
August 27, 2020

To: District and Charter Business Services
From: Shelley Stiles, Director External Fiscal Services
Subject: August 2020 Edition

Mandate Block Grant

The 2020-21 web-based application for the Mandate Block Grant is now available to school districts and charter schools. The Mandate Block Grant application link is located at: <http://www.cde.ca.gov/fg/aa/ca/mandatebg.asp> Applications must be submitted by **August 31, 2020**, in order to receive 2020-21 MBG funding.

- Funds are allocated using average daily attendance (ADA) calculated as of the 2019-20 Second Principal Apportionment. Rates are as follows:
 - Districts receive \$32.18 per ADA for students in grades K thru 8, and \$61.94 per ADA for students in grades 9 thru 12. Charters receive \$16.86 per ADA for students in grades K thru 8, and \$46.87 per ADA for students in grades 9 thru 12.

Instructional Materials Public Hearing Requirements for Fiscal Year 2020-21

Education Code Section 60119 requires that school district governing boards hold an annual public hearing **on or before the end of the eighth week from the first day pupils attend classes** and adopt a resolution stating whether each pupil in the LEA has sufficient textbooks or instructional materials. This public hearing and resolution are required annually. LEAs should keep the resolution on file for the LEA's annual audit, along with proof of posting and location of postings for the public hearing (at least 10 days in advance).

EC Section 60119(c)(1) states that sufficient textbooks or instructional materials means, "each pupil, including English Learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home. This paragraph does not require two sets of textbooks or instructional materials for each pupil." This specifically applies to four subject areas: reading/language arts, mathematics, science, and history-social science.

For more detailed information go to <http://www.cde.ca.gov/ci/cr/cf/> and click on "Instructional Materials Frequently Asked Questions" for direct responses to realistic/practical questions. **The resolution sample can be found at the CDE web page by clicking on the link embedded in FAQ #43.**

To see the steps your auditor will take click on the link to the audit guide and go to page 15. The 2020-21 Guide for Annual Audits of K-12 Local Education Agencies can be found at <https://www.cde.ca.gov/fg/au/ag/requirements.asp>.

Preliminary Allocations for Federal Resources are now available for 2020-21

For detailed information about these preliminary allocations, please visit the CDE Categorical Programs web page at <https://www.cde.ca.gov/fg/aa/ca/> where, under the program name, the preliminary allocations are posted for the following programs.

- Title I - Parts A and D
- Title II, Part A - Supporting Effective Instruction

- Title III - Language Instruction for English Learners (EL) and Language Instruction for Immigrant Students
- Title IV, Part A, Student Support and Academic Enrichment

CalPads Submission Windows

CalPads data is used for several things in California's education funding and accountability system. Supplemental and Concentration grant funds are calculated based on the Fall 1 certified submission. Accountability rubrics used in the Local Control and Accountability Plan (LCAP) come from CalPads data and other sources. The Fall 1 data submission includes 2020-21 (Census Day) enrollment counts, English language acquisition status, immigrant counts, free/reduced-price meal eligibility and special education and 2019-20 graduates and dropouts. 2020-21 Fall 1 certification deadline is December 18, 2020. A calendar of 2020-21 submission window dates can be found at <https://www.cde.ca.gov/ds/sp/cl/rptcalendar.asp>

2020-21 Advance Apportionment is now available

The 2020-21 Advance Principal Apportionment (Advance) has been certified. The Advance is based primarily on prior year funding and establishes each LEA's monthly state aid payment amount for July 2020 through January 2021. **Because this apportionment is merely a means to begin allocating funds in accordance with Education Code 41330, it should not be used by LEAs for budgeting.**

Federal Funding due to COVID-19

ESSER: For LEAs who have submitted their ESSER Application as of July 15, 2020, preliminary allocation amounts are posted on the CDE website. For more information about this apportionment, please visit the ESSER web page at <https://www.cde.ca.gov/fg/aa/ca/esserf.asp> where the letter and schedule for this apportionment are posted, along with FAQ <https://www.cde.ca.gov/fg/cr/esserfaqs.asp>.

Learning Loss Mitigation Funding: The CDE has posted the Schedule of Allocations for LLM Funding at <https://www.cde.ca.gov/fg/cr/documents/llmf sourcedatafy20.xlsxXLSX; Posted 28-Jul-2020> along with FAQ at <https://www.cde.ca.gov/fg/cr/llmffaqs.asp>. The receipt of LLM Funds are contingent upon the adoption of the Learning Continuity Plan by September 30. The CRF and Prop 98 funds must be expended by December 30, 2020 and the GEER funds must be expended by September, 2022.

- SCOE's COVID-19 Funding Sources (updated July 20, 2020) can be found at the following link: https://www.scoe.org/files/COVID-19_Funding_Sources_July_20_2020.pdf

2019-20 J-13a Waiver status

Waiver approval letters are still coming in slowly. Your LEA gets notified directly by CDE when approved, with a copy coming to SCOE. If you have a question or concern, please contact Vickie Holden (vholden@scoe.org) or Shelley Stiles (sstiles@scoe.org) directly. If your auditors are asking about approval, provide them with the waiver filed. A fully signed copy of waivers are available upon request directly to Vickie Holden.

2020-21 J13a Waivers:

Per [CDE 2020-21 Funding and Instructional Time FAQs \(For J-13A #1-5\)](#)

-Material Decrease: Form J-13A material decrease request process by which an LEA receives attendance credit due to an emergency event that occurs during FY 2020–21 **is suspended for all LEAs.**
 -Closure due to emergency: An LEA that closed due to a qualifying emergency in FY 2020–21 should activate one of their built-in emergency days if available. If no emergency days available, submit a Form J-13A **to avoid an instructional time penalty for not meeting the annual instructional day requirement.**

**Note 1) A Form J-13A approval letter for school closure in FY 2020–21 will have no effect on the LEA’s apportionment for FY 2020–21. Instead, an approval of a Form J-13A request from the CDE serves to document an LEA’s compliance with instructional time laws and provide authority to maintain school for less than the required instructional days and minutes without incurring a fiscal penalty to the LEA’s 2020–21 LCFF funding. This also applies to programs using a fixed divisor.*

**Note 2) LEAs are expected to offer distance learning while closed due to a public health order for COVID-19. However, if during that closure, another qualifying event occurs, the LEA may submit a Form J-13A to CDE to request credit for the day of instruction lost.*

The CDE School Fiscal Services Division has posted the following attendance reporting guidance for distance learning for the 2020-21 fiscal year (FY):

- A combined daily and weekly engagement template that local educational agencies may adapt for their use, or use as a reference when developing their own daily participation and weekly engagement forms at <https://www.cde.ca.gov/fg/aa/pa/documents/template.pdf>.

Special Education Extended Year Reporting

The ADA attributed to the Extended Year Special Education Program is reported in the FY that the program ends.

Program ending BY June 30, 2020: LEAs may claim Extended Year Special Education ADA offered through distance learning as long as the LEA met all of the requirements in Section 96 of SB 98. The divisor of 175 remains the same.

Note: The ADA previously reported in the 2019-20 P-2 and Annual submission was for the 2018-19 ESY Program ending after June 30, 2019. Any additional claim must meet the above criteria. If unsure, check with your auditor.

Program ending AFTER June 30, 2020: In FY 2020–21, LEAs will be funded based on ADA in the 2019–20 reported for both the P-2 and the Annual period apportionment. Therefore, LEAs would not be able to claim the ADA for the Extended Year Special Education Program that ends after June 30, 2020 or before June 30, 2021 because the ADA would be attributed to FY 2020–21.

2019-20 Attendance CORRECTIONS

*-Pursuant to Education Code 43502(b) added by [Senate Bill 98](#) (Chapter 24, Statutes of 2020), corrected 2019–20 P-2 and Annual files submitted now will **require auditor’s substantiation.***

- Submission Requirements:

Revisions to the **19-20 P-2** or earlier, should be made in the "Correction Mode."

Revisions to the **19-20 P-Annual** should be made in the "Regular Mode."

Submit revisions and auditor’s concurrence letters to Vickie Holden by September 21, 2020.

Cash flow management options

- A. County Treasurer (Line of Credit) – available to Districts only
- B. TRAN (tax and revenue anticipation notes) – available to Districts only
Although SCOE cannot make vendor recommendations, we can share a list of vendors used across the state for TRAN issuance. Please contact Shelley Stiles directly at sstiles@scoe.org if you are in need of vendor names. **BOTH SCOE and the County Treasury require notification of TRAN issuances. For individualized questions, please contact Shelley Stiles.**
- C. Interfund Borrowing

- D. Independent Banks – Charters with 501c3 status – now is the time for Charters to develop relationships with their independent banks. This is one source of cash flow loans or lines of credit – available to Charters only

Cash Flow Management Options Workshop - Presented by Government Financial Strategies, Inc. has been rescheduled to Monday, August 31, 2020 1:30-3:30pm via ZOOM. Please register for this free workshop by clicking [here](#). Zoom links will be sent out the morning of the workshop to all registered participants. The full presentation slide deck will be sent out to all participants at the end of the workshop.

Minimum Wage Increase for 2021

Minimum wage in California are set to increase on January 1, 2021. For employers with less than 25 employees the hourly rate will increase to \$13.00/hour and for employers with more than 25 employees the hourly rate will increase to \$14.00 per hour.

Board Meeting Dates: Things to navigate for 2020-21

September – may require two meetings, one with a public hearing on the Learning Continuity and Attendance Plan (Continuity Plan) and a subsequent meeting to approve. The Continuity Plan must be board approved by September 30 and submitted to SCOE. Remember that Unaudited Actuals should be board approved on or before September 15 by statute.

December – may require two meetings, one for a public hearing on the Budget Overview for Parents (component of the LCAP), and a subsequent meeting for approval. The Budget Overview for Parents must be submitted to SCOE with the First Interim Report on or before December 15 by statute.

December is also the Reorganization of the Board, and the required dates for this meeting changed in 2019. Attached is School and College Legal Services Legal Update 48-2020 addressing Reorganization of the Board.

Important SCOE reporting due dates

After the 45-Day Revise is completed and a copy is submitted to SCOE, we are asking for cash flow and budget update reports at important intervals (between interim reporting) throughout the upcoming 2020-21 year. These reports will help you with your cash analysis and provide SCOE with important milestones as we work together with LEAs to weather the COVID-19 economic downturn and remain fiscally solvent. It is highly recommended that Charter's prepare and submit the same documents to their authorizing LEA and a copy to SCOE as well.

Please mark your calendars now for the following cash flow and budget update submissions:

1. October 15: Budget update report (Fiscal 26a for all funds) and updated cash flow
2. February 15: Budget update report (Fiscal 26a for all funds) and updated cash flow
3. April 15: Budget update report (Fiscal 26a for all funds) and updated cash flow

COVID-19 Guidance documents

SCOE prepared guidance documents have been posted on the SCOE web page, under DBUG Resources <https://www.scoe.org/pub/htdocs/fiscal-dbug.html>. Updates to each document are completed, as more information becomes known. Please watch for updates via e-mail and on the SCOE web page. You can currently find the following:

- LCAP/LCP - Fiscal Perspectives - Updated 8/24/2020
- COVID-19 Closure Report Questions
- COVID-19 Funding Sources - Updated 7/20/2020
- Attendance & Instructional Time Reporting - Updated 8/10/2020

Fiscal Reports by School Services of California

School Services does an excellent job of providing explanations to current topics. If you are a member of School Services of California you can also see these reports by logging in to view on their web page or subscribe to their email services. If you are not a member, you may want to consider becoming one. Attached for your convenience are:

- When It Rains, It Pours—Fire-Related Instructional Time Loss
- How to Meet Independent Study Students Needs in the COVID-19 Era
- Preparing Multiyear Financial Projections in the Current Environment
- Instructional Materials Public Hearing Requirements for 2020–21 School Year
- How to NOT Lose Principal Apportionment Funding
- Ask SSC . . . Can I Spend the One-Time Learning Loss Dollars on Special Education Without Affecting My MOE?
- Website Available for K–14 District Statewide TRANS
- The Latest Proposal for Growth Funding: An SSC Editorial

Dates to Remember:

08/31/2020	Mandate Block Grant Application Deadline
08/31/2020	Cash Management Options Webinar – Registration required
09/01/2020	45 Day Revise reports and updated cash flows due to SCOE
09/07/2020	Labor Day Holiday – SCOE Closed
09/09/2020	ESCAPE HR/Payroll User Group
09/15/2020	Unaudited Actual Reports and GANN Limits due to SCOE
09/17/2020	ESCAPE HR/Payroll Concepts (1 st of 3)
09/21/2020	2019-20 P-2 and P-A revisions due to SCOE (with Auditor letter of concurrence)
09/24/2020	DBUG

Mark your calendars now! 2020-21 District Business User Group (DBUG) meeting dates:

All meetings will be on the 4th Thursday of the Month (except November 3rd Thursday, and not meeting in December), via Zoom until further notice. Time: 12:30 pm. to approximately 2:00 pm.

Workshops

2020-21 Interim Reporting Workshop – Thursday October 22, 2020 9:00 am-Noon
2021-22 Next Fiscal Year Workshop – Thursday May 13, 2021 9:00 am – Noon
2020-21 Year End Close Workshop – Thursday June 3, 2021 9:00 am – Noon
2020-21 Unaudited Actuals Workshop – Thursday July 26, 2021 9:00 am – Noon

NOTE:

- Want to add something to a DBUG Agenda? Want a topic added to SCOE Biz? Contract DBUG Chair Christina Menicucci
- Documents presented at DBUG found posted at <http://www.scoe.org/pub/htdocs/fiscal-dbug.html>
- Workshop manuals and Fiscal Services/IT forms may be found at <http://www.scoe.org/escape> under the heading of Resources on the left side of the page.



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

A Joint Powers Authority
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LEGAL UPDATE

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August 13, 2020

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To: Superintendents, Member School Districts (K-12)

From: Kaitlyn Schwendeman, Assistant General Counsel *KAS*
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General Counsel
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**Subject: 2020 Governing Board Elections and Organizational Meetings
and Frequently Asked Questions
Memo No. 48-2020**

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ORGANIZATIONAL MEETINGS **(Education Code Section 35143)**

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Each school district and county office of education is required to hold an annual organizational meeting. In an election year, a school district organizational meeting must be held on a day within the fifteen (15) day period that commences with the date upon which a governing board member elected at that election takes office (the second Friday in December). In years in which no regular election for governing board members is conducted, the organizational meeting is held during that same fifteen day period. Exceptions to this rule are discussed below. **This year, the date on which elected trustees will take office is December 11, 2020.**

Organizational meetings should be held as follows:

1. Governing Boards of School Districts

The organizational meeting must be held within 15 days of the second Friday in December. Unless otherwise provided by a rule of the Governing Board, the *date* of the organizational meeting must be selected by the Board at its regular meeting held immediately *prior* to December 1st (presumably the regular November board meeting).

The organizational meeting must, therefore, be held between December 11, 2020 and December 25, 2020.



2. Governing Boards of School Districts Governed by a City Charter

These Boards have the option of holding their organizational meetings as described above, or may hold their organizational meeting between December 15th and January 14th, if so provided by the Governing Board rules.

3. County Boards of Education

For those boards holding an organizational meeting following the November election, their organizational meetings will now be held on the second Friday in December instead of at the end of November. For boards whose members are elected in June, the organizational meeting remains July 1. (Education Code § 1009).

Board Member Term of Office
(Education Code Section 1007 and 5017)

County Boards of Education:

Effective in 2019, the date on which outgoing members' terms of office end, and on which newly-elected members take office, is moved from the last Friday in November to the second Friday in December. The terms of office of county board members elected at the California primary (whether in March or June) will continue to commence on the first day of July.

Likewise, the law has changed the date for county board organizational meetings from the last Friday in November to the second Friday in December. For those county boards with members elected at the primary, their organizational meeting remains the first board meeting held after July 1.

School Districts:

For school district board members, the 2019 amendment to Education Code section 5017 changes the last day of an incumbent trustee's term of office, and the first day of a newly-elected trustee's term, from the first Friday in December to the second Friday in December.

Because all of these changes to the terms of office—for county board and school board—lengthen the terms of office for board members slightly, any incumbent's term of office will simply be extended by that additional time beginning in December 2019 and thereafter, depending on when the term of office would otherwise have expired. For example, someone elected in 2020 will commence office on December 11, 2020. Incumbents' terms of office were similarly extended—where previously an incumbent's term would have expired on December 2, 2022, under the new law that person's term will now expire December 9, 2022. County board members, the only local body whose terms of office previously began and ended in November, will have their terms of office extended by approximately two weeks, and terms will now match those of school boards.

Election Issues

Districts with the governing board elections scheduled for 2020 should be aware of the following information:



- 1. Number of Candidates Less Than or Equal to the Number of Board Seats**
No election is held. The existing Board members continue to serve until the organizational meeting of the Board, at which time the candidate(s) are seated and become Board members. (Education Code §§ 5326 and 5328).
- 2. No Candidates or Insufficient Candidates for Number of Seats Vacant**
Seats for which there are sufficient candidates are discussed above. For those seat(s) for which there are no candidates, the Board must appoint. It is important to note that, except for seats which have been specifically designated two-year seats, an appointment to a governing board seat due to lack of a candidate or candidates is a four-year appointment.

The appointment must be made *prior* to the election. Prior to making the appointment, “. . . the governing board shall cause to be published a notice once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district, stating that the board intends to make an appointment and informing persons of the procedure available for applying for the office.” (Education Code section 5328.5.)

- 3. Changing the Election Cycle from Odd-Year to Even-Year**
Until 2018, the “default” for school districts and community college districts under the Elections Code was to hold elections in odd-numbered years. In 2015, AB 415 was signed into law, and required most local entities that formerly held their elections in odd-numbered years to move them to even-numbered years. Those districts that were required to do so but did not want to make the change-over immediately were required to adopt a plan, by January 1, 2018, to make this change by the November 2022 election. Any districts that have not made the switch and need assistance in doing so should contact our office for further information and assistance.

FREQUENTLY ASKED QUESTIONS

Eligibility to Hold Office

- 1. What are the qualifications to be elected/appointed to a school board?**
Education Code section 35107, subdivision (a) provides as follows:
 - (a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.
- 2. Can employees of the school district serve on the governing board?**
No. Education Code section 35107, subdivision (b)(1) provides as follows:



An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

3. Are there limitations on the employment of a spouse or other relatives of a board member?

Yes. Under Government Code section 1090, a long-term school district employee whose spouse is appointed to or elected to the district's governing board may not be promoted by the board. "Long-term" means that the employee has served for one year or more. See Government Code section 1091.5, subd. (a)(6). The spouse of a new employee, i.e., someone with less than one year of employment at the district in question, may not be elected or appointed to the board unless the other spouse resigns his or her employment first.

In other words, if a spouse has been an employee of the district for at least one year, then the non-employee spouse may be elected or appointed to serve on the governing board. Even if the employee-spouse meets this requirement, the board will not be able to take action affecting the spouse's employment status. For example, the employee-spouse could not be promoted, changed from a temporary to a regular employee, or have his or her position selectively reclassified while the other spouse is a board member. Furthermore, under the Political Reform Act (Government Code section 87100 *et seq.*), the board-member spouse would have to abstain from any discussion or participation in any decision that would uniquely affect the employee-spouse.

4. Are there term limits for school board members?

There can be, but only if the voters choose to impose them. Education Code section 35107, subdivision (c) provides as follows (emphasis added):

Notwithstanding any other provision of law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only *and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.*

Therefore, unless action is taken as set forth in section 35107, subdivision (c), term limits do not apply to school district governing boards.



5. May a school board member hold another public office?

The answer depends on whether the other public office has “potentially overlapping public duties” with the school board position. Where there is potential for overlapping duties the common law doctrine of “incompatible” offices prevents one person from holding both offices. By way of example, a board member of a “feeder” elementary school district cannot at the same time also serve as a board member of that elementary district’s high school district. (See 68 Ops.Cal.Atty.Gen. 171 (1985)).

Government Code section 1099 prohibits holding incompatible offices much like the common law rule. Prior attorney general’s opinions and judicial interpretation of the common law rule continue to aid in the application of this statute.

Term of Office

Note: The responses set forth below may not apply to school district elections that are subject to the provisions of a city charter. Districts governed by a city charter should always review the charter to determine whether it governs the district’s elections.

6. When does the term of office begin?

For K-12 board members elected in even-numbered years, Education Code section 5017 provides as follows (emphasis added):

Each person elected at a regular biennial governing board member election shall hold office for a term of four years *commencing on the second Friday in December next succeeding his or her election*. Any member of the governing board of a school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

For K-12 board members who are still elected in odd-numbered years,¹ Education Code section 5000 provides as follows (emphasis added):

After the initial election of governing board members in any school district or community college district, a governing board member election shall be held biennially on the first Tuesday after the first Monday in November of each succeeding odd-numbered year to fill the offices of members *whose terms expire on the first Friday in December next succeeding the election*. Except as provided in this chapter, or in Chapter 2 (commencing with Section 5200), the elections shall be held and conducted in accordance with Chapter 3 (commencing with Section 5300).

¹ See the discussion in the analysis section above. The Legislature was apparently confident that AB 415 has forced all school entities to switch from odd-year to even-year elections. This can be inferred because new legislation only requires those entities that hold elections in even-numbered years to switch the start date for terms of office to the second Friday in December. The start date for entities that hold elections in odd-numbered years has not been changed.



Finally, Elections Code section 10554 provides as follows (emphasis added):

Elective officers, elected or appointed pursuant to this part, take office *at noon* on the first Friday in December next following the general district election. Prior to taking office, each elective officer shall take the official oath and execute any bond required by the principal act.

Education Code section 5300 provides that provisions of the Elections Code apply to school district elections “except as otherwise provided in the code”. Thus, the 2018 amendments to sections 1007 and 5017 regarding the terms of office commencing on the second Friday in December arguably take precedence over Elections Code section 10554, because those amendments are more specific statutes with respect to when each elected trustee’s term commences.

7. Is there a different rule for when the term of office begins for County Boards of Education?

Yes. Education Code section 1007, subdivision (a) provides: “Members [of county boards of education] elected at the time of the direct primary shall take office on the first day of July, and members elected at the date on which members of school district governing boards are elected shall take office on the second Friday in December subsequent to their election.” *Thus, the first day of the term of incoming board members who were elected in June is July 1, 2020 and for those elected in November, their first day is December 11, 2020.*

The organizational meeting for County Board trustees is either the first meeting on or after the first day in July (for those elected at the June primary) or the second Friday in December (for those elected in November).

Awaiting the organizational meeting is done purely for ceremonial reasons, however, and has no legal effect on the true first day in office of the incoming member (or the last day of office of the outgoing member). Some board members choose to be sworn in privately (e.g., by a notary public) before the organizational meeting. In addition, these statutes permit a district to adopt a local rule of procedure to hold the organizational meeting on a different date, so check your local rules to see if they prescribe a different date.

Oath of Office

8. Is it necessary for a board member to take an “oath of office”?

Yes. Government Code section 1360 provides as follows:

Unless otherwise provided, before any officer enters on the duties of his office, he shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX² of the Constitution of California.

²That is, “Article 20.”



Failure to take the oath of office and file a bond as required by law is one way in which a public office becomes vacant, as provided in Government Code section 1770, subdivision (i).

9. Who can administer the oath of office to a newly elected/appointed board member?

Any person listed in Education Code section 60 or Government Code section 1362 may administer the oath to a newly elected/appointed board member.

Education Code section 60 provides as follows:

The Superintendent of Public Instruction, Deputy and Assistant Superintendents of Public Instruction, secretary of the Superintendent of Public Instruction, members of the Board of Governors of the California Community Colleges, the Chancellor of the California Community Colleges, county superintendents of schools, school trustees, members of boards of education, secretaries and assistant secretaries of boards of education, city superintendents of schools, district superintendents of schools, assistant superintendents of schools, deputy superintendents of schools, principals of schools, and every other officer charged with the performance of duties under the provisions of this code may administer and certify oaths relating to officers or official matters concerning public schools.

Government Code section 1362 provides as follows:

Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths.

This is a very broad provision—“any officer authorized to administer oaths.” It includes judges, virtually all elected officials, notaries public, and numerous county and state officers.

10. What happens if the elected/appointed officer fails or refuses to take the oath of office?

Education Code section 5017 provides, in pertinent part, as follows:

. . . Any member of the governing board of a school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

In addition, Government Code section 1302 provides as follows:

Every officer whose term has expired shall continue to discharge the duties of his office until his successor has qualified.



Thus, if an elected or appointed official fails or refuses to take the oath of office, the outgoing board member can continue to discharge the duties of office until a new member qualifies. Conversely, if the office becomes vacant, then the position remains vacant until filled by a qualified candidate, either by appointment or election depending on the procedure to be followed.³

11. When may the oath be taken by a newly elected/appointed school board member?

Elections Code section 10554 provides as follows (emphasis added):

Elective officers, elected or appointed pursuant to this part, take office at noon on the first Friday in December next following the general district election. *Prior to taking office*, each elective officer shall take the official oath and execute any bond required by the principal act. (Emphasis added.)

Thus, the oath of office may be administered at any time after the election results are certified by the county clerk. This is typically done at the district's organizational meeting, but once elected, a new board member can choose to be sworn in earlier, as discussed above.

12. How long does the county clerk have to certify the election results?

Elections Code section 15372 provides as follows:

The elections official shall prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election or, in the case of school district, community college district, county board of education, or special district elections conducted on the first Tuesday after the first Monday in November of odd-numbered years, no later than the last Monday before the last Friday of that month.

Elections Code sections 15400 and 15401 provides as follows:

The governing body shall declare elected or nominated to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, or who was elected or nominated under the exceptions noted in Section 15452. The governing board shall also declare the results of each election under its jurisdiction as to each measure voted on at the election.

The elections official shall make out and deliver to each person elected or nominated, as declared by the governing body, a certificate of election or nomination, signed and authenticated by the elections official.

³ As discussed below, district boards can sometimes make an appointment within 60 days of a vacancy. In other cases, if the vacancy occurs too close to a scheduled election or the end of a member's term, the vacancy must await an upcoming regular election or a special election.



13. What are the rules with respect to the annual organizational meeting?

Education Code section 35143 provides as follows:

The governing board of each school district shall hold an annual organizational meeting. In a year in which a regular election for governing board members is conducted, the meeting shall be held on a day within a 15-day period that commences with the date upon which a governing board member elected at that election takes office. Organizational meetings in years in which no such regular election for governing board members is conducted shall be held during the same 15-day period on the calendar. Unless otherwise provided by rule of the governing board, the day and time of the annual meeting shall be selected by the board at its regular meeting held immediately prior to the first day of such 15-day period, and the board shall notify the county superintendent of schools of the day and time selected. The clerk of the board shall, within 15 days prior to the date of the annual meeting, notify in writing all members and members-elect of the date and time selected for the meeting.

If the board fails to select a day and time for the meeting, the county superintendent of schools having jurisdiction over the district shall, prior to the first day of such 15-day period and after the regular meeting of the board held immediately prior to the first day of such 15-day period, designate the day and time of the annual meeting. The day designated shall be within the 15-day period. He shall notify in writing all members and members-elect of the date and time.

At the annual meeting the governing board of each high school district, union high school district, and joint union high school district shall organize by electing a president from its members and a clerk.

At the annual meeting each city board of education shall organize by electing a president from its members.

At the annual meeting the governing board of each other type of school district, except a community college district, shall elect one of its members clerk of the district.

As an alternative to the procedures set forth in this section, a city board of education whose members are elected in accordance with a city charter for terms of office commencing in December, may hold its annual organizational meeting required in this section between December 15 and January 14, inclusive, as provided in rules and regulations which shall be adopted by such board. At the annual meeting the city board of education shall organize by electing a president and vice president from its members who shall serve in such office during the period January 15 next to the following January 14, unless removed from such office by majority vote



of all members of the city board of education.

Note that, as discussed in section 7 above, section 35143 permits a district, by local rule, to choose a different date for its organizational meeting.

14. At the organizational meeting which board members (e.g., outgoing or incoming) convene the meeting?

Where the oath of office is administered at the organizational meeting, the outgoing board may convene the meeting, the oath(s) may be administered, and then the board with new members seated would complete the remainder of the agenda. If a new member or members have taken the oath of office prior to the organizational meeting, the meeting should convene with any previously-sworn members sitting with the board.

Brown Act

15. Does the Brown Act apply to newly elected members before they take office?

Yes. Government Code section 54952.1 provides as follows:

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

The reference to “elected to serve” arguably applies once the county clerk has certified the election results (See Elections Code sections 15372, 15400 and 15401, set forth above).

Board Member Resignation

16. May a school board member resign from his/her office?

Yes. Government Code section 1770, subdivision (c) provides that “[a]n office becomes vacant . . . [upon the incumbent’s] resignation.”

17. How does a school board member resign?

Education Code section 5090 provides that “a vacancy resulting from resignation occurs when the written resignation is filed with the county superintendent of schools . . .”

18. Is it necessary for the school board to take action to accept a member’s resignation?

No. As noted above the resignation is effective upon the county superintendent of schools’ receipt of the written resignation.

Some governing board meetings do have public agenda items to “accept” a member’s resignation. This is usually done for purposes of creating an occasion to honor a departing board member and is purely ceremonial with no legal significance.

19. May a board member rescind a written resignation once it is filed with the county superintendent of schools?

No. Education Code section 5090 provides that a “written resignation. . . shall, upon



being filed with the county superintendent of schools be irrevocable.”

20. What constitutes “filing” a resignation with the county superintendent?

A resignation is filed with the county superintendent upon physical receipt by the county superintendent’s office of a writing indicating a resignation.

21. May a board member defer the effective date of a resignation?

Yes. Education Code section 5090 provides that a board member’s written resignation may indicate a “deferred effective date.” Section 5091 provides further that the resignation may not be deferred “for more than 60 days after he or she files the resignation with the county superintendent of schools.”

22. Would an e-mail or facsimile transmission constitute a written resignation?

Probably not. The law applicable to resignations has not been amended to provide for electronic or facsimile substitution for written resignations.

23. What is the effective date of a resignation?

Unless the resignation contains a “deferral” date, the effective date of a written resignation is the date it is actually received by the county superintendent’s office.

24. Are there any limits on the role of a board member who files with the county superintendent a written resignation with a deferred effective date?

Yes. Education Code section 35178 provides as follows (emphasis added):

A member of the governing board of a school district who has tendered a resignation with a deferred effective date pursuant to Section 5090 shall, until the effective date of the resignation, continue to have the right to exercise all powers of a member of the governing board, *except that such member shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment pursuant to Section 5091.*

Note: This prohibition applies only to the actual vote and does not appear to preclude the member whose resignation is pending from participating in the selection process or board discussion of who to appoint.

25. What does a school board need to do after learning of a resignation from one of its members?

Education Code section 5091 provides that the governing board “shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy.”

Note: The 60 days starts to run when the resignation is received by the county superintendent even if the resignation contains a deferred effective date.

The governing board must also make sure that the person provisionally appointed to the position is “qualified” under Education Code section 35107 as discussed in more detail



above.

26. May the board meet in closed session to develop questions or interview candidates?

No. Under the Brown Act, all aspects of making a provisional appointment must be done in public session, except where the board appoints an advisory ad hoc committee of less than a quorum of board members and no other members. If an advisory ad hoc committee is appointed it may assist in screening or evaluating applications and preparing interview questions, but may not make any final decisions for the board. (*See* Government Code section 54952, subdivision (b).)

The provisional appointment must be put on the public session agenda and the full Board must take action to approve the appointment.

27. Once the board makes a provisional appointment to fill a vacancy, what happens next?

Education Code section 5092 provides as follows:

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.

Thus, the residents of the district whose board has appointed a provisional board member can petition to force a special election—although in practical terms, this rarely happens.

28. What happens if vacancies occur in a majority or more of the board seats at the same time?

Education Code section 5094 provides as follows:

If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.



Note: At the discretion of the president of the county board of education, appointments may be made in one or more of the vacant positions. In other words, the county board president is not limited to making appointments only sufficient to create a quorum on the district board. Thus, on a five person board with 3 vacancies, the county board president may designate up to 3 members of the county board of education to serve as district board members. Once appointed, the county board members continue to serve as district board members until new members “are elected or appointed.”

29. May a district board reappoint the same person who resigned from the seat that is vacant?

No. Government Code section 1752, subdivision (a) provides, in pertinent part, as follows:

. . . no person elected or appointed to the governing body of any city, county, or district having an elected governing body, shall be appointed to fill any vacancy on that governing body *during the term for which he or she was elected or appointed* (emphasis added).

Please note: This provision also prohibits a board member with a “short” term from resigning and being appointed to a vacant “long” term.

30. If the district chooses to call for written applications from candidates who wish to be considered for appointment, are the submitted applications public records?

Yes. Under the Public Records Act (Govt. Code section 6250 *et seq.*) copies of any applications for a board vacancy that are received by the district must be made available for public inspection and copies provided upon request.

Note: Because the applications become public records, we recommend that prospective candidates be so-informed before they submit an application.

31. If the board chooses to interview candidates one at a time before making an appointment do all candidates have a right to be present?

Under the Brown Act all persons—including candidates for a board appointment—have a right to attend all public sessions of the board.

At the same time the board may request (but not require) the other candidates to remain outside the meeting room until after they are interviewed.

Our experience has been that most candidates honor the request, as they understand the essential fairness of the request, and that the refusal to do so may have an impact on the remaining board members’ willingness to appoint a candidate who refuses to cooperate.

32. If everything must be done in public session, how does the board develop questions that will not be known in advance by the candidates?

The Brown Act does not provide a ready response to this question. We recommend against using email (or other private communications) among board members to reach a board decision on what questions to ask the candidates.



It is recommended that individual board members submit proposed questions to the board president, who will compile a composite question list. The board can also have such questions referred to an executive officer, such as the superintendent, who can undertake the task of compiling such questions, perhaps in concert with a single board member or an ad hoc committee of the board.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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FISCAL REPORT

When It Rains, It Pours—Fire-Related Instructional Time Loss



BY BRIANNA GARCÍA

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posted August 21, 2020

Due to COVID-19, many local educational agencies (LEAs) across the state have started school in a distance learning environment. Some started on time, while others have pushed back the start of school for a number of reasons. For some LEAs, school started on this past Monday, only to close again due to wildfires ravaging a number of communities in Northern California.

In years past, fires such as this have not only devastated local communities, but also significantly impacted LEAs due to declining student enrollment and attendance. And, since average daily attendance (ADA) generates the primary source of funding for LEAs, the loss of ADA had significant negative impacts on the LEAs' budgets. In order to help mitigate these losses, the state provides a waiver process so that LEAs are not penalized for the ADA losses due to these emergencies. Through the submittal of a [Form J-13A—Request for Allowance of Attendance Due To Emergency Conditions](#) (reference Education Code Sections 41422 and 46390 et seq., and California Code of Regulations, Title 5, Section 428), an LEA can receive credit for the lost ADA for the day(s) of the closures, as well as for a material decrease in student attendance resulting from the emergency, and/or for the missed instructional time.

This last item is the one that is key in the current circumstances. As LEAs are aware, due to COVID-19, apportionments for fiscal year 2020–21 are being funded based on 2019–20 Second Principal Apportionment and annual ADA. Therefore, any decrease in ADA due to fires will not impact apportionment. However, closures due to fires will impact instructional time. As noted in the California Department of Education's (CDE) [2020–21 Funding and Instructional Time FAQs](#) (scroll down to the section on Form J-13A), LEAs that experience closures “due to a qualifying emergency in FY 2020–21 should submit a Form J-13A to avoid an instructional time penalty for not meeting the annual instructional day requirement.”

School districts and charter schools should file the form with the county office of education (COE), and COEs should file the form with the CDE. Form J-13A is a multipage form, and not all pages are necessarily required—the instructions provide guidance on which pages need to be completed for your LEA's situation. For

additional information, see the [CDE Form J-13A webpage](#) for Management Advisory 90-01, Form J-13A, and other information regarding this waiver process. Note that Form J-13A does not need to be submitted immediately—you can wait until the current situation is over and the overall impact can be assessed.

We at School Services of California Inc. are saddened at the tremendous loss felt by so many due to the recent fires. Our hearts go out to all of you.

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FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

How to Meet Independent Study Students' Needs in the COVID-19 Era



[BY PATTI F. HERRERA, EDD](#)

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posted August 18, 2020

The complicating reach of COVID-19 is proving to be more expansive than many of us could have imagined, as evidenced by the plethora of inquiries we have received about the ability of local educational agencies (LEAs) to continue providing alternative educational programs—namely, independent study—to students who elect to enroll in them. What should be a simple inquiry requires some cognitive mapping of several parts of law, particularly a few provisions of Senate Bill (SB) 98 (Chapter 24, Statutes of 2020).

Independent Study is Subject to Distance Learning Requirements

While SB 98 did not change existing independent study statutes, the bill defines the state's expectations for instruction and establishes accountability measures for the 2020–21 school year. Specifically, SB 98 specifies that LEAs must provide in-person instruction or distance learning, as defined by Education Code Section (EC §) 43500, in addition to complying with several requirements related to distance learning. These requirements include, but are not limited to, meeting daily minimum instructional minutes, which for distance learning can include the time value of assignments; ensuring students can connect to and participate in educational programs that are standards-aligned and rigorous; providing academic and other supports for students who need it, including English learners, students with disabilities, and students who need mental health support; and providing meals for students who are eligible for free or reduced-price meals.

In addition to these programmatic requirements, SB 98 requires LEAs to monitor and document the engagement of students in their educational programs through the completion of weekly engagement records pursuant to EC § 43504(e) (see "[How NOT to Lose Principal Apportionment Funding](#)" in the August 2020 Fiscal Report) and requires them to develop written procedures to re-engage students who are chronically

absent. This requirement, along with other requirements identified in EC § 43504, are subject to audit, and lack of compliance with them could result in fiscal penalties (see the California Department of Education's (CDE) "Funding and Instructional Time FAQs," [Item 6](#) under "Attendance Accounting and Reporting").

All LEAs, excluding nonclassroom-based charter schools, are subject to the requirements specified in SB 98 for all students, including those who elect to enroll in independent study programs. Since most, if not all, LEAs are accustomed to documenting student participation in independent study programs through their student information systems or learning management systems, the requirement to maintain a weekly engagement log should not be too onerous or a stark departure from current practice.

Meeting Daily Live Interaction and Daily Participation Requirements

The distance learning requirements that may represent a significant change from traditional independent study programs for students are the requirement for LEAs to:

- Provide, and the expectations for students to participate in, daily live interactions with teachers and peers (EC § 43503[b][6]); and
- Document the daily participation of students for each school day (EC § 43504[d])

For some students, such as medically fragile, home hospital, or clinically anxious students, it may be difficult to meet these requirements without creating adverse or difficult conditions for students. Thus, to ensure that the needs—educational and otherwise—of such students can continue to be met, SB 98 provides authority and flexibility for LEAs.

Specifically, statute allows LEAs to develop alternative plans when daily live interaction is not feasible as part of regular instruction (EC §43503[b][6]). This is further clarified by the CDE in its "Distance Learning Frequently Asked Questions," [Item 16](#).

This authority is accompanied by broad authority for LEAs to ensure and document daily participation by students through a number of ways, including but not limited to online participation, completion of assignments or assessments, or contact between teachers and students or parents (EC §43504[d][2]). The CDE clarifies this requirement even further in its "Funding and Instructional Time FAQs," [Item 10](#) under "Attendance Accounting and Reporting" The FAQ provides that verification of daily participation can be done on a "daily, on a weekly, or bi-weekly basis" by an employee of the LEA and that in addition to the documentation of participation noted in statute, participation documentation can include "other means determined by the LEA."

Thus, while SB 98 does not absolve LEAs from meeting the distance learning requirements for the 2020–21 school year for students enrolled in independent study programs, it does provide some flexibility and discretion about how to comply with them.

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FISCAL REPORT

Preparing Multiyear Financial Projections in the Current Environment

 [BY BRIANNA GARCÍA](#)

 [BY ROBERT MCENTIRE, EDD](#)

 [BY SHEILA G. VICKERS](#)

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posted August 14, 2020

The Legislative Analyst’s Office (LAO) recently updated its [California Economy & Taxes blog](#) and highlighted that preliminary tax collections have come in approximately 5% ahead of budget projections with income tax withholding “surprisingly stable.” However, other state tax categories do not appear to be faring as well. The LAO’s analysis of credit and debit card spending, which provides some indication of sales tax revenue, shows that the tax bottomed out in March and April of 2020 and has since begun recovering. That said, one can imagine that the repeated closures of retail businesses due to the rising number of COVID-19 cases throughout the state could slow that recovery. The LAO’s blog also opines on the state’s economy as a whole. Similar to the sales tax trend, the economy experienced an unprecedented decline in March and April and started to recover in May and June of 2020, though more recent data suggests employment has declined since then.

Proposition 98

Why are we discussing state tax revenues and the economy in an article about your multiyear financial projections? Because the state of the economy and tax revenues directly impact education funding as determined by Proposition 98. Through a series of complex formulas that take changes in average daily attendance (ADA) and inflation adjustments—as measured by the change in either per capita personal income or per capita state General Fund revenues, whichever is less, Proposition 98 establishes the minimum funding level for K–12 education and community colleges from one year to the next. So, as the economy goes, so go state revenues and, subsequently, education funding.

Similar to local educational agencies (LEAs), the state’s budget also tracks revenues and expenditures over a three-year period—the difference being that the state looks at the two prior years and the current year. After years of historic growth, with the 2020–21 State Budget, the Proposition 98 minimum guarantee has decreased significantly for the most recent prior year (2019–20) and the current year (2020–21), resulting in an almost 10% reduction over the three-year period and a \$6.8 billion year-over-year decrease (from \$77.7 billion in 2019–20 to \$70.9 billion in 2020–21).

Deferrals and Reserves

The state, however, was able to stave off significant budget cuts to education largely through the implementation of \$12 billion in deferrals and the use of reserves—both of which directly impact how you plan for the next three years as you prepare your multiyear financial projections during this time. We say this because deferrals and reserves are solutions that can only be used once—at least, until the economy and state revenues recover enough to buy the deferrals down and sock away additional reserves.

It is looking less likely that more federal bailout funds will be received in order to buy down some of the deferrals. Given that, we believe that additional deferrals implemented after this year will need to be minimal, or else many LEAs will be pushed to the brink of insolvency. To put this in perspective, during the Great Recession, cash deferrals were implemented over several years, totaling \$9.5 billion. In this first year of the COVID-19 induced recession, the deferrals implemented already far exceed this amount. At the LEA level, this means that less than 70% of the state aid apportionment will be received in the current year. How much less cash can LEAs operate on and remain solvent?

Factors for Multiyear Planning

What follows is an excerpt from the most recent version of our 2020–21 Financial Projection Dashboard:

LCFF¹ PLANNING FACTORS					
Factor	2019–20	2020–21	2021–22	2022–23	2023–24
Statutory COLA ² and DOF ³ Latest Estimates	3.26%	2.31%	2.48%	3.26%	N/A
Funded COLA	3.26%	0.00%	N/A	N/A	N/A

SSC Estimated Statutory COLA	3.26%	2.31%	0.60%	0.70%	1.60%
SSC Recommended Planning COLA	3.26%	0.00%	0.00%	0.00%	0.00%

¹Local Control Funding Formula (LCFF)

²Cost-of-living Adjustment (COLA)

³Department of Finance (DOF)

Note that the “SSC Estimated Statutory COLA” percentages for 2021–22 through 2023–24 are much lower than the latest estimates provided by the DOF, which were prepared before the May Revision. This is because we used more current economic factors to develop our estimated COLAs.

However, the most important row in the table above is the bottom row. Based on economic projections at the time this information was prepared, the Proposition 98 minimum funding level was not expected to recover to the 2019–20 level during the forecast period, which is why we are recommending that LEAs plan on no funded COLA in the out-years.

Now, as we consider that California has once again closed down much of its commerce due to COVID-19 concerns, we are even more concerned about what our state policymakers will be faced with as the 2021–22 Governor’s State Budget Proposal is prepared for its January 2021 release. If suppressed economic activity persists, the option to use additional deferrals or reserves will be limited and likely not a significant part of the solution. Funding and program cuts could very well be headed our way. Remember that the Governor’s 2020–21 May Revision proposed smaller deferrals, but a 7.92% year-over-year cut in LCFF revenues (a 10% cut including the unfunded COLA of 2.31%).

Conclusion

Because of all these considerations, we recommend that LEAs prepare “what if” scenarios when preparing multiyear projections, including potential cuts in funding starting in 2021–22. It will be important to evaluate the impact of these different scenarios on your LEA’s fiscal health so that contingency plans can be prepared.

We will continue to monitor developments in the economy and state revenues, and at each State Budget juncture we will continue to update our Financial Projection Dashboard to reflect the latest information. In the meantime, please do not hesitate to contact us if we can be of further assistance as you prepare your multiyear projections or for other budget support.

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FISCAL REPORT

Instructional Materials Public Hearing Requirements for 2020–21 School Year



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posted August 11, 2020

Another year begins, and the current climate around the reopening of schools generates both anxiety and optimism. Anxiety abounds relative to the unknowns of tomorrow, next week, and next month, and when in-person learning will become “the norm.” However, optimism is present because of the opportunity to engage with students in different modes, and knock down the walls of the classroom to take full advantage of 21st century learning.

Amidst the sea of changes, some things remain unchanged, including the requirement to hold a public hearing on the sufficiency of instructional materials. Local educational agencies must still plan for the instructional materials hearing on or before the eighth week of school. Although the categorical funds for instructional materials have been swept into the Local Control Funding Formula, Education Code Section (EC §) 60119(d) specifically states that “a school district that receives funds for instructional materials from any state source is subject to the requirements of this section.” The code requires that the governing board of a school district hold an annual instructional materials public hearing to determine whether the school district has sufficient standards-aligned textbooks and instructional materials. The code is not applicable to charter schools.

Specifically, EC § 60119 requires that each governing board:

- Hold a public hearing on or before the end of the eighth week from the first day pupils attend classes. For multitrack year-round schools, the requirement refers to the end of the eighth week from the first day that pupils attend classes in a track that begins in August or September.
- Post a notice of the hearing at least ten days in advance in at least three public places within the school district. The notice must state the time, place, and purpose of the hearing. The hearing may not be held during or immediately following school hours.

- Encourage participation in the hearing by parents, teachers, members of the community, and bargaining unit leaders.
- Determine at the hearing whether “. . . each pupil in each school in the district has sufficient textbooks or instructional materials or both . . .” This is defined as each pupil, including English learners, having a “standards-aligned textbook or instructional materials, or both, to use in class and to take home.” The language does not require two sets of textbooks or instructional materials for each pupil regardless of whether homework is assigned. The use of “class sets” of instructional materials is insufficient.
 - The requirement for sufficient textbooks may not be satisfied by photocopied sheets from a portion of a textbook or by instructional materials photocopied in response to a shortage.
 - Instructional materials may be in a digital format as long as each pupil, at a minimum, has and can access the same materials in the class, and to take home, as all other pupils in the same class or course in the school district, and has the ability to use and access them at home.
- Determine whether each pupil enrolled in a world language or health course has sufficient standards-aligned textbooks or instructional materials.
- Determine whether laboratory science equipment is available to students in grades 9–12 who are enrolled in science laboratory courses.
- Adopt a resolution stating whether textbooks and instructional materials are sufficient.

If an insufficiency exists, disclose in the board resolution to the public and to classroom teachers (1) the percentage of pupils in each school who lack sufficient standards-aligned materials in each subject area, and (2) the reasons for the insufficiency. The governing board must remedy any insufficiency identified at the hearing within two months of the beginning of the school year. The action cannot be one that would require reimbursement by the Commission on State Mandates.

It is important that all school districts hold their hearings early and not wait until the eighth week of school, because if insufficiencies exist, a school district will have very little time to take corrective action. Compliance with this requirement is monitored through the annual independent audit process. Any discrepancies will result in a finding in the audit report.

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FISCAL REPORT

How to NOT Lose Principal Apportionment Funding



[BY MATT PHILLIPS, CPA](#)

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posted August 11, 2020

Local educational agencies (LEAs) are facing unrivaled challenges as school returns for the fall term of the 2020–21 year. In the face of unprecedented adversity, the normal human reaction is to fall back on muscle memory and perform tasks that have become routine and second nature. Senate Bill 98 (Chapter 24, Statutes of 2020) established Education Code Section (EC §) 43504, which challenges our collective muscle memory around attendance record keeping.

The process of taking attendance in the first five minutes of a class, bubbling in a scantron, or logging absences in a student information system (SIS) may be an inadequate practice in 2020–21 for purposes of securing state funding. The attendance generated from the SIS, which is typically the basis for apportionments, is moot in 2020–21 because average daily attendance (ADA) for LEAs are based on 2019–20 ADA records. Even though attendance records are not needed to determine apportionments, LEAs will be required to maintain student attendance records for audit purposes and to maintain the integrity of instruction during distance learning. The following five requirements pursuant to EC § 43504 are critically important to protecting an LEA's apportionment. Below we provide tips, tricks, and reminders to help successfully implement these compliance requirements, which take effect September 1, 2020:

- **Offer the required number of instructional days per EC § 43504(c).**

Tips, Tricks and Reminders: While the requirement to offer a minimum of 180 instructional days (175 instructional days for charter schools) is not new, nor are the minimum required minutes per day, the annual instructional minutes thresholds are waived for 2020–21. To comply with this provision, each of the instructional days, which can be a combination of synchronous and asynchronous instruction, must not be less than the minimum daily instructional time adjusted for each grade span pursuant to EC § 43501:

Grade Span	Minimum Daily Instructional Minutes
Kindergarten	180
Grades 1–3	230
Grades 4–12	240
Grades 11–12 (students concurrently enrolled in CSU or UC)	180
Concurrently enrolled in Community College	180
Continuation High School	180

Given that many LEAs are planning to do some form of distance learning this fall, daily minimum requirements will likely be met with a combination of synchronous and asynchronous instruction, so documentation of the time value of assignments will be necessary to comply with law. Note that for audit purposes, the time value is determined at the time the work is assigned.

- **Document daily participation for each pupil, for each school day, on which distance learning is provided as required by EC § 43504(d).**

Tips, Tricks and Reminders: EC § 43504(d)(1) states that a pupil who does not participate in distance learning on a school day shall be documented as absent. However, distance learning can be a combination of synchronous and asynchronous instruction, with students learning at various points throughout the day. The documentation of daily participation does not limit itself to the daily live interaction, which is also required by law pursuant to EC § 43503(b)(6) but can encompass applied learning during asynchronous time as well. LEAs must be able to document daily participation either through live interaction, student logins, or submission of work.

Under the in-person learning mode, LEAs receive attendance credit if a student is present for one minute of one day. For the purposes of documenting daily participation in distance learning, LEAs have latitude under statute, but should apply similar principles regarding attendance expectations in a remote learning environment.

- **Complete a weekly engagement record for each pupil documenting synchronous or asynchronous instruction for each whole or partial day of distance learning that verifies participation and tracks assignments as required by EC § 43504(e). To the extent synchronous or asynchronous instruction is assigned to a student in distance learning, that instruction should be included in the assignments listed.**

Tips, Tricks and Reminders: The weekly engagement record is intended to capture the daily participation of students in distance learning, under both synchronous and asynchronous instruction, including work performed independently, as well as tracking a student's assignments. Additionally, the weekly engagement record will help LEAs identify students in need of re-engagement pursuant to EC § 43504(f)(2).

LEAs that oversee or operate a nonclassroom-based charter school or virtual school may already be familiar with this process, as such schools must maintain a log that shows the daily work completed by students. These schools traditionally receive apportionment for the days that students are engaged in schoolwork documented by meticulous record-keeping.

The California Department of Education (CDE) is currently developing a sample template for the weekly engagement record, but LEAs should be prepared to implement the weekly engagement record with each of its certificated staff and advise that it is the substitute for the weekly teacher register. Also note that the weekly engagement record may differ by grade span as elementary school students are typically in one class per day while high school students take part in multiple classes on a given day.

- **Document absences as required by EC § 43504(d)(1) and (f) for the purposes of chronic absenteeism tracking.**

Tips, Tricks and Reminders: Although no attendance is collected for ADA purposes, LEAs must still track and report chronic absenteeism and therefore are still required to track student attendance.

The weekly engagement record should act as the tracking mechanism for chronic absenteeism. Many LEAs rely on their SIS as the reminder for sending notification to parents or beginning the School

Attendance Review Board (SARB) process. LEAs can still use the SIS for this purpose, but it will require aligning student schedules in the SIS with the weekly engagement record so that the weekly engagement record is the source document.

As a reminder, a student is defined as chronically absent when they are absent for 10% or more instructional days.

- **Develop written procedures for tiered reengagement strategies for students that are absent from distance learning for more than three schooldays or 60% of the instructional days in a school week as required by EC § 43504(f)(2).**

Tips, Tricks and Reminders: Although the statute triggers the reengagement strategy threshold at three schooldays, or 60% of the school week, the weekly engagement record that is maintained can provide a heightened level of analysis. The weekly engagement record, at a minimum, must include, in whole or in part, synchronous or asynchronous distance learning for each school day.

The weekly engagement record can be used as a tool to identify patterns of student absences at a certain time each day, or misses a specific subject on a regular basis. This can be quite powerful, and may help identify why a student is falling behind and effective measures to reengage them.

For audit purposes, the reengagement strategies must be documented, and the LEA should have a process, either automated or manual, where the strategies are triggered upon a child meeting the threshold.

The new requirements may feel daunting, especially when you consider the consequences. Inadequate implementation of any of these requirements could jeopardize a portion of an LEA's apportionment, and directly impact programs that are available to students. We recognize that there are still a number of unanswered questions, but as more information becomes available, we will keep you informed. In addition, the CDE has FAQs on [instructional time](#) and [distance learning](#) that are continually updated.

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FISCAL REPORT

Ask SSC . . . Can I Spend the One-Time Learning Loss Dollars on Special Education Without Affecting My MOE?

 [BY MICHELLE MCKAY UNDERWOOD](#)

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Q. The 2020–21 State Budget includes \$1.5 billion in federal one-time resources based on students with disabilities (SWDs) for learning loss mitigation. Can I spend these one-time dollars on special education without affecting my maintenance of effort (MOE)?

A. Yes. The keys to balancing the MOE, especially this year, are keeping track of the various funding sources—federal, state, and local—and recognizing that the MOE calculation is based on the expenditure of *state and local funds*.

Local educational agencies (LEAs) are seeing additional, one-time learning loss mitigation resources based on SWDs—these are considered *federal resources* (see our July 2020 *Fiscal Report* article, “[By the Way . . . CDE Posts Learning Loss Mitigation Entitlements](#)” for funding generated by each LEA). As we have explained previously, all of these funds, including those based on an LEA’s count of SWDs (see columns I and J in CDE’s entitlement spreadsheet) are to be used for learning loss mitigation and come with a set of requirements on how they can be spent. Specifically, the Learning Continuity and Attendance Plan includes a section on how an LEA will address learning loss and accelerate learning progress for pupils, including how these strategies will differ for pupils with exceptional needs. *Because these one-time learning loss funds are federal, their use for the learning loss needs of students with disabilities will not increase the MOE.*

This year, all Special Education Local Plan Areas (and their member districts) are experiencing an increase in ongoing state special education revenues thanks to the \$545 million provided in ongoing resources to equalize Assembly Bill 602 and \$100 million to increase funding for students with low-incidence disabilities. These ongoing resources will very likely serve to *reduce* the local contributions to special education programs that have been significantly increasing over the years because state funding has not kept pace with special

education expenditures. *Replacing local funding contributions with state funding contributions should not affect the MOE since this calculation tracks expenditure of state and local resources.* This additional, ongoing state funding provides ongoing relief to local districts' General Fund contributions to special education programs.

In addition to using new state resources to reduce the local general fund contribution, LEAs may be tempted to also replace local General Fund contributions with the one-time federal funds discussed above as a budget relief valve. We would caution against this for three reasons:

1. If using these federal resources *decreases* the expenditure of state and local resources, your LEA may fall short of the local- and state-based MOE calculation—which will be in direct violation of the supplement not supplant rules.
2. Swapping in one-time funds to support ongoing spending does not resolve long-term spending issues.
3. It will be hard to explain how ongoing expenditures are supporting one-time learning loss mitigation.

In conclusion, LEAs should not be afraid to use the one-time funding for learning loss mitigation based on SWDs *for the benefit* of the SWDs who generated them. With this year's funding increase—both one-time and ongoing, state and federal—it will be key to track the MOE this year even more closely than usual to make sure that there are no unwelcome surprises at the closing of the books next year.

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FISCAL REPORT

Website Available for K–14 District Statewide TRANS



[BY SHEILA G. VICKERS](#)

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posted August 24, 2020

As discussed in our previous Fiscal Report article this month, “[Ask SSC . . . What about the Statewide TRANS?](#),” in light of the significant cash deferrals this fiscal year, the California School Finance Authority (CSFA) has created new, statewide pooled Tax and Revenue Anticipation Note (TRAN) financing programs for local school agencies and community colleges. The website is now available for K–12 school districts, county offices of education, and community colleges. To find out more about the program and the application process, go [here](#).

Note that the first series of TRANS, referred to on the website as the “regular TRANS,” requires an application to be filed by September 4, 2020, with anticipated availability of funds at the end of November 2020. The second series of TRANS, referred to as the “February deferrals TRANS,” requires an application to be filed by September 25, 2020, with anticipated availability of funds by the last week of February 2021, in time for the Principal Apportionment cash deferrals. There are several more series of TRANS that are planned for after February 2021 as needed for local agency temporary cash borrowing.

CSFA is creating a separate TRAN program for charter schools; the website is being finalized now, and we will provide the link as soon as it is available. In the meantime, note that K–12 school districts, county offices of education, and community colleges that need to participate in the regular TRANS offering must file their application by Friday, September 4, 2020. There is no cost to apply and no obligation to proceed with the TRANS if the local agency’s circumstances change

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FISCAL REPORT

The Latest Proposal for Growth Funding: An SSC Editorial



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posted August 25, 2020

This is an unprecedented time, and many extraordinary measures have been required on the part of teachers, parents, students, and the entire school community. The same goes for our state policy makers, who have adjusted their protocols and work environments to safely continue to lead our state through this crisis. For public education in particular, they have provided a number of extraordinary measures, such as a hold harmless on average daily attendance (ADA) and additional one-time funds for local schools to meet the needs of students and their communities in these circumstances.

Another of these extraordinary measures is included in Senate Bill (SB) 820, the education trailer bill that contains clean-up language and is working its way through the legislative process this week. With the hold harmless on ADA for 2020–21 enacted in the State Budget came the realization that growing local educational agencies (LEAs) would not be funded for growth in ADA. Policy makers listened to those concerns and included language in SB 820 to provide growth funding *but only for those LEAs that projected enrollment or ADA growth in their 2019–20 Second Interim report or in their 2020–21 budget that was adopted by the local governing board by June 30, 2020.*

If an LEA projected growth in either of the above versions of its budget, funding is provided for the ADA growth related to the lesser of:

- Actual enrollment growth as of Census Day, October 7, 2020, reduced by the statewide average absence rate for the appropriate grade levels (to arrive at a measure of ADA)
- The ADA growth included in the LEA budget, or the enrollment growth included in the LEA budget reduced by the statewide average absence rate for the appropriate grade levels

Under no circumstances will the apportionment be less than if an LEA does not ask for this growth calculation to be made, which requires a request of the California Department of Education. We appreciate that the Legislature heard the pleas of those LEAs that are anticipating growth in 2020–21 and budgeted accordingly; however, those LEAs that did not include projected growth in their LEA budgets but realize growth in their student population this year will not be funded under this language. They too will incur additional costs in order to serve the additional students, but without the additional funding.

Many LEAs wait to build student enrollment/ADA growth into the budget until the growth is realized or verifiable. In the case of LEAs that have historically been growing and are projected to continue to grow, a number of them budget conservatively and include only a portion of the projected growth in the budget. This is because building enrollment/ADA growth into the LEA budget has the impact of increasing revenues in the current year as well as the two subsequent years of the projection. If the enrollment/ADA growth does not materialize, the revenues are significantly overstated in the current and subsequent years.

We began this editorial with an acknowledgement that these are extraordinary times that call for extraordinary measures and appreciate that the Administration and Legislature have heard the concerns of growing LEAs. There is no playbook for addressing the multitude of funding, learning, and health issues that face California. However, we at School Services of California Inc. have seen school district budgets go directly from positively to negatively certified in a span of months due to projections of student enrollment/ADA growth that turned out to be too optimistic. We urge our policy makers to continue to monitor the issue of growing LEAs throughout 2020–21 and appreciate the recognition in SB 820 that this policy for determining enrollment/ADA growth funding based on projections in an LEA's budget is only for this particular year, for this extraordinary time.

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FISCAL REPORT

Education Trailer Bill Proposes Changes, Big and Small

 [BY MICHELLE MCKAY UNDERWOOD](#)

 [BY SHEILA G. VICKERS](#)

 [BY KYLE HYLAND](#)

Copyright 2020 School Services of California, Inc. posted August 25, 2020

On Saturday, August 22, 2020, Senate Bill (SB) 820 was introduced to make changes to the education portion of the 2020–21 State Budget. As already highlighted in “[The Latest Proposal for Growth Funding: An SSC Editorial](#)” in the August 2020 *Fiscal Report*, SB 820 makes changes to how growth is calculated for some local educational agencies (LEAs) in 2020–21. Additional changes, large and small, are also proposed. Over several articles, we will highlight the most significant changes.

Learning Loss Mitigation Funding

Sought by numerous LEAs, SB 820 proposes longer timelines and additional opportunities for spending Learning Loss Mitigation (LLM) funds:

- Clarifies that the \$355 million from the Governor’s Emergency Education Relief (GEER) fund could be used for an additional year, extending the deadline from September 30, 2021, to September 30, 2022, which aligns with federal GEER fund deadlines
- Extends the expenditure deadline for \$540 million in funds from Proposition 98 from December 30, 2020, to June 30, 2021
- States that the December 30, 2020, deadline to expend the Coronavirus Relief Fund dollars, which is \$4.4 billion of the \$5.3 billion for LLM, would be extended if the federal government changed that deadline in law

- Clarifies that the funds can be used for programs outside K–12, including childcare programs, preschool programs, and adult schools served by the LEA
- Allows the funding to be used for addressing health and safety concerns, including purchasing public health testing, personal protective equipment, and supplies to sanitize and clean the facilities and school buses
- Changes various reporting dates and record retention requirements

The bill also allows LEAs to exclude these funds and federal Elementary and Secondary School Emergency Relief funds from being considered General Fund expenditures for the purposes of the Routine Restricted Maintenance Account calculation.

Instructional Materials

The bill would modify the definition of “technology-based instructional materials” in Education Code Section (EC §) 60010 to include, rather than exclude, technology equipment necessary to use the materials. Specifically, the bill would now include in the definition of “technology-based instructional materials” items such as laptop computers and devices that provide internet access required for students and teachers to access instructional materials used as a learning resource. These items would then be subject to the sufficiency requirements of EC § 60119.

The bill would also add a new section to the Government Code (Government Code Section [GC §] 8880.4.1) to clarify the definition of “instructional materials” as specified in GC § 8880.4(a)(2)(B), which is related to the requirement of local school agencies and community colleges to use Proposition 20 Lottery funds on instructional materials. The bill would clarify that instructional materials for this purpose “include, but are not limited to, laptop computers and devices that provide internet access for use by pupils, students, teachers, and faculty as learning resources,” thus providing more flexibility in the use of these funds.

Cash Deferrals

The implementation of the cash deferrals starting in February 2021 included provisions for charter schools and school districts to apply for exemptions from any of the deferrals. This occurs by the charter school, its authorizing agency, and the county office of education (COE) following a process to certify that the charter school would be unable to meet its financial obligations without the exemption. For a school district, the same process is followed with the COE.

The original deadline to make the certification for the February, March, April, and/or May deferrals was established as January 5, 2021. This bill would move the deadline for each of these deferrals back to December 15, 2020. The deadline for the certification for the June deferral would remain April 1 of each applicable year.

Young People's Task Force

The bill states that the Young People's Task Force (see "[School Police Reform in the Enacted State Budget](#)" in the July 2020 *Fiscal Report*) will conduct an evaluation of law enforcement personnel on school campuses and identify alternative options to ensure student safety on a school campus, student safety coming and going to and from school, and student academic and social-emotional success based on the needs of the local school community. The Task Force will also develop recommended guidance to ensure student health and safety during interactions between law enforcement and students on school sites.

Governor Gavin Newsom will designate a youth facilitator for the Task Force who graduated from a California public high school within the last seven years and has experience working in youth leadership development to jointly convene the task force with the State Superintendent of Public Instruction and the State Board of Education president. The Governor will appoint up to 15 students to the Task Force who are currently enrolled in a public school with at least 2 of the appointees being students that currently attend or have attended an alternative school.

The Task Force is required by October 1, 2021, to submit a written report on its findings and recommendations for state and local policy changes and guidance.