electronic systems**, directory information may include a student identification number, user identification, or other personal identifier used by the student ~~for purposes of accessing or communicating in electronic systems~~ provided that the identifier cannot be used to gain access to education records except when used in conjunction with a personal identification number, password, or other factor known or possessed only by the authorized user. (34 CFR 99.3)

**Note:** The following paragraph reflects a model policy developed by the California Attorney General pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017). See the Office of the Attorney General's Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues. Also see the section "Notification to Parents/Guardians" below.

***Directory information* also does not include a student's citizenship status, immigration status, place of birth, or any other information indicating national origin.**

**Notification to Parents/Guardians**

**Note:** Pursuant to Education Code 49063 and 1232g, the district must annually notify parents/guardians and eligible students who are age 18 or older, in writing, of their rights related to student records, including the categories of records considered to be "directory information." **The Attorney General's model policy developed pursuant to Education Code 234.7 requires that this notification also describe the manner in which parents/guardians may refuse the release of directory information.** See the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues. See the accompanying Exhibit for a sample parent/guardian notification.

At the beginning of each school year, all parents/guardians shall be notified as to the categories of directory information the district plans to release and the recipients of the information. The notification shall also inform parents/guardians of their right to refuse to let the district designate any or all types of information as directory information, **how to refuse release**, and the period of time within which a parent/guardian must notify the district in writing that he/she does not want a certain category of information designated as directory information. (Education Code 49063, 49073; 20 USC 1232g; 34 CFR 99.37)

*(cf. 5125 - Student Records)**(cf. 5145.6 - Parental Notifications)*

MB

**RELEASE OF DIRECTORY INFORMATION (continued)**

**Note:** Pursuant to Education Code 234.7, districts are mandated to adopt the following paragraph consistent with the Attorney General's model policy.

**In addition, the annual parental notification shall include a statement that directory information does not include citizenship status, immigration status, place of birth, or any other information indicating national origin and that the district will not release such information without parental consent or a court order.**

*(cf. 5145.13 - Response to Immigration Enforcement)*

Note: The following paragraph applies to districts that maintain secondary schools and receive funds under the federal Elementary and Secondary Education Act (ESEA). 20 USC 7908 requires those districts to notify parents/guardians that they may request that the district not release their child's name, address, and telephone number to military recruiters, employers, or colleges without their prior written consent. According to Guidance issued by the U.S. Department of Education (USDOE) ([Access to High School Students and Information on Students by Military Recruiters](#)), a single notice provided through a mailing, student handbook, or other method that is reasonably calculated to inform parents/guardians of the above information is sufficient. The law does not specify whether parents/guardians may request that the district not release their child's information to certain third parties, such as military recruiters, but authorize the release to other parties, such as private employers. Districts should consult legal counsel as appropriate.

The Superintendent or designee shall notify parents/guardians that they may request that the district not release the name, address, and telephone number of their child to military recruiters, employers, or institutions of higher education without prior written consent. (20 USC 7908)

**Parent/Guardian Consent**

Note: Education Code 49073 specifies that parents/guardians may request that their child's directory information not be released (an "opt-out" process). **Similarly, 20 USC 7908 requires an "opt-out" process by which parents/guardians may request that their child's information not be released to military recruiters, employers, or institutions of higher education.** However, in the case of a homeless ~~child or youth~~ **student** as defined in 42 USC 11434a, directory information may only be released if the parent/guardian or student age 18 or older has provided written consent ("opt-in process").

~~According to a letter from the USDOE to California's Superintendent of Public Instruction, it is a "misapplication" of 20 USC 7908 for a district to establish an "opt-in" procedure specifically for military recruiters whereby a district would not provide information to military recruiters unless a parent/guardian has provided affirmative consent. According to the letter, a district that establishes an "opt-in" procedure for military recruiters would risk having its federal ESEA funds withheld.~~

No directory information of a student identified as a homeless child or youth as defined in 42 USC 11434a shall be released, unless the parent/guardian, or the student if he/she is 18 years ~~old or older~~, has provided written consent that directory information may be released. For any other student, directory information shall not be released if his/her parent/guardian notifies the district in writing that such information not be disclosed without the parent/guardian's prior consent. (Education Code 49073; 20 USC 1232g, 7908)

*MS*

**RELEASE OF DIRECTORY INFORMATION (continued)**

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

For a former student, the district shall continue to honor any valid request to opt out of the disclosure of directory information made while the student was in attendance at the district, unless the opt-out request has been rescinded. (34 CFR 99.37)

(11/11 7/15) 5/18

MB

# CSBA Sample Exhibit

Students

E 5125.1(a)

## RELEASE OF DIRECTORY INFORMATION

Note: The following exhibit is based on a model notice prepared by the U.S. Department of Education and should be modified to reflect district practice. It has been updated to include provisions required by the California Attorney General's model policy developed pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017); see the accompanying administrative regulation.

### PARENT/GUARDIAN NOTICE RELEASE OF DIRECTORY INFORMATION

*San Pascual  
Union  
School  
District* The Family Educational Rights and Privacy Act (FERPA), a federal law, requires that \_\_\_\_\_ (district name) \_\_\_\_\_, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, the district may disclose appropriately designated "directory information" without written consent, unless you have advised the district to the contrary in accordance with district procedures. The primary purpose of directory information is to allow the district to include this type of information from your child's education records in certain school and/or district publications. Examples include:

- a playbill, showing your child's role in a drama production
- the annual yearbook
- honor roll or other recognition lists
- graduation programs
- sports activity sheets, such as for wrestling, showing weight and height of team members

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent/guardian's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require districts receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA), **as amended**, to provide military recruiters, upon request, with students' names, addresses, and telephone listings, unless parents/guardians have advised the district that they do not want their child's information disclosed without their prior written consent.

If you do not want the district to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by *September 1<sup>st</sup>* (insert date) \_\_\_\_\_. The district has designated the following information as directory information:

**RELEASE OF DIRECTORY INFORMATION** (continued)

Note: The district should modify the following list to specify those categories of information defined by the district as "directory information" in the accompanying administrative regulation. **Those items the district does not intend to release as directory information should be deleted.**

~~AB 143 (Ch. 434, Statutes of 2011) amended Education Code 49061 to redefine directory information to include the student's email address (see item #4 below) and delete student's place of birth.~~

1. Name
2. Address
3. Telephone number
4. Email address
5. Date of birth
6. ~~Major field of study~~
7. Participation in officially recognized activities and sports
8. ~~Weight and height of athletic team members~~
9. Dates of attendance
10. Degrees and awards received
11. Most recent previous school attended

The district also may disclose your child's student identification number, user identification, or other unique personal identifier used to communicate in electronic systems, provided it cannot be used to access education records without a personal identification number (PIN), password, or other factor that only the authorized user knows. Your child's social security number will not be used for this purpose.

**Directory information does not include your child's citizenship status, immigration status, place of birth, or any other information indicating national origin. The district will not disclose such information without your consent or a court order.**

(7/05 11/11) 5/18

# CSBA Sample Board Policy

Students

BP 5131.2(a)

## BULLYING

Note: Education Code 234.1 and federal law **mandate** that the Governing Board adopt policy prohibiting discrimination, harassment, intimidation, retaliation, and bullying based on specified characteristics. **AB 699 (Ch. 493, Statutes of 2017) amended Education Code 234.1 to include immigration status as a protected class**; see BP 5145.3 - Nondiscrimination/Harassment for language fulfilling this mandate.

In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education Office for Civil Rights (OCR) clarified that misconduct that falls under a district's general anti-bullying policy may also trigger responsibilities under one or more federal antidiscrimination laws if the bullying is on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, age, disability, and/or **another** legally protected category. If so, federal law requires the district to investigate or otherwise determine what occurred and, if it finds that unlawful discrimination did occur, take prompt and effective steps reasonably calculated to end the discrimination, eliminate any hostile environment and its effects, and prevent the discrimination from recurring.

In addition, OCR's August 2013 Dear Colleague Letter: Bullying of Students with Disabilities points out that any bullying of any student with disabilities that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education and must be remedied under the federal Individuals with Disabilities Education Act. As necessary, the school may need to convene the student's individualized education program (IEP) team to determine whether the student's needs have changed as a result of the bullying and, if so, revise the IEP to ensure that the student continues to receive appropriate special education and related services.

Thus, while this policy is intended to prevent and address all types of bullying incidents among students, school officials need to know that when "discriminatory bullying" is committed (~~i.e., discrimination based on the actual or perceived status of the alleged victim which is protected by law, such as race, sex, sexual orientation, gender identity or expression, religion, age, or disability~~), and the bullying is sufficiently serious to create a hostile educational environment for the alleged victim or to otherwise deny or limit his/her educational benefits and services, including denial of a free appropriate public education, the alleged victim must be afforded the protections specified under relevant state and/or federal law. ~~CSBA staff met with representatives from California Department of Education (CDE) and OCR to discuss this policy as it relates to the uniform complaint procedure (UCP) requirements. As a result, this sample policy has been drafted to go beyond the minimal requirements under California's UCP laws and regulations in an attempt to address issues and concerns raised by CDE and OCR. While CDE and OCR have not approved or signed off on this policy, CSBA believes that the additional details provided herein may help school districts and county offices of education during any compliance check by CDE or in the event that a CDE or OCR investigation occurs.~~

The Governing Board recognizes the harmful effects of bullying on student learning and school attendance and desires to provide **a** safe school environments **that protects** students from physical and emotional harm. District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

No individual or group shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel.

MS

**BULLYING** (continued)

*(cf. 5131 - Conduct)*

*(cf. 5136 - Gangs)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

Note: Pursuant to Education Code 48900, the definition of "bullying" for purposes of establishing grounds for suspension or expulsion includes bullying via an electronic act such as posting of messages on social media networks and includes electronic acts that originate off campus; see the section "Discipline" below and AR 5144.1 - Suspension and Expulsion/Due Process.

In addition, Penal Code 653.2 makes it a crime to distribute another person's personally identifiable information electronically with the intent to cause harassment by a third party and to threaten a person's safety or that of his/her family (e.g., placing a person's address online so that he/she receives harassing messages).

Cyberbullying includes the **electronic** creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images **as defined in Education Code 48900, on the Internet, social media, or other technologies using a telephone, computer, or any wireless communication device.** Cyberbullying also includes breaking into another person's electronic account and assuming that person's identity in order to damage that person's reputation.

*(cf. 5145.2 - Freedom of Speech/Expression)*

*(cf. 6163.4 - Student Use of Technology)*

Note: Education Code 32282 encourages districts to include bullying prevention policies and procedures in their comprehensive safety plan; see BP 0450 - Comprehensive Safety Plan. In addition, Education Code 52060-52077 require the Board to adopt and annually update a local control and accountability plan which includes, among other specified state priorities, goals for addressing school climate; see BP/AR 0460 - Local Control and Accountability Plan. Pursuant to Education Code 52060, school climate should be measured by student suspension and expulsion rates and other local measures, including surveys of students, parents/guardians, and teachers on the sense of safety and school connectedness, as applicable.

Strategies for addressing bullying in district schools shall be developed with involvement of key stakeholders, including students, parents/guardians, and staff, and may be incorporated into the comprehensive safety plan, the local control and accountability plan, and other applicable district and school plans.

*(cf. 0420 - School Plans/Site Councils)*

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 0460 - Local Control and Accountability Plan)*

*(cf. 1220 - Citizen Advisory Committees)*

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

*(cf. 6020 - Parent Involvement)*

MB

**BULLYING** (continued)

Note: Because bullying is not limited to one environment, collaboration among a variety of community agencies and organizations that serve youth may be helpful in preventing and responding to bullying. For further information about building a collaborative, see CSBA's publications Safe Schools: Strategies for Governing Boards to Ensure Student Success and Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement.

As appropriate, the Superintendent or designee may collaborate with law enforcement, courts, social services, mental health services, other agencies, and community organizations in the development and implementation of joint strategies to promote safety in schools and the community and to provide services for alleged victims and perpetrators of bullying.

*(cf. 1020 - Youth Services)*

**Bullying Prevention**

To the extent possible, district schools shall focus on the prevention of bullying by establishing clear rules for student conduct and implementing strategies to promote a positive, collaborative school climate. Students shall be informed, through student handbooks and other appropriate means, of district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for engaging in bullying.

*(cf. 5137 - Positive School Climate)*

Note: California content standards related to student education about bullying and violence prevention (e.g., recognizing the characteristics of bullying, examining the effects of bullying on others, demonstrating what to say and do when witnessing bullying) are addressed within the health education content standards adopted by the State Board of Education.

47 USC 254 mandates districts that receive e-rate discounts to adopt a policy which addresses educating students about appropriate online behavior, including the interaction with other individuals on social networking web sites and in chat rooms, as well as providing information about cyberbullying awareness and response. See BP 6163.4 - Student Use of Technology for language implementing this mandate.

As appropriate, the district shall provide students with instruction, in the classroom or other educational settings, that promotes **social-emotional learning**, effective communication and conflict resolution skills, ~~social skills~~, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

*(cf. 6142.8 - Comprehensive Health Education)*

*(cf. 6142.94 - History-Social Science Instruction)*

**Note: Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), requires districts to educate students about the negative impact of bullying based on actual or perceived immigration status or religious beliefs and customs. The following paragraph reflects the California Attorney**

AB



**BULLYING** (continued)

General's model policy developed pursuant to Education Code 234.7, contained in the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, and has been expanded to include education about the impact of bullying based on any other individual characteristic.

Such instruction shall also educate students about the negative impact of bullying, discrimination, intimidation, and harassment based on actual or perceived immigration status, religious beliefs and customs, or any other individual bias or prejudice.

*(cf. 6163.4 – Student Use of Technology)*

Note: Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), districts are mandated to adopt policy, equivalent to that developed by the Attorney General, which requires the provision of staff training with the components specified below.

Education Code 32283.5 requires the CDE to develop an online training module to assist all school staff, school administrators, parents/guardians, students, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying, including, but not limited to, identifying acts of bullying or cyberbullying and implementing strategies to address such acts.

Staff shall receive related professional development, including information about early warning signs of harassing/intimidating behaviors and effective response.

The Superintendent or designee shall provide training to teachers and other school staff to raise their awareness about the legal obligation of the district and its employees to prevent discrimination, harassment, intimidation, and bullying of district students. Such training shall be designed to provide staff with the skills to:

1. Discuss the diversity of the student body and school community, including their varying immigration experiences
2. Discuss bullying prevention strategies with students, and teach students to recognize the behavior and characteristics of bullying perpetrators and victims
3. Identify the signs of bullying or harassing behavior
4. Take immediate corrective action when bullying is observed
5. Report incidents to the appropriate authorities, including law enforcement in instances of criminal behavior

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*



**BULLYING** (continued)

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such as classrooms, playgrounds, hallways, restrooms, and cafeterias.

**Intervention**

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

Note: Although Education Code 234.1 requires the district to adopt a policy requiring school personnel who witness acts of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) against students based on the actual or perceived status of the student belonging to a protected class to take immediate steps to intervene when it is safe to do so, it is recommended that districts apply this policy equally to all students; also see AR 5145.3 - Nondiscrimination/Harassment.

School staff who witness an act of bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

*(cf. 6164.2 - Guidance/Counseling Services)*

**Reporting and Filing of Complaints**

Note: The following reporting process may be revised to reflect district practice.

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee. Within one business day of receiving such a report, a staff member shall notify the principal of the report, whether or not a uniform complaint is filed. In addition, any school employee who observes an incident of bullying involving a student shall, within one business day, report his/her observation to the principal or a district compliance officer, whether or not the alleged victim files a complaint.

**BULLYING** (continued)

Within two business days of receiving a report of bullying, the principal shall notify the district compliance officer identified in AR 1312.3 - Uniform Complaint Procedures.

*(cf. 1312.3 - Uniform Complaint Procedures)*

Note: Districts have the authority to monitor student use of the district's Internet system and to conduct individual searches of student accounts if there is reasonable suspicion that a user has violated district policy or the law; see BP/AR 5145.12 - Search and Seizure and BP/E 6163.4 - Student Use of Technology.

When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages that they feel constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated. When a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3. The student who is the alleged victim of the bullying shall be given an opportunity to describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

**Investigation and Resolution of Complaints**

Note: Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on race or ethnicity, nationality, gender, sex, sexual orientation, religion, **immigration status**, or any ~~other~~ characteristic contained in the definition of hate crimes in Penal Code 422.55. Pursuant to 5 CCR 4600-4633, the UCP must be used for this purpose. In addition, federal regulations require districts to adopt procedures providing for prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25).

Although some bullying incidents may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all bullying incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was bullied because of his/her actual or perceived membership in a legally protected class. Those bullying incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When a bullying incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process. Districts that are concerned about the capacity of a single district compliance officer to handle a possible increase in the number of UCP complaints, or that prefer to handle certain incidents at the school site level whenever possible, may designate multiple compliance officers in accordance with AR 1312.3 - Uniform Complaint Procedures.

**BULLYING** (continued)

Any complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3.

If, during the investigation, it is determined that a complaint is about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

**Discipline**

Note: Pursuant to Education Code 48900-48900.4, "bullying" is a ground for suspension or expulsion; see AR 5144.1 - Suspension and Expulsion/Due Process.

The courts have generally upheld discipline for off-campus student conduct that poses an identifiable threat to the safety of other students, staff, or school property or presents a risk of substantial disruption of school activities, provided that the district is able to document the impact or disruption that the conduct has, or could be expected to have, on school activities (e.g., Wynar v. Douglas County School District, Lavine v. Blaine School District). ~~In addition, courts have analyzed the reasonableness of the district's policy and whether the disciplinary action taken by the district was in proportion to the student's misbehavior. For example, T~~the court in J.C. v. Beverly Hills Unified School District found that the district would be able to discipline a student for a video recorded off campus and posted on YouTube, but that the discipline imposed on this particular student was not justified since the district did not present evidence of specific facts that led school officials to predict that the video would cause substantial disruption (e.g., the video was not violent or threatening nor did it lead to any confrontations between the students).

Consistent with these interpretations, Education Code 48900 defines bullying by means of an electronic act to include creation or transmission originating on or off the school site. Thus, for purposes of determining whether the conduct may be subject to suspension or expulsion, the act does not necessarily need to have been committed while at school, while coming to or from school, or during a school-sponsored activity. Nevertheless, the act needs to satisfy the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to his/her person or property, causing a substantially detrimental effect on his/her physical or mental health, causing substantial interference with his/her academic performance, or causing substantial interference with his/her ability to participate in or benefit from school services, activities, or privileges).

When the conduct does not rise to the level specified in Education Code 48900, the district may implement interventions other than suspension or expulsion to address the bullying. For further information, see CSBA's policy brief Cyberbullying: Policy Considerations for Boards. Also see BP 5131 - Conduct and BP 5145.2 - Freedom of Speech/Expression.

Additionally, districts should note that, in the context of discriminatory bullying on the basis of race, color, national origin, sex, or disability, federal law and regulations require school districts to impose discipline on students, up to and including suspension and expulsion, where necessary to remedy the effects of a hostile environment and prevent the discrimination from recurring.

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as

**BULLYING** (continued)

defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

- (cf. 5138 - Conflict Resolution/Peer Mediation)*
- (cf. 5144 - Discipline)*
- (cf. 5144.1 - Suspension and Expulsion/Due Process)*
- (cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*
- (cf. 6159.4 - Behavioral Interventions for Special Education Students)*

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

- (cf. 4118 - Dismissal/Suspension/Disciplinary Action)*
- (cf. 4119.21/4219.21/4319.21 - Professional Standards)*
- (cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*Legal Reference:*

EDUCATION CODE

- 200-262.4 Prohibition of discrimination
- 32282 Comprehensive safety plan
- 32283.5 Bullying; online training
- 35181 Governing board policy on responsibilities of students
- 35291-35291.5 Rules
- 48900-48925 Suspension or expulsion
- 48985 Translation of notices
- 52060-52077 Local control and accountability plan

PENAL CODE

- 422.55 Definition of hate crime
- 647 Use of camera or other instrument to invade person's privacy; misdemeanor
- 647.7 Use of camera or other instrument to invade person's privacy; punishment
- 653.2 Electronic communication devices, threats to safety

CODE OF REGULATIONS, TITLE 5

- 4600-4687 Uniform complaint procedures

UNITED STATES CODE, TITLE 47

- 254 Universal service discounts (e-rate)

CODE OF FEDERAL REGULATIONS, TITLE 28

- 35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

- 104.7 Designation of responsible employee for Section 504
- 106.8 Designation of responsible employee for Title IX
- 110.25 Notification of nondiscrimination on the basis of age

COURT DECISIONS

- Wynar v. Douglas County School District*, (2013) 728 F.3d 1062
- J.C. v. Beverly Hills Unified School District*, (2010) 711 F.Supp.2d 1094
- Lavine v. Blaine School District*, (2002) 279 F.3d 719

**BULLYING** (continued)*Management Resources:*CSBA PUBLICATIONS*Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014**Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014**Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012**Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011**Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009**Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007*CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**California's Social and Emotional Learning: Guiding Principles, 2018***Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008**Bullying at School, 2003***CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS****Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California K-12 Schools in Responding to Immigration Issues, April 2018**U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS**Guidance to Schools: Bullying of Students with Disabilities, October 2014***Dear Colleague Letter: Bullying of Students with Disabilities, August 2013***Dear Colleague Letter: Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, October 26, 2010***Dear Colleague Letter: Harassment and Bullying, October 2010*WEB SITESCSBA: <http://www.csba.org>California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lss>**California Office of the Attorney General: <http://oag.ca.gov>**Center on Great Teachers and Leaders: <https://gtlcenter.org/>Collaborative for Academic Social and Emotional Learning: <https://casel.org>Common Sense Media: <http://www.commonsensemedia.org>National School Safety Center: <http://www.schoolsafety.us>ON[the]LINE, digital citizenship resources: <http://www.onthelinea.org>**Partnership for Children and Youth: <https://www.partnerforchildren.org>**U.S. Department of Education: <http://www.ed.gov>

(10/14 7/15) 5/18

# CSBA Sample Board Policy

Students

BP 5145.3(a)

## NONDISCRIMINATION/HARASSMENT

Note: The following **mandated** policy reflects various provisions of state and federal law which prohibit discrimination against students in educational programs and activities based on certain actual or perceived characteristics of an individual, including Education Code 220, **as amended by AB 699 (Ch. 493, Statutes of 2017)**, which prohibits discrimination based on race, nationality, **immigration status**, ethnicity, gender, gender identity, gender expression, sex, sexual orientation, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55; **Government Code 11135, which prohibits discrimination based on all the foregoing characteristics and on age, disability, and an individual's genetic information**; Title VI (42 USC 2000d-2000e-17), which prohibits discrimination based on race, color, or national origin; Title IX (20 USC 1681-1688), which prohibits discrimination based on sex, gender, gender identity, pregnancy, and parental status; the Age Discrimination Act of 1975 (42 USC 6101-6107), which prohibits discrimination based on age; and Title II (20 USC 12101-12213) and Section 504 (29 USC 794), which prohibit discrimination based on disability. Education Code 260 gives the Governing Board primary responsibility for ensuring that district programs and activities are free from discrimination based on age or any of these characteristics. See also BP 0410 - Nondiscrimination in District Programs and Activities.

Moreover, this sample Board policy and the accompanying administrative regulation reflect the statutory right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with his/her gender identity as specified in Education Code 221.5, and best practices based on existing state and federal law. Districts with questions about the rights of transgender and gender-nonconforming students should consult legal counsel as appropriate. For more information on the rights of transgender students, see CSBA's **policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender Nonconforming Students and its Final Guidance Regarding Transgender Students, Privacy, and Facilities.**

Education Code 234.1 **mandates** that districts adopt policy prohibiting **discrimination**, at school or in any school activity related to school attendance or under the authority of the district, **discrimination**, including discriminatory harassment, intimidation, and bullying, based on the foregoing characteristics. The California Department of Education (CDE), through its Federal Program Monitoring process, reviews districts' uniform complaint procedures (UCP) and other anti-discrimination policies and practices to ensure compliance with these requirements. In addition, the U.S. Department of Education's Office for Civil Rights (OCR) is responsible for the administrative enforcement of federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance from the department, and requires the adoption of nondiscrimination policies and complaint procedures.

~~CSBA staff received feedback and comment from representatives of CDE and OCR regarding this policy and the accompanying regulation as they relate to the UCP requirements. As a result, the sample policy and regulation have been drafted to go beyond the minimal requirements under California's UCP laws and regulations in an attempt to address issues and concerns raised by CDE and OCR. While CDE and OCR have not approved or signed off on them, CSBA believes that the additional details provided herein may help school districts and county offices of education during any compliance check by CDE or in the event that a CDE or OCR investigation occurs.~~

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic, extracurricular, and other

NB

**NONDISCRIMINATION/HARASSMENT** (continued)

educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at any student by anyone, based on the student's actual or perceived race, color, ancestry, **nationality**, national origin, **nationality**, **immigration status**, **ethnicity**, ethnic group identification, **ethnicity**, age, religion, marital **status**, **pregnancy**, ~~or~~ parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, ~~or~~ gender expression, **or genetic information**, or association with a person or group with one or more of these actual or perceived characteristics.

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

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

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

*(cf. 6164.6 - Identification and Education Under Section 504)*

Note: Education Code 234.1 prohibits unlawful discrimination in **school-related activities and when it affects all acts related to school activity or** school attendance. ~~However,~~ OCR has clarified in several publications that conduct that occurs off campus may have an adverse effect on a student at school (i.e., create a "hostile environment" for the student). When that happens, the district has an obligation to investigate and to take steps to protect the student.

This policy shall apply to all acts related to school activity or to school attendance occurring within a district school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Note: In addition to the types of prohibited student conduct described ~~below~~ **above**, prohibited conduct **also** includes different treatment of students with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services. See BP 0410 - Nondiscrimination in District Programs and Activities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

AB



**NONDISCRIMINATION/HARASSMENT** (continued)

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

Note: Pursuant to Education Code 234.1 and 34 CFR 106.8, a district is required to adopt and publicize its nondiscrimination policies to the school community. The following paragraph may be modified to reflect district practice.

In addition, in its October 2010 Dear Colleague Letter: Harassment and Bullying, OCR identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school. See the accompanying administrative regulation for specific measures to prevent discrimination and facilitate students' access to the educational program.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. He/she shall provide training and information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. He/she shall report his/her findings and recommendations to the Board after each review.

*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1330 - Use of Facilities)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*  
*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*  
*(cf. 6164.2 - Guidance/Counseling Services)*

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

Note: Policies related to discrimination must be consistent with the First Amendment right to free speech. Education Code 48950 prohibits a district from subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. However, Education Code 48950 also specifies that the law does not prohibit discipline for harassment, threats, or intimidation unless constitutionally protected. Whether such speech might be

## **NONDISCRIMINATION/HARASSMENT (continued)**

entitled to constitutional protection would be determined on a case-by-case basis, with consideration for the specific words used and the circumstances involved. The district should consult legal counsel as necessary.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4118 - **Dismissal**/Suspension/Disciplinary Action)*  
*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 5144 - Discipline)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*  
*(cf. 5145.2 - Freedom of Speech/Expression)*

### **Record-Keeping**

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

*(cf. 3580 - District Records)*

*Legal Reference: (see next page)*

MS

**NONDISCRIMINATION/HARASSMENT (continued)**

*Legal Reference:*

EDUCATION CODE

- 200-262.4 *Prohibition of discrimination*
- 48900.3 *Suspension or expulsion for act of hate violence*
- 48900.4 *Suspension or expulsion for threats or harassment*
- 48904 *Liability of parent/guardian for willful student misconduct*
- 48907 *Student exercise of free expression*
- 48950 *Freedom of speech*
- 48985 *Translation of notices*
- 49020-49023 *Athletic programs*
- 51500 *Prohibited instruction or activity*
- 51501 *Prohibited means of instruction*
- 60044 *Prohibited instructional materials*

CIVIL CODE

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

GOVERNMENT CODE

- 11135 *Nondiscrimination in programs or activities funded by state***

PENAL CODE

- 422.55 *Definition of hate crime*
- 422.6 *Crimes, harassment*

CODE OF REGULATIONS, TITLE 5

- 432 *Student record*
- 4600-~~4687~~ **4670** *Uniform complaint procedures*
- 4900-4965 *Nondiscrimination in elementary and secondary education programs*

UNITED STATES CODE, TITLE 20

- 1681-1688 *Title IX of the Education Amendments of 1972*
- 12101-12213 *Title II equal opportunity for individuals with disabilities*

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*

CODE OF FEDERAL REGULATIONS, TITLE 28

- 35.107 *Nondiscrimination on basis of disability; complaints*

CODE OF FEDERAL REGULATIONS, TITLE 34

- 99.31 *Disclosure of personally identifiable information*
- 100.3 *Prohibition of discrimination on basis of race, color or national origin*
- 104.7 *Designation of responsible employee for Section 504*
- 106.8 *Designation of responsible employee for Title IX*
- 106.9 *Notification of nondiscrimination on basis of sex*
- 110.25 *Prohibition of discrimination based on age*

COURT DECISIONS

- Donovan v. Poway Unified School District*, (2008) 167 Cal.App.4th 567
- Flores v. Morgan Hill Unified School District*, (2003) 324 F.3d 1130

*Management Resources: (see next page)*

AB

**NONDISCRIMINATION/HARASSMENT (continued)**

*Management Resources:*

**CSBA PUBLICATIONS**

**Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, July 2016**

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

~~Final Guidance Regarding Transgender Students, Privacy, and Facilities, March 2014~~

~~Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2014~~

**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS**

**Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018**

**FIRST AMENDMENT CENTER PUBLICATIONS**

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006

**NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS**

~~Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, 2004~~

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

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

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, January 1999-Fact Sheet, August 2010

**WEB SITES**

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

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

California Safe Schools Coalition: <http://www.casafeschools.org>

**California Office of the Attorney General: <http://oag.ca.gov>**

First Amendment Center: <http://www.firstamendmentcenter.org>

National School Boards Association: <http://www.nsba.org>

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

(10/14 9/16) 5/18

*MRS*

# CSBA Sample Administrative Regulation

Students

AR 5145.3(a)

## NONDISCRIMINATION/HARASSMENT

Note: The following **mandated** administrative regulation provides measures that may be implemented by a district to comply with state and federal laws and regulations prohibiting **unlawful discrimination**, at school or in school-sponsored or school-related activities, **unlawful discrimination**, including discriminatory harassment, intimidation, and bullying, of any student based on his/her actual or perceived race, color, ancestry, **nationality**, national origin, **immigration status**, ethnic group identification, **ethnicity**, age, religion, marital ~~or parental~~ status, pregnancy, **parental status**, physical or mental disability, sex, sexual orientation, gender, gender identity, ~~or~~ gender expression, **genetic information**, or any other legally protected category or association with a person or group with one or more of these actual or perceived characteristics. Federal and state law also prohibit retaliation against those who engage in activity to protect civil rights.

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, including discriminatory harassment, intimidation, retaliation, or bullying. In addition, 34 CFR 106.8 and other federal regulations **mandate** districts that receive federal financial assistance to adopt procedures for the "prompt and equitable" resolution of student and employee discrimination complaints, including the designation of one or more responsible employees to ensure district compliance with federal laws and regulations governing the district's educational programs.

During the Federal Program Monitoring 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 investigating complaints. The U.S. Department of Education's (USDOE) Office for Civil Rights (OCR) is the agency responsible for the administrative enforcement of federal antidiscrimination laws and regulations in programs and activities that receive federal financial assistance from the department. In reviewing a district's discrimination policies and procedures, OCR will examine whether the district has identified the employee(s) responsible for coordinating compliance with federal civil rights laws, including the investigation of complaints.

The following paragraphs identify the employee(s) designated to coordinate the district's efforts to comply with state and federal civil rights laws (e.g. Title IX and Section 504 coordinators), including the investigation and resolution of discrimination complaints under AR 1312.3 - Uniform Complaint Procedures. Note also that a district may designate more than one employee to coordinate compliance and/or receive and investigate complaints, although each employee designated as a coordinator/compliance officer must be properly trained.

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, **nationality**, national

**NONDISCRIMINATION/HARASSMENT** (continued)

origin, **nationality**, **immigration status**, **ethnicity**, ethnic group identification, **ethnicity**, age, religion, marital **status**, pregnancy, ~~or~~ parental status, ~~pregnancy~~, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, **genetic information**, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

Superintendent  
 (title or position)  
 15305 Rockwood Rd, Escorido, CA 92027  
 (address)  
 760-748-4931  
 (telephone number)  
 spusde@compasgvalunion.net  
 (email)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

**Measures to Prevent Discrimination**

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

Note: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, CDE is required to ensure that the district posts its nondiscrimination policies in all schools, offices, staff lounges, and student government meeting rooms. In addition, federal regulations enforced by OCR require the district to notify students, parents/guardians, and employees of its policies prohibiting discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25) and of related complaint procedures.

Item #1 below may be revised to specify the means by which the district publicizes its nondiscrimination policies and complaint procedures.

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them on the district's web site and other prominent locations and providing easy access to them through district-supported social media, when available.

AB

**NONDISCRIMINATION/HARASSMENT** (continued)

Note: Education Code 221.61, as added by SB 1375 (Ch. 655, Statutes of 2016), requires districts and public schools to post on their web sites information related to Title IX (20 USC 1681-1688). A comprehensive list of rights based on the federal regulations implementing Title IX can be found in Education Code 221.8. A district that does not maintain a web site may comply by posting the information below on the web site of its county office of education. A school without a web site may comply by posting the information on the web site of the district or county office of education.

2. Post in a prominent and conspicuous location on the district and school web sites information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following: (Education Code 221.61)
    - a. The name and contact information of the district's Title IX coordinator, including the phone number and email address
    - b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)
    - c. A description of how to file a complaint of noncompliance with Title IX in accordance with AR 1312.3 - Uniform Complaint Procedures, which shall include:
      - (1) An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations
      - (2) An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site
      - (3) A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office
- (cf. 1113 - District and School Web Sites)*  
*(cf. 1114 - District-Sponsored Social Media)*
3. Provide to students a handbook that contains age-appropriate information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior. (Education Code 234.1)

**NONDISCRIMINATION/HARASSMENT** (continued)

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, OCR identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school. See also CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender Nonconforming Students. Item #4 below may be modified to reflect district practice.

4. Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.

*(cf. 5145.6 - Parental Notifications)*

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 school 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.

5. The Superintendent or designee shall ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

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 nondiscrimination 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 information for parents/guardians with limited English proficiency.

AB



**NONDISCRIMINATION/HARASSMENT (continued)**

6. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include details of guidelines the district may use to provide a discrimination-free environment for all district students, including transgender and gender-nonconforming students.

*(cf. 1240 - Volunteer Assistance)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*

7. At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required to intervene if it is safe to do so. (Education Code 234.1)

Note: Item #8 below may be revised to reflect district practice. In some situations, the district may need to provide assistance to a student to protect him/her from harassment or bullying. Each situation will need to be analyzed to determine the most appropriate course of action to meet the needs of the student, based on the circumstances involved.

8. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to ~~protect students' privacy rights and ensure their safety~~ **protect students** from threatened or potentially discriminatory behavior **and ensure their privacy rights**.

**Enforcement of District Policy**

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 - Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

*(cf. 5131.5 - Vandalism and Graffiti)*

2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, how to report it or file a complaint, and how to respond
3. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

*NB*

**NONDISCRIMINATION/HARASSMENT (continued)**

4. Consistent with ~~the~~ laws regarding the confidentiality of student and personnel records, communicating ~~the school's response~~ to students, parents/guardians, and the community **the school's response plan to unlawful discrimination or harassment**

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

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*(cf. 5125 - Student Records)*

5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that he/she knew was not true

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

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

*(cf. 5144 - Discipline)*

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

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

*(cf. 6159.4 - Behavioral Interventions for Special Education Students)*

**Process for Initiating and Responding to Complaints**

Note: Education Code 234.1 requires that districts adopt a process for receiving and investigating complaints of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying. Such a process, which is required to be consistent with the uniform complaint procedures specified in 5 CCR 4600-~~4687~~ **4670**, must include (1) a requirement that school personnel who witness an act take immediate steps to intervene when safe to do so, (2) a timeline for investigating and resolving complaints, (3) an appeal process, and (4) translation of forms when required by Education Code 48985. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). OCR guidance on federal civil rights requirements notes that districts may have a responsibility to respond to notice of discrimination whether or not a formal complaint is filed. In addition, ~~in its April 2011 Dear Colleague Letter: Sexual Violence, OCR cautions that~~ districts may have an obligation to respond to notice of sexual harassment of students which occurs off school grounds or outside school-sponsored or school-related programs or activities, since the sexual harassment may still create a hostile environment at school. This principle would also apply to harassment on other bases, such as race, gender, or disability.

Any student who feels that he/she has been subjected to unlawful discrimination described above or in district policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within a school day, whether or not the alleged victim files a complaint.

*MS*

**NONDISCRIMINATION/HARASSMENT (continued)**

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

Note: Though a formal complaint must be in writing pursuant to 5 CCR 4600, the district's obligation to provide a safe school environment for its students overrides the need to comply with formalities. Thus, once the district receives notice of an incident, whether verbally or in writing, it is good practice to begin the investigation of the report and to take steps to stop any prohibited conduct and address any effect on students. The following paragraph reflects such practice and is consistent with OCR recommendation.

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions in AR 1312.3 - Uniform Complaint Procedures. Once notified verbally or in writing, the principal or compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination by the principal, compliance officer, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

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

**Transgender and Gender-Nonconforming Students**

Note: The following section may be modified to reflect district practice. Pursuant to Education Code 221.5, a district is required to permit a student to use facilities and participate in sex-segregated school programs and activities consistent with the student's gender identity, regardless of the gender listed on his/her educational records. Because Education Code 221.5 affords transgender students these rights, districts in California are not impacted by the February 22, 2017 action of the USDOE and U.S. Department of Justice to rescind earlier federal guidance which had indicated that, under Title IX, students must be allowed to use sex-segregated facilities in accordance with their gender identity. In implementing state law, districts may review recommended practices in the USDOE's Office of Elementary and Secondary Education's Examples of Policies and Emerging Practices for Supporting Transgender Students. For more information on the rights of transgender students, see CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students and its Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Discrimination.

**NONDISCRIMINATION/HARASSMENT** (continued)

*Gender identity* of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense of his/her gender, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

*Gender expression* means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

*Gender transition* refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

*Gender-nonconforming student* means a student whose gender expression differs from stereotypical expectations.

*Transgender student* means a student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity
2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
3. Blocking a student's entry to the **bathroom** that corresponds to his/her gender identity
4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent
6. Use of gender-specific slurs

MS

**NONDISCRIMINATION/HARASSMENT** (continued)

7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

Examples of bases for complaints include, but are not limited to, the above list, as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

Note: Timelines included in items #1-2 below may be modified to reflect district practice.

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the compliance officer may discuss with the student any need to disclose the student's transgender or gender-nonconformity status or gender identity or gender expression to his/her parents/guardians and/or others, including other students, teacher(s), or other adults

**NONDISCRIMINATION/HARASSMENT** (continued)

on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

*(cf. 1340 - Access to District Records)*

*(cf. 3580 - District Records)*

2. **Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
3. **Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action ~~could~~ **can** be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting his/her educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance

**NONDISCRIMINATION/HARASSMENT** (continued)

with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

*(cf. 6145.2 - Athletic Competition)*

*(cf. 6153 - School-Sponsored Trips)*

*(cf. 7110 - Facilities Master Plan)*

Note: 5 CCR 432 requires the legal name, sex, date of birth, etc., of a student to be maintained as part of the student's "mandatory permanent student records" but does not prohibit keeping of other records, such as a student's preferred name, as part of the student's "permitted student records."

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed **pursuant to a court order with proper documentation**. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents. Such preferred name may be added to the student's record and official documents as permitted by law.

*(cf. 5125 - Student Records)*

*(cf. 5125.1 - Release of Directory Information)*

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying district policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

*(cf. 5132 - Dress Code)*

(9/16 5/17) 5/18

# CSBA Sample Board Policy

Students

BP 5145.9(a)

## HATE-MOTIVATED BEHAVIOR

Note: The following **optional** policy ~~is for use by districts in the implementation of a~~ **addresses** prevention ~~strategy~~ **strategies** for hate-motivated incidents and should be modified to reflect district practice. Elements of this policy ~~will also likely~~ **should** be integrated into existing **district and school site** plans, such as the **local control and accountability plan, comprehensive school safety plan,** and staff development plans, as well as any policies developed by the district regarding school climate (see BP 5137 — Positive School Climate) and nondiscrimination (see BP 0410 — Nondiscrimination in District Programs and Activities and BP 5145.3 — Nondiscrimination/Harassment).

~~In its publication entitled Hate-Motivated Behavior in Schools, the California Department of Education defines "hate-motivated behavior" as an act, or attempted act, motivated by hostility towards a victim's real or perceived ethnicity, national origin, immigrant status, sex, gender, sexual orientation, religious belief, age, disability, or any other physical or cultural characteristic. Some "hate-motivated behavior," including an assault, bomb threat, destruction of property, graffiti, and certain types of vandalism, may also be crimes under state or federal law.~~

~~In order to create a safe learning environment for all students, the Governing Board desires to protect the right of every student to be free from hate-motivated behavior and will promote harmonious relationships among students so as to enable them to gain a true understanding of the civil rights and social responsibilities of people in society. The district prohibits discriminatory behavior or statements that degrade an individual on the basis of his/her actual or perceived race, ethnicity, culture, heritage, gender, sex, sexual orientation, physical/mental attributes, or religious beliefs or practices.~~ **The Governing Board is committed to providing a safe learning environment that protects students from discrimination, harassment, intimidation, bullying, and other behavior motivated by a person's hostility towards another person's real or perceived ethnicity, national origin, immigrant status, sex, gender, sexual orientation, religious belief, age, disability, or any other physical or cultural characteristic. The Superintendent or designee shall design strategies to promote harmonious relationships among students, prevent incidents of hate-motivated behavior to the extent possible, and address such incidents if they occur.**

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

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515.4 - Recovery for Property Loss or Damage)*

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5131.5 - Vandalism and Graffiti)*

*(cf. 5136 - Gangs)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5141.52 - Suicide Prevention)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5147 - Dropout Prevention)*

MS



**HATE-MOTIVATED BEHAVIOR** (continued)

Note: **Hate-motivated behavior, such as an assault, physical threat, bomb threat, destruction of property, graffiti, and certain types of vandalism, may constitute a crime under state or federal law.** Local law enforcement agencies and human rights commissions **throughout the state** have established countywide hate crimes networks aimed at responding to and preventing hate crimes. **The Districts can identify local hate crime resources through the** California Association of Human Relations Organizations, **which** conducts activities designed to protect human and civil rights through networks of collaborations that reduce community tension and build intergroup relationships.

The following **optional** paragraph should be revised to reflect district practice.

The Superintendent or designee shall collaborate with regional programs and community organizations to promote safe environments for youth. **These Such collaborative efforts shall be focused focus on providing ensuring an efficient use of district and community resources, developing effective prevention strategies and response plans, providing assistance to students affected by hate-motivated behavior, and/or educating students who have perpetrated hate-motivated acts.**

*(cf. 1020 - Youth Services)*

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

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

*(cf. 5148.2 - Before/After School Programs)*

*(cf. 5148.3 - Preschool/Early Childhood Education)*

*(cf. 6020 - Parent Involvement)*

The district shall provide **students with** age-appropriate instruction **that includes the development of social-emotional learning, promotes their to help promote an** understanding of and respect for human rights, diversity, and **tolerance acceptance** in a multicultural society, and **to provides** strategies to manage conflicts constructively.

*(cf. 5138 - Conflict Resolution/Peer Mediation)*

*(cf. 6142.3 - Civic Education)*

*(cf. 6142.4 - Service Learning/Community Service Classes)*

*(cf. 6142.94 - History-Social Science Instruction)*

**The Superintendent or designee shall ensure that staff receive training on recognizing hate-motivated behavior and on strategies to help respond appropriately to such behavior.**

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

**As necessary, the district shall also provide counseling, guidance, and support to students who are victims of hate-motivated behavior and to students who exhibit such behavior.**

*(cf. 6164.2 - Guidance/Counseling Services)*

## HATE-MOTIVATED BEHAVIOR (continued)

**The Superintendent or designee shall ensure that the rules prohibiting hate-motivated behavior and procedures for reporting a hate-motivated incident are provided to students and parents/guardians.**

**The Superintendent or designee shall ensure that staff receive training on recognizing hate-motivated behavior and on strategies to help respond appropriately to such behavior provide staff with training on recognizing and preventing hate-motivated behavior and on effectively enforcing rules for appropriate student conduct.**

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

### **Grievance Procedures-Complaint Process**

Note: School-level grievance procedures for investigation of sexual harassment complaints are detailed in AR 5145.7 – Sexual Harassment. The following paragraph provides for the application of those procedures to the investigation of complaints regarding hate-motivated behavior. Districts that wish to use other procedures should modify the following paragraph accordingly. Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on race or ethnicity, nationality, gender, sex, sexual orientation, religion, immigration status, or any characteristic contained in the definition of hate crimes in Penal Code 422.55. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). Pursuant to 5 CCR 4600-4670, uniform complaint procedures (UCP) must be used for this purpose. See BP/AR 1312.3 - Uniform Complaint Procedures.

Although some incidents of harassment, intimidation, or bullying may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was victimized because of his/her actual or perceived membership in a legally protected class. Those incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When an incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process.

**Any student who believes he/she is a victim of hate-motivated behavior shall immediately contact the Coordinator for Nondiscrimination/Principal. A student or parent/guardian who believes the student is a victim of hate-motivated behavior is strongly encouraged to report the incident to a teacher, the principal, or other staff member.**

**Any staff member who is notified that hate-motivated behavior has occurred, observes such behavior, or otherwise becomes aware of an incident shall immediately contact the principal or the compliance officer responsible for coordinating the district's response to complaints and complying with state and federal civil rights laws. As appropriate, he/she shall also contact law enforcement.**

## HATE-MOTIVATED BEHAVIOR (continued)

*(cf. 3515.3 - District Police/Security Department)*

*(cf. 5145.11 - Questioning and Apprehension by Law Enforcement)*

Upon receiving such a complaint, the Coordinator/Principal shall immediately investigate the complaint in accordance with school level complaint process/grievance procedures as described in AR 5145.7 - Sexual Harassment. **Any complaint of hate-motivated behavior shall be investigated and, if determined to be discriminatory, shall be resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures. If, during the investigation, it is determined that a complaint is about nondiscriminatory behavior, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.**

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 5144 - Discipline)*

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

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

Staff who receive notice of hate-motivated behavior or personally observe such behavior shall notify the Coordinator/Principal, Superintendent or designee, and/or law enforcement, as appropriate.

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 School safety plans

48900.3 Suspension for hate violence

48900.4 Suspension or expulsion for threats or harassment

#### PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

#### CODE OF REGULATIONS, TITLE 5

4600-46874670 Uniform Complaint Procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

#### CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

#### CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Prohibition of discrimination based on age

Management Resources: (see next page)

**HATE-MOTIVATED BEHAVIOR (continued)**

*Management Resources:*

**CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES PUBLICATIONS**

**Bullying at School, 2003**

**California Student Safety and Violence Prevention—Laws and Regulations, April 2004**

**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS**

**Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist**

**California K-12 Schools in Responding to Immigration Issues, April 2018**

**U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS & NATIONAL ASSOCIATION**

**OF ATTORNEYS GENERAL PUBLICATIONS**

**Protecting Students from Harassment and Hate Crime: A Guide for Schools, 1999**

**U.S. DEPARTMENT OF JUSTICE PUBLICATIONS**

**Preventing Youth Hate Crimes: A Guide for Schools and Communities, 1997**

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

**Dear Colleague Letter: Harassment and Bullying, October 2010**

**Dear Colleague Letter: Prohibited Disability Harassment, July 2000**

**WEB SITES**

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

California Association of Human Relations Organizations: <http://www.cahro.org>

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

California Office of the Attorney General: <http://oag.ca.gov>

National Youth Violence Prevention Resource Center: <http://www.safeyouth.org>

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

U.S. Department of Justice, Community Relations Service: <http://www.usdoj.gov/ers>

<https://www.justice.gov>

(6/99 7/09) 5/18

MB