



# GOVERNING BOARD MEETING AGENDA

26316 Hesperian Blvd. Hayward, CA 94545 • (510) 293-2971 • [www.edenrop.org](http://www.edenrop.org)

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**Thursday, September 1, 2022**  
**5:45 pm**

## GOVERNING BOARD MEMBERS

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Juan Campos, President	San Lorenzo Unified School District
James Aguilar, Vice-President	San Leandro Unified School District
Gabriel Chaparro, Member	Hayward Unified School District
Gary Howard, Member	Castro Valley Unified School District

## MISSION STATEMENT

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The mission of the Eden Area ROP is to build a foundation for students that prepare them academically, technically, and professionally to meet challenging opportunities of the 21st Century with confidence and purpose.



Regular Meeting of the ROP Governing Board  
Date: Thursday, September 1, 2022  
Time: 5:45 p.m.

#### **NOTICE - COVID-19 PUBLIC HEALTH EMERGENCY BOARD MEMBERS TO ATTEND VIRTUALLY**

Consistent with Assembly Bill 361, effective October 1, 2021, and the continued state of emergency (COVID-19), the Eden Area ROP Governing Board will continue to hold meetings via teleconferencing until further notice. The public is invited to participate via teleconference per the Zoom link below.

##### **Attend Zoom Meeting Instructions:**

- **To observe the meeting by video conference**, please click on [LINK](#) or go <https://zoom.us/j/99397978944?pwd=anVST3pGRDF4MjRjOHJMOUJNR3NyUT09> to at the noticed meeting time.  
Meeting ID: **993 9797 8944**  
Passcode: **EAROP23**

Instructions on how to join a meeting by video conference is available at: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>.

**To listen to the meeting by phone**, please call at the noticed meeting time **1-669-900-6833**, then enter ID **993 9797 8944**, then press "#". Passcode: **8908035**

Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>.

##### **Public Comment Instructions:**

- **To comment by video conference**, click the "Raise Your Hand" button to request to speak when Public Comment is being taken on the eligible Agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions on how to "Raise Your Hand" is available at: <https://support.zoom.us/hc/en-us/articles/205566129-Raise-Hand-In-Webinar>.
- **To comment by phone**, you will be prompted to "Raise Your Hand" by pressing "\*9" to request to speak when Public Comment is being taken on the eligible Agenda Item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>.

#### **AGENDA**

Welcome to the Eden Area Regional Occupational Program Governing Board Meeting. The purpose of the meeting is to consider matters of policy and business necessary for the operation of the Regional Occupational Program.

Any member of the audience may speak on any agenda item by following this process, or upon recognition by the President by identifying him/herself and his/her organization affiliation prior to any action taken by the Governing Board. Such presentations may be limited. If there is a desire to address the Governing Board on a matter relating to the Eden Area ROP that does not appear on the agenda, this may be done during the "Public Comment" section.

State law prohibits the ROP Governing Board from taking any action on or discussing items that are not on the posted agenda except to A) briefly respond to statements made or questions posed by the public in attendance; B) ask questions for clarification; C) provide a reference to a staff member or other resource for factual information in response to the inquiry; or D) ask a staff member to report back on the matter at the next meeting and/or place it on a future agenda. (Government Code Section 54954.2 (a))

This meeting is being recorded. These recordings are maintained by the Eden Area ROP for 30 days and are available for review to the public upon request.

**I. Call to Order**

**II. Roll Call**

**III. Pledge of Allegiance**

**IV. Mission Statement**

**V. Approval of Agenda**

**VI. Public Comment for Agenda items and matters that are related to the Eden Area ROP**

(According to the Brown Act, the Board may not comment or take action on items not on the agenda.)

The Board respects and encourages the public to comment on matters on the Board agenda and within the Board's jurisdiction. The Board fully supports civil discourse and requests that everyone respect each other and their point of view.

**Public Comment Instructions:**

- When it is time for the speakers to address the Board, your name will be called and you will then be unmuted and allowed to make public comments.
- Speakers should rename their Zoom profile names to their real names to expedite this process.
- After the comment, the microphone for the speaker's Zoom profile will be muted.

With Board consensus, the President may increase or decrease the time allowed. This meeting is being recorded to prepare the official minutes.

**VII. Consent Calendar**

Action by the Eden Area ROP Governing Board of the Eden Area Regional Occupational Program means that all items listed under the Consent Calendar are adopted by one single motion, unless a member of the Governing Board, the Superintendent, or a member of the public requests that any such item be removed from the Consent Calendar and voted upon separately.

- A. Request the Governing Board to approve the Minutes of the Regular Governing Board Meeting of August 4, 2022 (pages 4-8)
- B. Request the Governing Board to approve the Bill Warrants (pages 9-13)
- C. Request the Governing Board to approve the Personnel Action Items (pages 14-15)
- D. Request the Governing Board to approve the Superintendent's Goals for the 2022-2023 School Year (pages 16-17)
- E. Request the Governing Board to approve the Agreement with the Alameda County Office of Education (ACOE), in Collaboration with School Services of California Inc. (SSC), for Fiscal Related Matters for the 2022-2023 School Year (pages 18-22)
- F. Request the Governing Board to approve the Agreement with the Fresno County Office of Education (FCOE) for Direct Support Professional Training for the 2022-2023 School Year (pages 23-33)
- G. Request the Governing Board approve the MOU with the Hayward Unified School District for the Independent Study Teacher to Support the Hayward Promise Neighborhoods Program from July 1, 2022-December 31, 2022 (pages 34-36)

**VIII. Information Items**

- A. Opening of School for the 2022-2023 School Year (page 37)
- B. Eden Area ROP Service Awards (page 38)
- C. First Reading of Governing Board Policy, Administrative Regulations and Exhibits (page 39-100)

**IX. Action Items**

- A. Request the Governing Board to approve Fiscal Year 2021-2022 Unaudited Actuals Income and Expenditure Report (page 101)
- B. Request the Governing Board to approve the Revised Calendar of Governing Board Meetings for the 2022-2023 School Year (pages 102-103)
- C. Request the Governing Board to approve the Adoption of Resolution 5-22/23: Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period September 4, 2022 through October 4, 2022 (pages 104-107)

**X. Superintendent's Report**

**XI. Governing Board Reports**

**XII. Recess to Closed Session**

- A. Conference with Legal Counsel – Anticipated Litigation (Pursuant Government Code Section 54956.9)

**XIII. Reconvene to Open Session and Report Action Taken in Closed Session**

- A. Conference with Legal Counsel – Anticipated Litigation (Pursuant Government Code Section 54956.9)

**XIV. Adjournment**

# CONSENT CALENDAR

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## CONSENT CALENDAR



## Minutes of the Regular Meeting of the ROP Governing Board August 4, 2022

### I. Call to Order

Juan Campos, Board President, called the meeting to order at 5:45 p.m. on Thursday, August 4, 2022. Due to COVID-19 all Board members and attendees attended the meeting virtually via Zoom.

### II. Roll Call

#### Eden Area ROP Governing Board Members Present:

Juan Campos, President	San Lorenzo USD
James Aguilar, Vice-President	San Leandro USD
Gary Howard, Member	Castro Valley USD
Gabriel Chaparro, Member	Hayward USD

#### Eden Area ROP Superintendent/Clerk of the Board Present:

Blaine Torpey

#### Eden Area ROP Administrators Present:

Linda Granger	Chief Operating Officer
Brigitte Luna	Director of Educational Services
Manuschka Michaud	Principal
Anthony Oum	Fiscal Services Administrator
Michelle Stephens	Pathway Coordinator/TOSA

#### Eden Area ROP Staff Present:

Gabriela Juarez	Executive Assistant
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#### Others Present:

Roman Muñoz	Lozano Smith
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### III. Pledge of Allegiance

Anthony Oum led the Pledge of Allegiance.

### IV. Mission Statement

Manuschka Michaud read the Eden Area ROP mission statement.

### V. Approval of Agenda

Trustee James Aguilar moved to approve the agenda. Trustee Gary Howard seconded the motion. By the following vote, the agenda was approved:

AYES:	4 (Aguilar, Campos, Chaparro, Howard)
NOES:	0
ABSTAIN:	0
ABSENT:	0

**VI. Action Items**

- A. Request the Governing Board to approve the Adoption of Resolution 1-22/23: Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period August 4, 2022 through September 3, 2022**

Upon review of and a motion by Trustee Gabriel Chaparro and a second by Trustee James Aguilar the Governing Board approved the adoption of Resolution 1-22/23: Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period August 4, 2022 through September 3, 2022.

AYES: 4 (Aguilar, Campos, Chaparro, Howard)  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

**VII. Public Comment for Agenda items and matters that are related to the Eden Area ROP**

None

**VIII. Consent Calendar**

Trustee Gary Howard moved to approve the consent calendar items as follows:

- A. Minutes of the Regular Governing Board Meeting of June 16, 2022
- B. Bill Warrants
- C. Personnel Action Items
- D. Listed Donations-Tiburcio Vasquez Health Center-Dental Department
- E. Quarterly Report on Williams Act Complaints and Resolutions
- F. Eden Area ROP Organization Chart for the 2022-2023 School Year
- G. Agreement with Eide Bailly for Non-Capitalized Equipment and Fixed Assets Consulting Services for the 2022-2023 School Year
- H. Lease Agreement Addendum with L & M Investments for the Use of Facilities for the Electrical Trainee Program that is Operated in Turlock, CA from October 2022 through September 2024
- I. Extension of Agreement with San Jose Charters, Inc. for Student Transportation Services from August 11, 2022 through November 18, 2022
- J. Agreement with Sonia Elgar for Purchasing and Accounts Receivable Services for Adult Programs for the 2022-2023 School Year
- K. Agreement with Sonia Elgar for Business Services Support for the 2022-2023 School Year
- L. Ongoing Agreement with Infinite Campus for a District Feeder System Module for the High School Programs
- M. Contract with Chabot-Las Positas Community College District (CLPCCD) for Student Support Services for the 2022-2023 School Year

Trustee Gabriel Chaparro seconded the motion.

AYES: 4 (Aguilar, Campos, Chaparro, Howard)  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

**IX. Action Items**

**A. Request the Governing Board to approve the adoption of Resolution 2-22/23: Signature Card-Board Members, Resolution 3-22/23: Signature Card-Authorized Agents: Payroll Warrants and Disbursements, Resolution 4-22/23: Signature Card-Authorized Agents: Official Documents and Reports**

Upon review of and a motion by Trustee James Aguilar and a second by Trustee Gary Howard the Governing Board approved the adoption of Resolution 2-22/23: Signature Card-Board Members, Resolution 3-22/23: Signature Card-Authorized Agents: Payroll Warrants and Disbursements, Resolution 4-22/23: Signature Card-Authorized Agents: Official Documents and Reports.

AYES: 4 (Aguilar, Campos, Chaparro, Howard)  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

**X. Superintendent's Report**

Superintendent Blaine Torpey was excited to present his first Superintendent's Report. He shared that it has been an incredible first month at the Eden Area ROP. The welcome has been warm, incredibly sincere and organized.

He shared that in early July, the Administrative Team participated in a Leadership Retreat using Restorative Community Building, collaborative agenda building and other best practices.

Superintendent Torpey continued his report by highlighting student participation in internships over the summer:

- Five of our CTE internship students were accepted into the prestigious Berkeley Lab Director's Apprenticeship Program.
- At HUSD, we had 11 students participate in our second year in the Illumina Summer Internship Program
- Four Engineering interns from HUSD participated in the ENGIE remote Engineering internship
- We had 4 new partners for summer internships this year for Engineering! Oro Lomo Sanitary District (SLZUSD), City of Hayward (CVUSD & SLZUSD), City of San Leandro (CVUSD), and Alameda County Public Works (CVUSD & SLZUSD)

The Superintendent discussed with the Board a scheduling conflict with the October Board meeting. The Alameda County Office of Education Teacher of the Year Awards Ceremony will be held on October 6<sup>th</sup>, the same day as the EAROP Board meeting. The program starts at 6:30 pm at the Castro Valley Center for the Arts at Castro Valley High School. Daniel Pareja (Automotive Collision & Refinishing Instructor) will be honored as the EAROP Teacher of the Year and nominee for the ACOE Teacher of the Year. Superintendent Torpey would like to show support for Mr. Pareja and attend the event along with other staff. He provided several options for the Board to consider to resolve the scheduling conflict. Of the options offered, the consensus of the Board was to meet on Friday, October 7<sup>th</sup> at 5:45 pm. Mr. Torpey will bring forward a revised board meeting calendar for Board approval at the September Board meeting.



Superintendent Torpey was excited about the progress he and staff have made towards the proposed goals. Under the goal reinforcing the organizational infrastructure and communications, staff has worked on developing the mission statement guided strategic plan. The Administration team and a small group have worked on identifying EAROP's core values as a community. This work will continue when staff returns on Monday for professional development (PD). The goal of identifying EAROP's core values is to connect those values to our WASC goals and then determine our priorities with respect to our short-term, mid-term and long-term goals. He reported that this has been an incredible experience to go through this process with the community and to learn and share about their values. Through narratives and communications, efforts will be made to continue to build the connection and sense of belonging.

He concluded his report by sharing that on Tuesday EAROP staff will continue its equity work with Dr. Lori Watson and Race Work. This is the second year of working with Dr. Watson. Throughout the year a small cohort will work with her and provide a second staff PD on March 31<sup>st</sup>.

#### **XI. Governing Board Reports**

Trustee Gary Howard, Castro Valley USD representative, reported that school starts next Tuesday.

Trustee Juan Campos, San Lorenzo USD representative, shared that San Lorenzo USD starts on the August 18<sup>th</sup>. He also shared that the past Tuesday SLZUSD had their first Board meeting of the year.

Trustee James Aguilar, San Leandro USD representative, excitedly shared that he will be working as a new teacher at San Lorenzo Unified.

Trustee Gabriel Chaparro, Hayward USD representative, reported that HUSD's elementary year-round school has started.

#### **XII. Recess to Closed Session**

The meeting was called into closed session at 5:59 p.m.

- A. Conference with Legal Counsel – Anticipated Litigation (Pursuant Government Code Section 54956.9)**
- B. Public Employee Performance Evaluation: Superintendent's Goals (Government Code Sec. 54957)**

#### **XIII. Reconvene to Open Session and Report any Action taken in Closed Session**

The meeting resumed to open session at 6:22 p.m.

- A. Conference with Legal Counsel – Anticipated Litigation (Pursuant Government Code Section 54956.9)**

Board President, Juan Campos, reported that the Board has given direction to legal counsel.

- B. Public Employee Performance Evaluation: Superintendent's Goals (Government Code Sec. 54957)**

Board President, Juan Campos, announced that no action was taken.

#### **XIV. Adjournment**

The meeting adjourned at 6:22 p.m.

Approved by the Eden Area ROP Governing Board \_\_\_\_\_.

\_\_\_\_\_  
Blaine Torpey, Superintendent/Clerk to the Eden Area ROP Governing Board



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Sabrina Ubhoff, Accounting Technician  
**SUBJECT:** Request the Governing Board to approve the Bill Warrants

## **CURRENT SITUATION**

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The bill warrants submitted for approval are for the period of July 15, 2022 through August 9, 2022 and include test warrant numbers and voided warrants.

## **CONSENT CALENDAR**

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**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Mercedes Henderson, Human Resources Administrator  
**SUBJECT:** Request the Governing Board to approve the Personnel Action Items

## **CURRENT SITUATION**

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The attached listing of personnel action items are the Eden Area ROP Superintendent's recommendations for approval.

## **CONSENT CALENDAR**

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**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**SUBJECT:** Request the Governing Board to approve the Superintendent's Goals for the 2022-2023 School Year

## **BACKGROUND**

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Each year the Governing Board develops goals for the Superintendent. The goals are designed to set a path for moving the organization forward and serve as the basis for the Superintendent's evaluation at the end of the school year.

## **CURRENT SITUATION**

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The Governing Board and Superintendent have discussed goals for the upcoming school year and a recommendation to the Governing Board will be presented to finalize the Superintendent's goals for the 2022-2023 school year.

## **CONSENT CALENDAR**

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## SUPERINTENDENT'S GOALS 2022-2023

### Reinforce EAROP Organizational Infrastructure and Communication

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- Develop a cohesive strategic plan that is guided by the Mission Statement, Student Learning Outcomes, and stakeholder input to allow for priority-driven decision making
- Develop and/or codify stakeholder input mechanisms for program assessment and evaluation
- Through technological platforms, expand EAROP brand and message
- Continue to develop strategic partnerships that enhance student learning and student outcomes

### Maintain and Refine High Quality CTE Programming

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- Continue to assess and refine high quality CTE programs based on student need
- Expand high impact partnerships with industry, with the community and other government agencies
- Focus on instructional practices and student outcomes
- Coordinate growth and development of adult programming

### Enhance Systems to Support the Success of All Students

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- Become an anti-racist and anti-bias organization to ensure that all students and staff feel a sense of belonging
- Expand the use of technology as a tool for supporting student success, and monitoring student success
- Build systems and infrastructure to support students' social-emotional learning and wellbeing
- Broaden student support efforts by engaging Classified Staff in initiatives

### Fiscal and Resource Management, Leadership and Innovation

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- Continue to develop strategic partnerships aligned to funding opportunities and identify grants aligned to the EAROP mission
- Identify and address long-term funding challenges to support outcomes for partner districts and their students
- Address EAROP campus technological, site safety and physical plant needs.
- Continue organizational responsiveness to the impact of the COVID-19 Pandemic to ensure safety of students and staff while prioritizing in-person instruction.



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Anthony Oum, Fiscal Services Administrator  
**SUBJECT:** Request the Governing Board to approve the Agreement with the Alameda County Office of Education (ACOE), in Collaboration with School Services of California Inc. (SSC), for Fiscal Related Matters for the 2022-2023 School Year

## **BACKGROUND**

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The Alameda County Office of Education (ACOE), in collaboration with School Services of California Inc. (SSC), has an agreement to aid on issues of school finance, legislation, school budgeting, and general fiscal issues. Per Government Code 53060, it states that "The legislative body of any public or municipal corporation or district may contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such person is specially trained and experienced and competent to perform the special services required."

## **CURRENT SITUATION**

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The Eden Area ROP works with ACOE and SSC throughout the fiscal year. This agreement ensures the relationship continues by paying our share of the cost amongst a multitude of school districts in Alameda County.

## **CONSENT CALENDAR**

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**AGREEMENT FOR SPECIAL SERVICES**  
Fiscal Budget Services Consortium

This is an Agreement between the **ALAMEDA COUNTY OFFICE OF EDUCATION**, hereinafter referred to as “County,” and **SCHOOL SERVICES OF CALIFORNIA INC.**, hereinafter referred to as “Consultant,” entered into as of July 1, 2022.

**RECITALS**

**WHEREAS**, the County needs assistance regarding issues of school finance, legislation, school budgeting, and general fiscal issues; and

**WHEREAS**, the Consultant is professionally and specially trained and competent to provide these services; and

**WHEREAS**, the authority for entering into this Agreement is contained in Section 53060 of the Government Code and such other provisions of California law as may be applicable;

**NOW, THEREFORE**, the parties to this Agreement do hereby mutually agree as follows:

1. The Consultant agrees to perform such duties relating to issues of school finance, including:
  - a. Electronic delivery of the *Fiscal Report* containing information on issues of school finance, budgets, or practices and policy issues that impact local educational agency fiscal policies, and an electronic copy of the *Analysis of the Governor’s Proposals for the State Budget and K-12 Education*.
  - b. An analysis of all major school finance/fiscal legislation and reports on its legislative/executive branch progress.
  - c. Twenty-eight hours of service annually as the County directs on fiscal issues, including: analysis of specific district revenue or expenditure issues, analysis of specific legislative or regulatory issues, and a “quick query” service to provide telephone response to specific fiscal questions of the County.  
  
Services for which the base service hours may not be used, include: mandate questions; County-specific economy, efficiency, or management consulting services, including, but not limited to, efficiency or management studies, demographic or school facility studies, special education studies, fiscal health analysis; and/or an in-depth budget review; direct collective bargaining or factfinding assistance, fiscal analysis for purposes of collective bargaining, legislative representation or advocacy; appearance as an expert witness; provision of depositions or declarations for district legal issues; major customized research projects or studies; or, on-site speeches or presentations.
  - d. Participation at the Consultant’s client rate at the Consultant’s school finance conferences and workshops.
2. The County agrees to pay the Consultant for services rendered under this Agreement:
  - a. \$66,900 annually, plus expenses, payable at \$5,575 per month, plus expenses upon billings from the Consultant.



- b. For all requested services in excess of 28 direct service hours as indicated in Item 1d above in a 12-month period, the applicable hourly rate for the person(s) performing the services shall apply.
  - c. “Hours” are defined as hours of direct service to the County, as well as reasonable travel time to and from the County’s site.
  - d. “Expenses” are defined as actual, out-of-pocket expenses, such as travel, meals, shipping, and duplication of materials.
3. The County agrees that any information received from the Consultant shall be for the use of the County and the districts in the County Consortium only and shall not be provided by the County to other districts over 500 average daily attendance (ADA). Districts under 500 ADA are eligible to receive service as deemed appropriate by the County Office (see Attachment A).
4. This Agreement shall be for the period of one year, beginning July 1, 2022, and terminating June 30, 2023. This Agreement may be terminated prior to June 30, 2023, by either party on 30 days’ written notice. In the event that the County elects to terminate services at the end of the Agreement, the County shall give a 30-day written notice of nonrenewal. The Consultant will provide continuing services for 90 days after the expiration date of the Agreement or until the County provides written notice. The County is responsible for these accrued charges and the Consultant may bill these additional days. In the case of cancellation, the County shall be liable for any costs accrued to the date of cancellation.
5. It is expressly understood and agreed to by both parties that the Consultant, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the County.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as indicated below:

By: 

Date: 09/01/2022

Anthony Oum

Print Name

Fiscal Services Administrator

Job Title

Alameda County Office of Education

By:   
John D. Gray  
President/CEO  
School Services of California Inc.

Date: May 25, 2022

**ALAMEDA COUNTY OFFICE OF EDUCATION**  
**July 1, 2022**

**ATTACHMENT**

	<i>Districts Over 500 ADA</i>
Alameda City USD	1
Albany City USD	2
Berkeley USD	3
Castro Valley USD	4
Dublin USD	5
Emery USD	6
Fremont USD	7
Hayward USD	8
Livermore Valley Joint USD	9
Mountain House ESD ( <i>Under 500 ADA</i> )	
New Haven USD	10
Newark USD	11
Oakland USD	12
Piedmont City USD	13
Pleasanton USD	14
San Leandro USD	15
San Lorenzo USD	16
Sunol Glen USD ( <i>Under 500 ADA</i> )	
Mission Valley ROP	17
Eden Area ROP	18
Monthly district/ROP rate (\$275 x 18):	\$4,950.00
Annual district/ROP rate:	Yearly District/ROP Rate = \$3,300/year x 18 districts = \$59,400 (a)
Annual county office rate:	Annual COE Rate (includes districts under 500 ADA) = \$7,500 (b) (a) \$59,400.00
	Total Annual Consortium Rate for 2022/23 = \$66,900 (c) or \$5,575.00 monthly (b) <u>7,500.00</u>
	(does not include add'l phone/fax charges)
Alameda COE consortium rate for 2022	(c) \$66,900.00

Monthly consortium rate: \$5,575.00

**100% participation of districts over 500 ADA is required (either through consortium membership or through district direct services.) Please call the Consultant regarding any changes that might need to be made. Thank you.**

## 2022/23 School Services of California Consortium Notice to Interested School Districts & ROPs

ACOE is renewing the Consortium Contract with School Services of California. Please indicate your district's intent to participate by completing the information below.

### **INTENT TO PARTICIPATE** *(please check ONE option below)*

- ☒ Yes, it is the intent of the Eden Area ROP School District to participate in the School Services Consortium for the period of **July 1, 2022 through June 30, 2023**. I understand that ACOE will journal the charge to my district for the entire cost of the contract in December of current fiscal year. The cost for each participating district is **\$3,300**. *(This is an estimate based on all current participants. Should the number of entities increase or decrease, there could be a change in the cost per district.)* All districts & ROPs that wish to participate must sign this intent form, including those that have participated in the past. A district may terminate this agreement prior to June 30, 2020 with a 30-day written notice. The district shall be liable for any costs accrued up to the date of cancellation.

**OR,**

- ☐ No, the \_\_\_\_\_ School District does not wish to participate or, participates under its own contract with SSC.

  
\_\_\_\_\_  
*Signature of District CBO/designee*

09/01/2022  
\_\_\_\_\_  
*Date*

Anthony Oum  
\_\_\_\_\_  
*Print Name of District CBO/designee*

Please return this form via email no later than **August 30, 2022** to:  
Cenovia Romero (cromero@acoe.org)

Thank you.

**Online districts only** - please complete full Escape account code below:

FUND	OBJ	RES	GOAL	FUN	LOC	MGR	YR	OPT
010	5800	0350	0000	7300	700	20		



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Craig Lang, Director of Adult Programs  
**SUBJECT:** Request the Governing Board to approve the Agreement with the Fresno County Office of Education (FCOE) for Direct Support Professional Training for the 2022-2023 School Year

## **BACKGROUND**

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Since 1998, the Department of Developmental Services (DDS) has partnered with the California Department of Education (CDE) to implement the Direct Support Professional Training (DSPT) program through 35 participating Regional Occupational Centers and Programs (ROCPs). The DSPT provides 70 hours of comprehensive skill development over a two-year period, testing Direct Support Professionals' (DSP) mastery of the curriculum and requiring them to demonstrate proficiency in specific skill sets in order to become certified.

## **CURRENT SITUATION**

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The State consolidated the administration of the DSPT program to 4 ROPs as regions throughout the state. The ROP serving our area for the purposes of this program is the Fresno County ROP. The Fresno County Office of Education (FCOE) would like to continue contracting with the Eden Area ROP to provide services within our area.

## **CONSENT CALENDAR**

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AGENCY OBLIGATIONS. Agency's obligations under this Agreement (collectively "**Services**") include those required of Agency in the General Terms and Conditions, any shared obligations stated below, and the following:

1. *What Services will Agency provide:* Agency shall adhere to the rules and regulations stipulated in the Direct Support Professional Training (DSPT) Procedure Manual issued by the California Department of Education (CDE), Department of Developmental Services (DDS) to implement an effective DSPT program in the East Bay Regional Center Catchment area. Agency shall:

1. Provide FCSS with a 2022-23 DSPT Training and Challenge Test schedule to meet the needs of Community Care Facility DSPs within the East Bay Regional Center Catchment area at least six (6) weeks prior to the start of session. Testing and training schedules shall include the name of the trainer/proctor, date, time, location, and room capacity of each session;
2. Provide certified DSPT trainers and proctors in accordance with State DSPT certification standards and requirements;
3. Provide the necessary and appropriate facilities to conduct DSPT Trainings and Challenge Tests as indicated in the submitted 2022-23 DSPT Training and Challenge Test schedules;
4. Conduct DSPT Trainings and Challenge Tests according to the scheduled testing and training sessions, utilizing only DDS approved testing and training materials;
5. Participate in DSPT State mandated trainings;
6. Participate in regional DSPT advisory meetings;
7. Provide DSPT program training materials (bubble packs, med containers, timers, clipboards, paper towels, etc.).

2. *When will Agency provide the Services (mark one and complete as indicated):*

- ☐ *Date Determined* – Agency will perform the Services on (*state specific date(s)*): The Parties' staff may mutually change any specified date if the new date is within the Contract Term and there is no change to the Contract Amount.
- ☒ *Date to be Determined* – The Parties' staff will coordinate and schedule the particular date(s) on which Agency shall perform the Services, which date(s) shall be within the Contract Term.

3. *Where will Agency provide the Services (state full address):* 26316 Hesperian Blvd., Hayward, CA 94545  
The Parties' staff may mutually change the location if there is no change in the Contract Amount.

4. *Full name of Agency staff who must perform the Services (leave blank if none designated):*

FCSS OBLIGATIONS. FCSS' obligations under this Agreement (collectively "**Services**") include those required of FCSS in the General Terms and Conditions, any shared obligations stated below, and the following:

1. *What Services will FCSS provide:* FCSS shall adhere to the rules and regulations stipulated in the Direct Support Professional Training (DSPT) Procedure Manual issued by the California Department of Education (CDE), Department of Developmental Services (DDS) to administer an effective DSPT program in the East Bay Regional Center Catchment area. FCSS shall:

1. Facilitate regional DSPT advisory meetings;
2. Conduct annual evaluations of the DSPT program according to the methods developed by DDS and described in the DSPT Procedure Manual;
3. Assure that eDSPT (online registration and certification system) has current information on trainers, training and testing schedules, and training locations;
4. Participate in periodic evaluations of the DSPT program as directed by DDS.

2. *When will FCSS provide the Services (mark one and complete as indicated):*

☐ *Date Determined* – FCSS will perform the Services on (*state specific date(s)*): The Parties' staff may mutually change any specified date if the new date is within the Contract Term and there is no change to the Contract Amount.

☒ *Date to be Determined* – The Parties' staff will coordinate and schedule the particular date(s) on which FCSS shall perform the Services, which date(s) shall be within the Contract Term.

3. *Where will FCSS provide the Services (state full address):* 1318 E. Shaw Avenue, Suite 420, Fresno, CA 93710 The Parties' staff may mutually change the location if there is no change in the Contract Amount.

4. *Full name of FCSS staff who must perform the Services (leave blank if none designated):*

SHARED OBLIGATIONS. The Parties shall each be responsible for the following obligations (*leave blank if none*):

RECITALS/OTHER TERMS AND CONDITIONS (*leave blank if none*):

**CONTRACT AMOUNT AND PAYMENT SCHEDULE** (mark each that applies and complete as indicated):

- ☐ NO PAYMENT. No monetary payment shall be made by or to either Party under this Agreement.
- ☐ PAYMENT TO FCSS. Agency (also refer to as **"Payor"**) shall pay FCSS (also refer to as **"Payee"**) pursuant to the following and the Pay Schedule stated below (mark one and complete as indicated):
- ☐ 1. *Fixed Installment*: \$\_\_\_\_\_ per month/quarter/year, the sum of all payments shall equal the **"Contract Amount"** of \$\_\_\_\_\_. FCSS shall submit each invoice to Agency monthly/quarterly/yearly by no later than the 15th day of the month immediately following the last day of the period for which FCSS requests payment.
  - ☐ 2. *Rate/Not-To-Exceed Contract Amount*: Services that FCSS performs in accordance with this Agreement, to be billed at \$\_\_\_\_\_ per hour in 15 minute increments OR pursuant to the rates set forth in Exhibit 1 and the sum of which shall not exceed the **"Contract Amount"** of \$\_\_\_\_\_. FCSS shall submit each invoice to Agency monthly/quarterly/yearly by no later than the 15th day of the month immediately following the last day of the period for which FCSS requests payment.
  - ☐ 3. *Entire Contract Amount/Completion Of All Services*: Entire **"Contract Amount"** of \$\_\_\_\_\_. FCSS shall submit the invoice to Agency within 30 days of the date on which FCSS completed all Services in accordance with this Agreement.
  - ☐ 4. *Other/Specified Amount, Paid Periodically*: The **"Contract Amount"** of \$\_\_\_\_\_. FCSS shall submit each invoice to Agency within 30 days of the date on which FCSS has completed, in accordance with this Agreement, the Services for which FCSS requests payment.
- ☒ PAYMENT TO AGENCY. FCSS (also refer to as **"Payor"**) shall pay Agency (also refer to as **"Payee"**) pursuant to the following and the Payment Schedule stated below (mark one and complete as indicated):
- ☐ 1. *Fixed Installment*: \$\_\_\_\_\_ per month/quarter/year, the sum of all payments shall equal the **"Contract Amount"** of \$\_\_\_\_\_. Agency shall submit each invoice to FCSS monthly/quarterly/yearly by no later than the 15th day of the month immediately following the last day of the period for which Agency requests payment.
  - ☒ 2. *Rate/Not-To-Exceed Contract Amount*: Services that Agency performs in accordance with this Agreement, to be billed at \$50 per DSPT Challenge Test and \$200 per student completing DSPT Training and the sum of which shall not exceed the **"Contract Amount"** of \$300,000.00. Agency shall submit each invoice to FCSS by no later than the 15th day of the month immediately following the last day of the period for which Agency requests payment.
  - ☐ 3. *Entire Contract Amount/Completion Of All Services*: Entire **"Contract Amount"** of \$\_\_\_\_\_. Agency shall submit the invoice to FCSS within 30 days of the date on which Agency completed all Services in accordance with this Agreement.
  - ☐ 4. *Other/Specified Amount, Paid Periodically*: The **"Contract Amount"** of \$\_\_\_\_\_. Agency shall submit each invoice to FCSS within 30 days of the date on which Agency has completed, in accordance with this Agreement, the Services for which Agency requests payment.
- ☐ OTHER (leave blank if none):

**Invoice and "Payment Schedule"**: Each invoice shall comply with Section 2.2 and must be received and approved by Payor before Payee may receive any payment under this Agreement. If 1, 2, or 4 is marked above, Payor shall pay Payee within 30 days after Payee has completed, in accordance with this Agreement, the Services required of Payee for the period for which Payee requests payment. If 3 is marked above, Payor shall pay Payee within 30 days after Payee has completed, in accordance with this Agreement, all Services required of Payee.



REQUIRED DOCUMENTS. Each document that is marked as required (“**Required Document**”) shall be provided in accordance with the following:

- ☒ 1. *Payment Document*. At Payor's request, Payee shall provide a Taxpayer Identification Number Request (W-9) and other documents that Payor may require to process payment to Payee. (See § 1.4.1).
- ☒ 2. *Proof of Insurance*. Each Party shall maintain insurance or self-insurance in accordance with Article 4 and, upon the other Party's request, provide written proof thereof: (A) commercial general liability, (B) workers compensation and employer's liability, and (C) commercial automobile liability. (See Art. 4.)
- ☐ 3. *Fingerprinting Certification From Agency*. If this box is marked and Agency is not a California public school district, county office of education, or charter school, Agency shall submit to FCSS a Fingerprinting and Criminal Background Check Certification (“**Fingerprinting Certification**”) before Agency commences performance of this Agreement, which form must be obtained from FCSS.
- ☐ 4. *TB Certification From Agency*. If this box is marked and Agency is not a California public school district, county office of education, or charter school, Agency shall submit to FCSS a Tuberculosis Certification before Agency commences performance of this Agreement, which form must be obtained from FCSS.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from this Agreement, Agency and FCSS, separately referred to as a “**Party**” and collectively as the “**Parties**,” have reviewed and understand, and hereby enter into this Agreement. Unless the context requires otherwise, any reference to a Party in this Agreement includes its governing body and members thereof, officers, employees, and agents. Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement.

AGENCY

FCSS

By: \_\_\_\_\_

Print Name: [Craig Lang](#)  
Title: [Director of Adult Programs](#)  
[or Authorized Designee](#)

By: \_\_\_\_\_

Jim A. Yovino, Superintendent  
or Authorized Designee

**NOTE – ELECTRONIC SIGNATURE:** While FCSS will accept digital signatures on contracts and amendments, they must be validated by a reliable Certificate Authority, and if a digital signature is used to execute any such document, the signature page thereof must be provided to FCSS in the electronic format it was signed in.

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## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following Articles:

Article 1	Scope of Services and Obligations
Article 2	Payment
Article 3	Term and Termination of Agreement
Article 4	Insurance
Article 5	Indemnity
Article 6	Dispute Resolution
Article 7	General Provisions

Terms with initial capital letter shall have the respective meanings set forth in this Agreement.

### ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 PURPOSE. By this Agreement, the Parties desire to set forth the terms and conditions upon which the Parties shall cooperate and share responsibilities for performance of this Agreement, and to set forth the Parties' rights and obligations relating to this Agreement.

SECTION 1.2 PARTIES' OBLIGATIONS. Except as specifically stated otherwise on the Cover, each Party shall provide all labor, materials, supplies, equipment, and transportation necessary to perform its obligations under this Agreement. Further and unless stated otherwise on the Cover, each Party is solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for it to perform its obligations under this Agreement; (B) the acts and omissions of its officers, employees, agents, and any other persons who it retains to perform any portion of this Agreement; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and damage or loss to the property of its officers, employees, agents and any other persons who it retains to perform any portion of this Agreement and to any officers, employees, agents, students, or invitees of the other Party or any Third Party (see definition in Article 5).

SECTION 1.3 WORK PRODUCTS AND RIGHTS THERETO. Unless stated otherwise on the Cover, the following applies to any data, document, display, drawing, report, material, invention, work, and discovery, including any copyright, right, and interest therein or thereto and whether written, recorded, or electronically stored (collectively "**Work**"), that a Party prepares for or provides to the other Party pursuant to this Agreement: (A) the Work of each Party shall remain its property and that Party shall have all rights and interests thereto; (B) each Party grants to the other Party a limited license during the Contract Term to use and reproduce the portion of the other Party's Work necessary for the Party to perform this Agreement; and (C) upon termination of this Agreement and a Party's request, the other Party shall return any Work that belongs to the requesting Party. The provisions of this Section shall survive the termination of this Agreement.

### SECTION 1.4 RECORDS AND INFORMATION.

1.4.1 REQUIRED DOCUMENTS. A Party shall provide to the other Party the Required Documents that are required from the Party as marked on the Cover, each of which is incorporated by reference into and constitutes a part of this Agreement. If any Required Document becomes incorrect or inapplicable or expires during the Contract Term, the Party providing the Required Document shall promptly notify in writing and/or submit to the other Party the corrected, updated, or effective Required Document.

1.4.1 CONFIDENTIAL MATERIAL. If any documents and/or information (for example and not as a limitation, employee or student record) that is subject to nondisclosure or protection under federal and/or California laws (collectively and separately "**Confidential Material**") are provided to or created by a Party for or pursuant to this Agreement, each Party shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as this Agreement may permit; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to a Party's performance of this Agreement; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and unauthorized

viewing, duplication, and use; (D) acknowledge that any Confidential Material related to students shall be the property of and under the control of the Party whose student it relates to, notwithstanding any use authorized under this Agreement or its status as Work; and (E) not retain any Confidential Material related to a student of the other Party upon the expiration of this Agreement, which shall be accomplished by either the return of or the destruction of such Confidential Material. The provisions of this Subsection shall survive the termination of this Agreement.

- 1.4.2 **SCHOOL OFFICIAL DESIGNATION.** To the extent FCSS' provision of the Services under this Agreement will entail FCSS staff to view, handle, create, or receive Confidential Material consisting of student records of Agency's students ("**Pupil Records**") that are subject to the Family Educational Rights and Privacy Act ("**FERPA**"), FCSS acknowledges and agrees, for the purposes of this Agreement, that FCSS is hereby designated as a "school official" with "legitimate educational interests" in the Pupil Records, as those terms are defined under FERPA and its implementing regulations. FCSS agrees to abide by the FERPA limitations and requirements imposed by 34 CFR 99.33(a) on school officials, including that FCSS will not disclose Pupil Records to any other party without the prior written consent of each pupil's parent or eligible pupil.

## SECTION 1.5 COMPLIANCE WITH APPLICABLE LAW AND GRANT.

- 1.5.1 **GENERALLY.** Each Party shall comply with all laws and regulations (collectively "**Law**") applicable to its performance of this Agreement, and all Law that it agrees to comply under this Agreement (referred to collectively and separately as "**Applicable Law**" and shall include amendments and Law that are in effect as of the Effective Date or become effective during the Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and an Applicable Law, the provision in this Agreement shall govern except where such provision is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein. Each Party shall comply with each grant (if any) that provides funding to pay for this Agreement and all Law and requirements applicable to such grant.
- 1.5.2 **FEDERAL GRANT FUNDS.** The provisions of this Subsection applies if this Agreement is paid, in part or in whole, with federal grant funds. Each Party shall comply with federal laws, regulations, and requirements applicable to such federal grant funds. Each Party represents that it is not debarred, suspended, or otherwise excluded or ineligible to be awarded this Agreement. Each Party shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Orders 12549 and 12689. Each Party shall also comply with: (A) applicable federal laws, regulations, and requirements, including but not be limited to, non-discrimination based on race, color, national origin, sex, disability, or age; (B) applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387); and (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Upon a Party's request, whether during or after the Contract Term, the other Party shall cooperate with and provide the requesting Party with documents and information relating to this Agreement that are necessary for the requesting Party to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of this Agreement.

## ARTICLE 2 PAYMENT.

**SECTION 2.1 CONTRACT AMOUNT.** Compensation, if any is required under this Agreement, shall be as stated on the Cover. Payor shall pay Payee, if any payment is due to Payee, in accordance with the Payment Schedule stated on the Cover.

**SECTION 2.2 INVOICE AND ADDITIONAL INFORMATION.** Payee shall submit an itemized invoice and supporting documentation to Payor before Payee may receive any payment, if any is due to Payee under this Agreement. Upon receiving an invoice and if Payor objects to it and/or requires additional information, Payor shall notify Payee and Payee shall provide such information to Payor within 10 days after Payee receives Payor's notice. If Payee fails or refuses to provide the additional information, Payor shall have the right to withhold payment of any or all of the Contract Amount until such time that Payor receives such information from Payee.

### ARTICLE 3 TERM AND TERMINATION OF AGREEMENT.

SECTION 3.1 CONTRACT TERM. This Agreement is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date and any extension thereto (“**Contract Term**”) and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party. Any extension of the Contract Term shall be set forth in an amendment executed by the Parties.

#### SECTION 3.2 TERMINATION DURING CONTRACT TERM.

3.2.1 TERMINATION FOR CAUSE/WITHOUT CAUSE. During the Contract Term and unless specifically permitted otherwise in this Section 3.2, a Party may terminate this Agreement as marked on the Cover: (A) *With or Without Cause* – A Party, with or without cause, may terminate this Agreement by giving the other Party written notice for the Notice Period stated on the Cover; or (B) *With Cause* – A Party may terminate this Agreement only upon the other Party’s material breach of one or more provisions of this Agreement and after the non-breaching Party has given the breaching Party written notice for the Notice Period stated on the Cover.

3.2.2 TERMINATION ON OTHER GROUNDS. Despite any contrary provisions in this Agreement, FCSS may terminate this Agreement effective on the date stated in FCSS’ written notice of termination to Agency pursuant to any of the following: (A) Agency is required to but fails to provide to FCSS and/or comply with the Fingerprinting Certification; (B) Agency is required to but fails to provide to FCSS and/or comply with the TB Certification; (C) FCSS, the Fresno County Board of Education, and/or any entity from which FCSS receives or is to receive funds to pay for this Agreement reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make future payments under this Agreement; (D) a government or issuing agency revokes, suspends, places on probation, or non-renews any License that Agency must hold to perform this Agreement; (E) Agency assigns, transfers, or subcontracts any or all of Agency’s obligations and/or rights under this Agreement in breach of Section 7.3; (F) Agency fails to maintain and provide written proof of insurance as required by Article 4; (G) Agency is required to provide particular staff as named on the Cover to perform this Agreement but such staff is not able, not willing, or not available to perform this Agreement; (H) Agency’s legal rights to exist or conduct business in California has been revoked or terminated by the California Secretary of State, another agency, or a court; or (I) Agency’s legal rights to exist or conduct business in California has been suspended or rendered inactive by the California Secretary of State, another agency, or a court and such suspension lasts more than 30 consecutive days.

3.2.3 RIGHTS AND OBLIGATIONS UPON TERMINATION. Upon termination of this Agreement and, if as stated on the Cover, compensation is due to Payee under this Agreement: (A) Payor shall pay Payee only for Services that Payee is required to perform, and has performed in accordance with, this Agreement before the effective date of termination; (B) Payee shall submit an invoice within 30 days of the effective date of termination; (C) Section 2.2 shall apply to Payee’s invoice and Payor’s payment under this Subsection; and (D) upon Payor’s payment, if any has been invoiced by Payee and is due to Payee, Payor is not obligated to make any further payment to Payee, whether pursuant to contract, law or equity. The provisions of this Subsection shall survive the termination of this Agreement.

SECTION 3.3 FORCE MAJEURE. A Party is not liable for failing or delaying performance of its obligations under this Agreement due to events that are beyond the Party’s reasonable control and occurring without its fault or negligence, for example, acts of God such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively “**Force Majeure**”), provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse Payor’s payment to Payee of any portion of the Contract Amount that is due from Payor to Payee where Payee has performed in accordance with this Agreement the Services for which payment is requested and submitted an invoice and supporting information in accordance with Section 2.2. Payee shall not be entitled to any payment for Services that Payee did not perform during the period in which the Force Majeure occurred.

## ARTICLE 4 INSURANCE.

Each Party, at its cost and throughout the Contract Term, shall maintain in effect insurance or self-insurance providing coverage that complies, at a minimum, with the following requirements, and shall provide written proof of such insurance to the other Party upon the other Party's request: (A) commercial general liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate and with coverage for property damage, bodily injury, and personal and advertising injury; (B) workers compensation with limits of not less than \$1,000,000 or as required by California laws, whichever is greater; and employer's liability insurance of not less than \$1,000,000; and (C) commercial automobile liability covering, at a minimum, non-owned and hired autos and, if there are any autos owned by the Party, then also covering owned autos, with a combined single limit of not less than \$1,000,000 per accident.

## ARTICLE 5 INDEMNITY.

Except as stated on the Cover in which case such provisions shall govern to the extent provided therein, each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to this Agreement shall be governed solely by this Article. A Party ("**Indemnitor**") shall: (A) indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Agreement. "**Claim**" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Agreement where there has been no Final Determination. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Agreement and for which there has been a Final Determination that a Party is or both Parties are liable. "**Third Party**" means a person who or an entity that is not any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of Agency; (C) an employee, agent, or volunteer of FCSS or a member, officer, or agent of the Fresno County Board of Education; or (D) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party's behalf. "**Final Determination**" means any judgment, order, or decision, each a "**Determination**," by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

## ARTICLE 6 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During a dispute regarding payment under this Agreement, Payor shall pay Payee the portion of the Contract Amount that is undisputed and due to Payee; if a disputed portion of the Contract Amount is determined in a Final Determination to be due to Payee, Payor shall pay such amount to Payee within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, Payor shall pay Payee in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

## ARTICLE 7 GENERAL PROVISIONS.

SECTION 7.1 ENTIRE AGREEMENT, CONFLICT, EXECUTION, AMENDMENT, AND WAIVER. This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure

section 1856. This Agreement consists of, and any conflict or inconsistency in this Agreement shall be resolved by giving precedence as follows: Cover, General Terms and Conditions, exhibit or attachment stated in this Agreement as being a part of this Agreement, and the Required Documents. The Parties may execute this Agreement and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.

**SECTION 7.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION.** If there is uncertainty of any language in this Agreement, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California's choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Fresno County, California, provided that FCSS does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

**SECTION 7.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, AND TRANSFER.** Each Party is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of the other Party. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. A Party and its officers, employees, agents, and any other person performing services for or on behalf of the Party shall not have any right or claim against the other Party for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or other employee benefits. A Party shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without the other Party's prior written consent.

**SECTION 7.4 NOTICES.** Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail *and* transmitted by e-mail; and, ***if to FCSS, a copy of any notice and demand by email to: FCSS Legal Services at legalservices@fcoe.org.*** A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

/ /



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Linda Granger, Chief Operating Officer  
**SUBJECT:** Request the Governing Board approve the MOU with the Hayward Unified School District for the Independent Study Teacher to Support the Hayward Promise Neighborhoods Program from July 1, 2022-December 31, 2022

## **BACKGROUND**

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The Hayward Promise Neighborhoods is in its second round of federal funding. Promise Neighborhood grants are 5 years in duration and are cradle-to-career initiatives focused on transforming a neighborhood within the city. The first Promise Neighborhood grant focused on the Jackson Triangle neighborhood and the new Promise Neighborhood grant focuses on South Hayward.

## **CURRENT SITUATION**

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The Eden Area ROP as a partner in this project will provide career technical programs and assist in dropout prevention for identified students. To this end, HUSD assigns a teacher to the Eden Area ROP that provides credit recovery to students attending ROP who live in the South Hayward Promise Neighborhood or attend the target high school. This MOU outlines our agreement with Hayward Unified School District to reimburse the district for the cost of this employee.

## **CONSENT CALENDAR**

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
EDEN AREA REGIONAL OCCUPATIONAL PROGRAM AND HAYWARD UNIFIED  
SCHOOL DISTRICT THROUGH  
THE HAYWARD PROMISE NEIGHBORHOOD PARTNERSHIP**

**I. TERMS OF MOU:**

This agreement shall commence on July 1, 2022 and shall extend through December 31, 2022.

**II. CONTRACT AMOUNT:**

The teacher contract amount for \$36,500

**PURPOSE:**

Through The Hayward Promise Neighborhood Grant, Hayward Unified School District and Eden Area Regional Occupational Program will collaborate to implement an independent study program to cover academic support for Career/Occupational training programs prepared and offered by ROP.

**III. ROLE AND RESPONSIBILITIES OF EDEN AREA ROP:**

- The ROP shall provide leadership and coordination services to ensure quality academic and career technical standards are met.
- The ROP will provide data control services for registration, attendance, grades, transcripts, and other student records.
- Attendance reporting will be reflected by both the ROP and HUSD.
- Reimbursement back to the district for the independent study teacher at a total of \$36,500 (includes benefits). Payments will be made in 6 monthly installments of \$6,083.33.

**IV. ROLE AND RESPONSIBILITIES OF HUSD:**

- HUSD shall designate instructors from its staffing assignment prior to the beginning of the school year.
- HUSD shall designate administrative supervision of selected staff through the HUSD Independent Study Program.
- HSUD will be responsible for instructor compensation.
- HUSD will insure that the instructor possesses an approved Credential.
- HUSD will insure that the instructor assists HUSD students (especially those in the Promise Neighborhood grant) with intense intervention and credit recovery as needed. Assistance can include:
  - Pre/Post Assessment
  - Individualized direct instruction
  - Teacher assigned prescriptive lessons
  - Push in or pull out instruction
  - Intensive intervention
  - Differentiated content



**V. TERMS OF AGREEMENT:**

An effort will be directed by both parties to maintain the terms of the agreement as defined. However, if urgent circumstances beyond either parties control occur, making one party unable to fulfill its agreement, this agreement can be renegotiated or terminated with 30 days' notice.

Eden Area ROP shall indemnify, defend and hold harmless HUSD and its employees from and against any and all loss, liability, expenses, claims, costs, suites and damages of every kind, nature and description directly or indirectly arising from the performance of the work. This paragraph shall not be construed to exempt HUSD and its employees from its own fraud, willful injury or violation of law whether willful or negligent.

HUSD shall indemnify, defend and hold harmless Eden Area ROP and its employees from and against any and all loss, liability, expense, claims, costs, suites and damages of every kind, nature and description directly or indirectly arising from the performance of the work. This paragraph shall not be construed to exempt Eden Area ROP and its employees from its own fraud, willful injury or violation of law whether willful or negligent.

Under penalty of perjury I agree to the statements above and am designated to sign this agreement on behalf of my agency,

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Blaine C. Torpey  
Superintendent  
Eden Area Regional Occupational Program

\_\_\_\_\_  
Chien Wu Fernandez  
Interim Superintendent  
Hayward Unified School District

# INFORMATION ITEMS

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**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Manuschka Michaud, Principal  
**SUBJECT:** Opening of School for the 2022-2023 School Year

## **BACKGROUND**

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Every year, staff monitors pre-enrollment, actual enrollment and attendance to forecast and maintain alignment with projected ADA, and to make adjustments if necessary.

## **CURRENT SITUATION**

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A report will be delivered to the Governing Board on the opening of the 2022-2023 school year. The participating high schools have worked closely with the Eden Area ROP in encouraging students to take advantage of the career development opportunities available through ROP classes. This collaboration has proven very effective in providing excellent educational opportunities for students in all four of our participating districts.

## **RECOMMENDATION**

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Information only



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**SUBJECT:** Eden Area ROP Service Awards

## **BACKGROUND**

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Annually the Eden Area ROP recognizes staff for their years of service.

## **CURRENT SITUATION**

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At the August 8, 2022 professional development day, service pins recognizing years of service were presented to staff members. Below is a list of the recipients and their respective years of service.

<b>EMPLOYEE</b>	<b>TITLE</b>	<b>SERVICE YEARS</b>
Todd Daugherty	Electrical Instructor	5
Kent Doan	Cybersecurity Instructor	5
Mikel Jackson	Sports Medicine Instructor	5
Anissa Barrot	Dental Assisting Instructor	10
Bill Deslaurier	Construction Technology Instructor	10
Erika Emery	Careers in Education Instructor	15
Dale Garrison	Security	15
Barbara Juarez	Welding Technology Instructor	15
Cheryl Gixti	Merchandising Instructor	20
Michelle Stephens	Pathway Coordinator	20

## **RECOMMENDATION**

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Information only

**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**SUBJECT:** First Reading of Governing Board Policy, Administrative Regulations and Exhibits

## BACKGROUND

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By law, districts are mandated to adopt policies and administrative regulations to help ensure that districts are legally compliant. New laws are passed by the legislature and congress every year and our policies can quickly become out-of-date. The last thorough review of all of the Eden Area ROP Governing Board policies and administrative regulations occurred in the 2019-2020 school year.

Since then, the Eden Area ROP has contracted with California School Boards Association (CSBA) to receive regular updates and suggested policy language for any additions, changes, or modifications to educational code that impacts policy. Staff regularly review these updates and bring relevant changes to the board for their consideration throughout the year.

The Eden Area ROP's policy development process includes a first reading at a public Governing Board meeting and a subsequent second reading and adoption for Board approval at a public Governing Board meeting.

## CURRENT SITUATION

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What follows is the first reading of updated board policy, administrative regulations, and exhibits to reflect current law and regulations provided in CSBA's quarterly update.

NUMBER	TYPE	TITLE	STATUS
1113	E(1)	District and School Web Sites	Revise
1312.4	AR	Williams Uniform Complaint Procedures	Revise
1312.4	E(2)	Williams Uniform Complaint Procedures	New
3523	BP	Electronic Signatures	New
3523	AR	Electronic Signatures	New
4112.2	AR	Certification	Revise
4161.8 4261.8 4361.8	AR	Family Care and Medical Leave	Revise

## RECOMMENDATION

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Information only



# EdenAreaROP SUPERINTENDENT'S MEMO

**To:** Eden Area ROP Governing Board  
**From:** Blaine Torpey, Superintendent  
**Date:** September 1, 2022  
**Re:** First Reading of Board Policies, Administrative Regulations and Exhibits

Listed below is a summary of the changes being recommended to Board Policies (BP), Administrative Regulations (R), and Exhibits (E) for the consideration of the Board.

Number	Type	Title	Explanation of Change	Status
1113	E(1)	District and School Web Sites	Exhibit updated to reflect NEW LAW (AB 27, 2021) which includes posting requirements related to the identification of homeless students and NEW LAW (AB 819, 2021) which includes posting requirements related to specified environmental review documents as required by the California Environmental Quality Act. Exhibit also updated to add posting requirements related to posters published by the California Department of Fair Employment and Housing, and amend the item regarding the district's meal payment collection policy and procedures to reference a different memorandum regarding unpaid meal charges.	Revise
1312.4	AR	Williams Uniform Complaint Procedures	Regulation updated to reflect NEW STATE REGULATIONS (Register 2020, No. 21) which amends the definition of "beginning of the year or semester" and NEW LAW (AB 367, 2021) which requires any school serving any of grades 6-12 to, at all times, stock and make available and accessible free of cost an adequate supply of menstrual products in specified restrooms beginning with the 2022-23 school year. Regulation also updated to clarify that the principal or Superintendent's designee is required to send a written resolution of the complaint to the mailing address of the complainant when the complainant has indicated on the complaint form a desire to receive a response to the complaint.	Revise
1312.4	E(2)	Williams Uniform Complaint Procedures	Exhibit updated to include that, for a school that serves any of grades 6-12, a complaint may be filed for failure to, at all times, stock and make available and accessible free of cost an adequate supply of menstrual products in specified restrooms, as required by NEW LAW (AB 367, 2021).	New

3523	BP	Electronic Signatures	New exhibit presents a sample of the required notification to be posted in a prominent and conspicuous location in each restroom where free menstrual products are required to be stocked, pursuant to NEW LAW (AB 367, 2021).	New
3523	AR	Electronic Signatures	New policy reflects the authorization for districts to use electronic signatures in their communications and operations, including the benefits of electronic records and signatures, the requirement that electronic signatures conform with criteria described in law and that the level of security is sufficient for the transaction being conducted, and that electronic records are retained in accordance with law and regulations and as specified in board policy and administrative regulation.	New
4112.2	AR	Certification	Regulation updated to expand the section on "Basic Skills Proficiency" to include a list of the ways a person may demonstrate basic skills proficiency, and reflect NEW LAW (AB 130, 2021) which exempts a person from the basic skills proficiency test requirement by earning at least a letter grade of B in qualifying coursework and, in conjunction with NEW LAW (AB 167, 2021), exempts a person from the basic skills proficiency test requirement if it is determined that a person has demonstrated proficiency through a combination of coursework, passage of a component(s) of the basic skills proficiency test, and other specified exams. Section also updated to reflect NEW LAW (AB 320, 2021) which impacts what is "qualifying coursework" by defining a "regionally accredited institution" to include an institution of higher education that held preaccreditation status at the time the degree of an applicant for a credential was conferred if the institution achieved full accreditation status within five years of earning preaccreditation status, in addition to an institution of higher education that has already been designated as regionally accredited at the time the degree of an applicant for a credential was conferred. Additionally, regulation updated to provide more detail for when an out-of-state prepared teacher is not required to meet the basic skills requirement within one year of being issued a California preliminary	Revise

			credential by the California Commission on Teacher Credentialing.	
4161.8 4261.8 4361.8	AR	Family Care and Medical Leave	Regulation updated to reflect NEW LAW (AB 1033, 2021) which changed the definition of "parent" to include a parent-in-law for the purposes of the California Family Rights Act (CFRA), by adding "parent-inlaw" to the definitions of "eligible family member" and "parent" within the "Definitions" section. Regulation also updated to delete the last sentence in the first body paragraph in the "Terms of Leave" section, as it is no longer legally accurate.	Revise



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**MATERIALS REQUIRED TO BE POSTED ON DISTRICT WEB SITE**

**Materials to Prominently Display**

The district herein after referred to as the Eden Area Regional Occupational Program (Eden Area ROP) unless otherwise noted or when referring to any of our member districts.

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

1. A direct link to the current board agenda containing the time and location of the meeting and a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session, or a link to the Eden Area ROP's agenda management platform where the current agenda shall be the first available (Government Code 54954.2, 54956). Post at least 72 hours before a regular board meeting or 24 hours before a special meeting. See BB 9320 - Meetings and Notices and BB 9322 - Agenda/Meeting Materials.
2. The Eden Area ROP's policy on student suicide prevention (Education Code 234.6). See BP 5141.52 - Suicide Prevention.
3. The Eden Area ROP's policies and procedures prohibiting discrimination, harassment, student sexual harassment, intimidation, bullying, and cyberbullying, including a section on social media bullying that includes all of the references described in Education Code 234.6 as possible forums for social media (Education Code 234.6). See AR 5131.2 - Bullying and AR 5145.3 - Nondiscrimination/Harassment.
4. The Eden Area ROP's policy on preventing and responding to hate violence, if the Eden Area ROP has adopted such a policy (Education Code 234.6). See BP 5145.9 - Hate-Motivated Behavior.
5. The definition of discrimination and harassment based on sex as described in Education Code 230, including the rights set forth in Education Code 221.8 (Education Code 234.6). See AR 5145.3 - Nondiscrimination/Harassment.
6. Information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the name and contact information of the Title IX Coordinator, the rights of students and the public as specified in Education Code 221.8, the responsibilities of the Eden Area ROP under Title IX, web links to information about those rights and responsibilities on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights, a description of how to file a complaint of noncompliance under Title IX with specified components, and a link to Title IX information posted on the California Department of Education's (CDE) web site (Education Code 221.6, 221.61, 234.6; 34 CFR 43

106.8). See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment.

7. A link to statewide CDE-compiled resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying and to their families (Education Code 234.5, 234.6). See AR 5145.3 - Nondiscrimination/Harassment.
8. Posters published by the California Department of Fair Employment and Housing (DFEH) including, "California Law Prohibits Workplace Discrimination and Harassment," and for districts with five or more employees, "Transgender Rights in the Workplace," "Your Rights and Obligations as a Pregnant Employee," and "Family Care and Medical Leave and Pregnancy Disability Leave" (Government Code 12950). See AR 4030 - Nondiscrimination in Employment and AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

### Other Postings

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

1. The Eden Area ROP's nondiscrimination policy and regulation, including the complaint procedure and the compliance coordinator's contact information (34 CFR 100.6, 106.8). See BP 0410 - Nondiscrimination in District Programs and Activities and AR 4030 - Nondiscrimination in Employment.
2. Training materials used to train the Title IX Coordinator, investigator(s), ~~decision-maker~~ decisionmaker(s), and any person(s) who facilitate an informal resolution process in response to a Title IX sexual harassment complaint (34 CFR 106.45). See AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.
3. Contact information for the district's liaison(s) for homeless students and other persons as required by Education Code 48852.6, and information regarding the educational rights and resources available to persons experiencing homelessness (Education Code 48852.6). See AR 6173 - Education for Homeless Children.
4. The section(s) of the Eden Area ROP's employee code of conduct addressing interactions with students (Education Code 44050). Post these section(s) or a link to them on Eden Area ROP's web site in a manner that is accessible to the public without a password. See BP 4119.21/4219.21/4319.21 - Professional Standards and BP 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions.
5. The Eden Area ROP's integrated pest management plan, whenever the Center chooses to use a pesticide not exempted pursuant to Education Code 17610.5 (Education Code 17611.5). Post on the Eden Area ROP's web site. See AR 3514.2 Integrated Pest Management.

6. When the California Environmental Quality Act requires an environmental impact report, negative declaration, or mitigated negative declaration, those environmental review documents, public notice of the preparation and availability of such documents within a reasonable period of time prior to certification of the environmental impact report, adoption of a negative declaration, or determination that a proposed subsequent project will have no additional significant effect on the environment, and specified notices when written requests for notices have been filed (Public Resources Code 21082.1, 21092, 21092.2).
7. Results of the Western Association of Schools and Colleges (WASC) or other accrediting agency's inspection of a school, within 60 days of receiving the results. (This notification could be made in writing to parents/guardians instead of or in addition to posting the results on the Eden Area ROP's web site.) In addition, if a school loses its WASC or other agency's accreditation, the Eden Area ROP shall post on their web sites a notice of the loss of accreditation and potential consequences (Education Code 35178.4). See BP 6190 - Evaluation of the Instructional Program.

**Regulation 1312.4: Williams Uniform Complaint Procedures**

Status: DRAFT

Original Adopted Date: 06/07/2012 | Last Revised Date: 11/04/2021 | Last Reviewed Date: 11/04/2021

**Types of Complaints**

The Eden Area Regional Occupational Program (Eden Area ROP) shall use the procedures described in this administrative regulation only to investigate and resolve the following:

1. Complaints regarding the insufficiency of textbooks and instructional materials, including any complaint alleging that: (Education Code 35186; 5 CCR 4681)
  - a. A student, including an English learner, does not have standards-aligned textbooks or instructional materials or state- or Eden Area ROP-adopted textbooks or other required instructional materials to use in class.
  - b. A student does not have access to textbooks or instructional materials to use at home or after school. This does not require two sets of textbooks or instructional materials for each student.
  - c. Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.
  - d. A student was provided photocopied sheets from only a portion of a textbook or instructional materials to address a shortage of textbooks or instructional materials.
2. Complaints regarding teacher vacancy or misassignment, including any complaint alleging that: (Education Code 35186; 5 CCR 4682)
  - a. A semester begins and a teacher vacancy exists.
  - b. A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learners in the class.
  - c. A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

Teacher vacancy means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of the semester for an entire semester. (Education Code 35186; 5 CCR 4600)

*Beginning of the year or semester* means the first day classes necessary to serve all the students enrolled are established with a single designated certificated employee assigned for the duration of the class, but not later than 20 working days after time period from the first day students attend classes for that semester. (5 CCR 4600) a year-long course or semester-long course though not later than 20 business days afterwards.

Misassignment means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold. (Education Code 35186; 5 CCR 4600)

3. Complaints regarding the condition of school facilities, including any complaint alleging that: (Education Code 35186; 5 CCR 4683)
  - a. A condition poses an emergency or urgent threat to the health or safety of students or staff.

Emergency or urgent threat means structures or systems that are in a condition that poses a threat to the health and safety of students or staff while at school, including, but not limited to, gas leaks; nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems; electrical power failure; major sewer line stoppage; major pest or vermin infestation; broken windows or exterior doors or gates that will not lock and that pose a security risk; abatement of hazardous materials previously undiscovered that pose an immediate threat to students or staff; structural damage creating a hazardous or uninhabitable condition; or any other condition deemed appropriate. (Education Code 17592.72)

- b. A school restroom has not been cleaned, maintained, or kept open in accordance with Education Code 35292.5.

Clean or maintained school restroom means a school restroom has been cleaned or maintained regularly, is fully operational, or has been stocked at all times with toilet paper, soap, or paper towels or functional hand dryers. (Education Code 35292.5)

Open restroom means the school has kept all restrooms open during school hours when students are not in classes and has kept a sufficient number of restrooms open during school hours when students are in classes. This does not apply when the temporary closing of the restroom is necessary for student safety or to make repairs. (Education Code 35292.5)

## Forms and Notices

The Superintendent or designee shall ensure a Williams complaint form is available at the Center. However, complainants need not use the Eden Area ROP's complaint form in order to file a complaint. (Education Code 35186; 5 CCR 4680)

The Superintendent or designee shall ensure that the Eden Area ROP's complaint form specifies the location for filing a complaint and contains a space to indicate whether the complainant desires a response to the complaint. A complainant may add as much text to explain the complaint as desired. (Education Code 35186; 5 CCR 4680)

The Superintendent or designee shall post in each classroom a notice containing the components specified in Education Code 35186. (Education Code 35186)

## Filing of Complaint

A complaint alleging any condition(s) specified in the section "Types of Complaints" above shall be filed with the principal or designee at the school in which the complaint arises. A complaint about problems beyond the authority of the principal shall be forwarded to the Superintendent or designee in a timely manner, but not to exceed 10 working days. Complaints may be filed anonymously. (Education Code 35186; 5 CCR 4680)

## Investigation and Response

The principal or a designee of the Superintendent shall make all reasonable efforts to investigate any problem within the principal's or designee's authority. (Education Code 35186; 5 CCR 4685)

The principal or Superintendent's designee shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. (Education Code 35186; 5 CCR 4685)

If the complainant has indicated on the complaint form a desire to receive a response to the complaint, the principal or Superintendent's designee shall report the send written resolution of the complaint to the mailing address of the complainant as indicated on the complaint within 45 working days of the initial filing of the complaint. If the principal makes this report, the information shall be reported at the same time to the Superintendent or designee. (Education Code 35186; 5 CCR 4680, 4685)

When Education Code 48985 is applicable and the complainant has requested a response, the response shall be written in English and in the primary language in which the complaint was filed. (Education Code 35186)

If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Governing Board at a regularly scheduled meeting. (Education Code 35186; 5 CCR 4686)

For any complaint concerning a facilities condition that poses an emergency or urgent threat to the health or safety of students or staff as described in item Item #3a in the section "Types of Complaints" above, a complainant who is not satisfied with the resolution proffered by the principal or Superintendent or designee may file an appeal to the Superintendent of Public Instruction within 15 days of receiving the Eden Area ROP response. The complainant shall comply with the appeal requirements specified in 5 CCR 4632. (Education Code 35186; 5 CCR 4687)

All complaints and written responses shall be public records. (Education Code 35186; 5 CCR 4686)

## Reports

On a quarterly basis, the Superintendent or designee shall report, to the Board at a regularly scheduled public Board meeting and to the County Superintendent of Schools, summarized data on the nature and resolution of all complaints. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. (Education Code 35186; 5 CCR 4686)

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

#### State References

5 CCR 4600-4670

5 CCR 4680-4687

Ed. Code 1240

Ed. Code 17592.72

Ed. Code 234.1

Ed. Code 33126

Ed. Code 35186

Ed. Code 35292.5-35292.6

Ed. Code 48985

Ed. Code 60119

#### Description

Uniform complaint procedures

Williams uniform complaint procedures

County superintendent of schools, duties -  
<https://simbli.eboardsolutions.com/SU/zxiNbLNKXQ1Z3w2H1beZIA==>

Urgent or emergency repairs; School Facility Emergency Repair Account

Student protections relating to discrimination, harassment, intimidation, and bullying

School accountability report card

Williams uniform complaint procedures

Restrooms; maintenance and cleanliness

Notices to parents in language other than English

Hearing on sufficiency of instructional materials

#### Federal References

20 USC 6314

#### Description

Title I schoolwide program

#### Management Resources References

Website

State Allocation Board, Office of Public School Construction -  
<https://simbli.eboardsolutions.com/SU/UxUcDGusZWnedr16Dp8wuQ==>

Website

California Department of Education, Williams Case -  
<https://simbli.eboardsolutions.com/SU/lgEokvI5m4hnKA9yXFZS8A==>

Website

California County Superintendents Educational Services Association -  
<https://simbli.eboardsolutions.com/SU/Wyr1WplusZPL9SDth52IMoLrg==>

Website

CSBA -  
<https://simbli.eboardsolutions.com/SU/W3QxkK2FPsDsQBnMIENxGg==>

#### Cross References

1250

Visitors/Outsiders -  
<https://simbli.eboardsolutions.com/SU/r97Rsu8M6iVBGFQk72Bvplusg==>

1250

Visitors/Outsiders -  
<https://simbli.eboardsolutions.com/SU/lozntKyUEVTuEwcqK7gFTw==>

1312.3

Uniform Complaint Procedures -  
<https://simbli.eboardsolutions.com/SU/NCIO1x8xFCdtQRniKVFEQQ==>

1312.3

Uniform Complaint Procedures -  
<https://simbli.eboardsolutions.com/SU/BA1WWI3efmslshPOPghyV4WnQ==>

1312.3-E PDF(1)

Uniform Complaint Procedures -  
<https://simbli.eboardsolutions.com/SU/W6rvYg4mauU6zHehPSApOQ==>

1340

Access To District Records -  
<https://simbli.eboardsolutions.com/SU/sJI0Q983QjwuOGlyZsiBqw==>

1340

Access To District Records -  
<https://simbli.eboardsolutions.com/SU/T6tAoJLAtsIF1aZLtyezrA==>

3270	Sale And Disposal Of Books, Equipment And Supplies - <a href="https://simbli.eboardsolutions.com/SU/mZ8rRymslshsSyzN2Un5g288w==">https://simbli.eboardsolutions.com/SU/mZ8rRymslshsSyzN2Un5g288w==</a>
3270	Sale And Disposal Of Books, Equipment And Supplies - <a href="https://simbli.eboardsolutions.com/SU/ITSnzs2NarKOslshSNwHA8fCg==">https://simbli.eboardsolutions.com/SU/ITSnzs2NarKOslshSNwHA8fCg==</a>
3514	Environmental Safety - <a href="https://simbli.eboardsolutions.com/SU/zY8DG5z4nD9CDQrTO6xVUA==">https://simbli.eboardsolutions.com/SU/zY8DG5z4nD9CDQrTO6xVUA==</a>
3514.2	Integrated Pest Management - <a href="https://simbli.eboardsolutions.com/SU/zLBELNz0oqwFZ1DBltoVdQ==">https://simbli.eboardsolutions.com/SU/zLBELNz0oqwFZ1DBltoVdQ==</a>
4112.2	Certification - <a href="https://simbli.eboardsolutions.com/SU/Ai5mkBQW9g0dF3kIAslshfVEQ==">https://simbli.eboardsolutions.com/SU/Ai5mkBQW9g0dF3kIAslshfVEQ==</a>
4112.2	Certification - <a href="https://simbli.eboardsolutions.com/SU/N3Bs1UMslshANAV8zGjSOSvsA==">https://simbli.eboardsolutions.com/SU/N3Bs1UMslshANAV8zGjSOSvsA==</a>
4113	Assignment - <a href="https://simbli.eboardsolutions.com/SU/9dslshMtF32XWzhiHHYi9mrAQ==">https://simbli.eboardsolutions.com/SU/9dslshMtF32XWzhiHHYi9mrAQ==</a>
4113	Assignment - <a href="https://simbli.eboardsolutions.com/SU/ekwvBSrWzlxuuNA7ALHNNQ==">https://simbli.eboardsolutions.com/SU/ekwvBSrWzlxuuNA7ALHNNQ==</a>
4144	Complaints - <a href="https://simbli.eboardsolutions.com/SU/jMJUWWhbRaLqEmvhJ3ML13A==">https://simbli.eboardsolutions.com/SU/jMJUWWhbRaLqEmvhJ3ML13A==</a>
4144	Complaints - <a href="https://simbli.eboardsolutions.com/SU/fMozsLcU1XQD2tEvpluslIn9w==">https://simbli.eboardsolutions.com/SU/fMozsLcU1XQD2tEvpluslIn9w==</a>
4244	Complaints - <a href="https://simbli.eboardsolutions.com/SU/aQNldGubKpluslpfZH0rpluskBQQ==">https://simbli.eboardsolutions.com/SU/aQNldGubKpluslpfZH0rpluskBQQ==</a>
4244	Complaints - <a href="https://simbli.eboardsolutions.com/SU/Ojld2dnxGJxfwG6RsewdNg==">https://simbli.eboardsolutions.com/SU/Ojld2dnxGJxfwG6RsewdNg==</a>
4344	Complaints - <a href="https://simbli.eboardsolutions.com/SU/81islshPFcSeJaoFtslshzpmvsRg==">https://simbli.eboardsolutions.com/SU/81islshPFcSeJaoFtslshzpmvsRg==</a>
4344	Complaints - <a href="https://simbli.eboardsolutions.com/SU/EpF4T2e1sCscykW5uttqlw==">https://simbli.eboardsolutions.com/SU/EpF4T2e1sCscykW5uttqlw==</a>
6161.1	Selection And Evaluation Of Instructional Materials - <a href="https://simbli.eboardsolutions.com/SU/ZIFkrhoPwYZcOtBW3P3Vtw==">https://simbli.eboardsolutions.com/SU/ZIFkrhoPwYZcOtBW3P3Vtw==</a>
6161.1	Selection And Evaluation Of Instructional Materials - <a href="https://simbli.eboardsolutions.com/SU/cQplusV1BtOQq9adCb0ypR4gw==">https://simbli.eboardsolutions.com/SU/cQplusV1BtOQq9adCb0ypR4gw==</a>
6161.2	Damaged Or Lost Instructional Materials - <a href="https://simbli.eboardsolutions.com/SU/j3FIKhXlnfxslshlpyJ8myMcw==">https://simbli.eboardsolutions.com/SU/j3FIKhXlnfxslshlpyJ8myMcw==</a>
9000	Role Of The Board - <a href="https://simbli.eboardsolutions.com/SU/7ycRID3oKqdpGslshplus6tolGQ==">https://simbli.eboardsolutions.com/SU/7ycRID3oKqdpGslshplus6tolGQ==</a>
9012	Board Member Electronic Communications - <a href="https://simbli.eboardsolutions.com/SU/XyqDxILkc6SplusgeVAMYfMWQ==">https://simbli.eboardsolutions.com/SU/XyqDxILkc6SplusgeVAMYfMWQ==</a>
9200	Limits Of Board Member Authority - <a href="https://simbli.eboardsolutions.com/SU/lplusspjGanwlwaeN2Z1XBIMA==">https://simbli.eboardsolutions.com/SU/lplusspjGanwlwaeN2Z1XBIMA==</a>
9322	Agenda/Meeting Materials - <a href="https://simbli.eboardsolutions.com/SU/dCPXiB9PuLeN3slsh0w2XINxw==">https://simbli.eboardsolutions.com/SU/dCPXiB9PuLeN3slsh0w2XINxw==</a>

**Exhibit 1312.4-E(2): Williams Uniform Complaint Procedures**

**Status:** DRAFT

**Original Adopted Date:** Pending

**K-12 COMPLAINT FORM:  
WILLIAMS UNIFORM COMPLAINT PROCEDURES**

Education Code 35186 creates a procedure for the filing of complaints concerning deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean or safe manner or in good repair, or teacher vacancy or misassignment. The complaint and response are public documents as provided by law. Complaints may be filed anonymously. However, if you wish to receive a response to your complaint, you must provide the contact information below.

Response requested? \_\_\_ Yes \_\_\_ No

Contact information: (if response is requested)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: Day: \_\_\_\_\_ Evening: \_\_\_\_\_

E-mail address, if any: \_\_\_\_\_

Date problem was observed: \_\_\_\_\_

Location of the problem that is the subject of this complaint:

School name/address: \_\_\_\_\_

Course title/grade level and teacher name: \_\_\_\_\_

Room number/name of room/location of facility: \_\_\_\_\_

**Only the following issues may be the subject of this complaint process. If you wish to complain about an issue not specified below, please contact the school or ~~district~~ Eden Area Regional Occupational Program (Eden Area ROP) for the appropriate ~~district~~ Eden Area ROP complaint procedure.**

Specific issue(s) of the complaint: (Please check all that apply. A complaint may contain more than one allegation.)

1. Textbooks and instructional materials: (Education Code 35186; 5 CCR 4681)
  - A student, including an English learner, does not have standards-aligned textbooks or instructional materials or state- or ~~district~~ Eden Area ROP-adopted textbooks or other required instructional materials to use in class.
  - A student does not have access to textbooks or instructional materials to use at home or after school. This does not require two sets of textbooks or instructional materials for each student.
  - Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.
  - A student was provided photocopied sheets from only a portion of a textbook or instructional materials to address a shortage of textbooks or instructional materials.
2. Teacher vacancy or misassignment: (Education Code 35186; 5 CCR 4682)



- A semester begins and a teacher vacancy exists. A *teacher vacancy* is a position to which a single designated certificated employee has not been assigned at the beginning of the school year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.
- A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learners in the class.
- A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

3. Facilities conditions: (Education Code 17592.72, 35186, 35292.5, 35292.6; 5 CCR 4683)

- A condition exists that poses an emergency or urgent threat to the health or safety of students or staff including gas leaks; nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems; electrical power failure; major sewer line stoppage; major pest or vermin infestation; broken windows or exterior doors or gates that will not lock and that pose a security risk; abatement of hazardous materials previously undiscovered that pose an immediate threat to students or staff; structural damage creating a hazardous or uninhabitable condition; and any other condition deemed appropriate by the **Eden Area ROP district**.
- A school restroom has not been cleaned or maintained regularly, is not fully operational, or has not been stocked at all times with toilet paper, soap, or paper towels or functional hand dryers.
- For a school serving any of grades 6-12, the school has not, at all times, stocked and made available and accessible free of cost, an adequate supply of menstrual products in every women's and all-gender restroom, and in at least one men's restroom.
- The school has not kept all restrooms open during school hours when students are not in classes and has not kept a sufficient number of restrooms open during school hours when students are in classes. This does not apply when temporary closing of the restroom is necessary for student safety or to make repairs.

Please describe the issue of your complaint in detail. You may attach additional pages and include as much text as necessary to fully describe the situation. For complaints regarding facilities conditions, please describe the emergency or urgent facilities condition and how that condition poses a threat to the health or safety of students or staff.

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Please file this complaint at the following location:

**Manuschka Michaud**

-----  
 (principal or designee)

**Eden Area ROP**

**26316 Hesperian Blvd.**

**Hayward, CA 94545**

-----  
 (address)

Please provide a signature below. If you wish to remain anonymous, a signature is not required. However, all complaints, even anonymous ones, should be dated.

-----  
(Signature) (Date)

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**Policy Reference Disclaimer:**

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**State**

5 CCR 4600-4670

**Description**

Uniform complaint procedures

5 CCR 4680-4687

Williams uniform complaint procedures

Ed. Code 1240

[County superintendent of schools, duties](#)

Ed. Code 17592.72

Urgent or emergency repairs; School Facility Emergency Repair Account

Ed. Code 234.1

Student protections relating to discrimination, harassment, intimidation, and bullying

Ed. Code 33126

School accountability report card

Ed. Code 35186

Williams uniform complaint procedures

Ed. Code 35292.5-35292.6

Restrooms; maintenance and cleanliness

Ed. Code 48985

Notices to parents in language other than English

Ed. Code 60119

Hearing on sufficiency of instructional materials

**Federal**

20 USC 6314

**Description**

Title I schoolwide program

**Management Resources**

Website

**Description**

[State Allocation Board, Office of Public School Construction](#)

Website

[California Department of Education, Williams Case](#)

Website

[California County Superintendents Educational Services Association](#)

Website

[CSBA](#)

**Cross References**

**Code**

1250

**Description**

[Visitors/Outsiders](#)

1250

[Visitors/Outsiders](#)

1312.3

[Uniform Complaint Procedures](#)

1312.3	<a href="#">Uniform Complaint Procedures</a>
1312.3-E PDF(1)	<a href="#">Uniform Complaint Procedures</a>
1340	<a href="#">Access To District Records</a>
1340	<a href="#">Access To District Records</a>
3270	<a href="#">Sale And Disposal Of Books, Equipment And Supplies</a>
3270	<a href="#">Sale And Disposal Of Books, Equipment And Supplies</a>
3514	<a href="#">Environmental Safety</a>
3514.2	<a href="#">Integrated Pest Management</a>
4112.2	<a href="#">Certification</a>
4112.2	<a href="#">Certification</a>
4113	<a href="#">Assignment</a>
4113	<a href="#">Assignment</a>
4144	<a href="#">Complaints</a>
4144	<a href="#">Complaints</a>
4244	<a href="#">Complaints</a>
4244	<a href="#">Complaints</a>
4344	<a href="#">Complaints</a>
4344	<a href="#">Complaints</a>
6161.1	<a href="#">Selection And Evaluation Of Instructional Materials</a>
6161.1	<a href="#">Selection And Evaluation Of Instructional Materials</a>
6161.2	<a href="#">Damaged Or Lost Instructional Materials</a>
9000	<a href="#">Role Of The Board</a>
9012	<a href="#">Board Member Electronic Communications</a>
9200	<a href="#">Limits Of Board Member Authority</a>
9322	<a href="#">Agenda/Meeting Materials</a>

**Policy 3523: Electronic Signatures**

**Status:** DRAFT

**Original Adopted Date:** Pending

The Governing Board believes that the use of electronic records and signatures is a convenient paperless option that can increase efficiency in commercial and administrative transactions, reduce costs, and contribute to environmental sustainability in district operations. The Board authorizes the use of electronic signatures in Eden Area Regional Occupational Programs (Eden Area ROP) operations when authorized by law.

The Superintendent or designee shall ensure that any electronic signature utilized by the Eden Area ROP conforms with criteria described in law and that the level of security is sufficient for the transaction being conducted. (Government Code 16.5; 2 CCR 22003, 22005)

The Superintendent or designee shall retain electronic records in accordance with law and regulations, and as specified in BP/AR 3580 - District Records.

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**State References**

	<b>Description</b>
2 CCR 22000-22005	Public entity use of electronic signatures - <a href="https://simbli.eboardsolutions.com/SU/jjoxXkoplusnISsKsUaPslshQplusYg==">https://simbli.eboardsolutions.com/SU/jjoxXkoplusnISsKsUaPslshQplusYg==</a>
5 CCR 16020-16022	Records, general provisions
5 CCR 16023-16027	District records, retention and destruction
5 CCR 430	Individual student records; definition
5 CCR 432	Student records
Civ. Code 1633.1-1633.17	Uniform Electronic Transactions Act
Civ. Code 1798.29	District records; breach of security - <a href="https://simbli.eboardsolutions.com/SU/LBkkDX8OIBFu9JplusO9hdW9w==">https://simbli.eboardsolutions.com/SU/LBkkDX8OIBFu9JplusO9hdW9w==</a>
Ed. Code 35252-35255	Records and reports
Ed. Code 44031	Personnel file contents and inspection
Ed. Code 49060-49079.7	Student records
Ed. Code 8234	Electronic signatures; child care and development programs
Gov. Code 16.5	Electronic signatures
Gov. Code 6252-6265	Inspection of public records
Gov. Code 811.2	Definition of public entity

**Federal References**

	<b>Description</b>
15 USC 7001-7006	Electronic Records and Signatures in Commerce Act
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1400-1482	Individuals with Disabilities Education Act
34 CFR 300-300.818	Assistance to states for the education of students with disabilities
34 CFR 99.1-99.8	Family Educational Rights and Privacy Act

**Management Resources References**

	<b>Description</b>
CA Department of Education Publication	Management Bulletin 17-13, October 2017

**Cross References**

**Description**

3580

District Records -

<https://simbli.eboardsolutions.com/SU/BVBOZJc6bUBBVUHL3OHsw==>

3580

District Records -

<https://simbli.eboardsolutions.com/SU/xvRmbIVplus3rJ1gRwplus5odLvA==>

**Regulation 3523: Electronic Signatures**

**Status:** DRAFT

**Original Adopted Date:** Pending

When authorized by law, electronic signatures may be used in the operation of the Eden Area Regional Occupational Program (Eden Area ROP) business and/or administration.

In any business transaction, an electronic signature shall only be used when each party has agreed to conduct the transaction by electronic means. In other Eden Area ROP operations, the Superintendent or designee may require the use of an electronic signature. (Civil Code 1633.5; 15 USC 7001)

A *digital signature* is defined as an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. (Government Code 16.5)

An *electronic signature* consists of an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (Civil Code 1633.2)

In order for an electronic signature to be used, the electronic signature shall be: (Government Code 16.5; 2 CCR 22002)

1. Unique to the person using it
2. Capable of verification
3. Under the sole control of the person using it
4. Linked to data in such a manner that if the data are changed the electronic signature is invalidated
5. Conform to 2 CCR 22000-22005

Prior to accepting an electronic signature, the Superintendent or designee shall ensure the following: (2 CCR 22005)

1. That the signature is created by acceptable technology pursuant to 2 CCR 22003
2. That the level of security used to identify the signer of the document and to transmit the signature is sufficient for the transaction being conducted
3. That, if a certificate is a required component of the electronic signature, the certificate format used by the signer is sufficient for the security and interoperability needs of the Eden Area ROP.

If a notarized signature is required with respect to an electronic signature, the electronic signature of the notary public together with all of the other information required by law to be included in a notarization shall accompany the electronic signature. (Civil Code 1633.11)

If a statement is required to be signed under penalty of perjury, the electronic signature shall include all of the information to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct. (Civil Code 1633.11)

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**State References**

**Description**

2 CCR 22000-22005

Public entity use of electronic signatures -  
<https://simbli.eboardsolutions.com/SU/jjoxXkoplusnlSsKsUaPslshQplusYg==>

5 CCR 16020-16022

Records, general provisions

5 CCR 16023-16027  
 5 CCR 430  
 5 CCR 432  
 Civ. Code 1633.1-1633.17  
 Civ. Code 1798.29  
 Ed. Code 35252-35255  
 Ed. Code 44031  
 Ed. Code 49060-49079.7  
 Ed. Code 8234  
 Gov. Code 16.5  
 Gov. Code 6252-6265  
 Gov. Code 811.2

#### **Federal References**

15 USC 7001-7006  
 20 USC 1232g  
 20 USC 1400-1482  
 34 CFR 300-300.818  
 34 CFR 99.1-99.8

#### **Management Resources References**

CA Department of Education Publication

#### **Cross References**

3580  
  
 3580

District records, retention and destruction  
 Individual student records; definition  
 Student records  
 Uniform Electronic Transactions Act  
 District records; breach of security -  
<https://simbli.eboardsolutions.com/SU/LBkkDX8OIBFu9JplusO9hdW9w==>  
 Records and reports  
 Personnel file contents and inspection  
 Student records  
 Electronic signatures; child care and development programs  
 Electronic signatures  
 Inspection of public records  
 Definition of public entity

#### **Description**

Electronic Records and Signatures in Commerce Act  
 Family Educational Rights and Privacy Act (FERPA) of 1974  
 Individuals with Disabilities Education Act  
 Assistance to states for the education of students with disabilities  
 Family Educational Rights and Privacy Act

#### **Description**

Management Bulletin 17-13, October 2017

#### **Description**

District Records -  
<https://simbli.eboardsolutions.com/SU/BVBOZJc6bUBBVUHL3OHsw==>  
 District Records -  
<https://simbli.eboardsolutions.com/SU/xvRmbIVplus3rJ1gRwplus5odLvA==>

**Regulation 4112.2: Certification**

Status: DRAFT

Original Adopted Date: 05/07/2020

**Verification of Credentials**

The Superintendent or designee shall verify that each employee in a position requiring certification qualifications possesses a valid certification document issued by the Commission on Teacher Credentialing (CTC). Such verification shall occur not later than 60 days after the commencement of employment or the renewal of a credential. (Education Code 44857)

(cf. 4112.21 - Interns)

(cf. 4112.22 - Staff Teaching English Learners)

(cf. 4112.23 - Special Education Staff)

(cf. 4121 - Temporary/Substitute Personnel)

(cf. 5148 - Child Care and Development)

(cf. 6178 - Career Technical Education)

(cf. 6200 - Adult Education)

The Superintendent or designee shall verify that any person who is employed by the Eden Area Regional Occupational Program (Eden Area ROP) while his/her CTC is processing the application for certification is being processed by the CTC possesses a temporary certificate based on a demonstration of basic skills and completion of a criminal background check. (Education Code 44332, 44332.5, 44332.6)

The Superintendent or designee shall maintain records of the appropriate certification of all employees serving in certificated positions.

(cf. 3580 - District Records)

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

**Basic Skills Proficiency**

The Eden Area ROP shall not initially hire a person in a position requiring certification, on a permanent, temporary, or substitute basis, unless that person has demonstrated basic skills proficiency in reading, writing, and mathematics or is specifically exempted from the requirement by law. (Education Code 44252, 44252.6, 44830)

A person may demonstrate basic skills proficiency in reading, writing, and mathematics by:

1. Passage of the California Basic Educational Skills Test (CBEST) (Education Code 44252.5)
2. Passage of the California Subject Examinations for Teachers plus Writing Skills Examination
3. Passage of the California State University (CSU) Early Assessment Program or the CSU Placement Examinations (Education Code 44252)
4. Achieving a qualifying score on the Scholastic Aptitude Test or the American College Test (Education Code 44252) 5. Achieving a qualifying score on College Board Advanced Placement Examinations
5. Achieving a qualifying score on College Board Advanced Placement Examinations
6. Passage of a basic skills examination from another state
7. Qualifying coursework (Education Code 44252)
8. Qualifying coursework and exams (Education Code 44252)



The Eden Area ROP may hire a certificated employee who has not taken a test of basic skills proficiency if he/she the employee has not yet been afforded the opportunity to take the test, provided that he/she the employee takes the test at the earliest opportunity. The employee may remain employed by the Eden Area ROP pending the receipt of his/her the test results. (Education Code 44830)

An out-of-state prepared teacher shall meet the basic skills requirement within one year of being issued a California preliminary credential by the CTC unless he/she the teacher has completed a basic skills proficiency test in another state, passed a basic skills proficiency test developed and administered by the Eden Area ROP, by cooperating districts or by the county office of education (COE), or is otherwise exempted by law. (Education Code 44252, 44274.2; 5 CCR 80071.4, 80413.3)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6146.2 - Certificate of Proficiency)

(cf. 6162.5 - High School Exit Examination)

### **Short-Term Staff Permit**

The Eden Area ROP may request that the CTC issue a short-term staff permit (STSP) to a qualified applicant whenever there is a need to immediately fill a classroom based on unforeseen circumstances, including, but not limited to: (5 CCR 80021)

1. Enrollment adjustments requiring the addition of another teacher
2. Inability of the teacher of record to finish the school year due to approved leave or illness
3. The applicant's need for additional time to complete preservice requirements for enrollment into an approved intern internship program

When requesting issuance of an STSP, the Superintendent or designee shall submit to the CTC: (5 CCR 80021)

1. Verification that the Eden Area ROP has conducted a local recruitment for the permit being requested
2. Verification that the Eden Area ROP has provided the permit holder with orientation to the curriculum and to instruction and classroom management techniques and has assigned a mentor teacher for the term of the permit

(cf. 4131 - Staff Development)

(cf. 4131.1 - Teacher Support and Guidance)

3. Written justification for the permit signed by the Superintendent or designee

The holder of an STSP may be assigned to provide the same service as a holder of a single subject, Career Technical Education (CTE), or education specialist credential in accordance with the authorizations specified on the permit. (5 CCR 80021)

### **Provisional Internship Permit**

Before requesting that the CTC issue a provisional internship permit (PIP), the Eden Area ROP shall conduct a diligent search for a suitable credentialed teacher or intern, including, but not limited to, distributing job announcements, contacting college and university placement centers, and advertising in print or electronic media. (5 CCR 80021.1)

(cf. 4111/4211/4311 - Recruitment and Selection)

Whenever a suitable credentialed teacher cannot be found after a diligent search, the Superintendent or designee may request that the CTC issue a PIP to an applicant who possesses a bachelor's or higher degree from a regionally accredited college or university, has met the basic skills proficiency requirement unless exempted by state law or regulations, and has satisfied the coursework/experience requirements specified in 5 CCR 80021.1 for the multiple subject, single subject, or education specialist PIP as appropriate. (5 CCR 80021.1)

### **Teaching Permit for Statutory Leave**

Whenever there is an anticipated need for the Eden Area ROP to temporarily fill the teaching assignment of a

teacher of record who will be on sick leave, differential sick leave, industrial accident or illness leave, pregnancy disability leave, or family care and medical leave under the federal Family and Medical Leave Act or California Family Rights Act, the Superintendent or designee may request that the CTC issue a Teaching Permit for Statutory Leave (TPSL) to a qualified individual who will be serving as the interim teacher of record. Prior to submitting an application to the CTC, the Eden Area ROP shall provide the applicant with 45 hours of preparation in the content areas listed in 5 CCR 80022. (5 CCR 80022)

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

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

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

A request for the TPSL shall only be submitted if the Eden Area ROP has made reasonable efforts to hire a substitute with a full teaching credential that matches the setting and/or subject for the statutory leave position and no such candidate is available. (5 CCR 80022)

The Eden Area ROP shall verify to the CTC that it will provide the interim teacher: (5 CCR 80022)

1. An orientation to the assignment before or during the first month of service in the statutory leave assignment
2. An average of two hours of mentoring, support, and/or coaching per week through a system of support coordinated and/or provided by a mentor who possesses a valid life or clear credential that would also authorize service in the statutory leave assignment
3. Lesson plans for the first four weeks of the assignment as well as continued assistance in the development of curriculum, lesson planning, and individualized education programs

The holder of the TPSL may serve as the interim teacher of record for up to the full length of the leave(s) during the school year. (5 CCR 80022)

The Superintendent or designee shall maintain documentation on the assignment in accordance with 5 CCR 80022. He/she shall and annually report data on the use of the TPSL to the County Superintendent of Schools for assignment monitoring pursuant to Education Code 44258.9. (5 CCR 80022)

(cf. 4113 - Assignment)

The Superintendent or designee may annually request renewal of the TPSL, provided that no substitute with a full teaching credential is available for the assignment. The application for each reissuance shall include verification that the interim teacher has completed an additional 45 hours of preparation and the Eden Area ROP is continuing to provide mentoring in accordance with items #2-3 above. (5 CCR 80022)

### **Substitute Teaching Permits**

The Eden Area ROP may employ a person whose credential or permit authorizes substitute teaching services, provided that:

1. A person holding an emergency 30-day substitute teaching permit, STSP, PIP, TPSL, or any valid teaching or services credential that requires at least a bachelor's degree and completion of the CBEST California Basic Educational Skills Test, shall not serve as a substitute for more than 30 days for any one teacher during the school year. (5 CCR 80025, 80025.3, 80025.4)
2. A person with an emergency career substitute teaching permit shall not serve as a substitute for more than 60 days for any one teacher during the school year. (5 CCR 80025.1)
3. A person with an emergency substitute teaching permit for prospective teachers shall not serve as a substitute for more than 30 days for any one teacher during the school year and not more than 90 days total during the school year. (5 CCR 80025.2)
4. A person with an emergency designated subjects 30-day substitute teaching permit for career technical education shall teach only in a program of technical, trade, or vocational education and shall not serve as a substitute for more than 30 days for any one teacher during the school year. (5 CCR 80025.5)

Before employing a person with an emergency substitute permit pursuant to item #1 or #4 above, the

Superintendent or designee shall prepare and keep on file a signed Statement of Need for the school year. The Statement of Need shall describe the situation or circumstances that necessitate the use of a 30-day substitute permit holder and state either that a credentialed person is not available or that the available credentialed person does not meet the Eden Area ROP's specified employment criteria. (5 CCR 80025, 80025.5)

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**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

### State References

5 CCR 80001-80674.6  
Ed. Code 32340-32341  
Ed. Code 35186  
Ed. Code 44066  
Ed. Code 44200-44418  
Ed. Code 44250-44277  
Ed. Code 44300-44302  
Ed. Code 44325-44328  
Ed. Code 44330-44355  
Ed. Code 44420-44440  
Ed. Code 44450-44468  
Ed. Code 44830-44929  
Ed. Code 56060-56063  
Ed. Code 8295-8305

### Description

Commission on Teacher Credentialing  
Unlawful issuance of a credential  
Complaints regarding teacher vacancy or misassignment  
Limitations on certification requirements  
Teacher credentialing  
Credentials and assignment of teachers  
Emergency permit  
District interns  
Certificates and credentials  
Revocation and suspension of credentials  
University internship program  
Employment of certificated persons; requirement of proficiency in basic skills  
Substitute teachers in special education  
Child development program personnel qualifications

### Federal References

20 USC 6312  
34 CFR 200.61

### Description

Title I local educational agency plans; notifications regarding teacher qualifications  
Parent notification regarding teacher qualifications

### Management Resources References

Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication  
Commission on Teacher Credentialing Publication

### Description

Proposed Amendments and Additions to Title 5 of the California Code of Regulations Pertaining to Subject Matter Competence, Coded Correspondence 21-06, September 20, 2021  
Assembly Bill 320: Regional Accreditation for Coursework and Degrees Used for Certification Purposes, Credential Information Alert 22-02, March 1, 2022  
Waiver Requests Guidebook, 2015  
Credential Information Guide  
Hiring Hierarchy in Education Code 44225.7, Coded Correspondence 13-01, January 30, 2013  
Approved Addition and Amendments to Title 5 of the California Code of Regulations Pertaining to Teaching Permit for Statutory Leave (TPSL), Coded Correspondence 16-10, Aug 23, 2016  
California Standards for the Teaching Profession (CSTP), 2009

Commission on Teacher Credentialing Publication	CL-667 Basic Skills Requirement
Commission on Teacher Credentialing Publication	CL-856 Provisional Internship Permit
Commission on Teacher Credentialing Publication	CL-858 Short-Term Staff Permit
Commission on Teacher Credentialing Publication	Subject Matter Authorization Guideline Book, December 2019
Commission on Teacher Credentialing Publication	Supplementary Authorization Guideline Book, December 2019
Commission on Teacher Credentialing Publication	The Administrator's Assignment Manual, 2021
Court Decision	Association of Mexican-American Educators et al. v. State of California and the Commission on Teacher Credentialing, (1993) 836 F.Supp. 1534
Nat'l Board for Prof. Teaching Stds. Publication	Using Federal Funds for National Board Activities: An Action-Planning Guide
Nat'l Board for Prof. Teaching Stds. Publication	Considerations for Using Federal Funds to Support National Board Certification
Website	California Department of Education, CA NBPTS Certification Incentive Program 2021-26 - <a href="https://simbli.eboardsolutions.com/SU/uKmxE8VYIFbmXZaxGIRRVQ==">https://simbli.eboardsolutions.com/SU/uKmxE8VYIFbmXZaxGIRRVQ==</a>
Website	National Board Resource Center - <a href="https://simbli.eboardsolutions.com/SU/g0vplusStn5VnplusyM4J8jU2DSw==">https://simbli.eboardsolutions.com/SU/g0vplusStn5VnplusyM4J8jU2DSw==</a>
Website	National Board for Professional Teaching Standards - <a href="https://simbli.eboardsolutions.com/SU/W4hc1FgK0ics8tTmuq7qslshw==">https://simbli.eboardsolutions.com/SU/W4hc1FgK0ics8tTmuq7qslshw==</a>
Website	Commission on Teacher Credentialing - <a href="https://simbli.eboardsolutions.com/SU/cxWNiqRUulsaq7efc7aH4Q==">https://simbli.eboardsolutions.com/SU/cxWNiqRUulsaq7efc7aH4Q==</a>
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## Cross References

1312.4	Williams Uniform Complaint Procedures - <a href="https://simbli.eboardsolutions.com/SU/BYbcDFfdbC6Dc9TjachakQ==">https://simbli.eboardsolutions.com/SU/BYbcDFfdbC6Dc9TjachakQ==</a>
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**Regulation 4161.8: Family Care And Medical Leave**

Status: DRAFT

Original Adopted Date: 05/07/2020 | Last Revised Date: 06/16/2022 | Last Reviewed Date: 06/16/2022

The Eden Area Regional Occupational Program (Eden Area ROP) shall not deny any eligible employee the right to family care or medical leave pursuant to the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), or ~~leave for pregnancy disability pursuant to California~~ to Pregnancy Disability Leave (PDL). ~~when an employee is disabled by a pregnancy, childbirth, or related medical condition.~~ The Eden Area ROP shall not interfere with, restrain, or deny the exercise of an employee's right to any such leave, nor shall the Eden Area ROP discharge, discriminate or retaliate against an employee for taking such leave, opposing or challenging an unlawful employment practice in relation to any of these laws, or being involved in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4033 - Lactation Accommodation)

**Definitions**

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

Child means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis. For purposes of CFRA leave, child also includes a child of a registered domestic partner. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

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

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

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

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

Parent means a biological, foster, or adoptive parent; a ~~parent-in-law~~; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child.

~~Parent~~ However, for FMLA purposes, ~~parent~~ does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

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

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

A person is considered an inpatient when formally admitted to a health care facility with the

expectation of remaining overnight and occupying a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

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

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:

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

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

### **Eligibility/Purposes of Leave**

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

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. ToThe care for the employee's of an eligible family member with a serious health condition
3. The employee's own serious health condition that makes the employee unable to perform one or more essential the job functions of the position
4. Any A qualifying exigency arising out of the fact that the employee's spouse, child, parent, or, for CFRA leave only, a registered domestic partner, is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. ToThe care for of a covered servicemember with a serious injury or illness if is when the covered servicemember employee is the employee'sa spouse, child, parent, or next of kin, as definedof the covered servicemember

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

### **Terms of Leave**

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

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

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

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



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

Each eligible employee shall be granted up to 12 work weeks for family care and medical leave related to the birth or placement of a child, regardless of whether both parents of the child work for the Eden Area ROP.

### **Use/Substitution of Paid Leave**

During any otherwise unpaid period of FMLA or CFRA leave, except leave for an employee's own serious health condition, an employee shall use accrued paid leave, including, but not limited to, vacation leave, personal leave, or family leave. If the leave is for the employee's own serious health condition, the employee shall use accrued paid leave, including but not limited to, vacation leave, personal leave, or sick leave. During an unpaid period of PDL, the employee shall use any accrued sick leave and may elect to use any vacation time or other accrued personal time off. (Government Code 12945, 12945.2; 2 CCR 11044, 11092; 29 USC 2612)

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4261.1 - Personal Illness/Injury Leave)

### **Intermittent Leave/Reduced Work or Leave Schedule**

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

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

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

1. The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment for the employee or family member.
2. A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.
3. The Eden Area ROP agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child.

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

### **Request for Leave**

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

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, the employee must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and

medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

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

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the Eden Area ROP is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

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

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

### **Certification of Health Condition**

Within five business days of an employee's request for family care and medical leave for the serious health condition of the employee or an eligible family member, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the Eden Area ROP's request, the employee shall provide the certification within 15 calendar days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11087, 11091; 29 CFR 825.305)

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

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

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

When an employee has provided sufficient medical certification to enable the Eden Area ROP to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there

is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

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

### **Certification for PDL**

The Superintendent or designee shall request that an employee who is requesting PDL provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if the Superintendent or designee has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

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

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

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

### **Release to Return to Work**

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

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

### **Rights to Reinstatement**

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

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

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

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

### **Maintenance of Benefits/Failure to Return from Leave**

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

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

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

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

### **Military Family Leave Resulting from Qualifying Exigencies**

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

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

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

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

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

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying

exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

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

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

### **Military Caregiver Leave**

The Eden Area ROP shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, child, parent, or next of kin of the covered servicemember. This 26-week period is **not in addition to, but rather is** inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

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

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

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

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

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

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

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
  - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating
  - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition

c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to the servicemember's military service or that would do so but for treatment received by the veteran

d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

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

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

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

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

## Notifications

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

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

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

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

2-3. Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)

3-4. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)

a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification

c. The employee's right to use paid leave, whether the Eden Area ROP will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave

d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis

- e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
- f. The employee's potential liability for health insurance premiums paid by the Eden Area ROP during the employee's unpaid FMLA leave should the employee not return to service after the leave

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

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

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

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

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

## Records

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

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

## State References

## Description

2 CCR 11035-11051	Unlawful sex discrimination: pregnancy, childbirth and related medical conditions - <a href="https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==">https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==</a>
2 CCR 11087-11098	California Family Rights Act - <a href="https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==">https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==</a>
Ed. Code 44965	Granting of leaves of absence for pregnancy and childbirth
Fam. Code 297-297.5	Rights, protections, benefits under the law; registered domestic partners
Fam. Code 300	Definition of marriage
Gov. Code 12926	Definitions
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Gov. Code 12945.1-12945.2	California Family Rights Act
Gov. Code 12945.6	Parental leave
Gov. Code 12946	Fair employment and Housing Act: discrimination prohibited

## Federal References

1 USC 7

29 CFR 825.100-825.702

29 USC 2601-2654

42 USC 2000ff-2000ff-11

## Management Resources References

Court Decision

Court Decision

Court Decision

U.S. Department of Labor Publication

Website

Website

## Cross References

0410

0470

1113

1113

1113-E PDF(1)

2121

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4112.2

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4112.4

4112.9

4112.9

## Description

Definition of marriage and spouse -

<https://simbli.eboardsolutions.com/SU/zna14bZkEoCQ5ILKxeKqGw==>

Family and Medical Leave Act of 1993

Family Care and Medical Leave Act

Genetic Information Nondiscrimination Act of 2008

## Description

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

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

United States v. Windsor, (2013) 699 F.3d 169

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

U.S. Department of Labor, FMLA -

<https://simbli.eboardsolutions.com/SU/gTctHyc7Ra9nNTUgNmxAhw==>

California Department of Fair Employment and Housing -

<https://simbli.eboardsolutions.com/SU/RRvNseNogmlnMLyl8K40jw==>

## Description

Nondiscrimination In District Programs And Activities -

<https://simbli.eboardsolutions.com/SU/e50nGqNuG7jQfN4N7E4ONA==>

COVID-19 Mitigation Plan -

<https://simbli.eboardsolutions.com/SU/lkd0OQyrdn0CMAAnaMO7MAw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/6eqaGiraNiZIWJNVmplusi2A==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/H2plusFDdQcslsh06TQUsCBPyRyw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/XbuVoK6Tf26q2m9jOKKacA==>

Superintendent's Contract -

<https://simbli.eboardsolutions.com/SU/jVoYXjIX5Smq6jRw7fN3Yw==>

Nondiscrimination In Employment -

<https://simbli.eboardsolutions.com/SU/10ZbnsLBD4kFslsh0MNYkuzuA==>

Nondiscrimination In Employment -

<https://simbli.eboardsolutions.com/SU/huJBj9Mb5p0jg2fOeadIA==>

Reasonable Accommodation -

<https://simbli.eboardsolutions.com/SU/eK452M5kQnYGHd40xSsBPA==>

Lactation Accommodation -

<https://simbli.eboardsolutions.com/SU/pMDebdpBYqwcfxR4Mhp2Kg==>

Certification -

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Certification -

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Health Examinations -

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Employee Notifications -

<https://simbli.eboardsolutions.com/SU/fQAypGvWMEaBoqLbzUZIQ==>

Employee Notifications -

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4112.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==">https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==</a>
4113.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==">https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==</a>
4117.3	Personnel Reduction - <a href="https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==">https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslshgppplusNU8Ha2g==">https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslshgppplusNU8Ha2g==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==">https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==">https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==">https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==</a>
4161.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==">https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==</a>
4161.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==">https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==</a>
4212.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==">https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==">https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==">https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==</a>
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4213.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==">https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==</a>
4254	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==">https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==</a>
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4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==">https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==</a>
4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==">https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==</a>
4261.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==">https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==</a>
4261.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==">https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==</a>
4312.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==">https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==</a>
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4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==">https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==</a>

4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==">https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvfw==">https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvfw==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==">https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==</a>
4361.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==">https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==</a>
4361.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==">https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==</a>

**Regulation 4261.8: Family Care And Medical Leave**

Status: DRAFT

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The Eden Area Regional Occupational Program (Eden Area ROP) shall not deny any eligible employee the right to family care or medical leave pursuant to the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), or leave for pregnancy disability pursuant to California to Pregnancy Disability Leave (PDL), when an employee is disabled by a pregnancy, childbirth, or related medical condition. The Eden Area ROP shall not interfere with, restrain, or deny the exercise of an employee's right to any such leave, nor shall the Eden Area ROP discharge, discriminate or retaliate against an employee for taking such leave, opposing or challenging an unlawful employment practice in relation to any of these laws, or being involved in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4033 - Lactation Accommodation)

**Definitions**

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

Child means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis. For purposes of CFRA leave, child also includes a child of a registered domestic partner. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

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

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

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

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

Parent means a biological, foster, or adoptive parent; a parent-in-law; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child.

Parent However, for FMLA purposes, parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

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

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

A person is considered an inpatient when formally admitted to a health care facility with the

expectation of remaining overnight and occupying a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

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

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:

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

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

### **Eligibility/Purposes of Leave**

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

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. ToThe care for the employee's of an eligible family member with a serious health condition
3. The employee's own serious health condition that makes the employee unable to perform one or more essential the job functions of the position
4. Any A qualifying exigency arising out of the fact that the employee's spouse, child, parent, or, for CFRA leave only, a registered domestic partner, is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. ToThe care for of a covered servicemember with a serious injury or illness if is when the covered servicemember employee is the employee'sa spouse, child, parent, or next of kin, as definedof the covered servicemember

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

### **Terms of Leave**

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

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

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

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

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

Each eligible employee shall be granted up to 12 work weeks for family care and medical leave related to the birth or placement of a child, regardless of whether both parents of the child work for the Eden Area ROP.

### **Use/Substitution of Paid Leave**

During any otherwise unpaid period of FMLA or CFRA leave, except leave for an employee's own serious health condition, an employee shall use accrued paid leave, including, but not limited to, vacation leave, personal leave, or family leave. If the leave is for the employee's own serious health condition, the employee shall use accrued paid leave, including but not limited to, vacation leave, personal leave, or sick leave. During an unpaid period of PDL, the employee shall use any accrued sick leave and may elect to use any vacation time or other accrued personal time off. (Government Code 12945, 12945.2; 2 CCR 11044, 11092; 29 USC 2612)

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4261.1 - Personal Illness/Injury Leave)

### **Intermittent Leave/Reduced Work or Leave Schedule**

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

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

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

1. The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment for the employee or family member.
2. A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.
3. The Eden Area ROP agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child.

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

### **Request for Leave**

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

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, the employee must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and

medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

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

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the Eden Area ROP is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

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

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

### **Certification of Health Condition**

Within five business days of an employee's request for family care and medical leave for the serious health condition of the employee or an eligible family member, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the Eden Area ROP's request, the employee shall provide the certification within 15 calendar days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11087, 11091; 29 CFR 825.305)

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

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

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

When an employee has provided sufficient medical certification to enable the Eden Area ROP to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there

is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

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

### **Certification for PDL**

The Superintendent or designee shall request that an employee who is requesting PDL provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if the Superintendent or designee has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

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

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

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

### **Release to Return to Work**

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

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

### **Rights to Reinstatement**

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

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

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

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

### **Maintenance of Benefits/Failure to Return from Leave**

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

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

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

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

### **Military Family Leave Resulting from Qualifying Exigencies**

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

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

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

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

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

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying



exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

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

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

### **Military Caregiver Leave**

The Eden Area ROP shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, child, parent, or next of kin of the covered servicemember. This 26-week period is **not in addition to, but rather is** inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

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

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

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

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

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

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

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
  - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating
  - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition

c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to the servicemember's military service or that would do so but for treatment received by the veteran

d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

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

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

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

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

## Notifications

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

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

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

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

2-3. Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)

3-4. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)

a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification

c. The employee's right to use paid leave, whether the Eden Area ROP will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave

d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis

- e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
- f. The employee's potential liability for health insurance premiums paid by the Eden Area ROP during the employee's unpaid FMLA leave should the employee not return to service after the leave

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

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

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

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

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

## Records

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

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

## State References

## Description

2 CCR 11035-11051	Unlawful sex discrimination: pregnancy, childbirth and related medical conditions - <a href="https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==">https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==</a>
2 CCR 11087-11098	California Family Rights Act - <a href="https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==">https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==</a>
Ed. Code 44965	Granting of leaves of absence for pregnancy and childbirth
Fam. Code 297-297.5	Rights, protections, benefits under the law; registered domestic partners
Fam. Code 300	Definition of marriage
Gov. Code 12926	Definitions
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Gov. Code 12945.1-12945.2	California Family Rights Act
Gov. Code 12945.6	Parental leave
Gov. Code 12946	Fair employment and Housing Act: discrimination prohibited

## Federal References

1 USC 7

29 CFR 825.100-825.702

29 USC 2601-2654

42 USC 2000ff-2000ff-11

## Management Resources References

Court Decision

Court Decision

Court Decision

U.S. Department of Labor Publication

Website

Website

## Cross References

0410

0470

1113

1113

1113-E PDF(1)

2121

4030

4030

4032

4033

4112.2

4112.2

4112.4

4112.9

4112.9

## Description

Definition of marriage and spouse -

<https://simbli.eboardsolutions.com/SU/zna4bZkEoCQ5ILKxeKqGw==>

Family and Medical Leave Act of 1993

Family Care and Medical Leave Act

Genetic Information Nondiscrimination Act of 2008

## Description

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

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

United States v. Windsor, (2013) 699 F.3d 169

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

U.S. Department of Labor, FMLA -

<https://simbli.eboardsolutions.com/SU/gTctHyc7Ra9nNTUgNmxAhw==>

California Department of Fair Employment and Housing -

<https://simbli.eboardsolutions.com/SU/RRvNseNogmlnMLyl8K40jw==>

## Description

Nondiscrimination In District Programs And Activities -

<https://simbli.eboardsolutions.com/SU/e50nGqNuG7jQfN4N7E4ONA==>

COVID-19 Mitigation Plan -

<https://simbli.eboardsolutions.com/SU/lkd0OQyrdn0CMAAnaMO7MAw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/6eqaGiraNiZIWJNVmplusi2A==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/H2plusFDdQcslsh06TQUscBPYRyw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/XbuVoK6Tf26q2m9jOKKacA==>

Superintendent's Contract -

<https://simbli.eboardsolutions.com/SU/jVoYXjIX5Smq6jRw7fN3Yw==>

Nondiscrimination In Employment -

<https://simbli.eboardsolutions.com/SU/10ZbnsLBD4kFslsh0MNYkuzuA==>

Nondiscrimination In Employment -

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Reasonable Accommodation -

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Lactation Accommodation -

<https://simbli.eboardsolutions.com/SU/pMDebdpBYqwcfxR4Mhp2Kg==>

Certification -

<https://simbli.eboardsolutions.com/SU/Ai5mkBQW9g0dF3kIAslshfVEQ==>

Certification -

<https://simbli.eboardsolutions.com/SU/N3Bs1UMslshANAV8zGjSOSvsA==>

Health Examinations -

<https://simbli.eboardsolutions.com/SU/8slshlwuXC09HcCycDxWi4o8g==>

Employee Notifications -

<https://simbli.eboardsolutions.com/SU/fQAypGvWMEaBoqLbzUZIQ==>

Employee Notifications -

<https://simbli.eboardsolutions.com/SU/R1SyYrIZ40DSa1c7mTns8w==>

4112.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==">https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==</a>
4113.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==">https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==</a>
4117.3	Personnel Reduction - <a href="https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==">https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslshgppplusNU8Ha2g==">https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslshgppplusNU8Ha2g==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==">https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==">https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==">https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==</a>
4161.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==">https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==</a>
4161.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==">https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==</a>
4212.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==">https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==">https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==">https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==</a>
4212.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/0BkcCrcOcSUkdOhZoslshcG2A==">https://simbli.eboardsolutions.com/SU/0BkcCrcOcSUkdOhZoslshcG2A==</a>
4213.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==">https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==</a>
4254	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==">https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==</a>
4254	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/4tx5rJF6vUP0pluslai4Zpl1g==">https://simbli.eboardsolutions.com/SU/4tx5rJF6vUP0pluslai4Zpl1g==</a>
4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==">https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==</a>
4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==">https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==</a>
4261.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==">https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==</a>
4261.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==">https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==</a>
4312.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==">https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==</a>
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4312.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/10wlsSqx3Y703oUH6Lu9Bg==">https://simbli.eboardsolutions.com/SU/10wlsSqx3Y703oUH6Lu9Bg==</a>
4312.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/tlDEw6WINi9spgzXcsOgiA==">https://simbli.eboardsolutions.com/SU/tlDEw6WINi9spgzXcsOgiA==</a>
4313.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/3FlczQKjshF0xWHoNT6wyTQ==">https://simbli.eboardsolutions.com/SU/3FlczQKjshF0xWHoNT6wyTQ==</a>
4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==">https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==</a>

4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==">https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvvfw==">https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvvfw==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==">https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==</a>
4361.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==">https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==</a>
4361.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==">https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==</a>

**Regulation 4361.8: Family Care And Medical Leave**

Status: DRAFT

Original Adopted Date: 05/07/2020 | Last Revised Date: 06/16/2022 | Last Reviewed Date: 06/16/2022

The Eden Area Regional Occupational Program (Eden Area ROP) shall not deny any eligible employee the right to family care or medical leave pursuant to the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), or leave for pregnancy disability pursuant to California to Pregnancy Disability Leave (PDL), when an employee is disabled by a pregnancy, childbirth, or related medical condition. The Eden Area ROP shall not interfere with, restrain, or deny the exercise of an employee's right to any such leave, nor shall the Eden Area ROP discharge, discriminate or retaliate against an employee for taking such leave, opposing or challenging an unlawful employment practice in relation to any of these laws, or being involved in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4033 - Lactation Accommodation)

**Definitions**

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

Child means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis. For purposes of CFRA leave, child also includes a child of a registered domestic partner. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

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

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

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

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

Parent means a biological, foster, or adoptive parent; a parent-in-law; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child.

Parent However, for FMLA purposes, parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

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

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

A person is considered an inpatient when formally admitted to a health care facility with the



expectation of remaining overnight and occupying a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

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

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:

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

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

### **Eligibility/Purposes of Leave**

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

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. ToThe care for the employee's of an eligible family member with a serious health condition
3. The employee's own serious health condition that makes the employee unable to perform one or more essential the job functions of the position
4. Any A qualifying exigency arising out of the fact that the employee's spouse, child, parent, or, for CFRA leave only, a registered domestic partner, is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. ToThe care for of a covered servicemember with a serious injury or illness if is when the covered servicemember employee is the employee's a spouse, child, parent, or next of kin, as defined of the covered servicemember

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

### **Terms of Leave**

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

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

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

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



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

Each eligible employee shall be granted up to 12 work weeks for family care and medical leave related to the birth or placement of a child, regardless of whether both parents of the child work for the Eden Area ROP.

### **Use/Substitution of Paid Leave**

During any otherwise unpaid period of FMLA or CFRA leave, except leave for an employee's own serious health condition, an employee shall use accrued paid leave, including, but not limited to, vacation leave, personal leave, or family leave. If the leave is for the employee's own serious health condition, the employee shall use accrued paid leave, including but not limited to, vacation leave, personal leave, or sick leave. During an unpaid period of PDL, the employee shall use any accrued sick leave and may elect to use any vacation time or other accrued personal time off. (Government Code 12945, 12945.2; 2 CCR 11044, 11092; 29 USC 2612)

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4261.1 - Personal Illness/Injury Leave)

### **Intermittent Leave/Reduced Work or Leave Schedule**

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

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

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

1. The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment for the employee or family member.
2. A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.
3. The Eden Area ROP agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child.

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

### **Request for Leave**

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

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, the employee must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and

medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

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

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the Eden Area ROP is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

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

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

### **Certification of Health Condition**

Within five business days of an employee's request for family care and medical leave for the serious health condition of the employee or an eligible family member, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the Eden Area ROP's request, the employee shall provide the certification within 15 calendar days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11087, 11091; 29 CFR 825.305)

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

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

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

When an employee has provided sufficient medical certification to enable the Eden Area ROP to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there

is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

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

### **Certification for PDL**

The Superintendent or designee shall request that an employee who is requesting PDL provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if the Superintendent or designee has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

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

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

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

### **Release to Return to Work**

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

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

### **Rights to Reinstatement**

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

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

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

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

### **Maintenance of Benefits/Failure to Return from Leave**

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

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

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

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

### **Military Family Leave Resulting from Qualifying Exigencies**

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

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

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

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

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

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying

exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

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

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

### **Military Caregiver Leave**

The Eden Area ROP shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, child, parent, or next of kin of the covered servicemember. This 26-week period is **not in addition to, but rather is** inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

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

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

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

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

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

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

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
  - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating
  - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition

c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to the servicemember's military service or that would do so but for treatment received by the veteran

d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

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

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

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

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

## Notifications

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

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

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

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

2-3. Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)

3-4. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)

a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification

c. The employee's right to use paid leave, whether the Eden Area ROP will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave

d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis

- e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
- f. The employee's potential liability for health insurance premiums paid by the Eden Area ROP during the employee's unpaid FMLA leave should the employee not return to service after the leave

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

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

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

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

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

## Records

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

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

## State References

## Description

2 CCR 11035-11051	Unlawful sex discrimination: pregnancy, childbirth and related medical conditions - <a href="https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==">https://simbli.eboardsolutions.com/SU/GplusgYNhBplus6hlimWMyAuhwJw==</a>
2 CCR 11087-11098	California Family Rights Act - <a href="https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==">https://simbli.eboardsolutions.com/SU/abM0slshHCKrMbGboplusCdDilag==</a>
Ed. Code 44965	Granting of leaves of absence for pregnancy and childbirth
Fam. Code 297-297.5	Rights, protections, benefits under the law; registered domestic partners
Fam. Code 300	Definition of marriage
Gov. Code 12926	Definitions
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Gov. Code 12945.1-12945.2	California Family Rights Act
Gov. Code 12945.6	Parental leave
Gov. Code 12946	Fair employment and Housing Act: discrimination prohibited

## Federal References

1 USC 7

29 CFR 825.100-825.702

29 USC 2601-2654

42 USC 2000ff-2000ff-11

## Management Resources References

Court Decision

Court Decision

Court Decision

U.S. Department of Labor Publication

Website

Website

## Cross References

0410

0470

1113

1113

1113-E PDF(1)

2121

4030

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4112.2

4112.2

4112.4

4112.9

4112.9

## Description

Definition of marriage and spouse -

<https://simbli.eboardsolutions.com/SU/zna4bZkEoCQ5ILKxeKqGw==>

Family and Medical Leave Act of 1993

Family Care and Medical Leave Act

Genetic Information Nondiscrimination Act of 2008

## Description

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

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

United States v. Windsor, (2013) 699 F.3d 169

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

U.S. Department of Labor, FMLA -

<https://simbli.eboardsolutions.com/SU/gTctHyc7Ra9nNTUgNmxAhw==>

California Department of Fair Employment and Housing -

<https://simbli.eboardsolutions.com/SU/RRvNseNogmlnMLyl8K40jw==>

## Description

Nondiscrimination In District Programs And Activities -

<https://simbli.eboardsolutions.com/SU/e50nGqNuG7jQfN4N7E4ONA==>

COVID-19 Mitigation Plan -

<https://simbli.eboardsolutions.com/SU/lkd0OQyrdn0CMAAnaMO7MAw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/6eqaGiraNiZIWJNVmplusi2A==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/H2plusFDdQcslsh06TQUsCBPyRyw==>

District And School Web Sites -

<https://simbli.eboardsolutions.com/SU/XbuVoK6Tf26q2m9jOKKacA==>

Superintendent's Contract -

<https://simbli.eboardsolutions.com/SU/jVoYXjIX5Smq6jRw7fN3Yw==>

Nondiscrimination In Employment -

<https://simbli.eboardsolutions.com/SU/10ZbnsLBD4kFslsh0MNYkuzuA==>

Nondiscrimination In Employment -

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Reasonable Accommodation -

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Lactation Accommodation -

<https://simbli.eboardsolutions.com/SU/pMDebdpBYqwcfxR4Mhp2Kg==>

Certification -

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Certification -

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Health Examinations -

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Employee Notifications -

<https://simbli.eboardsolutions.com/SU/fQAypGvWMEaBoqLbzUZIQ==>

Employee Notifications -

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4112.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==">https://simbli.eboardsolutions.com/SU/zr8ox1WUuCyBNJ5ACqUVQ==</a>
4113.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==">https://simbli.eboardsolutions.com/SU/qF0jWXslshDrtTAhpLzWzyGQw==</a>
4117.3	Personnel Reduction - <a href="https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==">https://simbli.eboardsolutions.com/SU/lDw3CuBnFDTcvfvFmdKz3Q==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslsghppplusNU8Ha2g==">https://simbli.eboardsolutions.com/SU/3VpYXQ4qqoslsghppplusNU8Ha2g==</a>
4154	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==">https://simbli.eboardsolutions.com/SU/plusAc3wfvJrXvm28jplusOj2itiw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==">https://simbli.eboardsolutions.com/SU/7plusW7uQZAz0yoM9vjFJplussMw==</a>
4161	Leaves - <a href="https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==">https://simbli.eboardsolutions.com/SU/43LAg0J4Hc77RETcpxlRJQ==</a>
4161.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==">https://simbli.eboardsolutions.com/SU/eewP9MaTi3ITpPD5D3GF4A==</a>
4161.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==">https://simbli.eboardsolutions.com/SU/x6tU3Tpluskw7DAoCNqbZqvBg==</a>
4212.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==">https://simbli.eboardsolutions.com/SU/UplusyEUuDoIplusQdeSd0HGnnMg==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==">https://simbli.eboardsolutions.com/SU/Pd4UbqkJGPTTnAAfxKDVw==</a>
4212.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==">https://simbli.eboardsolutions.com/SU/4A0tslshXyXIjvP6Bft5plusnng==</a>
4212.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/0BkcCrcOcSUkdOhZoslsG2A==">https://simbli.eboardsolutions.com/SU/0BkcCrcOcSUkdOhZoslsG2A==</a>
4213.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==">https://simbli.eboardsolutions.com/SU/sA27msjGY8GrXazjn7xwGQ==</a>
4254	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==">https://simbli.eboardsolutions.com/SU/CSlIbrhNraqTmiUivWKcAA==</a>
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4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==">https://simbli.eboardsolutions.com/SU/liG4YQsRuj6F8eIS9GG2kA==</a>
4261	Leaves - <a href="https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==">https://simbli.eboardsolutions.com/SU/Z5o7gMjXslshycN2SHIZ9BFRA==</a>
4261.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==">https://simbli.eboardsolutions.com/SU/slsh8oMjzcJGtcyVciXusC0bA==</a>
4261.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==">https://simbli.eboardsolutions.com/SU/xuNpyFIDoeUBNGJiduslshLeA==</a>
4312.4	Health Examinations - <a href="https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==">https://simbli.eboardsolutions.com/SU/jO5MpXplusetZS9M2VPi4Vjag==</a>
4312.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/Jf1oae2HJ0qdxsBFnE9myQ==">https://simbli.eboardsolutions.com/SU/Jf1oae2HJ0qdxsBFnE9myQ==</a>
4312.9	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/10wlsSqx3Y703oUH6Lu9Bg==">https://simbli.eboardsolutions.com/SU/10wlsSqx3Y703oUH6Lu9Bg==</a>
4312.9-E PDF(1)	Employee Notifications - <a href="https://simbli.eboardsolutions.com/SU/tlDEw6WINi9spgzXcsOgiA==">https://simbli.eboardsolutions.com/SU/tlDEw6WINi9spgzXcsOgiA==</a>
4313.4	Temporary Modified/Light-Duty Assignment - <a href="https://simbli.eboardsolutions.com/SU/3FlczQKjlslhF0xWHoNT6wyTQ==">https://simbli.eboardsolutions.com/SU/3FlczQKjlslhF0xWHoNT6wyTQ==</a>
4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==">https://simbli.eboardsolutions.com/SU/V58ClalxU5vLhV48nLfB3g==</a>

4354	Health And Welfare Benefits - <a href="https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==">https://simbli.eboardsolutions.com/SU/3s41x2FYSKTCypamMOTQsg==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvfw==">https://simbli.eboardsolutions.com/SU/G3y2Jy4MfTgEffD9BUvfw==</a>
4361	Leaves - <a href="https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==">https://simbli.eboardsolutions.com/SU/d737EvzScSbfuUUjvZslshvAA==</a>
4361.1	Personal Illness/Injury Leave - <a href="https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==">https://simbli.eboardsolutions.com/SU/wul5V6hXWcizpM6hydtxDg==</a>
4361.2	Personal Leaves - <a href="https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==">https://simbli.eboardsolutions.com/SU/6Euq6plus2q8QMELEkh2xDEPw==</a>

# ACTION ITEMS

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**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**PREPARED BY:** Anthony Oum, Fiscal Services Administrator  
**SUBJECT:** Request the Governing Board to approve Fiscal Year 2021-2022 Unaudited Actuals Income and Expenditure Report

## **BACKGROUND**

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Per Education Code 42100, it states that "On or before September 15, the governing board of each school district shall approve, in a format prescribed by the Superintendent of Public Instruction an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement ... with the county superintendent of schools."

## **CURRENT SITUATION**

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The FY 2021-2022 Unaudited Actuals includes the documentation of all fiscal transactions of Eden Area ROP and presents EAROP's financial position for the period of July 1, 2021 – June 30, 2022. It includes detailed summary information for the General Fund, as well as EAROP's Adult Education Fund, Special Reserve Fund for Postemployment Benefits, Capital Outlay Fund and Retiree Benefits Fund.

Unaudited Actuals for FY 2021-2022 documents the beginning fund balances of all funds, total of all revenues, total of all expenditures and the resulting ending fund balance of all funds. Ending fund balances of FY 2021-2022 then are forwarded onto FY 2022-2023.

## **RECOMMENDATION**

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It is recommended that the Governing Board approve Fiscal Year 2021-2022 Unaudited Actuals Income and Expenditure Report.



**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**SUBJECT:** Request the Governing Board to approve the Revised Calendar of Governing Board Meetings for the 2022-2023 School Year

## **BACKGROUND**

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The Eden Area ROP annually presents the Governing Board with the Governing Board Meeting calendar for the upcoming school year. Meetings are held on the first Thursday of every month at 5:45 pm, with the exception of January and July where no meetings are held.

## **CURRENT INFORMATION**

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The Eden Area ROP's 2022-2023 Governing Board Meeting Calendar was approved on June 16, 2022. Since June there have been some changes needed to better to accommodate scheduling conflicts.

The October Board meeting, on Thursday, October 6, 2022 at 5:45 pm conflicts with the Alameda County Office of Education Teacher of the Year Awards Ceremony. The Eden Area ROP staff has considered all district board meeting dates and is suggesting the meeting be changed to Friday, October 7 at 5:45 pm.

## **RECOMMENDATION**

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It is recommended that the Governing Board approve the revised calendar of Governing Board Meetings for the 2022-2023 school year.

# **EdenAreaROP** **GOVERNING BOARD MEETING DATES 2022-2023**

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The Eden Area ROP Governing Board meets the first Thursday of every month (with the exception of January and July) and meetings begin promptly at 5:45 p.m. in the Eden Area ROP Boardroom in Building A, unless posted otherwise. The Eden Area ROP is located at 26316 Hesperian Blvd, Hayward, CA 94545. The following dates have been scheduled for 2022-2023:

July 2022	No Meeting Scheduled
August 4, 2022	
September 1, 2022	
<del>October 6, 2022</del>	
<b>October 7, 2022</b>	<b>1<sup>st</sup> Friday at 5:45 pm</b>
November 3, 2022	
December 5, 2022	<b>1<sup>st</sup> Monday at 5:45 pm</b>
January 2023	No Meeting Scheduled
February 2, 2023	
March 2, 2023	
April 13, 2023	<b>2<sup>nd</sup> Thursday at 5:45 pm</b>
May 4, 2023	
June 9, 2023	<b>2<sup>nd</sup> Friday at 5:00 pm</b>

## Governing Board Terms

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Each Governing Board office is a two (2) year term and commences on January 1. Castro Valley and San Leandro Unified School Districts hold elections on the alternate years from Hayward and San Lorenzo Unified School Districts.

### 2022 Calendar Year

Board Member	Board Title	District	Term	New Term Commences
Juan Campos	President	San Lorenzo	1/22-12/23	1/2024
James Aguilar	Vice-President	San Leandro	1/21-12/22	1/2023
Gabriel Chaparro	Member	Hayward	1/22-12/23	1/2024
Gary Howard	Member	Castro Valley	1/21-12/22	1/2023

### 2023 Calendar Year

Board Member	Board Title	District	Term	New Term Commences
Juan Campos	TBD	San Lorenzo	1/22-12/23	1/2024
TBD	TBD	San Leandro	1/23-12/24	1/2025
Gabriel Chaparro	TBD	Hayward	1/22-12/23	1/2024
TBD	TBD	Castro Valley	1/23-12/24	1/2025

**DATE:** September 1, 2022  
**TO:** ROP Governing Board  
**FROM:** Blaine Torpey, Superintendent  
**SUBJECT:** Request the Governing Board to approve the Adoption of Resolution 5-22/23: Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period September 4, 2022 through October 4, 2022

## **BACKGROUND**

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On September 16, 2021, AB 361 became law, allowing legislative bodies to meet virtually during a proclaimed state of emergency if any of the following apply:

1. State or local officials have imposed or recommended measures to promote social distancing,
2. The purpose of the meeting is to determine, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or
3. The legislative body has already determined that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

## **CURRENT SITUATION**

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Public Schools in California are currently operating under mandates to maximize distancing as well as implement other safety measures to minimize the spread of COVID-19. Hosting an in-person meeting at this time would present imminent risks to the health and safety of attendees. Approving Resolution 5-22/23 would enable the Eden Area ROP to hold virtual Governing Board meetings.

## **RECOMMENDATION**

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It is recommended that the Governing Board approve the Adoption of Resolution 5-22/23: Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period September 4, 2022 through October 4, 2022.

# EdenAreaROP

## RESOLUTION NO. 5-22/23

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### Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020, and Authorizing Remote Teleconference Meetings for the Period September 4, 2022 through October 4, 2022

**WHEREAS**, the Eden Area Regional Occupational Program (Eden Area ROP) is committed to preserving and nurturing public access and participation in meetings of the Governing Board; and

**WHEREAS**, all meetings of the Eden Area ROP's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the District's legislative bodies conduct their business; and

**WHEREAS**, the Brown Act, Government Code section 54953(e), as amended by Assembly Bill 361, Chapter 165 of the Statutes of 2021, makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

**WHEREAS**, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the Eden Area ROP's boundaries, caused by natural, technological, or human-caused disasters; and

**WHEREAS**, it is further required that state or local officials have imposed or recommended measures to promote social distancing or that the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, such conditions now exist in the county, specifically, a State of Emergency has been proclaimed by the Governor on March 4, 2020, based on an outbreak of respiratory illness due to COVID-19; and

**WHEREAS**, the World Health Organization, the United States Centers for Disease Control and Prevention, the State of California including the California Department of Public Health, and the Alameda County Public Health Department have recognized that the country, state, and county face a life-threatening pandemic caused by the COVID-19 virus;



**WHEREAS**, with the continuing presence of COVID-19, opening a physical meeting location to the public to hold in-person Governing Board meetings would present an imminent risk to the health and safety of attendees given that members of the public are not required to be vaccinated to attend Board meetings, and with limited staff members, it is impractical to check and enforce the mask mandate and other indoor COVID-19 health and safety protocols for members of the public; and

**WHEREAS**, the Governing Board does hereby find that the Governor's March 4, 2020, State of Emergency proclamation due to the continuing presence of COVID-19 has caused, and will continue to cause, conditions of peril to the safety of persons within the county that are likely to be beyond the control of services, personnel, equipment, and facilities of the Eden Area ROP, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor of the State of California; and

**WHEREAS**, as a consequence of the local emergency, the Governing Board does hereby find that the legislative bodies of the Eden Area ROP, including any subsidiary bodies and committees created by action of the Board, shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

**WHEREAS**, to ensure the public has access to the Governing Board meetings on Zoom, the Eden Area ROP has posted and will continue to post the Zoom login information on its website and meeting agendas, and the public has and will continue to have the opportunity to provide live public comments during the Zoom meeting.

**NOW, THEREFORE**, The Governing Board of the Eden Area ROP hereby resolve as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the county, and opening a physical meeting location to the public to hold in-person Governing Board meetings would present an imminent risk to the health and safety of attendees due to the continuing presence of COVID-19.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of a State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The Superintendent and legislative bodies of the Eden Area ROP are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect September 4, 2022, and shall be effective until the earlier of (i) October 4, 2022, or such time the Governing Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the Eden Area ROP may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

**PASSED AND ADOPTED** by the Governing Board of the Eden Area ROP on this 1<sup>st</sup> day of September 2022, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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Blaine Torpey  
ROP Governing Board Clerk, Eden Area ROP  
Alameda County, State of California