

**CHARTER SCHOOL AUTHORIZATION**

Note: The following administrative regulation is **optional**.

**Petition Signatures**

A petition for the establishment of a start-up charter school must be signed by one of the following: (Education Code 47605)

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1. A number of parents/guardians equivalent to at least one-half of the number of students that the charter school estimates will enroll in the school for its first year of operation
2. A number of teachers equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation

If the charter petition calls for an existing public school to be converted to a charter school, the petition must be signed by at least 50 percent of the permanent status teachers currently employed at the school. (Education Code 47605)

*(cf. 4116 - Permanent/Probationary Status)*

In circulating a petition, the petitioners shall include a prominent statement explaining that a parent/guardian's signature means that the parent/guardian is meaningfully interested in having his/her child attend the charter school or, in the case of a teacher's signature, that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition. (Education Code 47605)

**Components of Charter Petition**

Note: CSBA's publication Charter Schools: A Manual for Governance Teams recommends specific content that might be included in the descriptions of each component listed in items #1-16 below.

A petition shall include affirmations of the conditions described in Education Code 47605(d) as well as reasonably comprehensive descriptions of: (Education Code 47605, 47611.5)

1. The educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling students to become self-motivated, competent, and lifelong learners.

**CHARTER SCHOOL AUTHORIZATION** (continued)

If the proposed school will serve high school students, the petition shall describe the manner in which the charter school will inform parents/guardians about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable, and courses approved by the University of California or the California State University as creditable under the "a-g" admissions criteria may be considered to meet college entrance requirements.

Note: Education Code 47605, as amended by SB 1290 (Ch. 576, Statutes of 2012), requires that the petition identify student outcomes that the charter school intends to use, including those that address increases in student achievement both schoolwide and for all groups of students served by the charter school, as defined in Education Code 47607. Education Code 47607, as amended by SB 1290, defines "all groups of students served by the charter school" to mean all "numerically significant" subgroups of students served by the charter school, as defined in Education Code 52052.

2. The measurable student outcomes identified for use by the charter school. *Student outcomes* means the extent to which all students of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program, including outcomes that address increases in student academic achievement both schoolwide and for each "numerically significant" subgroup of students served by the charter school, as defined in Education Code 52052.
3. The method by which student progress in meeting the identified student outcomes is to be measured.
4. The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parent/guardian involvement.
5. The qualifications to be met by individuals to be employed by the school.
6. The procedures that the school will follow to ensure the health and safety of students and staff, including the requirement that each school employee furnish the school with a criminal record summary as described in Education Code 44237.
7. The means by which the school will achieve a racial and ethnic balance among its students that is reflective of the general population residing within the district's territorial jurisdiction.
8. Admission requirements, if applicable.
9. The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the Governing Board's satisfaction.

**CHARTER SCHOOL AUTHORIZATION** (continued)

10. The procedures by which students can be suspended or expelled.
11. The manner by which staff members of the charter school will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
12. The public school attendance alternatives for students residing within the district who choose to not attend the charter school.
13. A description of the rights of any district employee upon leaving district employment to work in the charter school and of any rights of return to the district after employment at the charter school.
14. The procedures to be followed by the charter school and the Board to resolve disputes relating to charter provisions.

Note: Education Code 47605 requires charter petitions to contain the declaration specified in item #15 below regarding responsibilities for collective bargaining. If the charter school is not deemed the public school employer for purposes of collective bargaining under Government Code 3540-3549.3, the district where the charter school is located shall be deemed the public school employer for these purposes, pursuant to Education Code 47611.5. Education Code 47611.5 further provides that, if the charter does not specify that the charter school shall comply with laws and regulations governing tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

15. A declaration as to whether or not the charter school shall be deemed the exclusive public school employer of the school's employees for purposes of collective bargaining under Government Code 3540-3549.3.

Note: Education Code 47605 and 5 CCR 11962 require the charter petition to include procedures to be used in the event that the charter school closes for any reason, as provided in item #16 below. Duties of the district pertaining to charter school closures include notification requirements pursuant to Education Code 47604.32 and 5 CCR 11962.1; see BP 0420.41 - Charter School Oversight.

16. The procedures to be used if the charter school closes, including, but not limited to: (5 CCR 11962)
  - a. Designation of a responsible entity to conduct closure-related activities
  - b. Notification to parents/guardians, the Board, the county office of education, the special education local plan area in which the school participates, the retirement systems in which the school's employees participate, and the California Department of Education, providing at least the following information:

**CHARTER SCHOOL AUTHORIZATION** (continued)

- (1) The effective date of the closure
  - (2) The name(s) and contact information of the person(s) to whom reasonable inquiries may be made regarding the closure
  - (3) The students' districts of residence
  - (4) The manner in which parents/guardians may obtain copies of student records, including specific information on completed courses and credits that meet graduation requirements
- c. Provision of a list of students at each grade level, the classes they have completed, and their districts of residence to the responsible entity designated in accordance with item #16a above
  - d. Transfer and maintenance of all student records, all state assessment results, and any special education records to the custody of the responsible entity designated in accordance with item #16a above, except for records and/or assessment results that the charter may require to be transferred to a different entity
  - e. Transfer and maintenance of personnel records in accordance with applicable law
  - f. Completion of an independent final audit within six months after the closure of the school that includes an accounting of all financial assets and liabilities pursuant to 5 CCR 11962 and an assessment of the disposition of any restricted funds received by or due to the school
  - g. Disposal of any net assets remaining after all liabilities of the school have been paid or otherwise addressed pursuant to 5 CCR 11962
  - h. Completion and filing of any annual reports required pursuant to Education Code 47604.33
  - i. Identification of funding for the activities identified in item #16a-h above

Note: Education Code 47605 requires that petitioners provide to the Governing Board the information listed in items #1-4 below. The Board may require additional information. For example, U.S. Department of Education nonregulatory guidance, [The Impact of New Title I Requirements on Charter Schools](#), suggests that districts may, at their discretion, choose to incorporate in the charter the state's definition of "adequate yearly progress" to assist charter schools in understanding their accountability requirements; see the accompanying Board policy and BP/AR 0520.2 - Title I Program Improvement Schools.

**CHARTER SCHOOL AUTHORIZATION** (continued)

As outlined in CSBA's publication Charter Schools: A Manual for Governance Teams, some districts request a school calendar, information regarding transportation arrangements, staff development plans, assurances that the school will provide appropriate services for English language learners and students with disabilities, or any other information that will assist the Board in understanding the proposal. Districts that wish to require additional information in the charter may list those items below.

Charter school petitioners shall provide information to the Board regarding the proposed operation and potential effects of the school, including, but not limited to: (Education Code 47605)

Note: Education Code 47605 requires that information on school facilities, listed in item #1 below, must specify where the school intends to locate. Unless otherwise exempted, the school must be located within the geographic boundaries of the chartering district; see section "Location of Charter School" below.

1. The facilities to be used by the school, including where the school intends to locate  
*(cf. 7160 - Charter School Facilities)*
2. The manner in which administrative services of the school are to be provided
3. Potential civil liability effects, if any, upon the school and district
4. Financial statements that include a proposed first-year operational budget, including start-up costs and cash-flow and financial projections for the first three years of operation

**Location of Charter School**

Note: Education Code 47605 and 47605.1 establish geographic and site requirements for charter schools. Pursuant to Education Code 47605, a charter school granted by either the County Board of Education or the State Board of Education following initial denial by the district also must locate within the geographic boundaries of the district that denied the petition.

The Attorney General has opined, in 89 Ops.Cal.Atty.Gen. 166 (2006), that online charter schools are subject to the restrictions and conditions placed upon independent study programs, including the requirement that students reside in the charter school's home county or an adjacent county.

Unless otherwise exempted by law, the charter petition shall identify a single charter school that will operate within the geographic boundaries of the district. A charter school may propose to operate at multiple sites within the district as long as each location is identified in the petition. (Education Code 47605, 47605.1)

A charter school that is unable to locate within the district's jurisdictional boundaries may establish one site outside district boundaries but within the county, provided that: (Education Code 47605, 47605.1)

**CHARTER SCHOOL AUTHORIZATION** (continued)

1. The district is notified prior to approval of the petition.
2. The County Superintendent of Schools and Superintendent of Public Instruction are notified before the charter school begins operations.
3. The charter school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate, or the site is needed for temporary use during a construction or expansion project.

A charter school may establish and locate a resource center, meeting space, or other satellite facility in an adjacent county if both of the following conditions are met: (Education Code 47605.1)

1. The facility is used exclusively for the educational support of students who are enrolled in nonclassroom-based independent study of the charter school.
2. The charter school provides its primary educational services in, and a majority of the students it serves are residents of, the county in which the school is authorized.

**Petition Review Committee**

Note: The following section is **optional**. CSBA's publication Charter Schools: A Manual for Governance Teams suggests that establishment of a petition review team is one method that can be used to obtain input on proposed charters. Such a committee might include representatives of the district's human resources, fiscal services, risk management, student services, curriculum, special education, facilities, and other appropriate departments.

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At his/her discretion, the Superintendent or designee may establish a staff advisory committee to review submitted petitions and supporting documentation. Such a committee may be used to evaluate the completeness of proposals, the merits of the proposed educational programs, and any concerns that should be addressed by the petitioners, taking into consideration the criteria specified in law and Board policy for approval or denial of petitions. The Superintendent or designee shall also consult with legal counsel, as appropriate, regarding compliance of the charter proposals with legal requirements.

*(cf. 1220 - Citizen Advisory Committees)*

Regulation  
approved:

CSBA MANUAL MAINTENANCE SERVICE  
November 2012

**CHARTER SCHOOL RENEWAL**

Note: The following policy is **optional**. When the term of a charter granted by the Governing Board pursuant to Education Code 47605 (see BP/AR 0420.4 - Charter School Authorization) is due to expire, the charter school must submit a petition for renewal to the Board in accordance with Education Code 47607 and 5 CCR 11966.4.

Pursuant to Education Code 47605, to renew a charter that was originally granted by the State Board of Education (SBE) on appeal, the charter school must first submit its petition for renewal to the district that initially denied the charter. If the Board denies the renewal, the school may then petition the SBE for renewal.

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The Governing Board believes that the ongoing operation of a charter school established within the district should be dependent on the school's effectiveness in achieving its mission and goals for student learning and other student outcomes. Whenever a charter school submits a petition for renewal of its charter, the Board shall review the petition thoroughly and in a timely manner.

*(cf. 0420.4 - Charter School Authorization)*  
*(cf. 0420.41 - Charter School Oversight)*  
*(cf. 0420.43 - Charter School Revocation)*  
*(cf. 0500 - Accountability)*

Each renewal granted by the Board shall be for a period of five years. (Education Code 47607)

**Submission of Renewal Petition**

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Note: The following **optional** paragraph may be revised to reflect district practice. 5 CCR 11966.4 requires that the Board grant or deny the renewal petition within 60 days of receiving the petition; see section entitled "Timelines for Board Action" below. However, it is recommended that the charter school submit its renewal petition sufficiently early (e.g., as much as nine months before the term of the charter is due to expire) so that, in the event that the Board denies the renewal, the charter school may be able to appeal to the County Board of Education and then to the SBE pursuant to Education Code 47607.5 and, if the school closes, for students of the charter school to transfer to another school.

A charter school seeking renewal of its charter is encouraged to submit its petition for renewal to the Board sufficiently early before the term of the charter is due to expire.

The signature requirement applicable to new charter petitions is not applicable to petitions for renewal. (5 CCR 11966.4)

The petition for renewal shall include a reasonably comprehensive description of how the charter school has met all new charter school requirements enacted into law after the charter was originally granted or last renewed. The petition also shall include documentation that

## **CHARTER SCHOOL RENEWAL** (continued)

the charter school meets at least one of the criteria for academic performance specified in Education Code 47607(b), as listed in item #5 in the section "Criteria for Granting or Denying Renewal" below. (Education Code 47607; 5 CCR 11966.4)

### **Criteria for Granting or Denying Renewal**

Renewals shall be governed by the same standards and criteria that apply to new charter petitions as set forth in Education Code 47605. The Board shall consider the past performance of the charter school's academics, finances, and operations in evaluating the likelihood of future success, along with plans for improvement, if any. (Education Code 47607; 5 CCR 11966.4)

Note: As amended by SB 1290 (Ch. 576, Statutes of 2012), Education Code 47607 requires the Board to consider increases in student achievement for all "numerically significant" student subgroups, as defined in Education Code 52052, as the most important factor in determining whether to grant a charter renewal.

In determining whether to grant a charter renewal, the Board shall consider increases in academic achievement for all "numerically significant" groups of students served by the charter school, as defined in Education Code 52052, as the most important factor. (Education Code 47607)

Note: Education Code 47607 and 5 CCR 11966.4 establish grounds for denial of charter renewals. See CSBA's publication [Charter Schools: A Manual for Governance Teams](#) for additional information about making the determinations specified in items #1-4 below.

The Board shall deny a renewal petition only if it makes a written factual finding setting forth specific facts to support one or more of the following grounds: (Education Code 47605, 47607; 5 CCR 11966.4)

1. The charter school presents an unsound educational program for the students enrolled in the school.
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3. The petition does not contain an affirmation of each of the conditions described in Education Code 47605(d).
4. The petition does not contain reasonably comprehensive descriptions of the charter provisions in Education Code 47605(b).

**CHARTER SCHOOL RENEWAL** (continued)

5. The charter school has failed to meet at least one of the following criteria of academic performance:

Note: SB 1290 (Ch. 576, Statutes of 2012) amended Education Code 47607 to revise the criterion related to the attainment of the Academic Performance Index growth target to (1) delete the option to consider attainment of the growth target in the aggregate for the prior three years and (2) require the growth target to be met both schoolwide and for all numerically significant groups of students served by the charter school.

- a. Attainment of its Academic Performance Index (API) growth target in the prior year or in two of the last three years, both schoolwide and for all numerically significant groups of students served by the charter school as defined in Education Code 52052.
- b. An API ranking in deciles 4-10 in the prior year or in two of the last three years.
- c. An API ranking in deciles 4-10 for a demographically comparable school in the prior year or in two of the last three years.
- d. Academic performance at least equal to the academic performance of the public schools that the charter school students would otherwise have been required to attend as well as the academic performance of district schools, taking into account the composition of the student population that is served at the charter school. In determining whether the charter school satisfies this criterion, the Board shall base its decision on:
  - (1) Documented clear and convincing data
  - (2) Student achievement data from assessments, including, but not limited to, the Standardized Testing and Reporting Program, for demographically similar student populations in comparison schools
  - (3) Information submitted by the charter school

Note: When making a written finding based on item #5d, Education Code 47607 requires the district to submit copies of supporting documentation and a written summary of the basis for its determination to the Superintendent of Public Instruction (SPI), as provided below. The SPI will review the materials and make recommendations to the district; those recommendations may be the basis for a revocation of the charter by the SBE.

Whenever the Board makes a determination based on this criterion, the Superintendent or designee shall submit copies of supporting documentation and a written summary of the basis for the Board's determination to the Superintendent of Public Instruction.

**CHARTER SCHOOL RENEWAL** (continued)

(cf. 6162.51 - Standardized Testing and Reporting Program)

- e. Qualification for an alternative accountability system pursuant to Education Code 52052(h)

**Timelines for Board Action**

Note: The following <b>optional</b> paragraph may be revised to reflect district practice.
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Within 30 days of receiving the renewal petition, the Board shall hold a public hearing to review documentation submitted by the charter school and obtain public input.

If the charter school submits documentation pursuant to item #5d in the section "Criteria for Granting or Denying Renewal" above, the Board shall not grant a renewal until at least 30 days after the submission of such documentation. (Education Code 47607)

Within 60 days of receiving the renewal petition, or within 90 days if extended by mutual written agreement of the Board and the charter school, the Board shall either grant or deny the request to renew the charter. (Education Code 47607; 5 CCR 11966.4)

If the Board fails to make a written factual finding pursuant to items #1-5 in the section "Criteria for Granting or Denying Renewal" above within the required time period, the absence of a written factual finding shall be deemed an approval of the renewal petition. (5 CCR 11966.4)

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

If the Board denies a renewal petition, the charter school may submit its application for renewal to the County Board of Education within 30 days of the Board's written factual findings supporting the denial. If the County Board then fails to deny or grant the petition within 60 days of receiving the petition, or within 90 days if extended by written mutual agreement of the charter school and the County Board, the charter school may submit the petition to the State Board of Education. (Education Code 47605, 47607.5)

Note: Pursuant to Education Code 47604.32, if a charter school ceases operation for any reason, including denial of its renewal, the district must notify the California Department of Education; see BP 0420.41 - Charter School Oversight. In addition, the district and/or charter school must implement the school closure procedures specified in the charter in accordance with Education Code 47605 and 5 CCR 11962; see AR 0420.4 - Charter School Authorization.
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**CHARTER SCHOOL RENEWAL** (continued)

*Legal Reference:*

EDUCATION CODE

47600-47616.7 *Charter Schools Act of 1992*

52052 *Alternative accountability system; definition of numerically significant student subgroup*

56145-56146 *Special education services in charter schools*

60600-60649 *Assessment of academic achievement*

CODE OF REGULATIONS, TITLE 5

11960-11969 *Charter schools*

UNITED STATES CODE, TITLE 20

7223-7225 *Charter schools*

*Management Resources:*

CSBA PUBLICATIONS

*The Role of the Charter School Authorizer, Online Course*

*Charter Schools: A Manual for Governance Teams, rev. 2012*

WEB SITES

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

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

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

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

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

## CHARTER SCHOOL REVOCATION

Note: The following policy is **optional**. Education Code 47607 and 5 CCR 11968.5.2-11968.5.3 authorize the Governing Board to revoke the charter of a charter school in its jurisdiction when certain substantiated findings are made. In Today's Fresh Start, Inc. v. Los Angeles County Office of Education, the court of appeal confirmed that the revocation process prescribed in the Education Code provides a charter school with sufficient due process and that a charter school is not entitled to any additional evidentiary hearing by a neutral third party.

In addition, Education Code 47604.5 authorizes the State Board of Education (SBE) to revoke the charter of any charter school, whether or not the SBE is the chartering authority, if it makes certain findings relating to gross financial mismanagement, illegal or improper use of funds, or substantial and sustained departure from measurably successful practices that may jeopardize the educational development of students. SBE revocation procedures are specified in 5 CCR 11968.5-11968.5.1.

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The Governing Board expects any charter school it authorizes to provide a sound educational program that promotes student learning and to carry out its operations in a manner that complies with law and the terms of its charter.

*(cf. 0420.4 - Charter School Authorization)*

*(cf. 0420.41 - Charter School Oversight)*

*(cf. 0420.42 - Charter School Renewal)*

*(cf. 0500 - Accountability)*

The Board may revoke a charter before the date it is due to expire whenever the Board makes a written factual finding, supported by substantial evidence, that the charter school has done any of the following: (Education Code 47607)

1. Committed a material violation of any of the conditions, standards, or procedures set forth in the charter
2. Failed to meet or pursue any of the student outcomes identified in the charter
3. Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement
4. Violated any provision of law

Note: As amended by SB 1290 (Ch. 576, Statutes of 2012), Education Code 47607 requires the Board to consider increases in student achievement for all numerically significant student subgroups, as defined in Education Code 52052, as the most important factor in determining whether to revoke a charter.

In determining whether to revoke a charter, the Board shall consider increases in student academic achievement for all "numerically significant" groups of students served by the charter school, as defined in Education Code 52052, as the most important factor. (Education Code 47607)

## **CHARTER SCHOOL REVOCATION** (continued)

At least 72 hours prior to any Board meeting at which the Board will consider issuing a Notice of Violation, the Board shall provide the charter school with notice and all relevant documents related to the proposed action. (5 CCR 11968.5.2)

*(cf. 9320 - Meetings and Notices)*

If the Board takes action to issue a Notice of Violation, it shall deliver the Notice of Violation to the charter school's governing body. The Notice of Violation shall identify: (Education Code 47607; 5 CCR 11965, 11968.5.2)

1. The charter school's alleged violation(s).
2. All evidence relied upon by the Board in determining that the charter school committed the alleged violation(s), including the date and duration of the alleged violation(s). The Notice shall show that each alleged violation is both material and uncured and that it occurred within a reasonable period of time before the Notice of Violation is issued.
3. The period of time that the Board has concluded is a reasonable period of time for the charter school to remedy or refute the identified violation(s). In identifying this time period, the Board shall consider the amount of time reasonably necessary to remedy each identified violation, which may include the charter school's estimation as to the anticipated remediation time.

By the end of the remedy period identified in the Notice of Violation, the charter school's governing body may submit to the Board a detailed written response and supporting evidence addressing each identified violation, including the refutation, remedial action taken, or proposed remedial action. (5 CCR 11968.5.2)

Within 60 calendar days of the conclusion of the remedy period, the Board shall evaluate any response and supporting evidence provided by the charter school's governing body and shall take one of the following actions: (5 CCR 11968.5.2)

1. Discontinue revocation of the charter and provide timely written notice of such action to the charter school's governing body

<p>Note: Pursuant to Education Code 47607 and 5 CCR 11968.5.2, a decision to issue a Notice of Intent to Revoke as provided in item #2 below must be supported by substantial evidence that the charter school has failed to remedy or refute a violation. "Substantial evidence" is not defined in law or state regulations. The district should consult legal counsel as necessary.</p>
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**CHARTER SCHOOL REVOCATION** (continued)

2. If there is substantial evidence that the charter school has failed to remedy a violation identified in the Notice of Violation or to refute a violation to the Board's satisfaction, continue revocation of the charter by issuing a Notice of Intent to Revoke to the charter school's governing body

If the Board issues a Notice of Intent to Revoke, it shall hold a public hearing concerning the revocation on the date specified in the notice, which shall be no later than 30 days after providing the notice. Within 30 calendar days after the public hearing, or within 60 calendar days if extended by written mutual agreement of the Board and the charter school, the Board shall issue a final decision to revoke or decline to revoke the charter. (Education Code 47607; 5 CCR 11968.5.2)

If the Board fails to meet the timelines specified above for issuing a Notice of Intent to Revoke or a final decision, the revocation process shall be deemed terminated. (5 CCR 11968.5.2)

Within 10 calendar days of the Board's final decision, the Superintendent or designee shall provide a copy of the final decision to the California Department of Education (CDE) and the County Board of Education. (Education Code 47604.32; 5 CCR 11968.5.2)

Note: Pursuant to Education Code 47604.32, if a charter school ceases operation for any reason, including revocation, the district must notify the California Department of Education; see BP 0420.41 - Charter School Oversight. In addition, the district and/or charter school must implement the school closure procedures specified in the charter in accordance with Education Code 47605 and 5 CCR 11962; see AR 0420.4 - Charter School Authorization.

**Severe and Imminent Threat**

The procedures specified above shall not be applicable when the Board determines, in writing, that any violation under Education Code 47607 constitutes a severe and imminent threat to the health or safety of students. In such circumstances, the Board may immediately revoke the school's charter by approving and delivering a Notice of Revocation by Determination of a Severe and Imminent Threat to Pupil Health or Safety to the charter school's governing body, the County Board, and the CDE. (Education Code 47607; 5 CCR 11968.5.3)

**Appeals**

Note: Pursuant to Education Code 47607 and 5 CCR 11968.5.3-11968.5.5, a charter school may appeal the revocation of its charter, including a revocation based on a severe and imminent threat, to the County Board of Education within 30 days of the Board's final decision. The County Board may reverse the revocation if it determines that the district's findings are not supported by substantial evidence, in which case the district may appeal the reversal to the SBE. If the County Board upholds the revocation or does not issue a decision within 90 days of its receipt of the appeal, the charter school may appeal to the SBE. Pursuant to Education

**CHARTER SCHOOL REVOCATION** (continued)

Code 47607, if either the County Board or the SBE reverses the revocation, the district remains the chartering authority.

Education Code 47607 further provides that, while an appeal is pending, a charter school whose revocation is based on a material violation of any of the conditions, standards, or procedures set forth in its charter or is based on a failure to meet or pursue any of the student outcomes identified in the charter will continue to qualify as a charter school for funding and all other purposes of the Charter Schools Act and may continue to hold all existing grants, resources, and facilities in order to ensure that the education of students enrolled in the school is not disrupted.

In the event that the Board revokes the charter, the charter school may, within 30 days of the Board's final decision, appeal the revocation to the County Board. Either the charter school or the district may subsequently appeal the County Board's decision to the SBE. (Education Code 47607; 5 CCR 11968.5.3-11968.5.5)

*Legal Reference:*EDUCATION CODE

47600-47616.7 *Charter Schools Act of 1992, especially:*

47607 *Charter renewals and revocations*

52052 *Numerically significant student subgroup; definition*

CODE OF REGULATIONS, TITLE 5

11960-11969 *Charter schools, especially:*

11968.5-11968.5.5 *Charter revocations*

COURT DECISIONS

*Today's Fresh Start, Inc. v. Los Angeles County Office of Education, (2011) 197 Cal.App.4th 436*

*Management Resources:*CSBA PUBLICATIONS

*The Role of the Charter School Authorizer, Online Course*

*Charter Schools: A Manual for Governance Teams, rev. 2012*

WEB SITES

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

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

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

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

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

**FEES AND CHARGES**

Note: Education Code 49010-49013, as added by AB 1575 (Ch. 776, Statutes of 2012), prohibit districts from requiring students to pay fees, deposits, or other charges in order to participate in an educational activity, unless authorized by law, and **mandate** governing boards to adopt policies and procedures implementing this prohibition. However, the prohibition does not restrict districts from soliciting for voluntary donations, participating in fundraising activities, or providing prizes or other recognition for participants in such fundraising activities.

In addition, pursuant to 5 CCR 350, only fees specifically authorized by law may be charged by districts. See the accompanying administrative regulation for a list of such fees.

The Governing Board recognizes its responsibility to ensure that books, materials, equipment, supplies, and other resources necessary for students' participation in the educational program are made available to them. No student shall be required to pay any fees, deposits, or other charges for his/her participation in an educational activity which constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities.

*(cf. 1321 - Solicitation of Funds from and by Students)*  
*(cf. 3100 - Budget)*  
*(cf. 3290 - Gifts, Grants and Bequests)*  
*(cf. 6145 - Extracurricular and Cocurricular Activities)*

As necessary, the Board may approve fees, deposits, and other charges which are specifically authorized by law. For such authorized fees, deposits, and charges, the district shall consider students' and parents/guardians' ability to pay when establishing fee schedules and granting waivers or exceptions.

*(cf. 3250 - Transportation Fees)*  
*(cf. 3515.4 - Recovery for Property Loss or Damage)*  
*(cf. 3553 - Free and Reduced Price Meals)*  
*(cf. 5143 - Insurance)*  
*(cf. 9323.2 - Actions by the Board)*

Note: Pursuant to Education Code 49013, as added by AB 1575 (Ch. 776, Statutes of 2012), a district is mandated to adopt a policy which (1) allows students and/or parents/guardians to file complaints, using the uniform complaint procedures, when the district is alleged to have violated the prohibition against requiring students to pay unauthorized student fees and (2) requires the district to include information about the prohibition against requiring students to pay fees in the annual notification to students, parents/guardians, employees, and other interested parties. See BP/AR 1312.3 - Uniform Complaint Procedures for additional language implementing this mandate.

Whenever a student or parent/guardian believes that an impermissible fee, deposit, or other charge is being required of the student for his/her participation in an educational activity, the student or his/her parent/guardian may file a complaint with the principal or designee using the district's procedures in BP/AR 1312.3 - Uniform Complaint Procedures. (Education Code 49013)

*(cf. 1312.3 - Uniform Complaint Procedures)*

**FEES AND CHARGES** (continued)

The Superintendent or designee shall include information in the annual notification required by 5 CCR 4622 to be provided to all district students, parents/guardians, employees, and other interested parties about the requirements relating to the prohibition against districts requiring students to pay fees, deposits or other charges in order to participate in an educational activity, unless authorized by law, and the filing of complaints for alleged violations using the uniform complaint procedures. (Education Code 49013)

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

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

OK

The Superintendent or designee shall provide professional development opportunities to administrators, teachers, and other personnel to learn about permissible fees.

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

*Legal Reference:*

EDUCATION CODE

8239 *Preschool and wraparound child care services*  
8263 *Child care eligibility*  
8760-8773 *Outdoor science and conservation programs*  
17551 *Property fabricated by students*  
19910-19911 *Offenses against libraries*  
32033 *Eye protective devices*  
32221 *Insurance for athletic team member*  
32390 *Fingerprinting program*  
35330-35332 *Excursions and field trips*  
35335 *School camp programs*  
38080-38085 *Cafeteria establishment and use*  
38120 *Use of school band equipment on excursions to foreign countries*  
39807.5 *Payment of transportation costs*  
39837 *Transportation of students to places of summer employment*  
48050 *Residents of adjoining states*

*Legal Reference continued: (see next page)*

## **FEES AND CHARGES (continued)**

### *Legal Reference: (continued)*

#### EDUCATION CODE (continued)

48052 Tuition for foreign residents

48904 Liability of parent or guardian

49010-49013 Student fees

49065 Charge for copies

49066 Grades, effect of physical education class apparel

49091.14 Prospectus of school curriculum

51810-51815 Community service classes

52612 Tuition for adult classes

52613 Nonimmigrant aliens

60410 Students in classes for adults

#### GOVERNMENT CODE

6253 Request for copy; fee

#### CALIFORNIA CONSTITUTION

Article 9, Section 5 Common school system

#### CODE OF REGULATIONS, TITLE 5

350 Fees not permitted

4622 Notice

#### UNITED STATES CODE, TITLE 8

1184 Foreign students

#### COURT DECISIONS

Driving School Assn of CA v. San Mateo Union HSD (1993) 11 Cal. App. 4th 1513

Arcadia Unified School District v. State Department of Education (1992) 2 Cal 4th 251

Steffes v. California Interscholastic Federation (1986) 176 Cal. App. 3d 739

Hartzell v. Connell (1984) 35 Cal. 3d 899

CTA v. Glendale School District Board of Education (1980) 109 Cal. App. 3d 738

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF EDUCATION MANAGEMENT ADVISORIES

1030.97 Fiscal Management Advisory 97-02: Fees, Deposits and Other Charges

#### WEB SITES

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

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

**FEES AND CHARGES**

Note: Pursuant to 5 CCR 350, constitutionally permissible fees can be charged only when specifically authorized by law. The following list specifies fees currently authorized by law. Other such fees may exist and be identified in the future. Pursuant to Education Code 49011, as added by AB 1575 (Ch. 776, Statutes of 2012), a district is prohibited from requiring a student to pay fees or charges in order to participate in an educational activity. A complaint against the charging of impermissible student fees may be filed in accordance with the uniform complaint procedures; see the accompanying Board policy and BP/AR 1312.3 - Uniform Complaint Procedures. Districts with questions as to whether a fee may be charged should consult with legal counsel.

The district shall not require any district student to pay any fees, deposits, or charges except as specifically authorized by law. (Education Code 49011; 5 CCR 350)

When approved by the Governing Board, the Superintendent or designee may impose a fee for the following:

1. Insurance for athletic team members, with an exemption for financial hardship (Education Code 32221)

*(cf. 5143 - Insurance)*

2. Insurance for medical or hospital service for students participating in field trips and excursions (Education Code 35331)

3. Expenses of students' participation in a field trip or excursion to another state, the District of Columbia, or a foreign country, as long as no student is prohibited from making the field trip due to lack of funds (Education Code 35330)

*(cf. 6153 - School-Sponsored Trips)*

4. Student fingerprinting program (Education Code 32390)

*(cf. 5142.1 - Identification and Reporting of Missing Children)*

5. School camp programs operated pursuant to Education Code 8760-8773 provided that the fee is not mandatory (Education Code 35335)

*(cf. 6142.5 - Environmental Education)*

6. Personal property of the district fabricated by students, as long as the cost of the property does not exceed the cost of the materials provided by the district (Education Code 17551)

**FEES AND CHARGES** (continued)

7. Home-to-school transportation and transportation between regular, full-time day schools and regional occupational centers, programs, or classes, as long as the fee does not exceed the statewide average nonsubsidized cost per student and as long as exemptions are made for indigent and disabled students (Education Code 39807.5)

*(cf. 3250 - Transportation Fees)*

8. Transportation to and from summer employment programs for youth (Education Code 39837)
9. Deposit for band instruments, music, uniforms, and other regalia which school band members take on excursions to foreign countries (Education Code 38120)
10. Fees for community service classes (Education Code 51815)

*(cf. 6142.4 - Service Learning/Community Service Classes)*

11. Eye safety devices, at a price not to exceed the district's actual costs (Education Code 32033)

*(cf. 5142 - Safety)*

12. Actual cost of furnishing copies of any student's records except, if he/she is a former student, up to two transcripts or two verifications of his/her various records (Education Code 49065)

*(cf. 5125 - Student Records)*

13. Actual costs of duplication for copies of public records (Government Code 6253)

*(cf. 1340 - Access to District Records)*

14. Actual costs of duplication for reproduction of the prospectus of school curriculum (Education Code 49091.14)

*(cf. 5020 - Parent Rights and Responsibilities)*

15. Food sold at school subject to free and reduced-price meal program eligibility and other restrictions specified in law (Education Code 38084)

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

*(cf. 3551 - Food Service Operations/Cafeteria Funds)*

*(cf. 3553 - Free and Reduced Price Meals)*

*(cf. 3554 - Other Food Sales)*

**FEES AND CHARGES** (continued)

16. Fines or reimbursements for lost or damaged district property or damage to library property (Education Code 19910-19911, 48904)

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

17. Tuition for district school attendance by an out-of-state and out-of-country resident (Education Code 48050, 48052, 52613; 8 USC 1184)

*(cf. 5111.2 - Nonresident Foreign Students)*

18. Adult education books, materials, and classes as specified in law (Education Code 52612, 60410)

*(cf. 6200 - Adult Education)*

Note: Pursuant to Education Code 8239 and 8263, as amended by SB 1016 (Ch. 38, Statutes of 2012), districts are required to charge a fee to families enrolled in part-day preschool programs operated under the California State Preschool Program and/or wraparound child care and development services in accordance with the fee schedule established by the Superintendent of Public Instruction; see AR 5148.3 - Preschool/Early Childhood Education.

19. Preschool and child care and development services (Education Code 8239, 8263)

*(cf. 5148 - Child Care and Development)*

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

Note: In Fiscal Management Advisory 97-02, the California Department of Education (CDE) opines that it is permissible for a district to require students to purchase their own gym clothes of a district-specified design and color, as long as the design and color are of a type sold for general wear outside of the school. According to the CDE, once the gym uniforms become specialized (e.g., logos, school name), they then become "school supplies" and the district must provide the items free of charge. It is important to note that Education Code 49066 provides that a student's grade may not be adversely affected due to the fact that he/she does not wear standardized physical education apparel due to circumstances beyond his/her control, such as lack of funds.

20. Physical education uniforms

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

# Coronado USD

## Board Policy

### Claims and Actions Against The District

BP 3320

#### Business and Noninstructional Operations

The Governing Board desires to ensure that the district's operations are conducted in a manner that minimizes risk, protects district resources, and promotes the health and safety of students, staff, and the public. Any and all claims for money or damages against the district shall be presented to and acted upon in accordance with law, Board policy, and administrative regulation as well as the district's Joint Powers Authority (JPA) agreement or insurance coverage.

(cf. 3530 - Risk Management/Insurance)

(cf. 5143 - Insurance)

Note: Limitations for paragraph below have been changed from three years to one year per counsel from attorneys representing the interests of the Coronado Unified School District.

Any claim for money or damages not governed by the Government Claims Act (Government Code 810-996.6) or excepted by Government Code 905 shall be presented consistent with the manner and time limitations in the Government Claims Act, unless a procedure for processing such claims is otherwise provided by state or federal law, except that claims for money or damages specifically excepted from Government Code 905, including but not limited to claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances, shall be filed not later than one year after the accrual of the cause of action. (Government Code 905, 911.2, 935)

Upon notice to the district of a claim, the Superintendent or designee shall take all necessary steps to protect the district's rights under any applicable contractual agreements, including the right to indemnification from its insurance or other coverage provider.

In accordance with Government Code 935.4, the Board delegates to the Superintendent the authority to allow, compromise, or settle claims of \$50,000 or less pursuant to any conditions of coverage in the district's JPA agreement or insurance.

This policy applies retroactively to any existing causes of action and/or claims for money and/or damages.

#### Roster of Public Agencies

The Superintendent or designee shall file the information required for the Roster of Public Agencies with the Secretary of State and the County Clerk. This information shall include the name of the school district, the mailing address of the Board, and the names and addresses of the

Board presiding officer, the Board clerk or secretary, and other members of the Board.  
(Government Code 53051)

Any changes to such information shall be filed within 10 days after the change has occurred.  
(Government Code 53051)

Legal Reference:

EDUCATION CODE

35200 Liability for debts and contracts

35202 Claims against districts; applicability of Government Code

CODE OF CIVIL PROCEDURE

340.1 Damages suffered as result of childhood sexual abuse

GOVERNMENT CODE

800 Cost in civil actions

810-996.6 Claims and actions against public entities

6500-6536 Joint exercise of powers

53051 Information filed with secretary of state and county clerk

PENAL CODE

72 Fraudulent claims

COURT DECISIONS

City of Stockton v. Superior Court, (2007) 42 Cal. 4th 730

Connelly v. County of Fresno, (2006) 146 Cal.App.4th 29

CSEA v. South Orange Community College District, (2004) 123 Cal.App.4th 574

CSEA v. Azusa Unified School District, (1984) 152 Cal.App.3d 580

Management Resources:

WEB SITES

California Secretary of State's Office: <http://www.sos.ca.gov>

Policy CORONADO UNIFIED SCHOOL DISTRICT

adopted: June 16, 2011 Coronado, California

# Coronado USD

## Administrative Regulation

### Claims and Actions Against The District

AR 3320

#### Business and Noninstructional Operations

#### Time Limitations

The following time limitations apply to claims against the district:

1. Claims for money or damages relating to a cause of action for death or for injury to person, personal property, or growing crops shall be presented to the Governing Board not later than six months after the accrual of the cause of action. (Government Code 905, 911.2)
2. Claims for money or damages as authorized in Government Code 905 and not included in item #1 above, including claims for damages to real property, shall be presented not later than one year after the accrual of the cause of action. (Government Code 905, 911.2)

Note: Limitations for Item #3 have been changed from three years to one year per counsel from attorneys representing the interests of the Coronado Unified School District.
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3. Claims for money or damages specifically excepted from Government Code 905, including but not limited to claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances, shall be filed not later than one year after the accrual of the cause of action. (Government Code 905, 911.2, 935)

#### Receipt of Claims

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

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

#### Review of Contents of the Claim

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

1. The name and post office address of the claimant
2. The post office address to which the person presenting the claim desires notices to be sent
3. The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted
4. A general description of the indebtedness, obligation, injury, damage, or loss incurred insofar as it may be known at the time of presentation of the claim
5. The name(s) of the public employee(s) causing the injury, damage, or loss if known
6. The amount claimed if it totals less than \$10,000 as of the date of the presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, the dollar amount shall not be included in the claim and the claimant shall indicate whether the claim is a "limited civil case."
7. The signature of the claimant or the person acting on his/her behalf

#### Notice of Claim Insufficiency

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

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

#### Amendment to Claims

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

#### Late Claims

For claims under item #1 in the section entitled "Time Limitations" above, any person who presents a claim later than six months after the accrual of the cause of action shall present, along with the claim, an application to present a late claim. Such claim and the application to present a late claim shall be presented not later than one year after the accrual of the cause of action. (Government Code 911.4)

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

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

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

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

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

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

#### Action on Claims

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

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

1. If the Board finds that the claim is not a proper charge against the district, the claim shall be rejected.

2. If the Board finds that the claim is a proper charge against the district and is for an amount justly due, the claim shall be allowed.
3. If the Board finds that the claim is a proper charge against the district but is for an amount greater than is justly due, the Board shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
4. If legal liability of the district or the amount justly due is disputed, the Board may reject or compromise the claim.
5. If the Board takes no action on the claim, the claim shall be deemed rejected.

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

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

Regulation    CORONADO UNIFIED SCHOOL DISTRICT  
approved: June 16, 2011    Coronado, California

**TRANSPORTATION SAFETY AND EMERGENCIES**

**Cautionary Notice:** AB 1610 (Ch. 724, Statutes of 2010) amended Government Code 17581.5 to relieve districts from the obligation to implement specified statutes whenever they are identified in the Budget Act as being ones for which state mandate reimbursement is not provided for that fiscal year. As a result, certain provisions of the following administrative regulation that reflect those requirements may be suspended. It is recommended that districts consult legal counsel prior to suspending any provisions.

Note: The following regulation is for use by districts that provide school bus transportation services and employ their own school bus drivers. Districts that contract out for all transportation services may revise this regulation as appropriate to ensure that the contracting firm meets all legal requirements regarding transportation safety.

Each day, prior to driving a school bus, each school bus driver shall inspect the bus to ensure that it is in safe operating condition and equipped as required by law and that all equipment is in good working order. At the completion of each day's work, the driver shall prepare and sign a written report of the condition of the equipment listed in 13 CCR 1215, including any defect or deficiency discovered by or reported to him/her which would affect safe operation or result in mechanical breakdown of the bus, or indicating that no defect or deficiency was discovered or reported. Any defect or deficiency that would affect safe operation shall be repaired prior to operating the bus. (13 CCR 1215)

*(cf. 3540 - Transportation)*  
*(cf. 3541.1 - Transportation for School-Related Trips)*  
*(cf. 3542 - School Bus Drivers)*

In the event of a school bus accident, the driver shall immediately notify the California Highway Patrol, the Superintendent or designee, and, if the bus is operated under contract, the driver's employer. The driver shall not leave the immediate vicinity of the bus to seek aid unless necessary. (13 CCR 1219)

The Superintendent or designee shall review all investigations of bus incidents and accidents to develop preventative measures.

*(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)*

**Passenger Restraint Systems**

Note: Pursuant to Vehicle Code 27316 and 27316.5, any school bus or student activity bus purchased or leased for use in California must be equipped with a passenger restraint system if the bus was manufactured on or after the dates specified in law, as described below. Although it is the manufacturer's responsibility to ensure installation of appropriate passenger restraint systems, the district should be aware that buses manufactured or purchased from outside California may need to be modified to comply with the state's requirements. In addition, according to the California Department of Education's (CDE) [Passenger Restraints Frequently Asked Questions](#), districts may, but are not required to, retrofit older school buses with passenger restraint systems with the original equipment manufacturer's approval. In determining whether to retrofit buses, the CDE recommends that districts consider the age of the bus, the total cost of the retrofit, and the required re-inspection of the bus by the California Highway Patrol.

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)

The Superintendent or designee shall ensure that any school bus or student activity bus which is purchased or leased by the district is equipped with a combination pelvic and upper torso passenger restraint system at all designated seating positions if that bus: (Vehicle Code 27316, 27316.5; 13 CCR 1201)

1. Is a Type 1 school bus manufactured on or after July 1, 2005 which is designed for carrying more than 16 passengers and the driver
2. Is a Type 2 school bus or student activity bus manufactured on or after July 1, 2004 which meets one of the following criteria:
  - a. Is designed for carrying 16 or fewer passengers and the driver
  - b. Has a manufacturer's vehicle weight rating of 10,000 pounds or less and is designed for carrying not more than 20 passengers and the driver

Note: The following **optional** paragraph reflects legislative intent of Vehicle Code 27316.

**OK** The Superintendent or designee shall prioritize the allocation of school buses purchased, leased, or contracted to ensure that elementary students receive first priority for new school buses equipped with passenger restraint systems whenever feasible.

When a school bus or student activity bus is equipped with a passenger restraint system, all passengers shall use the passenger restraint system. (5 CCR 14105)

Note: Pursuant to Vehicle Code 27316, no person, district, or organization may be held criminally liable if a passenger improperly uses or fails to use the passenger restraint system. However, the CDE's Passenger Restraints Frequently Asked Questions encourages districts to develop procedures to enforce disciplinary actions for nonuse or improper use of the passenger restraint system.

The following **optional** paragraph may be expanded to specify the steps that should be taken by the driver to reasonably ensure that all passengers are properly restrained (e.g., verbal instructions to students, visual inspection), which may vary depending on the age/grade levels of the students. Such steps also may be incorporated in district regulations adopted pursuant to 5 CCR 14103 related to student conduct on buses, bus driver authority, and the suspension of riding privileges; see BP/AR 5131.1 - Bus Conduct.

Bus drivers shall be instructed regarding procedures to enforce the proper use of the passenger restraint system. Students who fail to follow instructions of the bus driver may be subject to discipline, including suspension of riding privileges, in accordance with Board policy and administrative regulations.

(cf. 5131.1 - Bus Conduct)  
(cf. 5144 - Discipline)

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)**Fire Extinguishers**

Each school bus shall be equipped with at least one fire extinguisher located in the driver's compartment which meets the standards specified in law. In addition, a wheelchair school bus shall have another fire extinguisher placed at the wheelchair loading door or emergency exit. All fire extinguishers shall be regularly inspected and serviced in accordance with regulations adopted by the State Fire Marshal. (Education Code 39838; 13 CCR 1242; 19 CCR 574-575.3)

**Electronic Communications Devices**

Note: Vehicle Code 23123 prohibits any person from driving a motor vehicle while using a wireless telephone, except under the conditions described below. Pursuant to the definitions in Vehicle Code 415 and 545, a "motor vehicle" would include a school bus or student activity bus. In addition, Vehicle Code 23125 prohibits a person from driving a school bus while using a wireless telephone except for work-related or emergency purposes. At its discretion, the district may establish conditions that are more restrictive than law and should revise the following list accordingly.

A bus driver shall not drive a school bus or student activity bus while using a wireless telephone, except under the following conditions: (Vehicle Code 23123, 23125)

1. When he/she uses a wireless telephone that is specifically designed and configured to allow hands-free listening and talking, provided it is used in that manner while driving
2. For emergency purposes, including, but not limited to, a call to a law enforcement agency, health care provider, fire department, or other emergency service agency or entity
3. For work-related purposes

*(cf. 3513.1 - Cellular Phone Reimbursement)*

Note: Vehicle Code 23123.5 generally prohibits any person from driving a motor vehicle while using an electronic wireless communications device for text-based communication. AB 1536 (Ch. 92, Statutes of 2012) amended Vehicle Code 23123.5 to add an exception for the use of voice-operated and hands-free operation of an electronic wireless communications device. At its discretion, the district may establish conditions that are more restrictive than law and should revise the following paragraph accordingly.

A bus driver shall not drive while using an electronic wireless communications device to write, send, or read a text-based communication, including, but not limited to, text messages, instant messages, and email, unless the device is specifically designed and configured to

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)

allow voice-operated and hands-free operation and is used in that manner. This prohibition does not include reading, selecting, or entering a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call. (Vehicle Code 23123.5)

**Safe Bus Operations**

Note: Pursuant to Education Code 39834, any Governing Board member, employee, or other person who knowingly operates or permits operation of a school bus in excess of its seating capacity is guilty of a misdemeanor. However, the Board is authorized to adopt policy that allows seating capacities to be exceeded in cases of emergency; see BP/AR 3516 - Emergencies and Disaster Preparedness Plan.

School buses and student activity buses shall not be operated whenever the number of passengers exceeds bus seating capacity, except when necessary in emergency situations which require that individuals be transported immediately to ensure their safety. (Education Code 39834)

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

Note: Vehicle Code 34501.6 **mandates** any district that provides student transportation to adopt procedures that limit bus operation when atmospheric conditions reduce visibility, as described below, and that give drivers for school activity trips discretionary authority to discontinue operation when it is unsafe.

School bus operations shall be limited when atmospheric conditions reduce visibility on the roadway to 200 feet or less during regular home-to-school transportation service. Bus drivers for school activity trips may discontinue bus operation whenever they determine that it is unsafe to continue operation because of reduced visibility. (Vehicle Code 34501.6)

**Unauthorized Entry**

The Superintendent or designee may place a notice at bus entrances that warns against unauthorized entry. The driver or another school official may order any person to disembark if that person enters a bus without prior authorization. (Education Code 39842; 13 CCR 1256.5)

*(cf. 3515.2 - Disruptions)*

**Transportation Safety Plan for Boarding and Exiting Buses**

Note: The district should modify items #1-2 below to reflect grade levels offered by the district. A district that does not maintain any of grades prekindergarten through 8 should delete items #1-2.

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)

The Superintendent or designee shall develop a transportation safety plan containing procedures for school personnel to follow to ensure the safe transport of students. The plan shall include all of the following: (Education Code 39831.3)

1. Procedures for determining if students in grades prekindergarten through 8 require an escort to cross a private road or highway at a bus stop pursuant to Vehicle Code 22112
2. Procedures for all students in grades prekindergarten through 8 to follow as they board and exit the bus at their bus stops
3. Procedures for boarding and exiting a school bus at a school or other trip destination

A copy of the plan shall be kept at each school site and made available upon request to the California Highway Patrol. (Education Code 39831.3)

**Parental Notifications**

Note: The following section is for use by districts that offer any of grades prekindergarten through 6 and should be revised to reflect the grade levels offered by the district.

The Superintendent or designee shall provide written safety information to the parents/guardians of all students in grades prekindergarten through 6 who have not previously been transported in a school bus or student activity bus. This information shall be provided upon registration and shall contain: (Education Code 39831.5)

1. A list of school bus stops near each student's home
2. General rules of conduct at school bus loading zones
3. Red light crossing instructions
4. A description of the school bus danger zone
5. Instructions for safety while walking to and from school bus stops

*(cf. 5145.6 - Parental Notifications)*

**Student Instruction**

Students who are transported in a school bus or student activity bus shall receive instruction in school bus emergency procedures and passenger safety as follows: (Education Code 39831.5; 5 CCR 14102)

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)

1. Each year, all students who receive home-to-school transportation in a school bus shall be provided appropriate instruction in safe riding practices and emergency evacuation drills.

Note: Item #2 below is for use by districts that offer any of grades prekindergarten through 8 and should be revised to reflect the grade levels offered by the district.
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2. At least once each school year, all students in grades prekindergarten through 8 who receive home-to-school transportation shall receive safety instruction which includes, but is not limited to:
  - a. Proper loading and unloading procedures, including escorting by the driver
  - b. How to safely cross the street, highway, or private road
  - c. In school buses with passenger restraint systems, instruction in the use of such systems as specified in 5 CCR 14105, including, but not limited to, the proper fastening and release of the passenger restraint system, acceptable placement of passenger restraint systems on students, times at which the passenger restraint systems should be fastened and released, and acceptable placement of the passenger restraint systems when not in use
  - d. Proper passenger conduct
  - e. Bus evacuation procedures
  - f. Location of emergency equipment

As part of this instruction, students shall evacuate the school bus through emergency exit doors. Instruction also may include responsibilities of passengers seated next to an emergency exit.

Each time the above instruction is given, the following information shall be documented:

- a. District name
- b. School name and location
- c. Date of instruction
- d. Names of supervising adults

**TRANSPORTATION SAFETY AND EMERGENCIES** (continued)

- e. Number of students participating
- f. Grade levels of students
- g. Subjects covered in instruction
- h. Amount of time taken for instruction
- i. Bus driver's name
- j. Bus number
- k. Additional remarks

This documentation shall be kept on file at the district office or the school for one year and shall be available for inspection by the California Highway Patrol.

Note: Item #3 below applies to all students in grades prekindergarten through 12 and may be revised to reflect grade levels offered by the district.
--

- 3. Before departing on a school activity trip, all students riding on a school bus or student activity bus shall receive safety instruction which includes, but is not limited to, the location of emergency exits and the location and use of emergency equipment. This instruction also may include responsibilities of passengers seated next to an emergency exit.

*Legal Reference: (see next page)*

**TRANSPORTATION SAFETY AND EMERGENCIES (continued)**

*Legal Reference:*

EDUCATION CODE

39830-39842 *Transportation, school buses*

51202 *Instruction in personal and public health and safety*

PENAL CODE

241.3 *Assault against school bus driver*

243.3 *Battery against school bus driver*

VEHICLE CODE

415 *Definition of motor vehicle*

545-546 *Definition of school bus and student activity bus*

22112 *Loading and unloading passengers*

23123 *Use of wireless telephone prohibited while driving motor vehicle*

23123.5 *Text communications prohibited while driving motor vehicle*

23125 *Use of wireless telephone prohibited while driving school bus*

27316-27316.5 *Passenger restraint systems*

34500 *California Highway Patrol responsibility to regulate safe operation of school buses*

34501.5 *California Highway Patrol responsibility to adopt rules re: safe operation of school buses*

34501.6 *School buses; reduced visibility*

34508 *California Highway Patrol responsibility to adopt rules re: equipment and operations of school buses*

CODE OF REGULATIONS, TITLE 5

14100-14105 *School buses and student activity buses*

CODE OF REGULATIONS, TITLE 13

1200-1293 *Motor carrier safety*

2480 *Airborne toxic control measure; limitation on bus idling*

CODE OF REGULATIONS, TITLE 19

574-575.3 *Inspection and maintenance of fire extinguishers*

CODE OF FEDERAL REGULATIONS, TITLE 49

571.1-571.500 *Motor vehicle standards, including school buses*

*Management Resources:*

WEB SITES

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

*California Association of School Transportation Officials: <http://www.castoways.org>*

*California Department of Education, Office of School Transportation: <http://www.cde.ca.gov/lst/m>*

*California Highway Patrol: <http://www.chp.ca.gov>*

*National Coalition for School Bus Safety: <http://www.ncsbs.org>*

*National Transportation Safety Board: <http://www.nts.gov>*

*U.S. Department of Transportation, National Highway Traffic Safety Administration:  
<http://www.nhtsa.dot.gov>*

**NONDISCRIMINATION IN EMPLOYMENT**

Note: The following policy reflects the provisions of the California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996), which prohibits employers from discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, sex, sexual orientation, gender, gender identity, gender expression, religious creed, physical or mental disability, medical condition, marital status, or genetic information. All of these protections also are provided under various provisions of federal law, including Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), the Americans with Disabilities Act (42 USC 12101-12213), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Genetic Information Nondiscrimination Act (42 USC 2000ff-2000ff-11).

For policy addressing sexual harassment of and by employees, see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

The Governing Board desires to provide a positive work environment where employees and job applicants are assured of equal access and opportunities and are free from harassment in accordance with law. The Board prohibits district employees from discriminating against or harassing any other district employee or job applicant on the basis of the person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation.

- (cf. 0410 - Nondiscrimination in District Programs and Activities)*
- (cf. 4032 - Reasonable Accommodation)*
- (cf. 4033 - Lactation Accommodation)*
- (cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*
- (cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)*
- (cf. 4154/4254/4354 - Health and Welfare Benefits)*
- (cf. 5145.7 - Sexual Harassment)*

Prohibited discrimination consists of the taking of any adverse employment action against a person, including termination or denial of promotion, job assignment, or training, or in discriminating against the person in compensation, terms, conditions, or other privileges of employment based on any of the prohibited categories of discrimination listed above.

Note: Government Code 12940, as amended by AB 1964 (Ch. 287, Statutes of 2012), provides that a district may not discriminate against an employee or job applicant based on the person's religious beliefs, observances, or dress or grooming practices unless it can demonstrate that it has explored available reasonable alternative means of accommodating the person but is unable to reasonably accommodate him/her. In addition, Government Code 12926, as amended by AB 2386 (Ch. 701, Statutes of 2012), clarifies the definitions of "religious creed" and "sex," as stated below.

The prohibition against discrimination based on the religious creed of an employee or job applicant includes any discrimination based on the person's religious dress or grooming

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

practices or any conflict between the person's religious belief, observance, or practice and an employment requirement. The prohibition against discrimination based on the sex of an employee or job applicant shall include any discrimination based on the person's pregnancy, childbirth, breastfeeding, or any related medical conditions. (Government Code 12926, 12940)

Harassment consists of any unwelcome verbal, physical, or visual conduct that is based on any of the prohibited categories of discrimination listed above and that is so severe or pervasive that it adversely affects an individual's employment opportunities, has the purpose or effect of unreasonably interfering with the individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Note: In Thompson v. North American Stainless LP, the U.S. Supreme Court held that a third party may file an antiretaliation suit.

The Board also prohibits retaliation against any district employee or job applicant who complains, testifies, assists, or in any way participates in the district's complaint procedures instituted pursuant to this policy.

Any district employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4117.4 - Dismissal)*

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

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

Note: Many nondiscrimination laws and regulations require identification of an employee who will be responsible for compliance with the nondiscrimination laws, as provided in the following paragraph. For example, pursuant to 34 CFR 104.7 and 106.8, the district is required to designate the person(s) responsible for the overall implementation of the requirements of Title IX and Section 504, which prohibit discrimination on the basis of sex and disability.

The following position is designated as Coordinator for Nondiscrimination in Employment:

Senior Director of Human Resources

(position title)

201 6<sup>th</sup> Street, Coronado, CA 92118

(address)

619.522.8900 x1013

(telephone number)

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of district policy should, as appropriate, immediately contact his/her supervisor, the Coordinator, or the Superintendent who shall advise the employee or applicant about the district's procedures for filing, investigating, and resolving any such complaint.

Note: For a sample procedure to be used by district employees or job applicants to complain about perceived discrimination in employment, see AR 4031 - Complaints Concerning Discrimination in Employment.

Complaints regarding employment discrimination or harassment shall immediately be investigated in accordance with AR 4031 - Complaints Concerning Discrimination in Employment.

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

Note: Pursuant to 2 CCR 7287.6, in certain instances, an employee's (especially a supervisor's) knowledge or notice of harassment may subject the district to liability. Therefore, it is recommended that the district require its employees with knowledge of harassment or discrimination to report the incident to the appropriate district authorities. In addition, Government Code 12940 provides that an employer may be responsible for the sexual harassment of employees by nonemployees where the employer knows or should have known of the conduct and failed to take immediate and corrective action. See BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to the Coordinator or Superintendent as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

**Training and Notifications**

Note: Government Code 12950.1 requires any district with 50 or more employees to provide two hours of sexual harassment training and education to supervisory employees once every two years.

In addition, Government Code 12940 requires districts to take all reasonable steps to prevent prohibited discrimination and harassment. Such steps include adopting an effective policy that contains provisions for training employees and providing them with required notifications. See AR 4119.11/4219.11/4319.11 - Sexual Harassment for information regarding sexual harassment training.

Although not required by law, risk managers and legal counsel often recommend that all employees receive training regarding harassment in order to help mitigate damages in the event of litigation.

The Superintendent or designee shall provide training to employees about how to recognize harassment and discrimination, how to respond appropriately, and components of the district's policies and regulations regarding discrimination.

## **NONDISCRIMINATION IN EMPLOYMENT (continued)**

*(cf. 4131- Staff Development)*

*(cf. 4231- Staff Development)*

*(cf. 4331- Staff Development)*

Note: Pursuant to 34 CFR 100.6(d) and 106.9 and 28 CFR 35.106, the district is required to continually notify job applicants that it does not discriminate on the basis of race, color, national origin, sex, disability, or age.

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The district's policy shall be posted in all district schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

### *Legal Reference:*

EDUCATION CODE

200-262.4 *Prohibition of discrimination*

CIVIL CODE

51.7 *Freedom from violence or intimidation*

GOVERNMENT CODE

11135 *Unlawful discrimination*

12900-12996 *Fair Employment and Housing Act*

PENAL CODE

422.56 *Definitions, hate crimes*

CODE OF REGULATIONS, TITLE 2

7287.6 *Terms, conditions and privileges of employment*

CODE OF REGULATIONS, TITLE 5

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

UNITED STATES CODE, TITLE 20

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

UNITED STATES CODE, TITLE 29

621-634 *Age Discrimination in Employment Act*

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

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

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

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

2000h-2-2000h-6 *Title IX of the Civil Rights Act of 1964*

6101-6107 *Age discrimination in federally assisted programs*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

*Legal Reference continued: (see next page)*

## **NONDISCRIMINATION IN EMPLOYMENT (continued)**

*Legal Reference continued:*

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863

Shepard v. Loyola Marymount, (2002) 102 Cal.App.4th 837

*Management Resources:*

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

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Questions and Answers: Religious Discrimination in the Workplace, 2008

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEB SITES

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

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

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

**All Personnel**

AR 4161.2(a)

4261.2

**PERSONAL LEAVES**

4361.2

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

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

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

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

*(cf. 4121 - Temporary/Substitute Personnel)*

**Bereavement**

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

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

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

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

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

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

## PERSONAL LEAVES (continued)

### Personal Necessity

Note: Employees may use a maximum of seven days of accumulated personal illness/injury leave (sick leave) for reasons of personal necessity pursuant to Education Code 44981 (certificated employees) and 45207 (classified employees). Pursuant to Education Code 44981 and 45207, a higher maximum may be set for certificated and classified employees if specified in their collective bargaining agreement or, if there is no collective bargaining agreement for classified employees, then in a Board resolution. Districts that have established a maximum that is higher than seven days should modify the following paragraph accordingly.

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

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

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

Acceptable reasons for the use of personal necessity leave include:

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

Note: Education Code 44981 provides that a certificated employee may use personal necessity leave for the serious illness of a member of his/her immediate family. The Board may extend these provisions to classified employees under the authority granted to the Board by Education Code 45207. Districts are cautioned to consult legal counsel regarding any interaction of Education Code provisions with Labor Code 233, which states that any employer who provides personal illness/injury leave for employees must permit employees to use personal illness/injury leave to attend to the illness of a child, parent, spouse, registered domestic partner, or registered domestic partner's child. See AR 4161.1/4361.1 - Personal Illness/Injury Leave and AR 4261.1 - Personal Illness/Injury Leave. Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for federal and state provisions related to leaves for the birth, adoption, or foster placement of a new child; the care of a seriously ill child, parent, or spouse/registered domestic partner; or the employee's own serious health condition.

3. A serious illness of a member of the certificated employee's immediate family (Education Code 44981)

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

## PERSONAL LEAVES (continued)

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

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

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

OK

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

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, no such leave shall be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether a request reflects personal necessity.

Note: Education Code 44981 and 45207 specify circumstances under which certificated and classified employees cannot be required to seek advance permission for the leave. However, only certificated employees are afforded the right, pursuant to Education Code 44981, to not be required to provide advance notice for leave due to a serious illness of the employee's family member. Districts may, at their discretion, extend this right to all employees as stated in the following optional paragraph. Districts that wish to restrict the provision to certificated employees should revise the paragraph accordingly.

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

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

However, the employee shall notify the Superintendent or designee of the need for the leave as soon as practicable.

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

## PERSONAL LEAVES (continued)

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

### Legal Duties

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

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

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

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

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

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

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

OK

A certificated employee also shall be granted leave for jury duty with pay up to the amount of the difference between his/her regular earnings and any amount received for jury fees.

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

## **PERSONAL LEAVES** (continued)

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Employees shall be granted leave to appear in court as witnesses other than litigants or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such employees shall receive pay up to the amount of the difference between the employee's regular earnings and any amount received for witness fees.

### **Leaves for Crime Victims**

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

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

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

Note: Pursuant to Labor Code 230.2, employees may use any of the types of leave listed in the following paragraph, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of an employee. The district should modify the following paragraph as necessary to reflect the terms of its collective bargaining agreement(s).

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

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

**PERSONAL LEAVES** (continued)

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

**Leaves for Victims of Domestic Violence or Sexual Assault**

Note: Labor Code 230 and 230.1 prohibit a district from taking adverse employment action against an employee who is a victim of sexual assault or domestic violence and who takes leave as described in the following section. Pursuant to Labor Code 230 and 230.1, such an employee may use vacation, personal leave, or compensatory time off that is otherwise available under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of an employee. The district should modify the following paragraph as necessary to reflect the terms of its collective bargaining agreement(s).

An employee who is a victim of domestic violence or sexual assault as defined by law may use vacation, personal leave, or compensatory time off that is otherwise available to him/her under the terms of his/her employment to attend to the following activities: (Labor Code 230, 230.1)

1. Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his/her child

Note: Labor Code 230.1 requires a district with 25 or more employees to grant time off to an employee who is a victim of sexual assault or domestic violence for the following additional reasons. **A district with fewer than 25 employees may use or delete items #2-5 below at its discretion.**

2. Seek medical attention for injuries caused by domestic violence or sexual assault
3. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault
4. Obtain psychological counseling related to an experience of domestic violence or sexual assault
5. Participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation

Prior to taking time off, an employee shall give reasonable notice to his/her supervisor, unless advance notice is not feasible. When an unscheduled absence occurs, the employee

## **PERSONAL LEAVES** (continued)

shall provide, within a reasonable period of time, certification of the absence in the form of any of the following documents: (Labor Code 230, 230.1)

1. A police report indicating that the employee was a victim of domestic violence or sexual assault
2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court
3. Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence or sexual assault

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

### **Personal Leave for a Child's School Activities**

Note: Pursuant to Labor Code 230.8, the following section applies to any district employing 25 or more employees at the same location. **A district with fewer than 25 employees at the same location may use or delete this section at its discretion.**

Any employee who is a parent/guardian, or grandparent having custody, of one or more children who are enrolled in grades K-12 or who attend a licensed day care facility may use up to 40 hours of personal leave, vacation, or compensatory time off each school year in order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the year. The employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

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

**OK**

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

If both parents/guardians of a child are employed at the same work site, this leave shall be allowed for the first parent/guardian who applies. Simultaneous absence by the second parent/guardian may be granted by the Superintendent or designee. (Labor Code 230.8)

AR 4161.2(h)  
4261.2  
4361.2

## **PERSONAL LEAVES** (continued)

Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed day care facility that he/she participated in school or licensed day care facility activities on a specific date and at a particular time. (Labor Code 230.8)

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

## **Service on Education Boards and Committees**

Upon request, a certificated employee shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education board, commission, committee, or group authorized by Education Code 44987.3 provided that all of the following conditions are met: (Education Code 44987.3)

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

## **Employee Organization Activities**

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

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

Upon request, any certificated or classified employee shall be granted a leave of absence without loss of compensation to serve as an elected officer of a district employee organization or any statewide or national employee organization with which the employee organization is affiliated. The leave shall include, but is not limited to, absence for purposes

AR 4161.2(i)  
4261.2  
4361.2

## PERSONAL LEAVES (continued)

of attending periodic, stated, special, or regular meetings of the body of the organization. (Education Code 44987, 45210)

(cf. 4140/4240/4340 - Bargaining Units)  
(cf. 4143/4243 - Negotiations)

Note: AB 1203 (Ch. 804, Statutes of 2012) amended Education Code 45210 to require districts to grant a paid leave of absence to a reasonable number of classified employees serving as unelected members of the employee organization or a statewide or national public employee organization when the employee attends "important organizational activities authorized by the public employee organization." Compensation must include the required retirement fund contributions. The employee will continue to earn full service credit during the leave and must pay member contributions as specified. The maximum amount of service credit an employee may earn cannot exceed 12 years. As amended, Education Code 45210 also requires that an employee organization provide reasonable notification to the district when requesting a leave of absence for employees without loss of compensation.

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

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

### Religious Leave

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

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

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

AR 4161.2(j)  
4261.2  
4361.2

## **PERSONAL LEAVES** (continued)

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

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

### **Spouse on Leave from Military Deployment**

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

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

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

### **Leave for Emergency Duty**

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

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

Note: Labor Code 230.4 requires a district with 50 or more employees to grant an employee who is a volunteer firefighter leaves of absence for up to 14 days per calendar year for activities as specified below. **A district with fewer than 50 employees may use or delete this paragraph at its discretion.**

AR 4161.2(k)  
4261.2  
4361.2

## PERSONAL LEAVES (continued)

An employee who is a volunteer firefighter shall be permitted to take temporary leaves of absence, not to exceed an aggregate total of 14 days per calendar year, for the purpose of engaging in fire or law enforcement training. (Labor Code 230.4)

### Civil Air Patrol Leave

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

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

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

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

#### *Legal Reference:*

##### EDUCATION CODE

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

*Legal Reference continued: (see next page)*

## PERSONAL LEAVES (continued)

### *Legal Reference: (continued)*

#### EDUCATION CODE (continued)

45207 *Personal necessity (classified)*

45210 *Service as officer of employee organization (classified)*

45240-45320 *Merit system, classified employees*

#### FAMILY CODE

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

#### GOVERNMENT CODE

3543.1 *Release time for representatives of employee organizations*

12945.1-12945.2 *California Family Rights Act*

#### LABOR CODE

230-230.2 *Leave for victims of domestic violence, sexual assault, or specified felonies*

230.3 *Leave for emergency personnel*

230.4 *Leave for volunteer firefighters*

230.8 *Leave to visit child's school*

233 *Illness of child, parent, spouse, domestic partner or domestic partner's child*

234 *Absence control policy*

1500-1507 *Civil Air Patrol leave*

#### MILITARY AND VETERANS CODE

395.10 *Leave when spouse on leave from military deployment*

#### PENAL CODE

667.5 *Violent felony, defined*

1192.7 *Serious felony, defined*

#### CALIFORNIA CONSTITUTION

*Article 1, Section 8 Religious discrimination*

#### UNITED STATES CODE, TITLE 29

2601-2654 *Family and Medical Leave Act*

#### UNITED STATES CODE, TITLE 42

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

#### COURT DECISIONS

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

#### PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

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

### *Management Resources:*

#### WEB SITES

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

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

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

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

**LAYOFF/REHIRE**

Note: The following **optional** regulation is subject to collective bargaining and may be deleted by those districts whose agreements fully cover the provisions specified below.

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

*(cf. 4121 - Temporary/Substitute Personnel)*

**Order of Layoff Within a Classification/Determination of Seniority**

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

Note: For any district whose average daily attendance (ADA) is under 400,000, Education Code 45308 defines "length of service" as employees' hours in paid status (Option 1 below). However, such a district may instead choose to enter into an agreement with the exclusive representative of classified employees to determine "length of service" based on an employee's date of hire (Option 2 below).

For any district with an ADA of 400,000 or higher, Education Code 45308 requires length of service to be based on the date of hire; such districts should select Option 2 below.

"Date of hire" is not defined in the law and could refer to the employee's first date of hire in the district or his/her date of hire in the classification or higher classification. Districts selecting Option 2 below may revise that paragraph to reflect the definition determined by the district or by agreement with the exclusive representative of classified employees, as applicable.

~~**OPTION 1:** "Length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that school is in session or closed. However, length of service shall not include hours compensated solely on an overtime basis, as provided in Education Code 45128, and shall not include hours for any service performed prior to entering into probationary or permanent status, except for service in a restricted position pursuant to Education Code 45105. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. (Education Code 45308)~~

~~For an employee who is a member of the Military Reserve or the National Guard, length of service credit shall be granted for military leave of absence, including voluntary or involuntary active duty during a period of national emergency or war. (Education Code 45297, 45308)~~

*(cf. 4161.5/4261.5/4361.5 - Military Leave)*

**LAYOFF/REHIRE** (continued)

~~Length of service credit may be granted for time spent on unpaid illness or maternity leave, unpaid family care leave, or unpaid industrial accident leave. Length of service credit shall not be granted for other types of unpaid leaves. (Education Code 45308)~~

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

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

*(cf. 4261.11 - Industrial Accident/Illness Leave)*

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**OPTION 2:** Length of service shall be determined by the date of hire. The employee who has been employed the shortest time by the district shall be laid off first. (Education Code 45308)

Note: The following paragraph applies to both Options 1 and 2. Pursuant to Education Code 45105 and 45259, persons employed in "restricted positions" are classified employees. However, they do not acquire permanent status or seniority credits unless they satisfy the conditions specified below.

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine his/her length of service, provided he/she has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class. (Education Code 45105)

*(cf. 4200 - Classified Personnel)*

**Notice of Layoff**

Note: Education Code 45117 requires that classified employees be given prior written notice when they are subject to layoff due to lack of work or lack of funds. AB 1908 (Ch. 860, Statutes of 2012) amended Education Code 45117 to extend the timeline for such notice to 60 days, as provided below.

Whenever a classified employee is to be laid off for lack of work or lack of funds, written notice shall be given to the employee, informing him/her of the layoff, the date the layoff goes into effect, any displacement rights, and reemployment rights. The notice shall be given: (Education Code 45117)

1. At least 60 days prior to the effective date of the layoff, if the layoff is for lack of work resulting from a bona fide reduction or elimination of service being performed.
2. No later than April 29, if the layoff is for lack of funds due to the expiration of a specially funded program at the end of any school year. However, if the termination date of the specially funded program is other than June 30, the employee shall be given notice at least 60 days from the effective date of the layoff.

**LAYOFF/REHIRE** (continued)

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

The district is not required to provide the 60-day notice in the event of an actual and existing financial inability to pay the salaries of classified employees or if the layoff is due to a lack of work resulting from conditions not foreseeable or preventable by the district. (Education Code 45117)

The district also is not required to provide the 60-day notice to any person hired as a short-term employee for a period not exceeding 60 days whose service may not be extended or renewed. (Education Code 45117)

**Reemployment**

Note: The following **optional** section specifies the rights of employees who are laid off or who take voluntary demotion or reduction in assigned time in lieu of layoff. Pursuant to Education Code 45308, laid-off classified employees have reemployment rights which are enforced in order of seniority rather than reverse order of layoff. In Tucker v. Grossmont Union High School District, a California appellate court ruled that a laid-off employee's reemployment right entitled him to preference over any new applicant to available positions for which he is qualified.

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. (Education Code 45114, 45298, 45308)

Note: Pursuant to San Mateo City School District v. Public Employment Relations Board, districts may adopt procedures which implement Education Code 45113 and 45114 as long as such procedures do not replace or set aside mandatory Education Code provisions. These procedures may be adopted pursuant to Board policy and/or collective bargaining agreement.

The following **optional** paragraph should be **deleted** by districts with a collective bargaining agreement that contains reemployment procedures, unless the district also has unrepresented classified employees.

When a vacancy occurs, the district shall give the employee with the most seniority an opportunity to accept or reject the position, by first calling the employee at his/her last known telephone number to notify him/her of the vacancy and then sending written notice by certified and standard mail to his/her last known address. The employee shall advise the district of his/her decision by any means no later than 10 calendar days from the date the notice was sent. If the employee accepts, he/she shall report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the district.

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

**LAYOFF/REHIRE** (continued)

In order to be reemployed, the employee must be capable of performing the essential duties of the job with or without reasonable accommodations. When an otherwise eligible employee is unable to perform the essential duties of the job, he/she shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

(*cf.* 4032 - Reasonable Accommodation)

Note: An argument can be made that, absent a collective bargaining provision to the contrary, once a district has offered a laid-off classified employee a position pursuant to the employee's reemployment rights under Education Code 45298 and that employee has refused the position, the district has discharged its duty to that employee. Whether or not such action conflicts with an employee's statutory right to reemployment is unclear.

The following two **optional** paragraphs should be used only with the approval of the district's legal counsel; the number of refusals that will trigger the removal of the employee's name from the district's list should be modified accordingly.

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and he/she will forfeit all reemployment rights to which he/she would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, his/her name shall be removed from the reemployment list and all reemployment rights to which he/she would otherwise be entitled shall be forfeited.

Note: AB 2307 (Ch. 586, Statutes of 2012) amended Education Code 45298 to provide that laid-off classified employees who are reemployed in a new position but fail to complete the probationary period for the new position shall be returned to the reemployment list for the remainder of the 39-month period, as provided below.

Although Education Code 45298 applies to districts using the merit system, pursuant to Education Code 45114, other districts are also required to lay off and reemploy classified employees in accordance with Education Code 45298.

If an employee is employed in a new position and fails to complete the probationary period in the new position, he/she shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment. (Education Code 45114, 45298)

**Reinstatement of Benefits**

Note: The following **optional** section should be **deleted** by districts that do not reinstate laid-off employee benefits upon reemployment and those whose collective bargaining agreements address the issue.

**LAYOFF/REHIRE** (continued)

When a laid-off employee is reemployed, all accumulated sick leave credit shall be restored.

A laid-off permanent employee shall be reemployed with all rights and benefits accorded to him/her at the time of layoff.

A laid-off probationary employee shall be reemployed as a probationary employee, and the previous time served toward the completion of the required probationary period shall be counted. He/she shall also be reemployed with all rights and benefits accorded to a probationary employee at the time of layoff.

A laid-off employee, when reemployed, shall be placed on the salary step held at the time of layoff. An employee who was bumped into a lower class shall, when reinstated to the previous class, be placed on the salary step to which he/she would have progressed had he/she remained there. An adjusted anniversary date shall be established for step increment purposes so as to reflect the actual amount of time served in the district.

**Voluntary Demotion or Reduction of Hours**

Classified employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the Governing Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

*Legal Reference: (see next page)*

**LAYOFF/REHIRE** (continued)

*Legal Reference:*

EDUCATION CODE

45101 Definitions

45103 Classified service in districts not incorporating the merit system

45105 Positions under various acts not requiring certification qualifications; classification

45113 Rules and regulations for classified service in districts not incorporating the merit system

45114 Layoff and reemployment procedures; definitions

45115 Layoff: Reinstatement from service retirement

45117 Notice of layoff

45286 Limited term employees

45297 Right to take equivalent examination while employee in military service

45298 Reemployment of persons laid off; voluntary demotions or reductions in time; districts adopting merit system

45308 Order of layoff and reemployment; length of service

45309 Reinstatement of permanent noncertified employees after resignation

UNITED STATES CODE, TITLE 38

4301-4307 Veterans' Reemployment Rights

COURT DECISIONS

Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4<sup>th</sup> 640

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 866

*Management Resources:*

WEB SITES

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

**CHRONIC ABSENCE AND TRUANCY**

Note: The following **optional** policy addresses both chronic absence, which refers to students missing an excessive number of school days for any reason, whether excused or unexcused, and truancy, which refers to students missing school without a valid excuse. AB 2616 (Ch. 432, Statutes of 2012) amended Education Code 48260 to define a "valid excuse" for purposes of classifying students as truants; see the accompanying administrative regulation. Also see BP/AR 5113 - Absences and Excuses for information about methods of verification of student absences.

CSBA's policy brief [Improving Student Achievement by Addressing Chronic Absence](#) provides further information about monitoring student attendance and strategies for addressing chronic absence.

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

*(cf. 5113 - Absences and Excuses)*

Note: The following **optional** paragraph may be revised to reflect district practice. Districts must monitor unexcused absences for the purpose of identifying students who are classified as truants pursuant to Education Code 48260-48273; see the accompanying administrative regulation. State law does not require districts to monitor chronic absence, although Education Code 60901 provides a definition of chronic absentees (i.e., students who are absent for any reason for 10 percent or more of the school days in the school year) which may be useful to districts that choose to monitor both excused and unexcused absences in order to identify students at risk.

Contingent on the receipt of federal funding, Education Code 60901 requires the California Department of Education (CDE) to include data on the quarterly rate of student attendance within the California Longitudinal Pupil Achievement Data System (CALPADS). When funded, the system will periodically provide districts with districtwide, school, class, and individual student reports on rates of absence and chronic absentees, and will provide early warning reports to identify individual students who are at risk of academic failure or dropping out of school. Districts' submission of attendance data to CALPADS will be voluntary.

Other tools to calculate chronic absence are available, such as the [District Attendance Tracking Tool](#) and [School Attendance Tracking Tool](#) from Attendance Works and an online software application from OnTrackCA; see the management resources listed below in this policy.

The Superintendent or designee shall establish a system to accurately track student attendance in order to identify individual students classified as chronic absentees and truants, as defined in law and administrative regulation.

The Superintendent or designee shall develop strategies that focus on prevention of attendance problems, which may include, but are not limited to, efforts to provide a safe and

**CHRONIC ABSENCE AND TRUANCY** (continued)

positive school environment, relevant and engaging learning experiences, school activities that help develop students' feelings of connectedness with the school, school-based health services, and incentives and rewards to recognize students who achieve excellent attendance or demonstrate significant improvement in attendance. The Superintendent or designee also shall develop strategies that enable early outreach to students as soon as they show signs of poor attendance.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 0450 - Comprehensive Safety Plan)*  
*(cf. 5126 - Awards for Achievement)*  
*(cf. 5131 - Conduct)*  
*(cf. 5131.2 - Bullying)*  
*(cf. 5137 - Positive School Climate)*  
*(cf. 5141.6 - School Health Services)*  
*(cf. 5145.3 - Nondiscrimination/Harassment)*

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

The Superintendent or designee shall work with students, parents/guardians, school staff, and community agencies, as appropriate, to identify factors contributing to chronic absence and truancy. He/she also may collaborate with child welfare services, law enforcement, courts, public health care agencies, other government agencies, and/or medical, mental health, and oral health care providers to ensure that alternative educational programs and nutrition, health care, and other support services are available for students and families and to intervene as necessary when students have serious attendance problems.

*(cf. 1020 - Youth Services)*  
*(cf. 5030 - Student Wellness)*  
*(cf. 5146 - Married/Pregnant/Parenting Students)*  
*(cf. 5147 - Dropout Prevention)*  
*(cf. 5149 - At-Risk Students)*  
*(cf. 6158 - Independent Study)*  
*(cf. 6164.2 - Guidance/Counseling Services)*  
*(cf. 6164.5 - Student Success Teams)*  
*(cf. 6173 - Education for Homeless Children)*  
*(cf. 6173.1 - Education for Foster Youth)*  
*(cf. 6173.2 - Education of Children of Military Families)*  
*(cf. 6175 - Migrant Education Program)*  
*(cf. 6179 - Supplemental Instruction)*  
*(cf. 6181 - Alternative Schools/Programs of Choice)*  
*(cf. 6183 - Home and Hospital Instruction)*  
*(cf. 6184 - Continuation Education)*  
*(cf. 6185 - Community Day School)*

**CHRONIC ABSENCE AND TRUANCY** (continued)

Note: State law establishes a series of interventions that the district is required or authorized to impose depending on the number of trancies committed by a student; see the accompanying administrative regulation. Habitually truant students, as defined in Education Code 48262, may be referred to a school attendance review board (SARB) established by the county or, if no county SARB exists, to a SARB established by the district Governing Board pursuant to Education Code 48321. Instead of the SARB process, students may be referred to a truancy mediation program operated by the county's district attorney or probation officer pursuant to Education Code 48260.6. As amended by AB 2616 (Ch. 432, Statutes of 2012), Education Code 48264.5 authorizes, but does not require, students who continue to be truant after receiving these interventions to be referred to a juvenile court. Parents/guardians of truants may be subject to penalties pursuant to Education Code 48293, Penal Code 270.1, and/or Penal Code 272.

Students who are identified as truants shall be subject to the interventions specified in law and administrative regulation.

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

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

*(cf. 5144 - Discipline)*

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

The Superintendent or designee shall regularly analyze data on student absence to identify patterns of absence districtwide and by school, grade level, and student population. Such data shall be used to identify common barriers to attendance, prioritize resources for intervention, and monitor progress over time. The Superintendent or designee shall periodically report this information to the Board for purposes of evaluating the effectiveness of strategies implemented to reduce chronic absence and truancy and making changes as needed. As appropriate, the Superintendent or designee also shall provide this information to key school staff and community agency partners to engage them in program evaluation and improvement and in identification of how to best allocate available community resources.

**School Attendance Review Board**

Note: Education Code 48321 authorizes the establishment of a SARB in each county and also authorizes the county SARB to approve as many local SARBs as it deems necessary. If no county SARB exists, the district Board may establish a local SARB which operates in the same manner and under the same authority as a county SARB. The following section should be revised to reflect program(s) available to district students.

In accordance with law and administrative regulation, habitual truants may be referred to a school attendance review board (SARB).

**CHRONIC ABSENCE AND TRUANCY** (continued)

Note: The following **optional** paragraph is for use by districts whose county has established a SARB. Pursuant to Education Code 48321, the county SARB must include representative(s) of school districts who are to be nominated by the district Board and appointed by the County Superintendent of Schools.

The Board may submit a nomination to the County Superintendent of Schools for a person who will serve on the county SARB as a representative of school districts. (Education Code 48321)

Note: The remainder of this section is for use by districts that have established a local SARB instead of, or in addition to, the county SARB. The CDE's School Attendance Review Board Handbook provides guidance to SARBs on effective operations.

Education Code 48321 lists persons the Board may, but is not required to, appoint to the local SARB, as provided in the following paragraph. AB 614 (Ch. 71, Statutes of 2011) amended Education Code 48321 to require county SARBs and to authorize local SARBs to include a representative of school, county, or community mental health personnel. In addition, the CDE recommends that the Board include a representative of the county CalWORKS office in order to assist the office in determining whether a student whose family receives a welfare grant is regularly attending school. Pursuant to Welfare and Institutions Code 11253.5, if any such student is not regularly attending school, the family's welfare grant may be reduced.

The Board shall appoint members of the district's SARB, who may include, but are not limited to, a parent/guardian as well as representatives of the district, county probation department, county welfare department, county office of education, law enforcement agencies, community-based youth service centers, school guidance personnel, child welfare and attendance personnel, school or county health care personnel, and school, county, or community mental health personnel. (Education Code 48321)

The district's SARB shall operate in accordance with Education Code 48320-48325 and procedures established by the Superintendent or designee.

*Legal Reference:*EDUCATION CODE*1740 Employment of personnel to supervise attendance (county superintendent)**37223 Weekend classes**41601 Reports of average daily attendance**46000 Records (attendance)**46010-46014 Absences**46110-46119 Attendance in kindergarten and elementary schools**46140-46147 Attendance in junior high and high schools**48200-48208 Children ages 6-18 (compulsory full-time attendance)**48225.5 Work permits, entertainment and allied industries**48240-48246 Supervisors of attendance*

*Legal Reference continued: (see next page)*

## **CHRONIC ABSENCE AND TRUANCY (continued)**

*Legal Reference: (continued)*

EDUCATION CODE (continued)

48260-48273 Truants

48290-48296 Failure to comply; complaints against parents

48320-48325 School attendance review boards

48340-48341 Improvement of student attendance

48400-48403 Compulsory continuation education

48900 Suspension and expulsion

49067 Unexcused absences as cause of failing grade

60901 Chronic absence

GOVERNMENT CODE

54950-54963 The Ralph M. Brown Act

PENAL CODE

270.1 Chronic truancy; parent/guardian misdemeanor

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

830.1 Peace officers

VEHICLE CODE

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

WELFARE AND INSTITUTIONS CODE

601-601.4 Habitually truant minors

11253.5 Compulsory school attendance

CODE OF REGULATIONS, TITLE 5

306 Explanation of absence

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

COURT DECISIONS

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

*Management Resources:*

CSBA PUBLICATIONS

Improving Student Achievement by Addressing Chronic Absence, Policy Brief, December 2010

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

School Attendance Review Board Handbook, 2012

School Attendance Improvement Handbook, 2000

WEB SITES

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

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

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

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

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

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

OnTrackCA: <http://www.ontrackca.org>

**CHRONIC ABSENCE AND TRUANCY****Definitions**

Note: The following definition of "chronic absentee" is provided in Education Code 60901 for purposes of reporting student attendance within the California Longitudinal Pupil Achievement Data System. Chronic absence includes absence for any reason (i.e., excused and/or unexcused absences).

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

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

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

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

Note: As provided above, definitions of the various categories of truancy are based on the number of absences from school without a valid excuse. As amended by AB 2616 (Ch. 432, Statutes of 2012), Education Code 48260 defines a "valid excuse," for purposes of classifying a student as a truant, as any of the reasons specified in Education Code 48205 (i.e., illness, quarantine, health services appointments, funeral service attendance, jury duty, illness or medical appointment of student's child, justifiable personal reasons, service on precinct board, time with family member called to active duty or on leave from active duty, and religious exercises), Education Code 48225.5 (i.e., entertainment or allied industries work permits and nonprofit organization performances), or other reasons at the discretion of school administrators. AR 5113 - Absences and Excuses reflects the reasons that students may be excused from school pursuant to Education Code 48205 and provides information about methods of verification of student absences.

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

(cf. 5113 - Absences and Excuses)

(cf. 5113.2 - Work Permits)

**CHRONIC ABSENCE AND TRUANCY** (continued)**Attendance Supervisor(s)**

Note: The following **optional** section may be revised to reflect district practice. Pursuant to Education Code 48240-48246, the district may appoint an attendance supervisor, join a consortium of districts to employ an attendance supervisor, or, with approval of the County Board of Education, contract with the County Superintendent of Schools to supervise the attendance of district students. The following section may be revised to specify which duties will be assumed by the attendance supervisor.

The Superintendent or designee shall appoint or contract with a supervisor of attendance and assistant supervisors as necessary to supervise the attendance of district students. Such supervisors shall perform duties related to compulsory full-time education, truancy, compulsory continuation education, work permits, and any additional duties prescribed by the Superintendent. (Education Code 48240, 48243, 48244)

**Addressing Chronic Absence**

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

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

*(cf. 6020 - Parent Involvement)*

The student may be referred to a student success team or school-site attendance review team to assist in evaluating his/her needs and identifying strategies and programs to assist him/her.

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

*(cf. 5147 - Dropout Prevention)*

*(cf. 5149 - At-Risk Students)*

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

*(cf. 6164.5 - Student Success Teams)*

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

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

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

*(cf. 6175 - Migrant Education Program)*

## **CHRONIC ABSENCE AND TRUANCY** (continued)

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

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

Whenever chronic absenteeism is linked to a health issue or nonschool condition, the attendance supervisor may recommend school or community resources and/or collaborate with community agencies and organizations to address the needs of the student and his/her family.

*(cf. 1020 - Youth Services)*  
*(cf. 5141.6 - School Health Services)*

### **Addressing Truancy**

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

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

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

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

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

**CHRONIC ABSENCE AND TRUANCY** (continued)

Note: When a student is classified as truant, Education Code 48260.5 requires notification of his/her parents/guardians by the most cost-effective method possible, which may include email or a telephone call. The CDE's web site and School Attendance Improvement Handbook provide sample letters.

- b. The student's parent/guardian shall be notified by the most cost-effective method possible, which may include email or a telephone call, that: (Education Code 48260.5)
- (1) The student is truant.
  - (2) The parent/guardian is obligated to compel the student to attend school. If the parent/guardian fails to meet this obligation, he/she may be guilty of an infraction of the law and subject to prosecution pursuant to Education Code 48290-48296.
  - (3) Alternative educational programs are available in the district.
  - (4) The parent/guardian has the right to meet with appropriate school personnel to discuss solutions to the student's truancy.
  - (5) The student may be subject to arrest or held in temporary custody by a probation officer, a peace officer, a school administrator or attendance supervisor or his/her designee under Education Code 48264 if found away from home and absent from school without a valid excuse.
  - (6) The student may be subject to suspension, restriction, or delay of his/her driving privilege pursuant to Vehicle Code 13202.7.
  - (7) It is recommended that the parent/guardian accompany the student to school and attend classes with the student for one day.

*(cf. 5145.6 - Parental Notifications)*

- c. The student may be required to attend makeup classes on one day of a weekend pursuant to Education Code 37223. (Education Code 48264.5)

Note: AB 2616 (Ch. 432, Statutes of 2012) amended Education Code 48264.5 to add the following strategy for addressing initial truancy.

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

**CHRONIC ABSENCE AND TRUANCY** (continued)

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

- e. ~~The attendance supervisor may notify the district attorney and/or probation officer of the student's name and the name and address of his/her parents/guardians. (Education Code 48260.6)~~
2. Second truancy
- a. Any student who has once been reported as a truant shall again be reported to the attendance supervisor as a truant if he/she is absent from school without a valid excuse one or more days or is tardy on one or more days during the school year. (Education Code 48261)
- b. The student may be required to attend makeup classes on one day of a weekend pursuant to Education Code 37223. (Education Code 48264.5)
- c. The student may be assigned to an after-school or weekend study program within the county. If the student fails to successfully complete this study program, he/she shall be subject to item #3 below. (Education Code 48264.5)

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

- d. An appropriate district staff member shall make a conscientious effort to hold at least one conference with the student and his/her parent/guardian by communicating with the parent/guardian at least once using the most cost-effective method possible, which may include email or a telephone call. (Education Code 48262)

Note: As amended by AB 2616 (Ch. 432, Statutes of 2012), Education Code 48264.5 eliminated a written warning by a peace officer as a response to initial truancy and instead provides that the peace officer's warning may be a response to the second truancy, as provided below.

- e. The student may be given a written warning by a peace officer. A record of that warning may be kept at the school for not less than two years or until the student graduates or transfers from the school. If the student transfers, the record may be forwarded to the new school. (Education Code 48264.5)

**CHRONIC ABSENCE AND TRUANCY** (continued)

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

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

## 3. Third truancy (habitual truancy)

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

According to the CDE's School Attendance Improvement Handbook, prior to referring a truant student to a SARB or county truancy mediation program, some districts initiate an intermediate step, such as a school-site attendance review team or student success team. Districts that have established such an intermediate step may revise the following item accordingly.

- a. A student who is habitually truant, irregular in school attendance, or habitually insubordinate or disorderly during attendance at school may be referred to, and required to attend, a school attendance review board (SARB) program, a truancy mediation program established by the district attorney or the probation officer, or a comparable program deemed acceptable by the district's attendance supervisor. (Education Code 48263, 48264.5)
- b. Upon making a referral to the SARB or the probation department, the attendance supervisor shall provide the student and parent/guardian, in writing, the name and address of the SARB or probation department and the reason for the referral. This notice shall indicate that the student and parent/guardian shall be required, along with the district staff person making the referral, to meet with the SARB or a probation officer to consider a proper disposition of the referral. (Education Code 48263)
- c. If the student does not successfully complete the truancy mediation program or other similar program, he/she shall be subject to item #4 below. (Education Code 48264.5)

Note: Pursuant to Education Code 48263, the SARB or probation officer may direct a student and/or the student's parents/guardians to make use of available community services and may require satisfactory

**CHRONIC ABSENCE AND TRUANCY** (continued)

evidence of participation. If the SARB or probation officer determines that available community resources cannot resolve the problem, or if the student and/or parents/guardians have failed to respond to the directives of the SARB or probation officer, the SARB may so notify the district attorney and/or probation officer, or the probation officer may notify the district attorney provided the district attorney or probation officer participates in a truancy mediation program. If the county has not established a SARB, the district may make this finding and notification.

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

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

Note: AB 2616 (Ch. 432, Statutes of 2012) amended Education Code 48264.5 to authorize, rather than require, a student to be referred to the jurisdiction of the juvenile court upon the fourth truancy report.

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

Note: Pursuant to Education Code 48264.5 and Welfare and Institutions Code 601, a student coming within the jurisdiction of the juvenile court may be adjudged a ward of the court and required to perform community service, pay a fine, attend a court-approved truancy prevention program, and/or lose driving privileges. AB 2616 (Ch. 432, Statutes of 2012) amended Education Code 48264.5 to lower the maximum amount of the fine that can be imposed from \$100 to \$50.

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

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

**CHRONIC ABSENCE AND TRUANCY** (continued)

Note: Item #5 below is for use by districts that offer any of grades K-8. Penal Code 270.1 states that a parent/guardian of a "chronic truant" who is at least age 6 years and is in any of grades K-8 is guilty of a misdemeanor punishable by a fine and/or imprisonment if he/she has failed to reasonably supervise and encourage the student's school attendance and has been offered language-accessible support services to address the student's truancy. Pursuant to Penal Code 270.1, a parent/guardian found guilty of a misdemeanor may participate in a program established by a superior court, if available, which includes periodic meetings with district representatives and service referrals.

5. Absence for 10 percent of school days (chronic truancy)
  - a. The attendance supervisor shall ensure that the student's parents/guardians are offered language-accessible support services to address the student's truancy.
  - b. If a chronically truant student is at least age 6 years and is in any of grades K-8, the attendance supervisor shall notify the student's parents/guardians that failure to reasonably supervise and encourage the student's school attendance may result in the parent/guardian being found guilty of a misdemeanor pursuant to Penal Code 270.1.

**Records**

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

The Superintendent or designee shall maintain accurate attendance records for students identified as habitual or chronic truants. The Superintendent or designee also shall document all contacts with a student and his/her parent/guardian regarding the student's attendance, including a summary of all conversations and a record of all intervention efforts.

*(cf. 5125 - Student Records)*

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

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

Regulation  
approved:

CSBA MANUAL MAINTENANCE SERVICE  
November 2012

**STUDENT RECORDS**

**Definitions**

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

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

Note: Guidance issued by the U.S. Department of Education (USDOE) and U.S. Department of Health and Human Services clarifies that a student's immunization and health record maintained by the district, such as health and medical records maintained by a school nurse who is employed by or under contract with a district, is a "student record" subject to the Family Educational Rights and Privacy Act (FERPA). Also see BP/AR 5141.6 - School Health Services.

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

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

1. Directory information

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

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

Note: USDOE guidance ([Balancing Student Privacy and School Safety](#)) clarifies that records created by the district's law enforcement unit, as specified in item #3 below, are not considered student records under FERPA as long as the records are created for a law enforcement purpose. Thus, according to the guidance, student images appearing on security videotapes maintained by the district's law enforcement unit are not subject to FERPA.

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

*(cf. 3515 - Campus Security)*

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

**STUDENT RECORDS** (continued)

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

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

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

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

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

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

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

1. The student's name
2. The name of the student's parent/guardian or other family members
3. The address of the student or student's family
4. A personal identifier, such as the student's social security number, student number, or biometric record (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting)
5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name

**STUDENT RECORDS** (continued)

6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty
7. Information requested by a person who the district reasonably believes knows the identity of the student to whom the student record relates

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

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

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

*School officials and employees* are officials or employees whose duties and responsibilities to the district, whether routine or as a result of special circumstances, require that they have access to student records.

Note: Pursuant to Education Code 49076, as amended by AB 733 (Ch. 388, Statutes of 2012), the district may allow any "contractor or consultant" with whom it has a formal written agreement to access information in student records without parent/guardian consent, when the contractor or consultant has a "legitimate educational interest" in that information. However, contrary to 34 CFR 99.31, Education Code 49076, as amended by AB 733, prohibits release of student records to volunteers.

*Contractor or consultant* is anyone with a formal written agreement or contract with the district regarding the provision of services or functions outsourced to him/her by the district. Contractor or consultant shall not include a volunteer or other party. (Education Code 49076)

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

*Custodian of records* is the employee responsible for the security of student records maintained by the district and for devising procedures for assuring that access to such records is limited to authorized persons. (5 CCR 433)

**STUDENT RECORDS** (continued)

*County placing agency* means the county social service department or county probation department. (Education Code 49061)

**Persons Granted Access**

The following persons shall have absolute access to any and all student records in accordance with law:

1. Parents/guardians of students younger than age 18 years, including the parent who is not the student's custodial parent (Education Code 49069; Family Code 3025)
2. An adult student age 18 years or older, or a student under the age of 18 years who attends a postsecondary institution, in which case the student alone shall exercise rights related to his/her student records and grant consent for the release of records (34 CFR 99.3, 99.5)

Note: Pursuant to Education Code 56041.5, all the rights accorded to the parent/guardian of a student with disabilities, including the right to access student records, are transferred to the student when he/she reaches age 18 years except when the student has been declared incompetent under state law.

3. Parents/guardians of an adult student with disabilities who is age 18 years or older and has been declared incompetent under state law (Education Code 56041.5)

(cf. 6159 - Individualized Education Program)

In addition, the following persons or agencies shall have access to those particular records that are relevant to their legitimate educational interest or other legally authorized purpose:

Note: Education Code 49076 and 34 CFR 99.31 require that parents/guardians of a dependent child, as defined in 26 USC 152, be provided access to student records that are relevant to their legitimate educational interest. 26 USC 152 defines a "dependent child" as one who lives with his/her parent/guardian for more than half the taxable year, has not provided more than half of his/her own support during that year, and has not filed a joint tax return with a spouse.

1. Parents/guardians of a student age 18 or older who is a dependent child as defined under 26 USC 152 (Education Code 49076; 34 CFR 99.31)
2. Students who are age 16 or older or who have completed the 10th grade (Education Code 49076; 34 CFR 99.31)
3. School officials and employees, consistent with the definition provided in the section "Definitions" above (Education Code 49076; 34 CFR 99.31)

**STUDENT RECORDS** (continued)

Note: Pursuant to Education Code 49076, as amended by AB 733 (Ch. 388, Statutes of 2012), access to student records based on the "legitimate educational interest" of a school attendance review board is limited to only those members who have been designated as authorized representatives of the district.

4. Members of a school attendance review board (SARB) who are authorized representatives of the district and any volunteer aide age 18 or older who has been investigated, selected, and trained by the SARB to provide follow-up services to a referred student (Education Code 49076)

*(cf. 5113.1 - Chronic Absence and Truancy)*

5. Officials and employees of other public schools, school systems, or postsecondary institutions where the student intends or is directed to enroll, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided, or where the student is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer (Education Code 49076; 34 CFR 99.31)

Note: 34 CFR 99.34 requires the district to make a reasonable attempt to notify the parent/guardian or adult student when the district discloses certain information as described in the following paragraph. However, if the district includes a statement in its annual parental notification that the district may forward education records under these circumstances, it is not obligated to individually notify parents/guardians or adult students. The following **optional** paragraph may be deleted by districts that include such a statement in their annual parental notifications. See section below entitled "Notification of Parents/Guardians."

~~When the district discloses personally identifiable information to officials of another school, school system, or postsecondary institution where the student seeks or intends to enroll, the Superintendent or designee shall make a reasonable attempt to notify the parent/guardian or adult student at his/her last known address, provide a copy of the record that is disclosed, and give the parent/guardian or adult student an opportunity for a hearing to challenge the record. (34 CFR 99.34)~~

Note: 34 CFR 99.3, 99.31, and 99.35 clarify the limited circumstances under which the district may disclose student records to federal, state, or local officials to assess the effectiveness of state and federally funded education programs. Pursuant to 34 CFR 99.35, the district must have a written agreement with the entity or individual which contains specified components and must use reasonable methods to ensure that the entity or individual complies with FERPA.

6. Federal, state, and local officials, as needed for an audit, evaluation, or compliance activity related to a state or federally funded education program and in accordance with a written agreement developed pursuant to 34 CFR 99.35 (Education Code 49076; 34 CFR 99.3, 99.31, 99.35)

**STUDENT RECORDS** (continued)

Note: Pursuant to Education Code 49076, as amended by AB 733 (Ch. 388, Statutes of 2012), county placing agencies authorized to assess the effectiveness of a state or federally funded program on behalf of federal, state, or local officials and agencies may be allowed access to student records. Education Code 49076 also authorizes districts, county offices of education, and county placing agencies to develop cooperative agreements to facilitate confidential access to and exchange of student information by email, facsimile, electronic format, or other secure means, provided the agreement complies with the requirements of 34 CFR 99.35.

7. Any county placing agency acting as an authorized representative of a state or local educational agency which is required to audit or evaluate a state or federally supported education program pursuant to item #6 above (Education Code 49076)

Note: Pursuant to 5 CCR 435, prior to releasing records in compliance with a court order or subpoena, the district is generally required to give the parent/guardian three days' notice as specified in item #8 below. However, 34 CFR 99.31 specifies that the notice is not required when the disclosure is in response to a court order issued under the USA Patriot Act regarding investigations of domestic or international terrorism.

8. Any person, agency, or organization authorized in compliance with a court order or lawfully issued subpoena (Education Code 49077; 5 CCR 435; 34 CFR 99.31)

Unless otherwise instructed by the court, the Superintendent or designee shall, prior to disclosing a record pursuant to a court order or subpoena, give the parent/guardian or adult student at least three days' notice of the name of the requesting agency and the specific record requested, if lawfully possible within the requirements of the judicial order. (Education Code 49077; 5 CCR 435; 34 CFR 99.31)

9. Any district attorney who is participating in or conducting a truancy mediation program or participating in the presentation of evidence in a truancy petition (Education Code 49076)
10. A district attorney's office for consideration against a parent/guardian for failure to comply with compulsory education laws (Education Code 49076)
11. Any probation officer, district attorney, or counsel of record for a minor student for the purposes of conducting a criminal investigation or an investigation in regards to declaring the minor student a ward of the court or involving a violation of a condition of probation, subject to evidentiary rules specified in Welfare and Institutions Code 701 (Education Code 49076)

When disclosing records for these purposes, the Superintendent or designee shall obtain written certification from the recipient of the records that the information will not be disclosed to another party without prior written consent of the student's parent/guardian or the holder of the student's educational rights, unless specifically authorized by state or federal law. (Education Code 49076)

**STUDENT RECORDS** (continued)

12. Any judge or probation officer for the purpose of conducting a truancy mediation program for a student or for the purpose of presenting evidence in a truancy petition pursuant to Welfare and Institutions Code 681 (Education Code 49076)

In such cases, the judge or probation officer shall certify in writing to the Superintendent or designee that the information will be used only for truancy purposes. Upon releasing student information to a judge or probation officer, the Superintendent or designee shall inform, or provide written notification to, the student's parent/guardian within 24 hours. (Education Code 49076)

13. Any foster family agency with jurisdiction over currently enrolled or former students for purposes of accessing those students' records of grades and transcripts and any individualized education program developed and maintained by the district (Education Code 49069.3)

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

14. Appropriate law enforcement authorities, in circumstances where Education Code 48902 requires that the district provide special education and disciplinary records of a student with disabilities who is suspended or expelled for committing an act violating Penal Code 245 (Education Code 48902, 49076)

When disclosing such records, the Superintendent or designee shall obtain written certification by the recipient of the records as described in item #11 above. (Education Code 49076)

Note: As amended by AB 733 (Ch. 388, Statutes of 2012), Education Code 49076.5 authorizes the use of item #15 below only in specified circumstances and requires that, prior to its use, the district receive from the designated peace officer or law enforcement agency a parent/guardian's written consent, a lawfully issued subpoena or court order, or information indicating the existence of an emergency situation.
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15. Designated peace officers or law enforcement agencies in cases where the district is authorized by law to assist law enforcement in investigations of suspected criminal conduct or kidnapping and a written parental consent, lawfully issued subpoena, or court order is submitted to the district, or information is provided to it indicating that an emergency exists in which the student's information is necessary to protect the health or safety of the student or other individuals (Education Code 49076.5; 34 CFR 99.1-99.67)

In such cases, the Superintendent or designee shall provide information about the identity and location of the student as it relates to the transfer of that student's records to another public school district or California private school. (Education Code 49076.5)

**STUDENT RECORDS** (continued)

At his/her discretion, the Superintendent or designee may release information from a student's records to the following:

Note: As amended by AB 733 (Ch. 388, Statutes of 2012), Education Code 49076 has conformed state law to 34 CFR 99.36, which authorizes a district to disclose personally identifiable information in connection with an emergency to any person whose knowledge of the information is necessary to protect the health or safety of students or others. Pursuant to Education Code 49076, when releasing any information based on this authorization, the district is required to document the information received indicating the emergency and those to whom it discloses information from the student record, in accordance with the requirements of 34 CFR 99.32(a)(5).

1. Appropriate persons, including parents/guardians of a student, in an emergency if the health and safety of the student or other persons are at stake (Education Code 49076; 34 CFR 99.31, 99.32, 99.36)
 

When releasing information to any such appropriate person, the Superintendent or designee shall record information about the threat to the health or safety of the student or any other person that formed the basis for the disclosure and the person(s) to whom the disclosure was made. (Education Code 49076; 34 CFR 99.32)
2. Accrediting associations (Education Code 49076; 34 CFR 99.31)
3. Under the conditions specified in Education Code 49076 and 34 CFR 99.31, organizations conducting studies on behalf of educational institutions or agencies for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction, provided that: (Education Code 49076; 34 CFR 99.31)
  - a. The study is conducted in a manner that does not permit personal identification of parents/guardians and students by individuals other than representatives of the organization who have legitimate interests in the information.
  - b. The information is destroyed when no longer needed for the purposes for which the study is conducted.
  - c. The district enters into a written agreement with the organization that complies with 34 CFR 99.31.
4. Officials and employees of private schools or school systems where the student is enrolled or intends to enroll, subject to the rights of parents/guardians as provided in Education Code 49068 and in compliance with 34 CFR 99.34 (Education Code 49076; 34 CFR 99.31, 99.34)

**STUDENT RECORDS** (continued)

5. Local health departments operating countywide or regional immunization information and reminder systems and the California Department of Public Health, in which case the Superintendent or designee shall notify the student's parent/guardian of his/her rights in accordance with law prior to releasing the information (Health and Safety Code 120440)

Note: Education Code 49076, as amended by AB 733 (Ch. 388, Statutes of 2012), has included "contractors" and "consultants," as defined above in the section entitled "Definitions," among the categories of individuals to whom a student's personally identifiable information may be disclosed under certain circumstances. Unlike 34 CFR 99.34, however, Education Code 49076 prohibits disclosure of such information to volunteers and other parties.

6. Contractors and consultants having a legitimate educational interest based on services or functions which have been outsourced to them through a formal written agreement or contract by the district, excluding volunteers or other parties (Education Code 49076)

*(cf. 3600 - Consultants)*

Note: Items #7 and 8 below are for use by districts that maintain high schools.

7. Agencies or organizations in connection with the student's application for or receipt of financial aid, provided that information permitting the personal identification of a student or his/her parents/guardians for these purposes is disclosed only as may be necessary to determine the eligibility of the student for financial aid, determine the amount of financial aid, determine the conditions which will be imposed regarding the financial aid, or enforce the terms or conditions of the financial aid (Education Code 49076; 34 CFR 99.31, 99.36)
8. County elections officials for the purpose of identifying students eligible to register to vote or offering such students an opportunity to register, subject to the provisions of 34 CFR 99.37 and under the condition that any information provided on this basis shall not be used for any other purpose or transferred to any other person or agency (Education Code 49076; 34 CFR 99.31, 99.37)

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

Persons, agencies, or organizations not afforded access rights by law may be granted access only through written consent of the parent/guardian or adult student, or by judicial order. (Education Code 49075)

Only a parent/guardian having legal custody of the student may consent to the release of records to others. Either parent may grant consent if both parents notify the district, in writing, that such an agreement has been made. (Education Code 49061)

**STUDENT RECORDS** (continued)

*(cf. 5021 - Noncustodial Parents)*

Any person, agency, or organization granted access is prohibited from releasing information to another person, agency, or organization without written permission from the parent/guardian or adult student unless specifically allowed by state law or the federal Family Educational Rights and Privacy Act. (Education Code 49076)

**De-identification of Records**

Note: 20 USC 1232(g) and Education Code 49076 authorize the district to release student records for specified purposes (e.g., to federal and state officials conducting program audits or to organizations conducting studies) without parent/guardian consent after the removal of all "personally identifiable information" as defined in the section entitled "Definitions" above and provided that the district has made a reasonable determination that a student's identity will not be personally identifiable through single or multiple releases. Education Code 49074 further authorizes the district to provide de-identified statistical data to public or private agencies, postsecondary institutions, or research organizations when such actions would be "in the best educational interests of students."

34 CFR 99.31 lists objective standards under which districts may release information from de-identified records. These standards are applicable to both requests for individual, redacted records and requests for statistical information from multiple records.

When authorized by law for any program audit, educational research, or other purposes, the Superintendent or designee may release information from a student record without prior consent of the parent/guardian or adult student after the removal of all personally identifiable information. Prior to releasing such information, the Superintendent or designee shall make a reasonable determination that the student's identity is not personally identifiable, whether through single or multiple releases and taking into account other reasonably available information. (Education Code 49074, 49076; 34 CFR 99.31)

**Process for Providing Access to Records**

Note: Education Code 49069 **mandates** procedures for notifying parents/guardians of the location of all official student records if not centrally located. The following paragraph may be expanded to include specific notification procedures.

Student records shall be maintained in a central file at the school attended by the student or, when records are maintained in different locations, a notation shall be placed in the central file indicating where other records may be found. Parents/guardians shall be notified of the location of student records if not centrally located. (Education Code 49069; 5 CCR 433)

The custodian of records shall be responsible for the security of student records and shall ensure that access is limited to authorized persons. (5 CCR 433)

**STUDENT RECORDS** (continued)

Note: 5 CCR 431 **mandates** districts to establish written procedures to ensure the security of student records. The following three paragraphs reflect this mandate and should be modified to reflect any specific physical, technological, or administrative controls developed by the district.

34 CFR 99.31 requires districts to use "reasonable methods" to (1) ensure that school officials, employees, and outside contractors obtain access to only those records, both paper and electronic, in which they have a legitimate educational interest and (2) identify and authenticate the identity of parents/guardians, students, school officials, and any other party to whom the district discloses personally identifiable information from education records. In addition, 34 CFR 99.31 specifies that a district which does not use physical or technological access controls (e.g., a locked file cabinet or computer security limiting access) must ensure that its administrative policy for controlling access is effective and remains in compliance with the "legitimate educational interest" requirement.

The Analysis to Comments and Changes (73 Fed. Reg. 237, page 74817) suggests a balance of physical, technological, and administrative controls to prevent unauthorized access and to ensure that school officials do not have unrestricted access to the records of all students. The Analysis also clarifies that the reasonableness of the method depends, in part, on the potential harm involved. For example, high-risk records, such as social security numbers or other information that could be used for identity theft, should receive greater and more immediate protection.

In addition, as a condition of participation in an interagency data information system (e.g., California Longitudinal Pupil Achievement Data System), Education Code 49076 requires that the district develop security procedures or devices by which unauthorized personnel cannot access data in the system and procedures or devices to secure privileged or confidential data from unauthorized disclosure.

The custodian of records shall develop reasonable methods, including physical, technological, and administrative controls, to ensure that school officials and employees obtain access to only those student records in which they have legitimate educational interests. (34 CFR 99.31)

To inspect, review, or obtain copies of student records, authorized persons shall submit a request to the custodian of records. Prior to granting the request, the custodian of records shall authenticate the individual's identity. For any individual granted access based on a legitimate educational interest, the request shall specify the interest involved.

When prior written consent is required by law, the parent/guardian shall provide a written, signed, and dated consent before the district discloses the student record. Such consent may be given through electronic means in those cases where it can be authenticated. The district's consent form shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. Upon request by the parent/guardian, the district shall provide him/her a copy of the records disclosed. (34 CFR 99.30)

Note: Education Code 49069 and 5 CCR 431 **mandate** that the district adopt procedures for granting parent/guardian requests to inspect, review, and obtain copies of records.

**STUDENT RECORDS** (continued)

Within five business days following the date of request, a parent/guardian or other authorized person shall be granted access to inspect, review, and obtain copies of student records during regular school hours. (Education Code 49069)

Note: Education Code 49069 **mandates** procedures for the availability of qualified certificated personnel to interpret records when requested. The following paragraph may be expanded to include specific procedures for persons to request and receive the assistance of certificated personnel.

Qualified certificated personnel shall be available to interpret records when requested. (Education Code 49069)

The custodian of records or the Superintendent or designee shall prevent the alteration, damage, or loss of records during inspection. (5 CCR 435)

**Access Log**

A log shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the records and the legitimate educational interest of the requester. (Education Code 49064)

In every instance of inspection by persons who do not have assigned educational responsibility, the custodian of records shall make an entry in the log indicating the record inspected, the name of the person granted access, the reason access was granted, and the time and circumstances of inspection. (5 CCR 435)

Note: Although Education Code 49064 does not require the district to record access by individuals specified in items #1-5 below, the district may consider recording access by all individuals as part of the reasonable administrative controls required by 34 CFR 99.31; see section above entitled "Process for Providing Access to Records." The following paragraph is **optional**.

~~The log does not need to include record of access by: (Education Code 49064)~~

- ~~1. — Parents/guardians or adult students~~
- ~~2. — Students who are 16 years of age or older or who have completed the 10th grade~~
- ~~3. — Parties obtaining district-approved directory information~~
- ~~4. — Parties who provide written parental consent, in which case the consent notice shall be filed with the record pursuant to Education Code 49075~~
- ~~5. — School officials and employees who have a legitimate educational interest~~

## **STUDENT RECORDS** (continued)

The log shall be accessible only to the parent/guardian, adult student, dependent adult student, student who is age 16 years or older or who has completed the 10th grade, custodian of records, and certain state or federal officials. (Education Code 49064; 5 CCR 432)

### **Duplication of Student Records**

Note: Education Code 49069 **mandates** that the district adopt procedures for granting parent/guardian requests for copies of student records pursuant to Education Code 49065.

To provide copies of any student record, the district shall charge a reasonable fee not to exceed the actual cost of providing the copies. No charge shall be made for providing up to two transcripts or up to two verifications of various records for any former student. No charge shall be made to locate or retrieve any student record. (Education Code 49065)

*(cf. 3260 - Fees and Charges)*

### **Changes to Student Records**

Only a parent/guardian having legal custody of a student or an adult student may challenge the content of a record or offer a written response to a record. (Education Code 49061)

*(cf. 5125.3 - Challenging Student Records)*

No additions except routine updating shall be made to a student's record after high school graduation or permanent departure without prior consent of the parent/guardian or adult student. (5 CCR 437)

### **Retention and Destruction of Student Records**

Note: 5 CCR 431 **mandates** that the district establish written policies and procedures regarding the signing and dating of anecdotal information, as specified below.

All anecdotal information and assessment reports maintained as student records shall be dated and signed by the individual who originated the data. (5 CCR 431)

The following mandatory permanent student records shall be kept indefinitely: (5 CCR 432, 437)

1. Legal name of student
2. Date and place of birth and method of verifying birth date

*(cf. 5111 - Admission)*

**STUDENT RECORDS** (continued)

3. Sex of student
4. Name and address of parent/guardian of minor student
  - a. Address of minor student if different from the above
  - b. Annual verification of parent/guardian's name and address and student's residence

*(cf. 5111.1 - District Residency)*

*(cf. 5111.12 - Residency Based on Parent/Guardian Employment)*

5. Entrance and departure dates of each school year and for any summer session or other extra session
6. Subjects taken during each year, half-year, summer session, or quarter, and marks or credits given

*(cf. 5121 - Grades/Evaluation of Student Achievement)*

7. Verification of or exemption from required immunizations

*(cf. 5141.31 - Immunizations)*

8. Date of high school graduation or equivalent

Mandatory interim student records, unless forwarded to another district, shall be maintained subject to destruction during the third school year after the school year in which they originated, following a determination that their usefulness has ceased or the student has left the district. These records include: (Education Code 48918, 51747; 5 CCR 432, 437, 16027)

1. Expulsion orders and the causes therefor

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

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

2. A log identifying persons or agencies who request or receive information from the student record
3. Health information, including verification or waiver of the health screening for school entry

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

**STUDENT RECORDS** (continued)

4. Information on participation in special education programs, including required tests, case studies, authorizations, and evidence of eligibility for admission or discharge

*(cf. 6159 - Individualized Education Program)*

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*

5. Language training records

*(cf. 6174 - Education for English Language Learners)*

6. Progress slips/notices required by Education Code 49066 and 49067

7. Parental restrictions/stipulations regarding access to directory information

8. Parent/guardian or adult student rejoinders to challenged records and to disciplinary action

9. Parent/guardian authorization or denial of student participation in specific programs

10. Results of standardized tests administered within the past three years

*(cf. 6162.51 - Standardized Testing and Reporting Program)*

*(cf. 6162.52 - High School Exit Examination)*

11. Written findings resulting from an evaluation conducted after a specified number of missed assignments to determine whether it is in a student's best interest to remain in independent study

*(cf. 6158 - Independent Study)*

Permitted student records may be destroyed six months after the student completes or withdraws from the educational program, including: (5 CCR 432, 437)

1. Objective counselor and/or teacher ratings
2. Standardized test results older than three years
3. Routine disciplinary data

*(cf. 5144 - Discipline)*

4. Verified reports of relevant behavioral patterns
5. All disciplinary notices

**STUDENT RECORDS** (continued)

## 6. Supplementary attendance records

Records shall be destroyed in a way that assures they will not be available to possible public inspection in the process of destruction. (5 CCR 437)

**Transfer of Student Records**

When a student transfers into this district from any other school district or a private school, the Superintendent or designee shall inform the student's parent/guardian of his/her rights regarding student records, including the right to review, challenge, and receive a copy of student records. (Education Code 49068; 5 CCR 438)

Note: Education Code 48201 requires districts to request records of a transferring student regarding acts that resulted in the student's suspension or expulsion from the previous school, as specified below. Once the record is received, the Superintendent or designee must inform the student's teachers of the acts; see AR 4158/4258/4358 - Employee Security.

When a student transfers into this district from another district, the Superintendent or designee shall request that the student's previous district provide any records, either maintained by that district in the ordinary course of business or received from a law enforcement agency, regarding acts committed by the transferring student that resulted in his/her suspension or expulsion. (Education Code 48201)

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

*(cf. 5119 - Students Expelled From Other Districts)*

Note: Pursuant to Education Code 49068, as amended by AB 1799 (Ch. 369, Statutes of 2012), a district is required to transfer a copy of a student's records to another school in which the student is enrolled or intends to enroll within 10 school days of receiving a request for the records. However, this would not affect a situation where a more restrictive timeline is required. For example, a district is required to transfer the records of a student who is a foster youth to the new school within two business days, pursuant to Education Code 48853.5.

When a student transfers from this district to another school district or to a private school, the Superintendent or designee shall forward a copy of the student's mandatory permanent record within 10 school days of the district's receipt of the request for the student's records. The original record or a copy shall be retained permanently by this district. If the transfer is to another California public school, the student's entire mandatory interim record shall also be forwarded. If the transfer is out of state or to a private school, the mandatory interim record may be forwarded. Permitted student records may be forwarded to any other district or private school. (Education Code 48918, 49068; 5 CCR 438)

Upon receiving a request from a county placing agency to transfer a student in foster care out of a district school, the Superintendent or designee shall transfer the student's records to the next educational placement within two business days. (Education Code 49069.5)

**STUDENT RECORDS** (continued)

All student records shall be updated before they are transferred. (5 CCR 438)

Student records shall not be withheld from the requesting district because of any charges or fees owed by the student or parent/guardian. (5 CCR 438)

If the district is withholding grades, diploma, or transcripts from the student because of his/her damage or loss of school property, this information shall be sent to the requesting district along with the student's records.

*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*

**Notification of Parents/Guardians**

Upon any student's initial enrollment, and at the beginning of each school year thereafter, the Superintendent or designee shall notify parents/guardians and eligible students, in writing, of their rights related to student records. Insofar as practicable, the district shall provide these notices in the student's home language and shall effectively notify parents/guardians or eligible students with disabilities. (Education Code 49063; 34 CFR 99.7)

*(cf. 5145.6 - Parental Notifications)*

The notice shall include: (Education Code 49063; 34 CFR 99.7, 99.34)

1. The types of student records kept by the district and the information contained therein
2. The title(s) of the official(s) responsible for maintaining each type of record
3. The location of the log identifying those who request information from the records
4. District criteria for defining school officials and employees and for determining legitimate educational interest
5. District policies for reviewing and expunging student records
6. The right to inspect and review student records and the procedures for doing so
7. The right to challenge and the procedures for challenging the content of a student record that the parent/guardian or student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights
8. The cost, if any, charged for duplicating copies of records

**STUDENT RECORDS** (continued)

9. The categories of information defined as directory information pursuant to Education Code 49073
10. The right to consent to disclosures of personally identifiable information contained in the student's records except when disclosure without consent is authorized by law
11. Availability of the curriculum prospectus developed pursuant to Education Code 49091.14 containing the titles, descriptions, and instructional aims of every course offered by the school

*(cf. 5020 - Parent Rights and Responsibilities)*

12. Any other rights and requirements set forth in Education Code 49060-49078, and the right of parents/guardians to file a complaint with the U.S. Department of Education concerning an alleged failure by the district to comply with 20 USC 1232g

Note: Pursuant to 34 CFR 99.34, if the district's annual parental notification contains the information described in <b>optional</b> item #13 below, the district does not need to attempt to individually notify a parent/guardian or adult student when the district discloses an education record to officials of another school, school system, or postsecondary institution (see item #5 in the list of persons/agencies with legitimate educational interests in the section entitled "Persons Granted Access" above).
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- ~~13. A statement that the district forwards education records to other agencies or institutions that request the records and in which the student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment~~

## IMMUNIZATIONS

### Required Immunizations

Note: The following **optional** paragraph may be revised to reflect district practice. The California Department of Public Health's (CDPH) California Immunization Handbook for Schools and Child Care Programs recommends that districts provide parents/guardians with a written notice of immunization requirements. The CDPH's Guide to the Requirements of the California School Immunization Law for Parents of Children in or Entering School or Child Care, which is available in English and Spanish, may be used for this purpose.

~~The Superintendent or designee shall provide parents/guardians, upon school registration, a written notice summarizing the state's immunization requirements.~~

Note: The following paragraph should be revised to reflect the grade levels and programs offered by the district. See 17 CCR 6020 and the CDPH's Guide to Immunizations Required for School Entry and California Immunization Handbook for Schools and Child Care Programs for details regarding the ages/grades at which specific immunizations are required and the doses needed.

The Superintendent or designee shall not unconditionally admit any student to a district elementary or secondary school, preschool, or child care and development program nor advance a student to specified grade levels unless the student has presented documentation of full immunization, in accordance with the age/grade and dose required by the California Department of Public Health (CDPH), against the following diseases: (Health and Safety Code 120335; 17 CCR 6020)

1. Measles, mumps, and rubella (MMR)
2. Diphtheria, tetanus, and pertussis (whooping cough) (DTP, DTaP, or Tdap)
3. Poliomyelitis (polio)
4. Hepatitis B
5. Varicella (chickenpox)
6. Haemophilus influenza type b (Hib meningitis)
7. Any other disease designated by the CDPH

*(cf. 5141.22 - Infectious Diseases)*

*(cf. 5148 - Child Care and Development)*

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

**IMMUNIZATIONS** (continued)

Note: According to the CDPH's Guide to Immunizations Required for School Entry, the immunization record must be either a personal record with entries made by an authorized health care provider or a school immunization record from the student's previous school (either the California School Immunization Record or another state's school record). Pursuant to 17 CCR 6070, the record must include at least the month and year each dose was received. However, for measles, mumps, and rubella vaccine administered during the month of the first birthday, the record must show the month, day, and year.

The student's immunization record shall be provided by the student's health care provider or from the student's previous school immunization record. The record must show the date that each dose was administered.

**Exemptions**

Exemption from immunization requirements shall be granted under either of the following circumstances: (Health and Safety Code 120365, 120370; 17 CCR 6051)

1. The student's parent/guardian provides a written statement by a licensed physician that, due to the physical condition or medical circumstances of the student, one or more immunizations are considered unsafe or are permanently not indicated. The physician's statement shall indicate the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization. In such circumstances, the student shall be exempted from one or more vaccines to the extent indicated by the physician's statement.

Note: Health and Safety Code 120365 exempts a student from one or more immunization requirements if the parent/guardian states in writing that the immunizations are contrary to his/her beliefs. AB 2109 (Ch. 821, Statutes of 2012) amended Health and Safety Code 120365 to require that this written statement also document which immunizations have been given and to specify which immunizations are contrary to the parent/guardian's beliefs. On or after January 1, 2014, the parent/guardian statement must be accompanied by (1) a CDPH form signed by a physician attesting that he/she has provided certain information to the parent/guardian, as provided below, and (2) the parent/guardian's acknowledgment of the receipt of the information.

2. The student's parent/guardian provides a letter or affidavit documenting which immunizations required by Health and Safety Code 120355 have been given and which immunizations have not been given on the basis that they are contrary to the parent/guardian's beliefs.

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

When immunization(s) are contrary to the parent/guardian's personal beliefs but there is good cause to believe that the student has been exposed to one of the communicable diseases listed in Health and Safety Code 120325, the student may be temporarily excluded from school until the local public health officer is satisfied that the student is no longer at risk of developing the disease.

**IMMUNIZATIONS** (continued)

On or after January 1, 2014, the parent/guardian shall also submit a form prescribed by the CDPH which includes a signed attestation by a health care practitioner that indicates he/she has provided the parent/guardian with information regarding the benefits and risks of the immunization and the health risks of the communicable diseases listed in Health and Safety Code 120335 to the person and the community. The parent/guardian shall sign a statement indicating that he/she has received this information. Neither the health care practitioner nor the parent/guardian shall sign these statements more than six months prior to the date that the student is subject to the immunization requirement. In lieu of the original form, the district shall accept a photocopy of the signed form or a letter by a health care practitioner that includes all information and attestations included on the form.

**Exclusions Due to Lack of Immunizations**

Any student without the required evidence of immunization may be excluded from school until the immunization is obtained or an exemption is granted in accordance with the section "Exemptions" above.

*(cf. 5112.2 - Exclusions from Attendance)*

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

Before an already admitted student is excluded from school attendance because of lack of immunization, the Superintendent or designee shall notify the parent/guardian that he/she has 10 school days to supply evidence of proper immunization or an appropriate exemption. (Education Code 48216; 17 CCR 6040)

This notice shall refer the parent/guardian to the student's usual source of medical care or, if the student has no usual source of medical care, then to the county health department or school immunization program, if any. (Education Code 48216)

*(cf. 5141.6 - School Health Services)*

The Superintendent or designee shall exclude from further attendance any already admitted student who fails to obtain the required immunization within 10 school days following the parent/guardian's receipt of the notice specified above, unless the student is exempt from immunization for medical reasons or personal beliefs. The student shall remain excluded from school until he/she provides written evidence that he/she has received a dose of each required vaccine due at that time. The student shall also be reported to the attendance supervisor or principal. (17 CCR 6055)

**Conditional Enrollment**

The Superintendent or designee may conditionally admit a student with documentation from an authorized health care provider that: (Health and Safety Code 120340; 17 CCR 6000, 6035)

**IMMUNIZATIONS** (continued)

1. The student has received some but not all required immunizations and is not due for any vaccine dose at the time of admission.
2. The student has a temporary exemption from immunization for medical reasons.

The Superintendent or designee shall notify the student's parents/guardians of the date by which the student must complete all the remaining doses when they become due as specified in 17 CCR 6035.

The Superintendent or designee shall review the immunization record of each student admitted conditionally every 30 days until that student has received all the required immunizations. If the student does not receive the required immunizations within the specified time limits, he/she shall be excluded from further attendance until the immunizations are received. (Health and Safety Code 120375; 17 CCR 6070)

**Records**

Note: The CDPH requires that school staff record all immunization dates from each student's personal immunization record onto the California School Immunization Record (often referred to as the "blue card") and then complete the documentation section of the card which includes the type of record provided and the status of the student's immunizations. The record also may be maintained electronically.

An immunization record that is directly related to a student is an "education record" subject to the Family Educational Rights and Privacy Act (20 USC 1232g; 34 CFR 99.1-99.67) and therefore generally requires parent/guardian consent to be lawfully disclosed. However, pursuant to 20 USC 1232g and 34 CFR 99.31 and 99.36, an exception exists when knowledge of the information is necessary to address an articulable and significant threat to the health or safety of the student or other individuals.

The Superintendent or designee shall record each new entrant's immunizations in the California School Immunization Record and retain it as part of the student's mandatory permanent student record. District staff shall maintain the confidentiality of immunization records and may disclose such information to state and local health departments only in accordance with law. (Health and Safety Code 120375, 120440; 17 CCR 6070)

*(cf. 5125 - Student Records)*

**DISCIPLINE**

Note: The following policy is **optional**. In amending Education Code 48900 through AB 1729 (Ch. 425, Statutes of 2012), the legislature declared that the public policy guiding the development of discipline policies for California schools should be for the creation of a safe, positive, supportive, and equitable school environment which enables students to learn rather than unnecessary exclusion of students from instruction and other school activities. As amended, Education Code 48900 authorizes the use of age-appropriate alternatives to suspension and expulsion of students. In addition, Education Code 48900.5, as amended by AB 1729, provides alternative methods of discipline that should be considered before suspension is imposed. Such alternative methods include conferences with the student and his/her parents/guardians, use of study teams, and participation in restorative justice programs. Education Code 48900.5 also authorizes a district to document in a student's records other means of correction that may have been used to address the student's behavior.

For further information about disciplinary strategies, see the accompanying administrative regulation and CSBA's publication [Safe Schools: Strategies for Governing Boards to Ensure Student Success](#).

The Governing Board desires to provide a safe, supportive, and positive school environment conducive to student learning and to prepare students for responsible citizenship by fostering self-discipline and personal responsibility. The Board believes that high expectations for student behavior, use of effective school and classroom management strategies, and parent involvement can minimize the need for discipline.

The Superintendent or designee shall approve, for each school, a complement of effective, age-appropriate strategies for correcting student behavior. Such strategies may include, but are not limited to, conferences with students and their parents/guardians; use of study, guidance, or other intervention-related teams; enrollment in a program teaching prosocial behavior or anger management; and participation in a restorative justice program. Staff shall use preventative measures and positive conflict resolution techniques whenever possible. Disciplinary measures that may result in loss of instructional time or cause students to be disengaged from school, such as suspension and expulsion, shall be imposed only when required by law and when other means of correction have failed. (Education Code 48900.5)

*(cf. 5020 - Parent Rights and Responsibilities)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5138 - Conflict Resolution/Peer Mediation)*

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

*(cf. 6020 - Parent Involvement)*

*(cf. 6164.5 - Student Success Teams)*

Board policies and administrative regulations shall outline acceptable student conduct and provide the basis for sound disciplinary practices.

*(cf. 5131 - Conduct)*

*(cf. 5131.1 - Bus Conduct)*

*(cf. 5131.2 - Bullying)*

Note: Education Code 35291.5 authorizes, but does not require, school sites to adopt rules and procedures for student discipline. The following paragraph is **optional**.

**DISCIPLINE** (continued)

The administrative staff at each school may develop disciplinary rules to meet the school's particular needs. However, the rules shall be consistent with law, Board policy, and district regulations. The Board may review, at an open meeting, the approved school discipline rules for consistency with Board policy and state law. (Education Code 35291.5)

*(cf. 9320 - Meetings and Notices)*

At all times, the safety of students and staff and the maintenance of an orderly school environment shall be priorities in determining appropriate discipline. When misconduct occurs, staff shall attempt to identify the causes of the student's behavior and implement appropriate discipline. When choosing between different disciplinary strategies, staff shall consider the effect of each option on the student's health and opportunity to learn.

Persistently disruptive students may be assigned to alternative programs or removed from school in accordance with law, Board policy, and administrative regulation.

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

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

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

*(cf. 5136 - Gangs)*

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

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

*(cf. 6159.4 - Behavioral Interventions for Special Education Students)*

*(cf. 6184 - Continuation Education)*

*(cf. 6185 - Community Day School)*

Staff shall enforce disciplinary rules fairly, consistently, and in accordance with the district's nondiscrimination policies.

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

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

The Superintendent or designee shall provide professional development as necessary to assist staff in developing consistent classroom management skills, implementing effective disciplinary techniques, and establishing cooperative relationships with parents/guardians.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

At the beginning of every school year, the Superintendent or designee shall report to the Board regarding disciplinary strategies used in each school in the immediately preceding school year and their effect on student learning in the school.

**DISCIPLINE** (continued)

**Corporal Punishment**

Corporal punishment shall not be used as a disciplinary measure against any student. Corporal punishment includes the willful infliction of, or willfully causing the infliction of, physical pain on a student. (Education Code 49001)

However, corporal punishment does not include any pain or discomfort suffered by a student as a result of his/her voluntary participation in an athletic or other recreational competition or activity. In addition, an employee's use of force that is reasonable and necessary to protect himself/herself, students, staff, or other persons, to prevent damage to property, or to obtain possession of weapons or other dangerous objects within the control of the student is not corporal punishment. (Education Code 49001)

*(cf. 4158/4258/4358 - Employee Security)*  
*(cf. 5131.7 - Weapons and Dangerous Instruments)*  
*(cf. 6145.2 - Athletic Competition)*

*Legal Reference: (see next page)*

**DISCIPLINE** (continued)

*Legal Reference:*

EDUCATION CODE

32280-32288 *School safety plans*

35146 *Closed sessions*

35291 *Rules*

35291.5-35291.7 *School-adopted discipline rules*

37223 *Weekend classes*

44807.5 *Restriction from recess*

48900-48926 *Suspension and expulsion*

48980-48985 *Notification of parent/guardian*

49000-49001 *Prohibition of corporal punishment*

49330-49335 *Injurious objects*

CIVIL CODE

1714.1 *Parental liability for child's misconduct*

CODE OF REGULATIONS, TITLE 5

307 *Participation in school activities until departure of bus*

353 *Detention after school*

*Management Resources:*

CSBA PUBLICATIONS

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

*Maximizing Opportunities for Physical Activity during the School Day, Fact Sheet, 2009*

CALIFORNIA DEPARTMENT OF EDUCATION PROGRAM ADVISORIES

*Classroom Management: A California Resource Guide for Teachers and Administrators of Elementary and Secondary Schools, 2000*

STATE BOARD OF EDUCATION POLICIES

*01-02 School Safety, Discipline, and Attendance, March 2001*

WEB SITES

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

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

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

**DISCIPLINE**

**Site-Level Rules**

Note: The following section is **optional**. Pursuant to Education Code 35291.5, schools are authorized, but not required, to adopt site-level student discipline rules and procedures. Schools that choose to adopt student discipline rules, or that are directed by the Governing Board to do so, must solicit input from groups specified in items #1-5 below. If the school develops student discipline rules, Education Code 32282 requires that they be included in the comprehensive safety plan; see BP/AR 0450 - Comprehensive Safety Plan.

In developing site-level disciplinary rules, the principal or designee shall solicit the participation, views, and advice of one representative selected by each of the following groups: (Education Code 35291.5)

1. Parents/guardians
2. Teachers
3. School administrators
4. School security personnel, if any

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

Note: Item #5 below may be deleted by elementary districts.

5. For junior high and high schools, students enrolled in the school

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

Each school shall file a copy of its rules with the Superintendent or designee.

Note: Education Code 35291.5 provides that schools may adopt discipline rules at least every four years. The following **optional** paragraph, including the timelines for review of the school's discipline rules, may be revised to reflect district practice.

Each school shall review its site-level discipline rules at least every four years.

It shall be the duty of each employee of the school to enforce the school rules on student discipline. (Education Code 35291)

**Disciplinary Strategies**

Note: Education Code 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), provides methods of correction of student behavior that a district may use. The district should select those strategies that are appropriate for its student population. The following strategies may be modified or expanded to reflect district practice. Also see CSBA's publication [Safe Schools: Strategies for Governing Boards to Ensure Student Success](#).

**DISCIPLINE** (continued)

To the extent possible, staff shall use disciplinary strategies that keep students in school and participating in the instructional program. Disciplinary strategies may include, but are not limited to:

1. Discussion or conference between school staff and the student and his/her parents/guardians

*(cf. 5020 - Parent Rights and Responsibilities)*  
*(cf. 6020 - Parent Involvement)*

2. Referral of the student to the school counselor or other school support service personnel for case management and counseling

*(cf. 5138 - Conflict Resolution/Peer Mediation)*  
*(cf. 6164.2 - Guidance/Counseling Services)*

3. Convening of a study, guidance, resource panel, or other intervention-related team to assess the behavior and develop and implement an individual plan to address the behavior in partnership with the student and his/her parents/guardians

*(cf. 6164.5 - Student Success Teams)*

4. When applicable, referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program or a Section 504 plan

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

5. Enrollment in a program for teaching prosocial behavior or anger management

6. Participation in a restorative justice program

7. A positive behavior support approach with tiered interventions that occur during the school day on campus

8. After-school programs that address specific behavioral issues or expose students to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups

*(cf. 5148.2 - Before/After School Programs)*

**DISCIPLINE** (continued)

9. Recess restriction as provided in the section below entitled "Recess Restriction"
10. Detention after school hours as provided in the section below entitled "Detention After School"
11. Community service as provided in the section below entitled "Community Service"
12. In accordance with Board policy and administrative regulation, restriction or disqualification from participation in extracurricular activities

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

13. Reassignment to an alternative educational environment

*(cf. 6158 - Independent Study)*

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

*(cf. 6184 - Continuation Education)*

*(cf. 6185 - Community Day School)*

14. Suspension and expulsion in accordance with law, Board policy, and administrative regulation

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

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

**Recess Restriction**

Note: Education Code 44807.5 authorizes the district to adopt reasonable regulations allowing a teacher to restrict recess time for disciplinary purposes. The following **optional** section should be revised to reflect district practice.

A teacher may restrict a student's recess time only when he/she believes that this action is the most effective way to bring about improved behavior. When recess restriction may involve the withholding of physical activity from a student, the teacher shall try other disciplinary measures before imposing the restriction. Recess restriction shall be subject to the following conditions:

**OK**

1. The student shall be given adequate time to use the restroom and get a drink or eat lunch, as appropriate.
2. The student shall remain under a certificated employee's supervision during the period of restriction.

**DISCIPLINE** (continued)

3. Teachers shall inform the principal of any recess restrictions they impose.

(cf. 5030 - Student Wellness)

(cf. 6142.7 - Physical Education and Activity)

**Detention After School**

Note: 5 CCR 353 limits after-school detention to one hour after the close of the maximum school day except as otherwise provided by 5 CCR 307. 5 CCR 307 allows schools to require students to stay at school and participate in school activities until the departure of the school transportation to which the student has been assigned. The California Department of Education's legal counsel has interpreted these regulations to mean that a school may detain a student up to an hour after school even if the student misses his/her bus, and may require a student to remain at school for more than one hour if the school bus leaves more than one hour after the end of the school day. For safety purposes, when a student will miss his/her transportation due to detention, the school should notify the parent/guardian at least one day in advance so that alternative arrangements may be made.

Students may be detained for disciplinary reasons up to one hour after the close of the maximum school day. (5 CCR 353)

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

If a student will miss his/her school bus on account of being detained after school, or if the student is not transported by school bus, the principal or designee shall notify parents/guardians of the detention at least one day in advance so that alternative transportation arrangements may be made. The student shall not be detained unless the principal or designee notifies the parent/guardian.

In cases where the school bus departs more than one hour after the end of the school day, students may be detained until the bus departs. (5 CCR 307, 353)

Students shall remain under the supervision of a certificated employee during the period of detention.

Note: The following **optional** paragraph is offered for districts that use Saturday classes for purposes of detention. Education Code 37223 authorizes the use of Saturday classes; however, except in the case of truants, attendance at such classes must be at the election of the student or parent/guardian.

**OK**

Students may be offered the choice of serving their detention on Saturday rather than after school.

(cf. 6176 - Weekend/Saturday Classes)

**DISCIPLINE** (continued)**Community Service**

As part of or instead of disciplinary action, the Board, Superintendent, principal, or principal's designee may, at his/her discretion, require a student to perform community service during nonschool hours on school grounds, or, with written permission of the student's parent/guardian, off school grounds. Such service may include, but is not limited to, community or school outdoor beautification, campus betterment, and teacher, peer, or youth assistance programs. (Education Code 48900.6)

Note: Education Code 48900.6 provides that the community service option is not available for those students who have been suspended, pending expulsion, for acts qualifying for either "mandatory recommendation for expulsion" or "mandatory expulsion" pursuant to Education Code 48915. See AR 5144.1 - Suspension and Expulsion/Due Process.

This community service option is not available for a student who has been suspended, pending expulsion, pursuant to Education Code 48915. However, if the recommended expulsion is not implemented or the expulsion itself is suspended, then a student may be required to perform community service for the resulting suspension. (Education Code 48900.6)

**Notice to Parents/Guardians and Students**

At the beginning of the school year, the Superintendent or designee shall notify parents/guardians, in writing, about the availability of district rules related to discipline. (Education Code 35291, 48980)

*(cf. 5145.6 - Parental Notifications)*

The Superintendent or designee shall also provide written notice of the rules related to discipline to transfer students at the time of their enrollment in the district.

**SUSPENSION AND EXPULSION/DUE PROCESS**

Note: Education Code 35291 requires the Governing Board to prescribe rules and regulations for maintaining discipline in the schools under its jurisdiction. In addition, Education Code 48918 mandates the setting of rules and regulations for student expulsion; see the accompanying administrative regulation.

While recognizing that suspension or expulsion of students is sometimes necessary, the California State Legislature has made its intent clear that instructional time should be used for student learning purposes and that school discipline should be imposed in a way that, as much as possible, would not exclude students from school or limit their ability or opportunity to learn. Pursuant to Education Code 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), a district is not authorized to suspend a student for certain specified violations unless other means of correction have failed to bring about proper conduct. Such other means of correction include, but are not limited to, conferences between school personnel and the student and his/her parents/guardians; use of study, guidance, or other intervention teams to develop a plan to address the behavior in partnership with the student; and participation in a restorative justice program. Education Code 48900.5, as amended, also authorizes a district to document in a student's records the alternative means of correction used to address the student's behavior. For further information about specific disciplinary strategies, see BP/AR 5144 - Discipline.

The Governing Board desires to provide district students access to educational opportunities in an orderly school environment that protects their safety and security, ensures their welfare and well-being, and promotes their learning and development. The Board shall develop rules and regulations setting the standards of behavior expected of district students and the disciplinary processes and procedures for addressing violations of those standards, including suspension and/or expulsion.

*(cf. 5131 - Conduct)*  
*(cf. 5131.1 - Bus Conduct)*  
*(cf. 5131.2 - Bullying)*

To correct the behavior of any student who is subject to discipline, the Superintendent or designee shall, to the extent allowed by law, first use alternative disciplinary strategies specified in AR 5144.1 - Discipline. (Education Code 48900.5)

*(cf. 1020 - Youth Services)*  
*(cf. 5138 - Conflict Resolution/Peer Mediation)*  
*(cf. 5144 - Discipline)*  
*(cf. 6142.4 - Service Learning/Community Service Classes)*  
*(cf. 6164.2 - Guidance/Counseling Services)*  
*(cf. 6164.5 - Student Success Teams)*

Note: The following **optional** paragraph reflects the Legislature's intent, expressed in Education Code 48900, concerning disciplinary actions against truant, tardy, or absent students.

Alternatives to suspension or expulsion also shall be used with students who are truant, tardy, or otherwise absent from assigned school activities.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

*(cf. 5113 - Absences and Excuses)*

*(cf. 5113.1 - Chronic Absence and Truancy)*

Note: The following **optional** paragraph may be revised to reflect district practice. Although the term "zero tolerance" does not appear in law, the federal Gun-Free Schools Act (20 USC 7151) requires a district to expel for one year a student who brings a firearm to school without permission. This requirement has commonly been labeled as "zero tolerance." Education Code 48915(c) also requires the mandatory suspension and recommendation for expulsion of students who possess, sell, or furnish a firearm, brandish a knife, sell a controlled substance, commit or attempt to commit a sexual assault or sexual battery, or possess an explosive. However, as amended by AB 2537 (Ch. 431, Statutes of 2012), Education Code 48915(c) clarifies that a student's possession of an "imitation firearm" does not require expulsion. See accompanying administrative regulation and BP/AR 5131.7 - Weapons and Dangerous Instruments.

Except for single acts of a grave nature or offenses for which suspension or expulsion is required by law, suspension or expulsion shall be used only when other means of correction have failed to bring about proper conduct or the student's presence causes a continuing danger to himself/herself or others.

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

The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be those specified in law and administrative regulation.

Note: The following **optional** paragraph highlights the importance of ensuring fairness in the dispensing of suspension and/or expulsion to students who violate school rules. As part of its justification for passing AB 1729 (Ch. 425, Statutes of 2012), the Legislature noted in its findings that suspension and expulsion are disproportionately imposed on some vulnerable student populations. The U.S. Department of Education's Office for Civil Rights' (OCR) March 2012 publication, [Civil Rights Data Collection Summary](#), indicates that males, certain ethnic minority students, and students with disabilities are being suspended or expelled at a disproportionately higher rate than other students.

District staff shall enforce the rules concerning suspension and expulsion of students fairly, consistently, and in accordance with the district's nondiscrimination policies.

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

**Due Process**

The Board shall provide for the fair and equitable treatment of students facing suspension and expulsion by affording them their due process rights under the law. The Superintendent or designee shall comply with procedures for notices, hearings, and appeals as specified in law and administrative regulation. (Education Code 48911, 48915, 48915.5)

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

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

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)**Removal from Class by a Teacher and Parental Attendance**

Note: The following section is for use by any district that chooses to require parents/guardians to attend a portion of the school day when their child is removed from class for specified behaviors, as authorized by Education Code 48900.1. As noted in its findings in AB 1729 (Ch. 425, Statutes of 2012), the Legislature has indicated its preference for disciplinary strategies that keep students engaged in school and from losing instructional time. For any district using this disciplinary option, the Board is required to include the components specified in this section. Districts that do not require parental attendance should delete this section.

When suspending a student from class for committing an obscene act, engaging in habitual profanity or vulgarity, disrupting school activities, or otherwise willfully defying valid staff authority, the teacher of the class may require any parent/guardian who lives with the student to attend a portion of the school day in the class from which the student is being suspended, to assist in resolving the classroom behavior problems. (Education Code 48900.1)

Teachers should reserve the option of required parental attendance for cases in which they have determined that it is the best strategy to promote positive interaction between the teacher and the student and his/her parents/guardians and to improve the student's behavior.

Any teacher requiring parental attendance pursuant to this policy shall apply the policy uniformly to all students within the classroom. (Education Code 48900.1)

When a teacher requires parental attendance, the principal shall send a written notice to the parent/guardian stating that his/her attendance is required pursuant to law. (Education Code 48900.1)

*(cf. 5145.6 - Parental Notifications)*

Note: For any district that authorizes parental attendance as a disciplinary option, Education Code 48900.1 **mandates** that the district's policy include procedures to ensure that parents/guardians who attend school meet with the principal or designee after completing the classroom visitation and before leaving the school.

A parent/guardian who has received a written notice shall attend class as specified in the notice. After completing the classroom visit and before leaving school premises, the parent/guardian also shall meet with the principal or designee. (Education Code 48900.1)

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

At the meeting with the student's parent/guardian, the principal or designee shall explain the district's and school's discipline policies, including the disciplinary strategies that may be used to achieve proper student conduct.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

Note: For any district that authorizes parental attendance as a disciplinary option, Education Code 48900.1 **mandates** that the district's policy include procedures for contacting parents/guardians who do not respond to the request to attend. The following paragraph may be revised to reflect district practice.

When a parent/guardian does not respond to the request to attend school, the principal or designee shall contact him/her by telephone, mail, or other method that maintains the confidentiality of the student's records.

*(cf. 5125 - Student Records)*

District regulations and school-site rules for student discipline shall include procedures for implementing parental attendance requirements. Parents/guardians shall be notified of this policy prior to its implementation. (Education Code 48900.1)

**Supervised Suspension Classroom**

Note: As an alternative to off-campus suspension, Education Code 48911.1 authorizes a supervised suspension classroom program for students who pose no imminent danger to anyone at school and who have not been recommended for expulsion, as specified below. Education Code 48911.2 states that if the number of students suspended during the prior year exceeds 30 percent of the school's enrollment, the district should consider implementing this program and/or another program of on-campus progressive discipline. However, Education Code 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), requires a district to try other means of correction, under certain circumstances, before imposing a supervised suspension.

The following **optional** section is for use by districts implementing a supervised suspension classroom program; such districts may continue to claim apportionments for students so assigned, provided they meet specific criteria which are set forth under "Supervised Suspension Classroom" in the accompanying administrative regulation.

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To ensure the proper supervision and ongoing learning of students who are suspended for any of the reasons enumerated in Education Code 48900 and 48900.2, but who pose no imminent danger or threat to anyone at school and for whom expulsion proceedings have not been initiated, the Superintendent or designee shall establish a supervised suspension classroom program which meets the requirements of law.

Except where a supervised suspension is permitted by law for a student's first offense, supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

**Decision Not to Enforce Expulsion Order**

Note: Pursuant to Education Code 48917, the Board may decide to suspend the enforcement of an order for expulsion if a student satisfies specific conditions. See the accompanying administrative regulation for criteria. In addition, the Attorney General opined in 80 Ops.Cal.Atty.Gen. 85 (1997) that a board may suspend the enforcement of an expulsion even in those cases where the student has committed an offense for which expulsion is required by law. Legal counsel should be consulted as appropriate.

## **SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

Option 1 below is for use by boards that choose not to suspend the enforcement of an order for expulsion in cases where the student has committed an offense for which expulsion is mandatory pursuant to Education Code 48915(c). Option 2 is for use by boards that, on a case-by-case basis, may determine that an order for expulsion be suspended for any type of offense.

**OPTION 1:** In cases where expulsion is mandatory pursuant to Education Code 48915(c), the enforcement of an expulsion order shall not be suspended by the Board. In all other cases of expulsion, the order for expulsion may be suspended by the Board, on case-by-case basis, pursuant to the requirements of law and administrative regulation.

~~**OPTION 2:** On a case by case basis, the enforcement of an expulsion order may be suspended by the Board pursuant to the requirements of law and administrative regulation. (Education Code 48917)~~

### **Monitoring the Use of Suspension and Expulsion**

Note: The following section is **optional**. Pursuant to Education Code 48900.8 and 48916, the district is required to maintain data related to suspensions and expulsions and to report them to the Superintendent of Public Instruction upon request. For the specific information required, see the accompanying administrative regulation.

At the end of each school year, the Superintendent or designee shall **may** present a report to the Board regarding the use of suspension and/or expulsion in district schools. The report shall include, but is not limited to, outcome data which the district is required by law to collect and data related to the effect of suspension and/or expulsion on the district's minority student populations or groupings.

*(cf. 9320 - Meetings and Notices)*

*Legal Reference: (see next page)*

**SUSPENSION AND EXPULSION/DUE PROCESS (continued)**

*Legal Reference:*

EDUCATION CODE

212.5 Sexual harassment

233 Hate violence

1981 Enrollment of students in community school

17292.5 Program for expelled students

32261 Interagency School Safety Demonstration Act of 1985

35145 Open board meetings

35146 Closed sessions (regarding suspensions)

35291 Rules (for government and discipline of schools)

35291.5 Rules and procedures on school discipline

48645.5 Readmission; contact with juvenile justice system

48660-48667 Community day schools

48853.5 Foster youth

48900-48927 Suspension and expulsion

48950 Speech and other communication

48980 Parental notifications

49073-49079 Privacy of student records

CIVIL CODE

47 Privileged communication

48.8 Defamation liability

CODE OF CIVIL PROCEDURE

1985-1997 Subpoenas; means of production

GOVERNMENT CODE

11455.20 Contempt

54950-54963 Ralph M. Brown Act

HEALTH AND SAFETY CODE

11014.5 Drug paraphernalia

11053-11058 Standards and schedules

LABOR CODE

230.7 Discharge or discrimination against employee for taking time off to appear in school on behalf of a child

PENAL CODE

31 Principal of a crime, defined

240 Assault defined

241.2 Assault fines

242 Battery defined

243.2 Battery on school property

243.4 Sexual battery

245 Assault with deadly weapon

245.6 Hazing

261 Rape defined

266c Unlawful sexual intercourse

286 Sodomy defined

288 Lewd or lascivious acts with child under age 14

288a Oral copulation

289 Penetration of genital or anal openings

417.27 Laser pointers

*Legal Reference continued: (see next page)*

## **SUSPENSION AND EXPULSION/DUE PROCESS (continued)**

### *Legal Reference: (continued)*

#### PENAL CODE (continued)

422.55 Hate crime defined

422.6 Interference with exercise of civil rights

422.7 Aggravating factors for punishment

422.75 Enhanced penalties for hate crimes

626.2 Entry upon campus after written notice of suspension or dismissal without permission

626.9 Gun-Free School Zone Act of 1995

626.10 Dirks, daggers, knives, razors, or stun guns

868.5 Supporting person; attendance during testimony of witness

#### WELFARE AND INSTITUTIONS CODE

729.6 Counseling

#### UNITED STATES CODE, TITLE 18

921 Definitions, firearm

#### UNITED STATES CODE, TITLE 20

1415(K) Placement in alternative educational setting

7151 Gun-free schools

#### COURT DECISIONS

T.H. v. San Diego Unified School District (2004) 122 Cal. App. 4th 1267

Woodbury v. Dempsey (2003) 108 Cal. App. 4th 421

Board of Education of Sacramento City Unified School District v. Sacramento County Board of Education and Kenneth H. (2001) 85 Cal.App.4th 1321

Garcia v. Los Angeles Board of Education (1991) 123 Cal. App. 3d 807

Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 1182

John A. v. San Bernardino School District (1982) 33 Cal. 3d 301

#### ATTORNEY GENERAL OPINIONS

84 Ops.Cal.Atty.Gen. 146 (2001)

80 Ops.Cal.Atty.Gen. 91 (1997)

80 Ops.Cal.Atty.Gen. 85 (1997)

### *Management Resources:*

#### CSBA PUBLICATIONS

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

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

Civil Rights Data Collection Summary, March 2012

#### WEB SITES

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

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

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

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

<http://www.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

U.S. Department of Education, Office of Safe and Drug-Free Schools:

<http://www.ed.gov/about/offices/list/osdfs>

**SUSPENSION AND EXPULSION/DUE PROCESS**

Note: Education Code 35291 requires the Governing Board to adopt rules and regulations for maintaining discipline in the schools under its jurisdiction. In addition, Education Code 48918 and 48918.5 **mandate** that districts adopt rules concerning the due process rights of students in expulsion situations, and Education Code 48916 **mandates** procedures for filing and processing requests for readmission. Specific language complying with these mandates is included throughout this administrative regulation.

**Definitions**

*Suspension from school* means removal of a student from ongoing instruction for adjustment purposes. However, suspension does not mean any of the following: (Education Code 48925)

1. Reassignment to another education program or class at the same school where the student will receive continuing instruction for the length of day prescribed by the Governing Board for students of the same grade level.
2. Referral to a certificated employee designated by the principal to advise students.
3. Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or designee as provided in Education Code 48910. Removal from a particular class shall not occur more than once every five school days.

*Expulsion* means removal of a student from the immediate supervision and control, or the general supervision, of school personnel. (Education Code 48925)

*Day* means a calendar day unless otherwise specifically provided. (Education Code 48925)

*School day* means a day upon which the schools of the district are in session or weekdays during the summer recess. (Education Code 48925)

*Student* includes a student's parent/guardian or legal counsel. (Education Code 48925)

*Principal's designee* means one or more administrators or, if there is not a second administrator at one school site, a certificated person specifically designated by the principal, in writing, to assist with disciplinary procedures. Only one such person may be designated at any time as the principal's primary designee and only one such person may be designated as secondary designee for the school year. The names of such persons shall be on file in the principal's office. (Education Code 48911)

*School property*, for the purposes described in Education Code 48900, includes, but is not limited to, electronic files and databases. (Education Code 48900(u))

## **SUSPENSION AND EXPULSION/DUE PROCESS (continued)**

### **Notice of Regulations**

At the beginning of each school year, the principal of each school shall ensure that all students and parents/guardians are notified in writing of all school rules related to discipline, including suspension and expulsion. (Education Code 35291, 48900.1, 48980)

(cf. 5144 - Discipline)

(cf. 5145.6 - Parental Notifications)

### **Grounds for Suspension and Expulsion**

Any student, including a student with disabilities, may be subject to suspension or expulsion when it is determined that he/she:

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

1. Caused, attempted to cause, or threatened to cause physical injury to another person or willfully used force or violence upon another person, except in self-defense (Education Code 48900(a))

Note: Education Code 48900 allows for the suspension, but not expulsion, of a student who "aids or abets," as defined in Penal Code 31, the infliction or attempted infliction of physical injury to another person. However, a student may be suspended or expelled if a juvenile court determines that he/she has committed, as an aider or abettor, a crime of physical violence in which the victim suffered either great or serious bodily injury. The term "aiding or abetting," as defined in Penal Code 31, is a complex legal term and requires that, at the time he/she committed the crime, the aider or abettor was aware of the crime and specifically intended to commit the crime. Because of the complexities of criminal law, this issue may be difficult for school administrators to apply in a school setting and legal counsel should be consulted as appropriate.

A student who *aids* or *abets* the infliction or attempted infliction of physical injury on another person, as defined in Penal Code 31, may be suspended, but not expelled. However, such a student may be suspended or expelled pursuant to Education Code 48900(a) when he/she has been adjudged by a juvenile court to have committed, as an aider or abettor, a crime of physical violence in which the victim suffered great or serious bodily injury. (Education Code 48900(t))

Note: The Attorney General, in 80 Ops.Cal.Atty.Gen. 91 (1997), determined that a student may be expelled for "possession" of a firearm if the student knowingly and voluntarily had direct control over the firearm. The only exceptions are when the student has permission from school officials to possess the firearm (pursuant to Education Code 48900 and 48915) or when the possession is brief and solely for the purpose of disposing of the firearm, such as handing it to school officials. See BP 5131.7 - Weapons and Dangerous Instruments.

Pursuant to Penal Code 417.27, students are prohibited from possessing a laser pointer on school premises, except for a valid instructional or other school-related purpose. See BP 5131 - Conduct.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

2. Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, with the principal or designee's concurrence (Education Code 48900(b))

*(cf. 5131 - Conduct)*

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

3. Unlawfully possessed, used, sold, otherwise furnished, or was under the influence of any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind (Education Code 48900(c))

*(cf. 5131.6 - Alcohol and Other Drugs)*

4. Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind, and then sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented same as such controlled substance, alcoholic beverage, or intoxicant (Education Code 48900(d))

5. Committed or attempted to commit robbery or extortion (Education Code 48900(e))

6. Caused or attempted to cause damage to school property or private property (Education Code 48900(f))

7. Stole or attempted to steal school property or private property (Education Code 48900(g))

8. Possessed or used tobacco or products containing tobacco or nicotine products, including, but not limited to, cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel, except that this restriction shall not prohibit a student from using or possessing his/her own prescription products (Education Code 48900(h))

*(cf. 5131.62 - Tobacco)*

9. Committed an obscene act or engaged in habitual profanity or vulgarity (Education Code 48900(i))

10. Unlawfully possessed, offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code 11014.5 (Education Code 48900(j))

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

11. Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, other school officials, or other school personnel engaged in the performance of their duties (Education Code 48900(k))

(cf. 5131.4 - Student Disturbances)

12. Knowingly received stolen school property or private property (Education Code 48900(l))
13. Possessed an imitation firearm (Education Code 48900(m))

*Imitation firearm* means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm. (Education Code 48900(m))

14. Committed or attempted to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committed a sexual battery as defined in Penal Code 243.4 (Education Code 48900(n))
15. Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness (Education Code 48900(o))
16. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma (Education Code 48900(p))
17. Engaged in, or attempted to engage in, hazing (Education Code 48900(q))

*Hazing* means a method of initiation or pre-initiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. *Hazing* does not include athletic events or school-sanctioned events.

Note: Education Code 48900(r) defines "bullying" as "any severe or pervasive physical or verbal act or conduct directed toward a student and which would have certain consequences upon a reasonable student."

The legal issues regarding the discipline of students for cyberbullying are complex because the acts often originate off campus (e.g., using a home computer) and because such communications may be protected by the freedom of speech rights of students granted pursuant to Education Code 48907. Generally, courts have upheld discipline against students for off-campus conduct that constituted cyberbullying that posed a threat

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities. Districts should consult legal counsel as appropriate. See also BP 5131.2 - Bullying and BP 5145.2 - Freedom of Speech/Expression.

## 18. Engaged in an act of bullying (Education Code 48900(r))

*Bullying* means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, directed toward one or more students that has or can reasonably be predicted to have the effect of placing a reasonable student in fear of harm to himself/herself or his/her property; cause the student to experience a substantially detrimental effect on his/her physical or mental health; or cause the student to experience substantial interferences with his/her academic performance or ability to participate in or benefit from the services, activities, or privileges provided by a school.

Note: "Bullying" also would include any act of sexual harassment, hate violence, or harassment, threat, or intimidation (as set forth in Education Code 48900.2, 48900.3, or 48900.4; see items #20-22 below) that is committed by a student of any grade level, when the act results in harm to a reasonable student as specified in the above paragraph. However, when bullying is found under these circumstances, students below grade 4 may not be disciplined for the underlying violations of items #20-22 below, but may only be disciplined for "bullying."

Bullying shall include any act of sexual harassment, hate violence, or harassment, threat, or intimidation, as defined in Education Code 48900.2, 48900.3, or 48900.4 (items #20-22 below), that has any of the effects described above on a reasonable student.

Note: Education Code 48900(r), as amended by AB 1732 (Ch. 157, Statutes of 2012), defines "electronic act" to include posts on social network Internet web sites as specified below. However, Education Code 48900(r) provides that an electronic act shall not constitute pervasive conduct solely by reason of its transmission on the Internet.

*Electronic act* means the transmission of a communication, including, but not limited to, a message, text, sound, image, or post on a social network Internet web site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager. A post on a social network Internet web site shall include, but is not limited to, the posting or creation of a burn page or the creation of a credible impersonation or false profile for the purpose of causing a reasonable student any of the effects of bullying described above.

*Reasonable student* means a student, including, but not limited to, a student who has been identified as a student with a disability, who exercises average care, skill, and judgment in conduct for a person of his/her age, or for a person of his/her age with his/her disability. (Education Code 48900(r))

## SUSPENSION AND EXPULSION/DUE PROCESS (continued)

(cf. 1114 - District-Sponsored Social Media)

(cf. 5131.2 - Bullying)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

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

19. Made terrorist threats against school officials and/or school property. (Education Code 48900.7)

*A terrorist threat* includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death or great bodily injury to another person or property damage in excess of \$1,000, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out. (Education Code 48900.7)

<p>Note: The following additional grounds apply only to students in grades 4-12 and may be revised to reflect grade levels offered by the district. As discussed in item #18 above, although Education Code 48900(r) defines bullying to include acts involving items #20-22, only students in grades 4-12 may be suspended or expelled for the individual acts that constitute sexual harassment, hate violence, and harassment as stated in items #20-22 below. The interplay between items #18 and #20-22 can raise complex legal issues. Districts should consult legal counsel as appropriate.</p>
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A student in grades 4-12 is also subject to suspension or recommendation for expulsion when it is determined that he/she:

20. Committed sexual harassment as defined in Education Code 212.5 (Education Code 48900.2)

*Sexual harassment* means conduct which, when considered from the perspective of a reasonable person of the same gender as the victim, is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment. (Education Code 212.5, 48900.2)

(cf. 5145.7 - Sexual Harassment)

21. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code 233 (Education Code 48900.3)

*Hate violence* means any act punishable under Penal Code 422.6, 422.7, or 422.75. Such acts include injuring or intimidating a victim, interfering with the exercise of a victim's civil rights, or damaging a victim's property because of the victim's race, ethnicity, religion, nationality, disability, gender, gender identity, gender expression, or sexual orientation; a perception of the presence of any of those characteristics in the victim; or the victim's association with a person or group with one or more of those actual or perceived characteristics. (Education Code 233; Penal Code 422.55)

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

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

22. Intentionally engaged in harassment, threats, or intimidation against district personnel or students that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of school personnel or students by creating an intimidating or hostile educational environment (Education Code 48900.4)

*(cf. 5145.3 - Nondiscrimination/Harassment)*

A student may be suspended or expelled for any of the acts listed above if the act is related to school activity or school attendance occurring at any district school or within any other school district, at any time, including, but not limited to, the following: (Education Code 48900(s))

1. While on school grounds
2. While going to or coming from school

*(cf. 5131.1 - Bus Conduct)*

3. During the lunch period, whether on or off the school campus

*(cf. 5112.5 - Open/Closed Campus)*

4. During, going to, or coming from a school-sponsored activity

**Removal from Class by a Teacher and Parental Attendance**

Note: The following section is <b>optional</b> and may be revised to reflect district practice.
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A teacher may remove any student from his/her class for the remainder of the day and the following day for any act listed in "Grounds for Suspension and Expulsion" above. (Education Code 48910)

When removing a student from his/her class, the teacher shall immediately report this action to the principal or designee and send the student to the principal or designee for appropriate action. If that action requires the continuing presence of the student at school, he/she shall be appropriately supervised during the class periods from which he/she has been removed. (Education Code 48910)

As soon as possible, the teacher shall ask the student's parent/guardian to attend a parent-teacher conference regarding the removal. A counselor or psychologist may attend the

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

conference if it is practicable, and a school administrator shall attend if either the parent/guardian or teacher so requests. (Education Code 48910)

A student removed from class shall not be returned to class during the period of removal without the approval of the teacher of the class and the principal. (Education Code 48910)

A student removed from class shall not be placed in another regular class during the period of removal. However, if a student is assigned to more than one class per day, he/she may be placed in any other regular classes except those held at the same time as the class from which the student was removed. (Education Code 48910)

The teacher of any class from which a student is removed may require the student to complete any assignments and tests missed during the removal. (Education Code 48913)

Note: The remainder of this section is for use by districts that have adopted a policy regarding required parental attendance pursuant to Education Code 48900.1; see the accompanying Board policy.

Pursuant to Board policy, a teacher may require the parent/guardian of a student whom the teacher has removed to attend a portion of a school day in his/her child's classroom. When a teacher makes this request, the principal shall send the parent/guardian a written notice that the parent/guardian's attendance is requested pursuant to law. (Education Code 48900.1)

Note: Education Code 48900.1 requires the principal's notice to specify when the parent/guardian must attend the class and to take into account reasonable factors that may prevent the parent/guardian from complying, such as illness, injury, disability, or absence from town. The following paragraph establishes a one-week deadline for the parent/guardian's attendance. This deadline may be modified to reflect district practice.

The notice shall specify that the attendance may be on either the date the student is scheduled to return to class or within one week thereafter.

Note: Items #1-3 below are **optional** and should be modified to reflect district practice.

This notice shall also:

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1. Inform the parent/guardian when his/her presence is expected and by what means he/she may arrange an alternate date
2. State that if the parent/guardian does not have a means of transportation to school, he/she may ride the school bus with the student
3. Ask the parent/guardian to meet with the principal after the visit and before leaving school, as required by Education Code 48900.1

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)**Suspension by Superintendent, Principal, or Designee**

Note: Pursuant to Education Code 48900, as amended by AB 1729 (Ch. 425, Statutes of 2012), and Education Code 48915, as amended by AB 2537 (Ch. 431, Statutes of 2012), except for certain grave violations requiring suspension as specified below, the Superintendent or principal is authorized to use his/her discretion to provide an alternative, age-appropriate disciplinary measure that is tailored to correct a student's specific misbehavior when considering suspension or expulsion of the student. Education Code 48900.5, as amended by AB 1729, also authorizes documentation in the student's record of any implemented alternative means of correction and provides examples of such alternatives. For details and a listing of these alternatives, see AR 5144 - Discipline.

The Superintendent, principal, or designee may suspend a student for any of the acts listed in "Grounds for Suspension and Expulsion" above. A student may be suspended only when the Superintendent or principal has determined that other means of correction have failed to bring about proper conduct in the student. (Education Code 48900.5)

When other means of correcting a student's behavior are implemented prior to imposing suspension upon the student, including supervised suspension, the Superintendent, principal, or designee shall document the other means of correction used and retain them in the student's record. (Education Code 48900.5)

(*cf.* 5125 - Student Records)

Note: Education Code 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), limits situations warranting suspension for a first offense to when the violation involves Education Code 48900(a)-(e) or the student's presence causes a danger to persons.

However, the Superintendent, principal, or designee may impose a suspension upon a first offense if he/she determines that the student violated any of items #1-5 listed in "Grounds for Suspension and Expulsion" above or if the student's presence causes a danger to persons. (Education Code 48900.5)

In addition, the Superintendent, principal, or designee shall immediately suspend any student found at school or at a school activity to be: (Education Code 48915)

1. Possessing, as verified by a district employee, selling, or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Brandishing a knife as defined in Education Code 48915(g)
3. Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

4. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committing a sexual battery as defined in Penal Code 243.4
5. Possessing an explosive as defined in 18 USC 921

The Superintendent, principal, or designee may suspend a student from school for not more than five consecutive school days unless the suspension is extended pending expulsion. (Education Code 48911)

A student may be suspended from school for not more than 20 school days in any school year unless, for purposes of adjustment, the student enrolls in or is transferred to another regular school, an opportunity school, or continuation school or class, in which case suspension shall not exceed 30 days in any school year. However, this restriction on the number of days of suspension does not apply when the suspension is extended pending an expulsion. (Education Code 48903, 48911, 48912)

*(cf. 6184 - Continuation Education)*

The district may count suspensions that occur while a student is enrolled in another school district toward the maximum number of days for which the student may be suspended in any school year. (Education Code 48903)

Suspensions shall be initiated according to the following procedures:

1. **Informal Conference:** Suspension shall be preceded by an informal conference conducted by the Superintendent, principal, or designee with the student and, whenever practicable, the teacher, supervisor, or school employee who referred the student to the principal. At the conference, the student shall be informed of the reason for the disciplinary action, presented with the evidence against him/her, and given the opportunity to present his/her version and evidence in support of his/her defense. (Education Code 48911)

This conference may be omitted if the Superintendent, principal, or designee determines that an emergency situation exists involving a clear and present danger to the lives, safety, or health of students or school personnel. If a student is suspended without this conference, both the parent/guardian and student shall be notified of the student's right to return to school for the purpose of the conference. The conference shall be held within two school days, unless the student waives his/her right to it or is physically unable to attend for any reason. In such a case, the conference shall be held as soon as the student is physically able to return to school. (Education Code 48911)

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

Note: Item #2 below should be revised to reflect the district's processing and reporting procedures.

2. **Administrative Actions:** All requests for student suspension are to be processed by the principal or designee. A school employee shall report the suspension, including the name of the student and the cause for the suspension, to the Superintendent or designee. (Education Code 48911)
3. **Notice to Parents/Guardians:** At the time of the suspension, a school employee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension. (Education Code 48911)

This notice shall state the specific offense committed by the student. (Education Code 48900.8)

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

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In addition, the notice may state the date and time when the student may return to school. If school officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may add that state law requires the parent/guardian to respond to such requests without delay.

4. **Parent/Guardian Conference:** Whenever a student is suspended, school officials may meet with the parent/guardian to discuss the cause(s) and duration of the suspension, the school policy involved, and any other pertinent matter. (Education Code 48914)

Although the parent/guardian is required to respond without delay to a request for a conference about his/her child's behavior, no penalties may be imposed on the student for the failure of the parent/guardian to attend such a conference. The student may not be denied readmission solely because the parent/guardian failed to attend the conference. (Education Code 48911)

5. **Extension of Suspension:** If the Board is considering the expulsion of a suspended student from any school or the suspension of a student for the balance of the semester from continuation school, the Superintendent or designee may, in writing, extend the suspension until such time as the Board has made a decision. (Education Code 48911)

Any extension of the original period of suspension shall be preceded by notice of such extension with an offer to hold a conference concerning the extension, giving the student an opportunity to be heard. This conference may be held in conjunction with

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

a meeting requested by the student or parent/guardian to challenge the original suspension. Extension of the suspension may be made only if the Superintendent or designee determines, following a meeting in which the student and the student's parent/guardian were invited to participate, that the student's presence at the school or at an alternative school would endanger persons or property or threaten to disrupt the instructional process. (Education Code 48911)

Note: When the student being considered for expulsion is a foster youth, Education Code 48911, as amended by AB 1909 (Ch. 849, Statutes of 2012), and Education Code 48918.1, as added by AB 1909, require the district to invite the student's attorney and an appropriate county child welfare agency representative to the meeting specified above. To ensure such invitation, the following paragraph provides that the district liaison for foster youth be notified. However, any district that has designated another position to carry out this responsibility may modify the paragraph to specify that position. For designation of the liaison for foster youth, see AR 6173.1 - Education for Foster Youth.

If the student involved is a foster youth, the Superintendent or designee shall notify the district liaison for foster youth of the need to invite the student's attorney and a representative of the appropriate county child welfare agency to attend the meeting. (Education Code 48853.5, 48911, 48918.1)

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

Note: The following **optional** paragraph may be revised to reflect district practice. Since Education Code 48900 and 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), require a district, under certain circumstances, to use alternative disciplinary measures prior to imposing suspension, including supervised suspension, the district may, as necessary, provide services that would address the student's specific misbehavior along with the suspension program. For example, the district may require the student to enroll in a program that teaches prosocial behavior or anger management even while the student is suspended.

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In addition to suspending a student, the Superintendent, principal, or designee may provide services or require the student to participate in an alternative disciplinary program designed to correct his/her behavior and keep him/her in school.

**Suspension by the Board**

The Board may suspend a student for any of the acts listed in "Grounds for Suspension and Expulsion" above and within the limits specified in "Suspension by Superintendent, Principal, or Designee" above. (Education Code 48912)

The Board may suspend a student enrolled in a continuation school or class for a period not longer than the remainder of the semester if any of the acts listed in "Grounds for Suspension and Expulsion" occurred. The suspension shall meet the requirements of Education Code 48915. (Education Code 48912.5)

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

When the Board is considering a suspension, disciplinary action, or any other action (except expulsion) against any student, it shall hold a closed session if a public hearing would lead to disclosure of information violating a student's right to privacy under Education Code 49073-49079. (Education Code 35146, 48912)

*(cf. 9321 - Closed Session Purposes and Agendas)*

The Board shall provide the student and his/her parent/guardian with written notice of the closed session by registered or certified mail or personal service. Upon receiving this notice, the student or parent/guardian may request a public meeting, and this request shall be granted if made in writing within 48 hours after receipt of the Board's notice. However, any discussion that conflicts with any other student's right to privacy still shall be held in closed session. (Education Code 35146, 48912)

**Supervised Suspension Classroom**

Note: The following **optional** section is for use by any district establishing a supervised on-campus suspension program pursuant to Education Code 48911.1. However, pursuant to Education Code 48900.5, as amended by AB 1729 (Ch. 425, Statutes of 2012), such a district is required to use other means of correcting a student's behavior before imposing a supervised suspension, unless such a supervised suspension is otherwise permitted by law for a student's first offense. Use of a supervised suspension program does not in any way limit the district's ability to transfer a student to an opportunity school or class or a continuation education school or class.

A student for whom an expulsion action has not been initiated and who poses no imminent danger or threat to the school, students, or staff may be assigned to a supervised suspension classroom in a separate classroom, building, or site for the entire period of suspension. The following conditions shall apply: (Education Code 48911.1)

1. The supervised suspension classroom shall be staffed in accordance with law.
2. The student shall have access to appropriate counseling services.
3. The supervised suspension classroom shall promote completion of schoolwork and tests missed by the student during the suspension.
4. The student shall be responsible for contacting his/her teacher(s) to receive assignments to be completed in the supervised suspension classroom. The teacher(s) shall provide all assignments and tests that the student will miss while suspended. If no such work is assigned, the person supervising the suspension classroom shall assign schoolwork.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

At the time a student is assigned to a supervised suspension classroom, the principal or designee shall notify the student's parent/guardian in person or by telephone. When the assignment is for longer than one class period, this notification shall be made in writing. (Education Code 48911.1)

**Authority to Expel**

A student may be expelled only by the Board. (Education Code 48918(j))

The Board shall expel, as required by law, any student found to have committed any offense listed below under "Mandatory Recommendation and Mandatory Expulsion." (Education Code 48915)

For all other grounds listed above under "Grounds for Suspension and Expulsion," the Board shall order a student expelled upon the recommendation of the Superintendent, principal, or designee, only if the Board makes a finding of either or both of the following: (Education Code 48915(b) and (e))

1. That other means of correction are not feasible or have repeatedly failed to bring about proper conduct
2. That due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others

**Mandatory Recommendation for Expulsion**

Note: Pursuant to Education Code 48915, as amended by AB 2537 (Ch. 431, Statutes of 2012), the authority of school administrators in determining when expulsion should be recommended for certain offenses has been broadened as provided in the following paragraph.

Unless the Superintendent, principal, or designee determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct, he/she shall recommend a student's expulsion for any of the following acts: (Education Code 48915(a))

1. Causing serious physical injury to another person, except in self-defense
2. Possession of any knife as defined in Education Code 48915(g), explosive, or other dangerous object of no reasonable use to the student

Note: As amended by AB 2537 (Ch. 431, Statutes of 2012), Education Code 48915 added possession by a student of his/her over-the-counter or prescribed medication as an exception to the possession of controlled substances as provided in item #3 below.

**SUSPENSION AND EXPULSION/DUE PROCESS (continued)**

3. Unlawful possession of any controlled substance as listed in Health and Safety Code 11053-11058, except for (a) the first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis, or (b) the student's possession of over-the-counter medication for his/her use or other medication prescribed for him/her by a physician
4. Robbery or extortion
5. Assault or battery, as defined in Penal Code 240 and 242, upon any school employee

In determining whether or not to recommend the expulsion of a student, the Superintendent, principal, or designee shall act as quickly as possible to ensure that the student does not lose instructional time. (Education Code 48915)

**Mandatory Recommendation and Mandatory Expulsion**

Note: The following section reflects circumstances under which Education Code 48915 requires both a recommendation of expulsion and Board action to expel the student. The Attorney General has determined, in 80 Ops.Cal.Atty.Gen. 347 (1997), that a district may not adopt a zero tolerance policy mandating expulsion of a student for a first offense of possession of a controlled substance or alcohol; see the accompanying Board policy.

The Superintendent, principal, or designee shall recommend that the Board expel any student found at school or at a school activity to be: (Education Code 48915(c))

Note: The Gun-Free Schools Act, 20 USC 7151, requires districts and county offices of education to submit to the California Department of Education (CDE) assurances of compliance with state and federal laws related to incidents on campus involving the possession of firearms. Item #1 below reflects language that must be submitted to the CDE for compliance. For other such language that must be submitted to the CDE, see sections in this regulation entitled "Final Action by the Board" and "Notifications to Law Enforcement Authorities."

Education Code 48915, as amended by AB 2537 (Ch. 431, Statutes of 2012), clarifies that possession of an "imitation firearm" is not an offense requiring mandatory expulsion as provided in item #1 below.

1. Possessing, as verified by a district employee, selling, or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the firearm from a certificated school employee, with the principal or designee's concurrence

However, possession of an imitation firearm, as defined in Education Code 48900(m), shall not be regarded as an offense requiring a mandatory recommendation for expulsion and mandatory expulsion.

2. Brandishing a knife as defined in Education Code 48915(g) at another person

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

3. Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058
4. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committing a sexual battery as defined in Penal Code 243.4
5. Possessing an explosive as defined in 18 USC 921

Upon finding that the student committed any of the above acts, the Board shall expel the student. (Education Code 48915)

**Student's Right to Expulsion Hearing**

Note: Education Code 48918 <b>mandates</b> that the Board establish rules and regulations governing procedures for the expulsion of students. The timelines of Education Code 48918 must be strictly followed; failure to do so may result in loss of the district's power to act ( <u>Garcia v. Los Angeles Board of Education</u> ). In calculating timelines, the district should also be aware of the difference between the calculation of "school days" and "calendar days" under Education Code 48918.
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Any student recommended for expulsion shall be entitled to a hearing to determine whether he/she should be expelled. The hearing shall be held within 30 school days after the Superintendent, principal, or designee determines that the student has committed one of the acts listed above under "Grounds for Suspension and Expulsion." (Education Code 48918(a))

The student is entitled to at least one postponement of an expulsion hearing for a period of not more than 30 calendar days. The request for postponement shall be in writing. Any subsequent postponement may be granted at the Board's discretion. (Education Code 48918(a))

If the Board finds it impractical during the regular school year to comply with these time requirements for conducting an expulsion hearing, the Superintendent or designee may, for good cause, extend the time period by an additional five school days. Reasons for the extension shall be included as a part of the record when the expulsion hearing is held. (Education Code 48918(a))

If the Board finds it impractical to comply with the time requirements of the expulsion hearing due to a summer recess of Board meetings of more than two weeks, the days during the recess shall not be counted as school days. The days not counted during the recess may not exceed 20 school days, as defined in Education Code 48925. Unless the student requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of the next school year. (Education Code 48918(a))

## **SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

Once the hearing starts, all matters shall be pursued with reasonable diligence and concluded without unnecessary delay. (Education Code 48918(a))

Note: The following **optional** paragraph may be revised to reflect district practice. "Stipulated expulsion" is for districts that have adopted an expedited procedure which requires a student to waive his/her right to a hearing in exchange for an agreement as to the term of the expulsion. Because such waivers are not covered in the Education Code, districts should consult legal counsel as appropriate.

**OK**

After a determination that one of the grounds listed above under "Grounds for Suspension and Expulsion" has occurred, the Superintendent, principal, or designee shall offer the student and his/her parent/guardian the option to waive a hearing and stipulate to the expulsion. The stipulation agreement shall be in writing and shall be signed by the student and his/her parent/guardian.

### **Rights of Complaining Witness**

Note: Education Code 48918.5 **mandates** the following rights related to the treatment of witnesses alleging acts of sexual assault or sexual battery. Other procedures related to complaining witnesses also may be added as desired by the district. Additional mandated procedures related to the rights and treatment of complaining witnesses are included where appropriate throughout this regulation.

An expulsion hearing involving allegations of sexual assault or sexual battery may be postponed for one school day in order to accommodate the special physical, mental, or emotional needs of a student who is the complaining witness. (Education Code 48918.5)

Whenever the Superintendent or designee recommends an expulsion hearing that addresses allegations of sexual assault or sexual battery, he/she shall give the complaining witness a copy of the district's suspension and expulsion policy and regulation and shall advise the witness of his/her right to: (Education Code 48918.5)

1. Receive five days' notice of his/her scheduled testimony at the hearing
2. Have up to two adult support persons of his/her choosing present at the hearing at the time he/she testifies
3. Have a closed hearing during the time he/she testifies

Whenever any allegation of sexual assault or sexual battery is made, the Superintendent or designee shall immediately advise complaining witnesses and accused students to refrain from personal or telephone contact with each other during the time when an expulsion process is pending. (Education Code 48918.5)

## SUSPENSION AND EXPULSION/DUE PROCESS (continued)

### Written Notice of the Expulsion Hearing

Note: Education Code 48918 **mandates** the Board to adopt procedures that include the following items.

Written notice of the expulsion hearing shall be forwarded to the student and the student's parent/guardian at least 10 calendar days before the date of the hearing. The notice shall include: (Education Code 48900.8, 48918(b))

1. The date and place of the hearing.
2. A statement of the specific facts, charges, and offense upon which the proposed expulsion is based.
3. A copy of district disciplinary rules which relate to the alleged violation.
4. Notification of the student's or parent/guardian's obligation, pursuant to Education Code 48915.1, to provide information about the student's status in the district to any other district in which the student seeks enrollment. This obligation applies when a student is expelled for acts other than those described in Education Code 48915(a) or (c).

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

5. The opportunity for the student or the student's parent/guardian to appear in person or be represented by legal counsel or by a nonattorney advisor.

*Legal counsel* means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.

*Nonattorney advisor* means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case and has been selected by the student or student's parent/guardian to provide assistance at the hearing.

6. The right to inspect and obtain copies of all documents to be used at the hearing.
7. The opportunity to confront and question all witnesses who testify at the hearing.
8. The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf, including witnesses.

## SUSPENSION AND EXPULSION/DUE PROCESS (continued)

### Additional Notice of Expulsion Hearing for Foster Youth

Note: Prior to conducting a hearing to determine whether a foster youth should be expelled, Education Code 48918.1, as added by AB 1909 (Ch. 849, Statutes of 2012), requires the district to notify the student's attorney and a representative of an appropriate county child welfare agency, provided that the violation does not require a mandatory recommendation for expulsion. However, if the offense requires a mandatory recommendation for expulsion, the notice is permitted but not required.

At least 10 days prior to a hearing to determine if a student who is a foster youth as defined under Education Code 48853.5 should be expelled for an offense not requiring a mandatory recommendation for expulsion, the Superintendent or designee shall notify the student's attorney and a representative of an appropriate county child welfare agency. If the hearing is pursuant to an offense requiring a mandatory expulsion recommendation, the Superintendent or designee may provide the same notification. The notice shall be provided by the most cost-effective method possible, including by email or a telephone call. (Education Code 48918.1)

### Conduct of Expulsion Hearing

Note: Education Code 48918 **mandates** that the Board adopt procedures that include the following items.

Instead of the Board conducting an expulsion hearing, it may appoint a hearing officer or an impartial administrative panel to conduct the hearing; see section "Alternative Expulsion Hearing: Hearing Officer or Administrative Panel" below. Even if the district conducts all expulsion hearings in this manner, the requirements of Education Code 48918 pertaining to the conduct of the hearing must be met.

1. **Closed Session:** Notwithstanding the provisions of Government Code 54953 and Education Code 35145, the Board shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting. If such a request is made, the meeting shall be public unless another student's privacy rights would be violated. (Education Code 48918(c))

Note: For the purpose of Board deliberations during the closed session described below, the presence of any person other than the Board members, including the Superintendent, necessitates allowing the presence of the parent/guardian, student, and student's counsel.

Whether the expulsion hearing is held in closed or public session, the Board may meet in closed session to deliberate and determine whether or not the student should be expelled. If the Board admits any other person to this closed session, the parent/guardian, the student, and the counsel of the student also shall be allowed to attend the closed session. (Education Code 48918(c))

If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in public, a complaining witness shall have the right to have his/her

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by closed-circuit television. (Education Code 48918(c))

2. **Record of Hearing:** A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. (Education Code 48918(g))

Note: Education Code 48918 authorizes the Board to issue subpoenas for the personal appearance of percipient witnesses at an expulsion hearing. In Woodbury v. Dempsey, the court held that a district's authority to determine whether to issue subpoenas is discretionary, but a district could not have a blanket policy denying the issuance of subpoenas in all cases.

In accordance with Code of Civil Procedure 1987, the subpoena must be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. Unless they are parties to the hearing or are district or government employees, witnesses who appear pursuant to a subpoena receive fees equal to those prescribed for witnesses in civil actions in a superior court, and all witnesses other than the parties to the hearing receive mileage; these fees and mileage must be paid by the party requesting the subpoena.

3. **Subpoenas:** Before commencing a student expulsion hearing, the Board may issue subpoenas, at the request of either the student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Board or the hearing officer or administrative panel may issue such subpoenas at the request of the student or the County Superintendent of Schools or designee. All subpoenas shall be issued in accordance with Code of Civil Procedure 1985-1985.2 and enforced in accordance with Government Code 11455.20. (Education Code 48918(i))

Any objection raised by the student or the Superintendent or designee to the issuance of subpoenas may be considered by the Board in closed session, or in open session if so requested by the student, before the meeting. The Board's decision in response to such an objection shall be final and binding. (Education Code 48918(i))

If the Board determines, or if the hearing officer or administrative panel finds and submits to the Board, that a witness would be subject to unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as described in item #4 below. (Education Code 48918(i))

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

4. **Presentation of Evidence:** Technical rules of evidence shall not apply to the expulsion hearing, but relevant evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs. The decision of the Board to expel shall be supported by substantial evidence that the student committed any of the acts pursuant to Education Code 48900 and listed in "Grounds for Suspension and Expulsion" above. (Education Code 48918(h))

Note: Findings of fact made by the Board or a hearing panel must not be based on hearsay alone. "Hearsay" is evidence of an oral or written statement made by a person who is not present at the hearing which is offered to establish a fact as being true. Some exceptions to the hearsay rule exist under the Evidence Code and Education Code; the district should consult legal counsel as appropriate.

Findings of fact shall be based solely on the evidence at the hearing. Although no finding shall be based solely on hearsay, sworn declarations may be admitted as testimony from witnesses whose disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm. (Education Code 48918(f))

In cases where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record.

Note: Education Code 48918.6 provides that testimony by a student witness at an expulsion hearing is privileged and thus protected from liability for defamation pursuant to Civil Code 47(b).

5. **Testimony by Complaining Witnesses:** The following procedures shall be observed when a hearing involves allegations of sexual assault or sexual battery by a student: (Education Code 48918, 48918.5)
- a. Any complaining witness shall be given five days' notice before being called to testify.
  - b. Any complaining witness shall be entitled to have up to two adult support persons, including, but not limited to, a parent/guardian or legal counsel, present during his/her testimony.
  - c. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.
  - d. The person presiding over the hearing may remove a support person whom he/she finds is disrupting the hearing.
  - e. If one or both support persons are also witnesses, the hearing shall be conducted in accordance with Penal Code 868.5.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

- f. Evidence of specific instances of prior sexual conduct of a complaining witness shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complaining witness shall be given notice and an opportunity to oppose the introduction of this evidence. In the hearing on the admissibility of this evidence, the complaining witness shall be entitled to be represented by a parent/guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of a complaining witness shall not be admissible for any purpose.
  - g. In order to facilitate a free and accurate statement of the experiences of the complaining witness and to prevent discouragement of complaints, the district shall provide a nonthreatening environment.
    - (1) The district shall provide a room separate from the hearing room for the use of the complaining witness before and during breaks in testimony.
    - (2) At the discretion of the person conducting the hearing, the complaining witness shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room.
    - (3) The person conducting the hearing may:
      - (a) Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complaining witness
      - (b) Limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours
      - (c) Permit one of the support persons to accompany the complaining witness to the witness stand
6. **Decision:** The Board's decision as to whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))

## **SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

### **Alternative Expulsion Hearing: Hearing Officer or Administrative Panel**

Note: For districts that use a hearing officer or administrative panel, Education Code 48918 **mandates** that the Board adopt procedures that include the following section.

Instead of conducting an expulsion hearing itself, the Board may contract with the county hearing officer or with the Office of Administrative Hearings of the State of California for a hearing officer. Alternatively, the Board may appoint an impartial administrative panel composed of three or more certificated personnel, none of whom shall be members of the Board or on the staff of the school in which the student is enrolled. (Education Code 48918(d))

A hearing conducted by the hearing officer or administrative panel shall conform to the same procedures applicable to a hearing conducted by the Board as specified above in "Conduct of Expulsion Hearing," including the requirement to issue its decision within 40 school days of the student's removal from school, unless the student requests that the decision be postponed. (Education Code 48918(a) and (d))

The hearing officer or administrative panel shall, within three school days after the hearing, determine whether to recommend expulsion of the student to the Board. If expulsion is not recommended, the expulsion proceeding shall be terminated and the student shall be immediately reinstated. The Superintendent or designee shall place the student in a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs after consulting with district staff, including the student's teachers, and with the student's parent/guardian. The decision to not recommend expulsion shall be final. (Education Code 48918(e))

If expulsion is recommended, findings of fact in support of the recommendation shall be prepared and submitted to the Board. All findings of fact and recommendations shall be based solely on the evidence presented at the hearing. The Board may accept the recommendation based either upon a review of the findings of fact and recommendations submitted or upon the results of any supplementary hearing the Board may order. (Education Code 48918(f))

In accordance with Board policy, the hearing officer or administrative panel may recommend that the Board suspend the enforcement of the expulsion for a period of one year. (Education Code 48917, 48918)

### **Final Action by the Board**

Note: Education Code 48918 **mandates** that the Board adopt procedures that include the following paragraph.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

Whether the expulsion hearing is conducted in closed or public session by the Board, a hearing officer, or an administrative panel, the final action to expel shall be taken by the Board at a public meeting. (Education Code 48918(j))

*(cf. 9321.1 - Closed Session Actions and Reports)*

If the Board conducts the hearing and reaches a decision not to expel, this decision shall be final and the student shall be reinstated immediately.

Note: The Gun-Free Schools Act, 20 USC 7151, requires that the following paragraph be sent to the CDE for assurances of compliance with federal and state law. For other language that must be submitted to the CDE, see section below entitled "Notifications to Law Enforcement Authorities."

Upon ordering an expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the district. For a student expelled for any act listed under "Mandatory Recommendation and Mandatory Expulsion" above, this date shall be one year from the date the expulsion occurred, except that the Board may set an earlier date on a case-by-case basis. For a student expelled for other acts, this date shall be no later than the last day of the semester following the semester in which the expulsion occurred. If an expulsion is ordered during summer session or the intersession period of a year-round program, the Board shall set a date when the student shall be reviewed for readmission not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred. (Education Code 48916)

At the time of the expulsion order, the Board shall recommend a plan for the student's rehabilitation, which may include: (Education Code 48916)

1. Periodic review, as well as assessment at the time of review, for readmission
2. Recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs

Note: The following paragraph is **optional**. Education Code 48916.5 authorizes, but does not mandate, the Board to make the following requirement of certain expelled students.

**OK**

With parent/guardian consent, students who have been expelled for reasons relating to controlled substances or alcohol may be required to enroll in a county-sponsored drug rehabilitation program before returning to school. (Education Code 48916.5)

**Written Notice to Expel**

The Superintendent or designee shall send written notice of the decision to expel to the student or parent/guardian. This notice shall include the following:

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

1. The specific offense committed by the student for any of the causes for suspension or expulsion listed above under "Grounds for Suspension and Expulsion" (Education Code 48900.8)
2. The fact that a description of readmission procedures will be made available to the student and his/her parent/guardian (Education Code 48916)
3. Notice of the right to appeal the expulsion to the County Board of Education (Education Code 48918)
4. Notice of the alternative educational placement to be provided to the student during the time of expulsion (Education Code 48918)
5. Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the expelling district, pursuant to Education Code 48915.1 (Education Code 48918)

**Decision Not to Enforce Expulsion Order**

Note: Pursuant to Education Code 48917, the Board's criteria for suspending the enforcement of expulsions must be applied uniformly to all students. Items #1-3 below are **optional** and should be revised to reflect district criteria.

In accordance with Board policy, when deciding whether to suspend the enforcement of an expulsion order, the Board shall take into account the following criteria:

1. The student's pattern of behavior
2. The seriousness of the misconduct
3. The student's attitude toward the misconduct and his/her willingness to follow a rehabilitation program

The suspension of the enforcement of an expulsion shall be governed by the following:

1. The Board may, as a condition of the suspension of enforcement, assign the student to a school, class, or program appropriate for the student's rehabilitation. This rehabilitation program may provide for the involvement of the student's parent/guardian in the student's education. However, a parent/guardian's refusal to participate in the rehabilitation program shall not be considered in the Board's determination as to whether the student has satisfactorily completed the rehabilitation program. (Education Code 48917)

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

2. During the period when enforcement of the expulsion order is suspended, the student shall be on probationary status. (Education Code 48917)
3. The suspension of the enforcement of an expulsion order may be revoked by the Board if the student commits any of the acts listed under "Grounds for Suspension and Expulsion" above or violates any of the district's rules and regulations governing student conduct. (Education Code 48917)
4. When the suspension of enforcement of an expulsion order is revoked, a student may be expelled under the terms of the original expulsion order. (Education Code 48917)
5. Upon satisfactory completion of the rehabilitation assignment, the Board shall reinstate the student in a district school. Upon reinstatement, the Board may order the expunging of any or all records of the expulsion proceedings. (Education Code 48917)
6. The Superintendent or designee shall send written notice of any decision to suspend the enforcement of an expulsion order during a period of probation to the student or parent/guardian. The notice shall inform the parent/guardian of the right to appeal the expulsion to the County Board, the alternative educational placement to be provided to the student during the period of expulsion, and the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of his/her status with the expelling district, pursuant to Education Code 48915.1(b). (Education Code 48918(j))
7. Suspension of the enforcement of an expulsion order shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the County Board. (Education Code 48917)

**Right to Appeal**

The student or parent/guardian is entitled to file an appeal of the Board's decision with the County Board. The appeal must be filed within 30 days of the Board's decision to expel, even if the expulsion order is suspended and the student is placed on probation. (Education Code 48919)

The student shall submit a written request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the County Board. The district shall provide the student with these documents within 10 school days following the student's written request. (Education Code 48919)

## **SUSPENSION AND EXPULSION/DUE PROCESS (continued)**

### **Notification to Law Enforcement Authorities**

Note: The Gun-Free Schools Act, 20 USC 7151, requires that the following two paragraphs be sent to the CDE for assurances of compliance with federal and state law.

In addition, Education Code 48902 requires the principal or designee to notify law enforcement authorities when a student or nonstudent possesses a firearm or explosive or sells or furnishes a firearm at school. However, when the student involved in such a case is a student with a disability, Education Code 49076 requires any law enforcement authority to which student information is disclosed to certify that those records will not be disclosed to another party without the prior written consent of the student's parent/guardian or other person invested with the student's educational right; see AR 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities).

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate city or county law enforcement authorities of any student acts of assault which may have violated Penal Code 245. (Education Code 48902)

The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts which may involve the possession or sale of narcotics or of a controlled substance. In addition, law enforcement authorities shall be notified regarding any acts by students regarding the possession, sale, or furnishment of firearms, explosives, or other dangerous weapons in violation of Education Code 48915(c)(1) or (5) or Penal Code 626.9 and 626.10. (Education Code 48902)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts which may violate Education Code 48900(c) or (d), relating to the possession, use, offering, or sale of controlled substances, alcohol, or intoxicants of any kind. (Education Code 48902)

### **Post-Expulsion Placements**

Note: Education Code 48915 requires the Board to refer all expelled students to a program of study that is prepared to accommodate students with discipline problems and that is not located at the school the student currently attends or at any regular elementary, middle, junior, or senior high school. However, students expelled for the acts described in Education Code 48900(f) through (r) or Education Code 48900.2, 48900.3, or 48900.4 may be referred to a program of study that is at another elementary, middle, junior, or senior high school if the County Superintendent of Schools certifies that an alternative program is not available at a site away from such a school.

Education Code 48915.01 states that if the Board has established a community day school pursuant to Education Code 48661 on the same site as an elementary, middle, junior, or senior high school, expelled students may be referred to the community day school at that site. Although Education Code 48663 prohibits the use of independent study in community day schools, Education Code 48916.1 does not in any way restrict the district from offering independent study as a voluntary alternative placement option for expelled students.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

The Board shall refer expelled students to a program of study that is: (Education Code 48915, 48915.01)

1. Appropriately prepared to accommodate students who exhibit discipline problems
2. Not provided at a comprehensive middle, junior, or senior high school or at any elementary school, unless the program is offered at a community day school established at such a site
3. Not housed at the school site attended by the student at the time of suspension

*(cf. 6158 - Independent Study)*

*(cf. 6185 - Community Day School)*

When the placement described above is not available and when the County Superintendent so certifies, students expelled for acts described in items #6-13 and #20-22 under "Grounds for Suspension and Expulsion" above may be referred to a program of study that is provided at another comprehensive middle, junior, or senior high school or at an elementary school. (Education Code 48915)

The program for a student expelled from any of grades K-6 shall not be combined or merged with programs offered to students in any of grades 7-12. (Education Code 48916.1)

**Readmission After Expulsion**

Note: Education Code 48916 <b>mandates</b> that the Board adopt rules and regulations establishing a procedure for filing and processing requests for readmission and a process for Board review of all expelled students for readmission. Items #2-4 below should be revised to reflect district practice.
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Readmission procedures shall be as follows:

1. On the date set by the Board when it ordered the expulsion, the district shall consider readmission of the student. (Education Code 48916)
2. The Superintendent or designee shall hold a conference with the parent/guardian and the student. At the conference, the student's rehabilitation plan shall be reviewed and the Superintendent or designee shall verify that the provisions of this plan have been met. School regulations shall be reviewed and the student and parent/guardian shall be asked to indicate in writing their willingness to comply with these regulations.
3. The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission. The Board shall consider this recommendation in closed session if information would be disclosed in violation of Education Code 49073-

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

49079. If a written request for open session is received from the parent/guardian or adult student, it shall be honored.
4. If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian, by registered mail, of the Board's decision regarding readmission.
  5. The Board may deny readmission only if it finds that the student has not satisfied the conditions of the rehabilitation plan or that the student continues to pose a danger to campus safety or to other district students or employees. (Education Code 48916)
  6. If the Board denies the readmission of a student, the Board shall determine either to continue the student's placement in the alternative educational program initially selected or to place the student in another program that serves expelled students, including placement in a county community school. (Education Code 48916)
  7. The Board shall provide written notice to the expelled student and parent/guardian describing the reasons for denying readmittance into the regular program. This notice shall indicate the Board's determination of the educational program which the Board has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district. (Education Code 48916)

Note: Education Code 48645.5, as amended by SB 1088 (Ch. 381, Statutes of 2012), prohibits the district from denying the readmission of an expelled student solely because of his/her contact with the juvenile justice system.

No student shall be denied readmission into the district based solely on the student's arrest, adjudication by a juvenile court, formal or informal supervision by a probation officer, detention in a juvenile facility, enrollment in a juvenile school, or other such contact with the juvenile justice system. (Education Code 48645.5)

**Maintenance of Records**

The district shall maintain a record of each suspension and expulsion, including its specific cause(s). (Education Code 48900.8)

Expulsion records of any student shall be maintained in the student's mandatory interim record, and sent to any school in which the student subsequently enrolls upon written request by that school. (Education Code 48918(k))

Note: Education Code 48915.1 requires that, when an expelled student asks to enroll in another district, the receiving district must hold a hearing to determine whether the student poses a danger to its students or staff. The receiving district then may either deny or permit the enrollment. Upon request from another district, the expelling district must provide information about the expulsion within five days.

**SUSPENSION AND EXPULSION/DUE PROCESS** (continued)

The Superintendent or designee shall, within five working days, honor any other district's request for information about an expulsion from this district. (Education Code 48915.1)

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

**Outcome Data**

The Superintendent or designee shall maintain the following data: (Education Code 48900.8, 48916.1)

1. The number of students recommended for expulsion
2. The specific grounds for each recommended expulsion
3. Whether the student was subsequently expelled
4. Whether the expulsion order was suspended
5. The type of referral made after the expulsion
6. The disposition of the student after the end of the expulsion period

<p>Note: The following paragraph is <b>optional</b> and may be revised to reflect district practice. In passing AB 1729 (Ch. 425, Statutes of 2012), the Legislature noted the disproportionate use of suspension and expulsion against minority student populations. To ensure that suspension and expulsion are being enforced in a fair and even-handed manner, districts should monitor their uses against such student populations and make necessary changes accordingly.</p>
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**OK** In addition, the Superintendent or designee shall disaggregate student data collected based on race, color, nationality, religion, disability, and other categories protected from discrimination under the law.

**PARENTAL NOTIFICATIONS**

The Governing Board recognizes that notifications are essential to effective communication between the school and the home. The Superintendent or designee shall send students and parents/guardians all notifications required by law, including notifications about their legal rights, and any other notifications he/she believes will promote parental understanding and involvement.

*(cf. 5020 - Parent Rights and Responsibilities)*  
*(cf. 5022 - Student and Family Privacy Rights)*  
*(cf. 6020 - Parent Involvement)*

Note: Education Code 48981 and 48982, as amended by AB 2262 (Ch. 17, Statutes of 2012), authorize annual parental notifications to be sent electronically upon request, as provided below.

The notice required pursuant to Education Code 48980 shall be sent at the beginning of each academic year and may be provided either by regular mail, in electronic form when so requested by the parent/guardian, or by any other method normally used to communicate with parents/guardians in writing. (Education Code 48981, 48982)

If any activity specified in Education Code 48980 will be undertaken by any school during the forthcoming school term, the notice shall state that fact and the approximate date on which any such activity will occur. No such activity shall be undertaken with respect to any particular student unless his/her parent/guardian has been informed of such action through the annual notification or other separate special notification. (Education Code 48983-48984)

The annual notification shall include a request that the parent/guardian sign the notice and return it to the school or, if the notice is provided in electronic format, that the parent/guardian submit a signed acknowledgment of receipt of the notice to the school. The parent/guardian's signature is an acknowledgment of receipt of the information but does not indicate that consent to participate in any particular program has been given or withheld. (Education Code 48982)

Note: Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to the parents/guardians of these students must also be written in the primary language and may be answered by the parent/guardian in either language. As amended by AB 2262 (Ch. 17, Statutes of 2012), Education Code 48981 requires notifications sent electronically to conform to the primary language requirements of Education Code 48985. In addition, 20 USC 6311 and 6312 require that districts receiving Title I funds provide parent/guardian notices in an understandable and uniform format and, to the extent practicable, in a language that parents/guardians understand.

The following paragraph should be modified to reflect district practice.

Notifications to parents/guardians shall be written both in English and in the family's primary language when so required by law. (Education Code 48981, 48985; 20 USC 6311, 6312)

**PARENTAL NOTIFICATIONS** (continued)

Whenever an employee learns that a student's parent/guardian is, for any reason, unable to understand the district's printed notifications, the principal or designee shall work with the parent/guardian to establish other appropriate means of communication.

*Legal Reference:*

EDUCATION CODE

- 221.5 Prohibited sex discrimination
- 231.5 Sexual harassment policy
- 262.3 Appeals for discrimination complaints; information regarding availability of civil remedies
- 310 Structured English immersion program
- 440 English language proficiency assessment; instruction in English language development
- 17288 Building standards for university campuses
- 17612 Notification of pesticide use
- 32221.5 Insurance for athletic team members
- 32255-32255.6 Right to refuse harmful or destructive use of animals
- 32390 Fingerprint program; contracts; funding; consent of parent/guardian
- 35160.5 Extracurricular and cocurricular activities
- 35178.4 Notice of accreditation status
- 35183 School dress codes; uniforms
- 35186 Complaints concerning deficiencies in instructional materials and facilities
- 35256 School Accountability Report Card
- 35291 Rules for student discipline
- 37254 Intensive instruction for students who have not passed High School Exit Examination
- 37616 Consultation regarding year-round schedule
- 39831.5 School bus rider rules and information
- 44808.5 Permission to leave school grounds
- 46010.1 Notice regarding excuse to obtain confidential medical services
- 46014 Regulations regarding absences for religious purposes
- 46600-46611 Interdistrict attendance agreements
- 48000 Minimum age of admission
- 48070.5 Promotion or retention of students
- 48204 Residency requirements
- 48205 Absence for personal reasons
- 48206.3 Students with temporary disabilities; individual instruction; definitions
- 48207-48208 Students with temporary disabilities in hospitals
- 48213 Prior notice of exclusion from attendance
- 48216 Immunization
- 48260.5 Notice regarding truancy
- 48262 Need for parent conference regarding truancy
- 48263 Referral to school attendance review board or probation department
- 48354 Option to transfer from school identified under Open Enrollment Act
- 48357 Status of application for transfer from school identified under Open Enrollment Act
- 48432.5 Involuntary transfers of students

*Legal Reference continued: (see next page)*

**PARENTAL NOTIFICATIONS** (continued)*Legal Reference: (continued)*EDUCATION CODE (continued)

- 48900.1 Parental attendance required after suspension
- 48904 Liability of parent/guardian for willful student misconduct
- 48904.3 Withholding grades, diplomas, or transcripts
- 48906 Notification of release of student to peace officer
- 48911 Notification in case of suspension
- 48911.1 Assignment to supervised suspension classroom
- 48912 Closed sessions; consideration of suspension
- 48915.1 Expelled students; enrollment in another district
- 48916 Readmission procedures
- 48918 Rules governing expulsion procedures
- 48980 Required notification at beginning of term
- 48980.3 Notification of pesticide use
- 48981 Time and means of notification
- 48982 Parent signature acknowledging receipt of notice
- 48983 Contents of notice
- 48984 Activities prohibited unless notice given
- 48985 Notices to parents in language other than English
- 48987 Child abuse information
- 49013 Use of uniform complaint procedures for complaints regarding student fees
- 49063 Notification of parental rights
- 49067 Student evaluation; student in danger of failing course
- 49068 Transfer of permanent enrollment and scholarship record
- 49069 Absolute right to access
- 49073 Release of directory information
- 49076 Access to student records
- 49077 Access to information concerning a student in compliance with court order
- 49403 Cooperation in control of communicable disease and immunization
- 49423 Administration of prescribed medication for student
- 49451 Physical examinations: parent's refusal to consent
- 49452.5 Screening for scoliosis
- 49452.7 Information on type 2 diabetes
- 49452.8 Oral health assessment
- 49456 Results of vision or hearing test
- 49472 Insurance
- 49475 Student athletes; concussions and head injuries
- 49480 Continuing medication regimen for nonepisodic conditions
- 49510-49520 Duffy-Moscone Family Nutrition Education and Services Act of 1970
- 51225.3 Graduation requirements; courses that satisfy college entrance criteria
- 51229 Course of study for grades 7-12
- 51513 Personal beliefs; privacy
- 51938 HIV/AIDS and sexual health instruction
- 52164.1 Census-taking methods; determination of primary language; assessment of language skills
- 52164.3 Reassessment of English learners; notification of results
- 52173 Bilingual education
- 52244 Advanced Placement program
- 54444.2 Migrant education programs; parent involvement
- 56301 Child-find system; policies regarding written notification rights
- 56321 Special education: proposed assessment plan

*Legal Reference continued: (see next page)*

**PARENTAL NOTIFICATIONS (continued)**

*Legal Reference: (continued)*

EDUCATION CODE (continued)

- 56321.5-56321.6 Notice of parent rights pertaining to special education
- 56329 Written notice of right to findings; independent assessment
- 56341.1 Development of individualized education program; right to audio record meeting
- 56341.5 Individualized education program team meetings
- 56343.5 Individualized education program meetings
- 58501 Alternative schools; notice required prior to establishment
- 60641 Standardized Testing and Reporting Program
- 60850 High School Exit Examination
- 60852.4 High School Exit Examination; waiver for student with disabilities

HEALTH AND SAFETY CODE

- 1596.857 Right to enter child care facility
- 104855 Availability of topical fluoride treatment
- 120365-120375 Immunizations
- 120440 Sharing immunization information
- 124100 Health screening and immunizations

PENAL CODE

- 627.5 Hearing request following denial or revocation of registration

CODE OF REGULATIONS, TITLE 5

- 850 Definitions; notification regarding use of California Modified Assessment
- 863 Standardized Testing and Reporting Program
- 3052 Behavioral intervention
- 3831 General standards, Gifted and Talented Education program
- 4622 Notification of uniform complaint procedures
- 4631 Uniform complaint procedures; notification of decision and right to appeal
- 4702 Student transfer from school identified under Open Enrollment Act
- 4917 Notification of sexual harassment policy
- 11303 Reclassification of English learners
- 11309 Parental exception waivers
- 11511.5 English language proficiency assessment; test results
- 11523 Notice of proficiency examinations
- 18066 Child care policies regarding excused and unexcused absences

CODE OF REGULATIONS, TITLE 17

- 6040 Time period to obtain needed immunizations

UNITED STATES CODE, TITLE 20

- 1232g Family Educational and Privacy Rights Act
- 1232h Privacy rights
- 1415 Procedural safeguards
- 6311 State plans
- 6312 Local education agency plans
- 6316 Academic assessment and local education agency school improvement
- 6318 Parental involvement
- 7012 Instruction in English language development
- 7908 Armed forces recruiter access to students

UNITED STATES CODE, TITLE 42

- 1758 Child nutrition programs

CODE OF FEDERAL REGULATIONS, TITLE 7

- 245.5 Eligibility criteria for free and reduced-price meals
- 245.6a Verification of eligibility for free and reduced-price meals

*Legal Reference continued: (see next page)*

**PARENTAL NOTIFICATIONS (continued)**

*Legal Reference: (continued)*

CODE OF FEDERAL REGULATIONS, TITLE 34

99.7 *Student records, annual notification*

99.34 *Student records, disclosure to other educational agencies*

99.37 *Disclosure of directory information*

104.32 *District responsibility to provide free appropriate public education*

104.36 *Procedural safeguards*

104.8 *Nondiscrimination*

106.9 *Dissemination of policy, nondiscrimination on basis of sex*

200.61 *Teacher qualifications*

300.300 *Parent consent for special education evaluation*

300.322 *Parent participation in IEP team meetings*

300.502 *Independent educational evaluation of student with disability*

300.503 *Prior written notice regarding identification, evaluation, or placement of student with disability*

300.504 *Procedural safeguards notice for students with disabilities*

300.508 *Due process complaint*

300.530 *Discipline procedures*

CODE OF FEDERAL REGULATIONS, TITLE 40

763.84 *Asbestos inspections, response actions and post-response actions*

763.93 *Asbestos management plans*

**PRESCHOOL/EARLY CHILDHOOD EDUCATION**

Note: The following policy is **optional** and may be used both by districts that operate their own preschool/early childhood education programs and those that do not; see the appropriate sections below. CSBA's publication [Expanding Access to High-Quality Preschool Programs: A Resource and Policy Guide for School Leaders](#) provides information about characteristics of effective preschool programs and actions that the district and Governing Board can take to encourage and/or provide high-quality preschool education, including a worksheet to assist districts in the development of policy pertaining to preschool and early childhood education.

The Governing Board recognizes that high-quality preschool experiences help children ages 3-4 years to develop knowledge, skills, abilities, and attributes necessary for a successful transition into the elementary education program. Such programs should provide developmentally appropriate activities in a safe, adequately supervised, and cognitively rich environment.

*(cf. 6170.1 - Transitional Kindergarten)*

**Collaboration with Community Programs**

Note: The following **optional** section may be used by all districts, regardless of whether or not they provide their own preschool programs, and may be revised to reflect district practice.

The Superintendent or designee shall collaborate with other agencies, organizations, the county office of education, and/or private preschool providers to assess the availability of preschool programs in the community and the extent to which the community's preschool needs are being met. The Board encourages the development of a community-wide plan to increase children's access to high-quality preschool programs.

*(cf. 1020 - Youth Services)*

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

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

The Superintendent or designee shall provide information about preschool options in the community to parents/guardians upon request.

Note: The following **optional** paragraph is for use by districts that maintain elementary schools.

**OK**

The Superintendent or designee shall **may** establish partnerships with feeder preschools to facilitate articulation of the preschool curriculum with the district's elementary education program.

*(cf. 6011 - Academic Standards)*

**PRESCHOOL/EARLY CHILDHOOD EDUCATION** (continued)

(cf. 6143 - Courses of Study)

**District Preschool Programs**

Note: The following **optional** section is for use by districts that choose to provide preschool/early childhood education programs for children ages 3-4 years and should be revised to reflect district practice. Also see BP/AR 5148 - Child Care and Development.

Education Code 8235-8239 establish the California State Preschool Program (CSPP) with subsidized services for children ages 3-4 from low-income or otherwise disadvantaged families. The CSPP consolidates funding and program requirements for a number of state programs that serve children ages 3-4, including state preschool programs (Education Code 8235-8237), family literacy programs (Education Code 8238-8238.4), and general child care and development programs to the extent that they serve children ages 3-4 (Education Code 8240-8244). Agencies that provide general child care and development programs for children younger than age 3 or older than age 4 will continue to have a general child care and development contract for those services in addition to a CSPP contract. See the accompanying administrative regulation for major program requirements.

Preschool programs also may receive funding through the state migrant child care and development program (Education Code 8230-8233), state program for severely disabled children (Education Code 8250-8252), federal Head Start program (42 USC 9831-9852), or Title I preschool program (20 USC 6311-6322).

When the Board determines that it is feasible, the district may contract with the California Department of Education (CDE) to provide preschool services in facilities at or near district schools.

The Board shall set priorities for establishing or expanding services as resources become available. In so doing, the Board shall give consideration to the benefits of providing early education programs for at-risk children and/or children residing in the attendance areas of the lowest performing district schools.

(cf. 0520.2 - Title I Program Improvement Schools)

(cf. 0520.4 - Quality Education Investment Schools)

(cf. 6171 - Title I Programs)

Note: Pursuant to Education Code 8236, districts have the authority to subcontract with an appropriate public or private agency to operate a district CSPP program.

On a case-by-case basis, the Board shall determine whether the district shall directly administer a **state funded** preschool program or contract with a public or private provider to offer such a program.

Facilities for preschool classrooms shall be addressed in the district's facilities master plan, including an assessment as to whether adequate and appropriate space exists on school sites. As necessary, the Superintendent or designee shall provide information to the Board

**PRESCHOOL/EARLY CHILDHOOD EDUCATION** (continued)

regarding facilities financing options for preschool classrooms and/or facilities available through partnering organizations.

*(cf. 7110 - Facilities Master Plan)*

*(cf. 7210 - Facilities Financing)*

Note: The following paragraph is **optional**. SB 1016 (Ch. 38, Statutes of 2012) amended Education Code 8235 to define programs operated under the CSPP to be part-day programs only, and repealed Education Code 8236.1 which contained the provisions related to full-day programs. However, Education Code 8239, as amended by SB 1016, encourages the provision of "wraparound child care services" which combine part-day preschool and general child care services to provide a full day of services for qualifying families; see the accompanying administrative regulation for program requirements.

To encourage participation in the district's **state funded** preschool program and meet the child care needs of parents/guardians, the Superintendent or designee shall recommend strategies to link the district's **state funded** preschool program with other available child care and development programs in the district or community.

*(cf. 5148 - Child Care and Development)*

*(cf. 5148.1 - Child Care Services for Parenting Students)*

*(cf. 5148.2 - Before/After School Programs)*

Because parents/guardians are essential partners in supporting the development of their children, the Superintendent or designee shall involve them in program planning. Program staff shall encourage volunteerism in the program and shall communicate frequently with parents/guardians of enrolled children regarding their child's progress.

*(cf. 1240 - Volunteer Assistance)*

*(cf. 5020 - Parent Rights and Responsibilities)*

*(cf. 6020 - Parent Involvement)*

Note: The CDE has developed voluntary "preschool learning foundations" which describe the knowledge, skills, and competencies that children are expected to exhibit as they complete their first or second year of preschool. In 2008, learning foundations were issued in the areas of social-emotional development, language and literacy, English language development for English learners, and mathematics. Learning foundations in visual and performing arts, physical development, and health were issued in 2010. Learning foundations in history/social science and science are expected to be released in 2013. Companion curriculum frameworks are also being developed. The CDE's Prekindergarten Learning and Development Guidelines (2000) provides further guidance on how to develop a high-quality preschool program and will be revised in the future to incorporate the learning foundations.

The district's program shall be aligned with preschool learning foundations and curriculum frameworks developed by the CDE which identify the knowledge, skills, and competencies that children typically attain as they complete their first or second year of preschool. Program components shall address social-emotional, physical, and cognitive development in key areas that are necessary for kindergarten readiness.

**PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)**

The district's **state funded** preschool program shall provide appropriate services to support the needs of English learners and children with disabilities.

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*  
*(cf. 6174 - Education for English Language Learners)*

To maximize the ability of children to succeed in the preschool program, program staff shall support children's health through proper nutrition and physical activity and shall provide or make referrals to available health and social services as needed.

*(cf. 3550 - Food Services/Child Nutrition Program)*  
*(cf. 5030 - Student Wellness)*  
*(cf. 5141.31 - Immunizations)*  
*(cf. 5141.32 - Health Screening for School Entry)*  
*(cf. 5141.6 - School Health Services)*

Note: The Commission on Teacher Credentialing issues permits for child development program directors, site supervisors, master teachers, teachers, associate teachers, and assistants pursuant to criteria established in Education Code 8360-8370 and 5 CCR 80105-80125.

Professional development resources pertaining to preschool/early childhood education are available through the CDE, California Preschool Instructional Network, and others. See the management resources below.

The Superintendent or designee shall ensure that administrators, teachers, and paraprofessionals in district preschool programs possess the appropriate permit(s) issued by the Commission on Teacher Credentialing, meet any additional qualifications established by the Board, and participate in professional development opportunities designed to continually enhance their knowledge and skills.

*(cf. 4112.2 - Certification)*  
*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*  
*(cf. 4112.5/4312.5 - Criminal Record Check)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4212.5 - Criminal Record Check)*  
*(cf. 4222 - Teacher Aides/Paraprofessionals)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*

Note: 5 CCR 18279-18281 require an annual evaluation using the standardized "Desired Results for Children and Families" system developed by the CDE. The system requires a self-evaluation that includes, but is not limited to, an assessment of the program by staff and the Board, a parent survey, and an environment rating scale using forms selected by the CDE.

The Superintendent or designee shall develop and implement an annual plan of evaluation which conforms to state requirements. (5 CCR 18279)

**PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)**

The Superintendent or designee shall regularly report to the Board regarding enrollments in district preschool programs and the effectiveness of the programs in preparing preschoolers for transition into the elementary education program.

(cf. 0500 - Accountability)

(cf. 6190 - Evaluation of the Instructional Program)

*Legal Reference:*

EDUCATION CODE

8200-8499.10 *Child Care and Development Services Act, especially:*

8200-8209 *General provisions for child care and development services*

8230-8233 *Migrant child care and development program*

8235-8239 *California State Preschool Program*

8240-8244 *General child care and development programs*

8250-8252 *Programs for children with special needs*

8263 *Eligibility and priorities for subsidized child development services*

8300-8303 *Early Learning Quality Improvement System Advisory Committee*

8360-8370 *Personnel qualifications*

8400-8409 *Contracts*

8493-8498 *Facilities*

8499.3-8499.7 *Local child care and development planning councils*

54740-54749 *Cal-SAFE program for pregnant/parenting students and their children*

HEALTH AND SAFETY CODE

1596.70-1596.895 *California Child Day Care Act*

1596.90-1597.21 *Day care centers*

120325-120380 *Immunization requirements*

CODE OF REGULATIONS, TITLE 5

18000-18434 *Child care and development programs*

80105-80125 *Permits authorizing service in child development programs*

UNITED STATES CODE, TITLE 20

6311-6322 *Title I, relative to preschool*

6319 *Qualifications for teachers and paraprofessionals*

6371-6376 *Early Reading First*

6381-6381k *Even Start family literacy programs*

6391-6399 *Education of migratory children*

UNITED STATES CODE, TITLE 42

9831-9852 *Head Start programs*

9858-9858q *Child Care and Development Block Grant*

CODE OF FEDERAL REGULATIONS, TITLE 22

101151-101239.2 *General requirements, licensed child care centers, including:*

101151-101163 *Licensing and application procedures*

101212-101231 *Continuing requirements*

101237-101239.2 *Facilities and equipment*

CODE OF FEDERAL REGULATIONS, TITLE 45

1301-1310 *Head Start*

*Management Resources: (see next page)*

**PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)**

*Management Resources:*

CSBA PUBLICATIONS

*Expanding Access to High-Quality Preschool Programs: A Resource and Policy Guide for School Leaders*, 2005

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*California Preschool Learning Foundations*

*12-08 Disenrollment Due to 2012-13 Budget Reduction for California State Preschool Programs*, Management Bulletin, July 2012

*Preschool English Learners: Principles and Practices to Promote Language, Literacy, and Learning*, 2nd ed., 2009

*Prekindergarten Learning Development Guidelines*, 2000

*First Class: A Guide for Early Primary Education*, 1999

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

*Good Start, Grow Smart*, April 2002

WEB SITES

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

California Association for the Education of Young Children: <http://www.caeyc.org>

California Children and Families Commission: <http://www.cafc.ca.gov>

California County Superintendents Educational Services Association: <http://www.ccsesa.org>

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

California Head Start Association: <http://caheadstart.org>

California Preschool Instructional Network: <http://www.cpin.us>

Child Development Policy Institute: <http://www.cdpi.net>

Cities, Counties, and Schools Partnership: <http://www.ccspartnership.org>

First 5 Association of California: <http://www.f5ac.org>

National Institute for Early Education Research: <http://nieer.org>

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

Preschool California: <http://www.preschoolcalifornia.org>

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

**PRESCHOOL/EARLY CHILDHOOD EDUCATION**

Note: The following administrative regulation reflects the major requirements of the California State Preschool Program (CSPP) pursuant to Education Code 8235-8239. The CSPP consolidates funding and program requirements for a number of state programs that serve children ages 3-4, including state preschool programs (Education Code 8235-8237), family literacy programs (Education Code 8238-8238.4), and general child care and development programs to the extent that they serve children ages 3-4 (Education Code 8240-8244).

SB 1016 (Ch. 38, Statutes of 2012) amended Education Code 8235 to provide that programs operated under the CSPP through a contract with the California Department of Education (CDE) will be part-day programs only. SB 1016 also amended Education Code 8239 to encourage a combination of part-day preschool and supplemental wraparound child care for preschool-age children (i.e., services funded with support from the general child care and development program).

The district may revise the following administrative regulation to reflect other preschool program(s) it offers which were not consolidated into the CSPP, such as the state migrant child care and development program (Education Code 8230-8233), the state program for severely disabled children (Education Code 8250-8252), the federal Head Start program (42 USC 9831-9852), or the Title I preschool program (20 USC 6311-6322).

In addition to the program requirements described below, preschool programs may be subject to other policies contained throughout the district's policy manual. For example, see BP/AR 5148 - Child Care and Development, AR 3514.2 - Integrated Pest Management, BP/AR 1240 - Volunteer Assistance, and food safety standards and nutrition requirements in BP/AR 3550 - Food Service/Child Nutrition Program. Districts should consult legal counsel if they have questions regarding the applicability of other laws to the district's preschool program.

When approved by the California Department of Education (CDE) under the California State Preschool Program, the district may operate one or more part-day preschool programs in accordance with law and the terms of the state contract.

*(cf. 5148 - Child Care and Development)*  
*(cf. 5148.1 - Child Care Services for Parenting Students)*  
*(cf. 5148.2 - Before/After School Programs)*

**Eligibility**

Note: SB 1016 (Ch. 38, Statutes of 2012) amended Education Code 8208 to align the age of preschool eligibility with start dates for kindergarten and transitional kindergarten; see AR 5111 - Admission and BP 6170.1 - Transitional Kindergarten.

Children eligible for the district's **state funded** preschool program include those who will have their third or fourth birthday on or before October 1 of the 2013-14 fiscal year or September 1 of each fiscal year thereafter. (Education Code 8208, 8235, 8236)

*(cf. 5111 - Admission)*  
*(cf. 6170.1 - Transitional Kindergarten)*

**PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)****Enrollment Priorities**

Note: The following **optional** paragraph is for use by districts that have access to a "centralized eligibility list" established by the county child care and development planning council pursuant to Education Code 8499.5, which ranks families by eligibility factors for subsidized care (e.g., income, family size, and need); see section below entitled "Fees and Charges" for further information about eligibility for subsidized services. Unless state funding is allocated to support such lists, they will be maintained only if locally funded. In situations where there is no locally funded centralized eligibility list or the district elects not to participate in the local list, the district must determine each family's eligibility and priority for subsidized services.

The Superintendent or designee shall refer to the county's centralized eligibility list to identify children in need of services.

First priority for enrollment in a **state funded** preschool program shall be given to neglected or abused children who are recipients of child protective services or who are at risk of being neglected, abused, or exploited, upon written referral from a legal, medical, or social service agency. If unable to enroll a child in this category, the district shall refer the child's parent/guardian to local resource and referral services so that services for the child can be located. (Education Code 8236)

*(cf. 1020 - Youth Services)*

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

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

Note: Pursuant to Education Code 8236, second priority for enrollment must be granted to children age 4 years, as provided in the following paragraph. In any CSPP program operating with funding that was initially allocated in a prior fiscal year, at least one-half of the children enrolled at a preschool site must be children who are age 4 unless an exception is granted by the Superintendent of Public Instruction (SPI).

After all such children are enrolled, the district shall give priority to eligible children age 4 years prior to enrolling eligible children age 3 years. (Education Code 8236)

After enrolling all eligible children who meet the criteria for subsidized services as specified in the section entitled "Fees and Charges" below, up to 10 percent of the program's enrollment, calculated throughout the entire contract, may be filled with children whose family income is no more than 15 percent above the income eligibility threshold. (Education Code 8235)

The district may certify eligibility and enrollment up to 120 calendar days prior to the first day of the beginning of the preschool year. After establishing eligibility at the time of initial enrollment, a child shall remain eligible for the remainder of the program year. (Education Code 8237)

**PRESCHOOL/EARLY CHILDHOOD EDUCATION (continued)**

Note: Education Code 8263.3, as added by SB 1016 (Ch. 38, Statutes of 2012), specifies the order by which families will be disenrolled from child care and development services when funding levels are reduced. CDE Management Bulletin 12-08 clarifies the order in which families will be disenrolled from CSPP programs and takes into account the priority specified in Education Code 8236 to enroll children age 4 years before enrolling children age 3 years. The following list reflects the order as specified in the CDE Management Bulletin.

When necessary due to a reduction in state reimbursements, families shall be disenrolled in the following order: (Education Code 8236, 8263.3)

1. Children age 3 years whose families have the highest income in relation to family size shall be disenrolled first, followed by children age 4 years whose families have the highest income in relation to family size.

At each age level, if two or more families have the same income ranking, the child with disabilities shall be disenrolled last. If there are no families that have a child with disabilities, the child who has received services the longest shall be disenrolled first.

2. Families of children age 3 or 4 years who are receiving child protective services or who have been documented to be at risk of being neglected, abused, or exploited, regardless of income, shall be disenrolled last.

**Minimum Hours/Days of Operation**

Note: SB 1016 (Ch. 38, Statutes of 2012) amended Education Code 8235 to delete the provision which specified that preschool programs could be offered a maximum of four hours per day.

The district's part-day **state funded** preschool program shall operate a minimum of three hours per day, excluding time for home-to-school transportation, and for a minimum of 175 days per year unless otherwise specified in the program's contract. (Education Code 8235)

*(cf. 6111 - School Calendar)*

*(cf. 6112 - School Day)*

**Wraparound Child Care Services**

Note: The following section is **optional**. Pursuant to Education Code 8329, as amended by SB 1016 (Ch. 38, Statutes of 2012), districts may contract with the CDE to offer "wraparound child care services" which combine preschool and general child care services to provide a full day of services for eligible families, as described below. Such programs must be consistent with requirements for general child care and development programs offered pursuant to Education Code 8240-8244; see BP/AR 5148 - Child Care and Development.

**PRESCHOOL/EARLY CHILDHOOD EDUCATION** (continued)

In accordance with its contract with the CDE, the district may offer full-day services to meet the needs of eligible families through a combination of part-day preschool and wraparound child care services that are offered for the remaining portion of the day or year following completion of the preschool services. Child care and development services offered through this program shall meet the requirements of general child care and development programs pursuant to Education Code 8240-8244. (Education Code 8239)

Wraparound services shall operate a minimum of 246 days per year unless otherwise specified in the contract. For this period of time, part-day **state funded** preschool programs shall operate 175-180 days and general child care and development programs may operate a full day for the remainder of the year after the completion of the preschool program. (Education Code 8239)

**Family Literacy Services**

Note: The following section is **optional**. Education Code 8238 and 8238.4, as amended by SB 1016 (Ch. 28, Statutes of 2012), provide for the SPI to distribute family literacy supplemental grant funds to qualifying CSPP contractors, including districts, for the purposes described below. Pursuant to Education Code 8238.4, CSPP programs that contract to receive this funding before July 1, 2012 will have first priority for funding. Second priority is given to CSPP programs operating in classrooms located in the attendance area of elementary schools ranked in deciles 1-3 of the Academic Performance Index.

SB 1016 also repealed some sections of the Education Code and consolidated the program requirements into Education Code 8238 and 8238.4. As amended, Education Code 8238.4 no longer addresses the appointment of a program coordinator, but the district may choose to appoint such a coordinator at its discretion.

When any district **state funded** preschool program receives funding for family literacy services pursuant to Education Code 8238.4, the Superintendent or designee shall coordinate the provision of: (Education Code 8238)

1. Opportunities for parents/guardians to work with their children on interactive literacy activities, including activities in which parents/guardians actively participate in facilitating their children's acquisition of prereading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development

*(cf. 6020 - Parent Involvement)*

2. Parenting education for parents/guardians of participating children to support their children's development of literacy skills, including, but not limited to, parent education in:
  - a. Providing support for the educational growth and success of their children

**PRESCHOOL/EARLY CHILDHOOD EDUCATION** (continued)

- b. Improving parent-school communications and parental understanding of school structures and expectations
  - c. Becoming active partners with teachers in the education of their children
3. Referrals to providers of adult education and instruction in English as a second language as necessary to improve parents/guardians' academic skills

*(cf. 6200 - Adult Education)*

4. Staff development for teachers in participating classrooms that includes, but is not limited to:
- a. Development of a pedagogical knowledge, including, but not limited to, improved instructional strategies
  - b. Knowledge and application of developmentally appropriate assessments of the prereading skills of children in participating classrooms
  - c. Information on working with families, including the use of on-site coaching, for guided practice in interactive literacy activities

*(cf. 4131 - Staff Development)*

**Fees and Charges**

Note: SB 1016 (Ch. 38, Statutes of 2012) amended Education Code 8239 and 8263 to provide that districts must charge a fee to families enrolled in part-day CSPP programs and/or supplemental wraparound services (see section "Wraparound Child Care Services" above) in accordance with the fee schedule established by the SPI.
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Fees for participation shall be assessed and collected in accordance with the fee schedule established by the Superintendent of Public Instruction. (Education Code 8239, 8263)

*(cf. 3260 - Fees and Charges)*

Children shall be eligible for subsidized services as follows:

1. Children shall be eligible for subsidized **state funded** preschool services if their family is a current aid recipient, income eligible, or homeless and/or the family's children are recipients of protective services or have been identified as being, or at risk of being, abused, neglected, or exploited. (Education Code 8235, 8263, 8263.1)

**PRESCHOOL/EARLY CHILDHOOD EDUCATION** (continued)

2. Children shall be eligible for subsidized wraparound services if their family meets at least one of the criteria specified in item #1 above and/or needs child care services because of either of the following circumstances: (Education Code 8239, 8263)
  - a. The child is identified by a legal, medical, or social services agency or emergency shelter as a recipient of protective services or as being, or at risk of being, neglected, abused, or exploited.
  - b. The parents/guardians are engaged in vocational training leading directly to a recognized trade, paraprofession, or profession; are employed or seeking employment; are seeking permanent housing for family stability; or are incapacitated.

Note: Pursuant to Education Code 8263, a district that chooses to charge a fee for field trips or to require parents/guardians to provide diapers is **mandated** to adopt policy to include parents/guardians in the decision-making about such fees, as provided below. The following paragraph may be modified to delete diapers as appropriate for the age of the children served.

The district shall involve parents/guardians in the decision-making process to determine whether and how much to charge for field trip expenses and whether to require parents/guardians to provide diapers. A child shall not be denied participation in a field trip due to the parent/guardian's inability or refusal to pay the fee, and no adverse action shall be taken against a parent/guardian for that inability or refusal. (Education Code 8263)

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS**

**Cautionary Notice:** As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs and provides that districts are deemed in compliance with the program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result of this flexibility, the district may choose to temporarily suspend certain provisions of the following policy or administrative regulation that reflect those requirements. However, this flexibility does not affect or alter any existing contract or bargaining agreement that the district may have in place. Thus, districts should examine the terms of those contracts and agreements and consult with district legal counsel for additional guidance. Also see BP 2210 - Administrative Discretion Regarding Board Policy.

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

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

*(cf. 0440 - District Technology Plan)*

*(cf. 6000 - Concepts and Roles)*

*(cf. 6011 - Academic Standards)*

*(cf. 6141 - Curriculum Development and Evaluation)*

*(cf. 6143 - Courses of Study)*

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6161.11 - Supplementary Instructional Materials)*

*(cf. 6162.5 - Student Assessment)*

*(cf. 6163.1 - Library Media Centers)*

Note: The following paragraph is for use by districts that maintain any of grades K-8 and may be revised to reflect grade levels offered by the district. Pursuant to Education Code 60200, the State Board of Education (SBE) is required to adopt basic instructional materials in specified subjects that districts may select for use in grades K-8. AB 1246 (Ch. 668, Statutes of 2012) amended Education Code 60200, 60203, 60207, and 60209 to revise the process and timelines used by the state to adopt such materials.

AB 1246 also added Education Code 60210, which authorizes the Board to select materials that have not been approved by the SBE, provided they are aligned with state academic content standards or Common Core Standards. In addition, if the district uses materials not adopted by the SBE, the majority of participants in the review process must be teachers assigned to the subject area or grade level for which the materials will be used; see section below entitled "Review Process."

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

The Board shall select instructional materials for use in grades K-8 that have been approved by the State Board of Education (SBE) or have otherwise been determined to be aligned with the state academic content standards adopted pursuant to Education Code 60605 or the Common Core Standards adopted pursuant to Education Code 60605.8. (Education Code 60200, 60210)

Note: The following paragraph is for use by districts that maintain high schools.

The Board shall adopt instructional materials for grades 9-12 upon determining that the materials meet the criteria specified in law and administrative regulation. (Education Code 60400)

Note: The following **optional** paragraph is consistent with priorities established in Education Code 60119 to ensure that each student is provided with sufficient standards-aligned instructional materials in four core curriculum areas: English/language arts, mathematics, science, and history-social science. The Instructional Materials Funding Realignment Program (Education Code 60420-60424), which had provided a block grant for instructional materials with a priority on materials that are aligned to state standards in those core courses, was repealed by AB 1246 (Ch. 668, Statutes of 2012).

**OK** The Board's priority in the selection of instructional materials is to ensure that all students are provided with standards-aligned instructional materials in the core curriculum areas of English/language arts, mathematics, science, and history-social science.

**Review Process**

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

**OK** The Superintendent or designee shall establish a process by which instructional materials shall be reviewed for recommendation to the Board. Toward that end, he/she may establish an instructional materials review committee to evaluate and recommend instructional materials.

*(cf. 1220 - Citizen Advisory Committees)*

Note: Pursuant to Education Code 60002, the Board must provide for "substantial" teacher involvement in the selection of instructional materials and must promote the involvement of parents/guardians and other members of the community in the selection of instructional materials. The Education Code does not define "substantial."

The review process shall involve teachers in a substantial manner and shall encourage the participation of parents/guardians and community members. (Education Code 60002)

## **SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

In addition, the instructional materials review committee may include administrators, other staff who have subject-matter expertise, and students as appropriate.

Note: The following paragraph is for use by districts that maintain any of grades K-8. Education Code 60210, as added by AB 1246 (Ch. 668, Statutes of 2012), adds the following requirement for the review of K-8 materials that have not been adopted by the SBE.

If the district chooses to use instructional materials for grades K-8 that have not been adopted by the SBE, the Superintendent or designee shall ensure that a majority of the participants in the district's review process are classroom teachers who are assigned to the subject area or grade level of the materials. (Education Code 60210)

Individuals who participate in the selection or review of instructional materials shall not have a conflict of interest, as defined in administrative regulation, in the materials being reviewed.

*(cf. 9270 - Conflict of Interest)*

The committee shall review instructional materials using criteria provided in law and administrative regulation, and shall provide the Board with documentation supporting its recommendations.

All recommended instructional materials shall be available for public inspection at the district office.

*(cf. 5020 - Parent Rights and Responsibilities)*

Note: SBE Policy on Guidelines for Piloting Textbooks and Instructional Materials provides a sample process for piloting instructional materials that addresses the selection of materials to pilot, a chronology of the process, and additional considerations, such as conflict of interest, contacts with publishers, and consideration of standards maps.

The district may pilot instructional materials, using a representative sample of classrooms for a specified period of time during a school year, in order to determine how well the materials support the district's curricular goals and academic standards. Feedback from teachers piloting the materials shall be made available to the Board before the materials are adopted.

### **Public Hearing on Sufficiency of Instructional Materials**

Note: As a condition of receiving funds for instructional materials from any state source, Education Code 60119 requires the Board to annually hold a public hearing to determine whether each student in the district has sufficient standards-aligned textbooks or instructional materials in English/language arts, mathematics, science, and history-social science that are consistent with the content and cycles of the curriculum framework adopted by the SBE.

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

Education Code 1240 requires the County Superintendent of Schools to review the textbooks or instructional materials of schools ranked in deciles 1-3 of the Academic Performance Index (API). If the County Superintendent determines that a school does not have sufficient materials, he/she must prepare a report outlining the noncompliance and give the district a chance to remedy the deficiency. If the deficiency is not remedied by the second month of the school year, the County Superintendent may request that the California Department of Education (CDE) purchase textbooks or materials for the district, and the cost must be repaid by the district. The CDE will issue a public statement at an SBE meeting indicating the district's failure to provide instructional materials.

The Board shall annually conduct one or more public hearings on the sufficiency of the district's textbooks and other instructional materials. (Education Code 60119)

Note: Education Code 60119 specifies that the hearing must be held within eight weeks of the beginning of the school year. Option 1 is for use by districts without any schools on a multitrack year-round calendar. Option 2 is for use by districts with schools on a multitrack year-round calendar.

**OK**

**OPTION 1:** The hearing shall be held on or before the end of the eighth week from the first day students attend school for that year. (Education Code 60119)

~~**OPTION 2:** The hearing shall be held on or before the end of the eighth week from the first day of the school year of any district school that operates on a multitrack year-round calendar that begins its school year in August or September. (Education Code 60119)~~

Note: The remainder of this policy applies to all districts.

The Board encourages participation by parents/guardians, teachers, interested community members, and bargaining unit leaders at the hearing. Ten days prior to the hearing, the Superintendent or designee shall post a notice in three public places within the district containing the time, place, and purpose of the hearing. The hearing shall not take place during or immediately following school hours. (Education Code 60119)

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

Note: Education Code 60119 requires the Board to adopt a resolution indicating whether or not each student in each school has sufficient standards-aligned textbooks or instructional materials. AB 1246 (Ch. 668, Statutes of 2012) amended Education Code 60119 to provide that the materials may be aligned to either state content standards adopted pursuant to Education Code 60605 or Common Core Standards adopted pursuant to Education Code 60605.8. See the accompanying Exhibit for a sample resolution.

Pursuant to Education Code 60119, the determination of the sufficiency of textbooks or instructional materials for mathematics, science, history-social science, and English/language arts is a condition for receipt of state instructional materials funding. The Board must also make a written determination during the hearing as to the sufficiency of textbooks or instructional materials in foreign language and health courses, as well as science laboratory equipment in science laboratory courses, although the provision of the materials or the equipment in these courses is not a condition for receipt of state instructional materials funding.

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

At the hearing(s), the Board shall determine, through a resolution, whether each student in each school, including each English learner, has sufficient textbooks or instructional materials which are aligned to the state content standards adopted pursuant to Education Code 60605 or the Common Core Standards adopted pursuant to Education Code 60605.8 and which are consistent with the content and cycles of the state's curriculum frameworks. Sufficiency of instructional materials shall be determined in each of the following subjects: (Education Code 60119)

1. Mathematics

*(cf. 6142.92 - Mathematics Instruction)*

2. Science

*(cf. 6142.93 - Science Instruction)*

3. History-social science

*(cf. 6142.94 - History-Social Science Instruction)*

4. English language arts, including the English language development component of an adopted program

*(cf. 6142.91 - English/Language Arts Instruction)*  
*(cf. 6174 - Education for English Language Learners)*

5. Foreign language

*(cf. 6142.2 - World/Foreign Language Instruction)*

6. Health

*(cf. 6142.8 - Comprehensive Health Education)*

Note: The following paragraph is for use by districts that maintain any of grades 9-12.
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The Board shall also determine the availability of science laboratory equipment, as applicable to science laboratory courses offered in grades 9-12. (Education Code 60119)

In making these determinations, the Board shall consider whether each student has sufficient textbooks and/or instructional materials to use in class and to take home. However, this does not require that each student have two sets of materials. The materials may be in a digital format as long as each student, at a minimum, has and can access the same materials in the

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

class and to take home as all other students in the same class or course in the district and has the ability to use and access them at home. However, the materials shall not be considered sufficient if they are photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage. (Education Code 60119)

Note: Education Code 1240.3 and 42605 specify that, for the 2008-09 through 2014-15 fiscal years, "sufficiency" means that all students in the district who are enrolled in the same course have "identical" standards-aligned textbooks and instructional materials from the same adoption cycle. However, Education Code 1240.3 does not require districts to purchase all of the instructional materials included in an adoption cycle if the materials that are purchased are made available to all the students for whom they are intended in all of the schools within the district.

For example, fourth-grade students at all district schools must have instructional materials from the same SBE science adoption cycle, though fourth-grade students at different schools could be using materials from different publishers within the same adoption cycle. However, the district may use materials from different adoption cycles for grades K-3 and grades 4-8 since those students are not in the same "course."

The Board shall also make a determination that all students within the district who are enrolled in the same course have "identical" standards-aligned textbooks or instructional materials from the same adoption cycle, as defined in Education Code 1240.3 and 60119. (Education Code 1240.3, 42605)

Note: The following paragraph is **optional**. Education Code 1240.3 authorizes the district, until July 1, 2015, to purchase the newest adopted instructional materials for the neediest schools in the district without incurring a duty to purchase these materials for students in other district schools. This provision will be used by the County Superintendent through fiscal year 2014-15 whenever he/she visits schools ranked in deciles 1-3 of the API to determine the sufficiency of instructional materials pursuant to Education Code 1240.

**OK** However, the district may purchase the newest adopted instructional materials for students in district schools ranked in deciles 1-3 of the base Academic Performance Index in any one of the past three school years without necessarily purchasing these materials for use in other district schools. (Education Code 1240.3)

Note: Pursuant to Education Code 60119, if the Board makes a determination that there are insufficient textbooks or instructional materials, the Board must take action to ensure that the materials are provided within two months of the beginning of the school year. The CDE's [Instructional Materials FAQ](#) states that, if a district has submitted purchase orders to the publisher to purchase materials to remedy the insufficiency, these materials should be received and made available to students by the end of the second month of the school year. Thus, districts are strongly encouraged to hold the public hearing as early in the school year as possible in order to provide sufficient time to correct any deficiencies.

If the Board determines that there are insufficient textbooks or instructional materials, it shall provide information to classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the percentage of students who lack sufficient standards-

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

aligned textbooks or instructional materials in each subject area and the reasons that each student does not have sufficient textbooks or instructional materials. The Board shall take any action, except an action that would require reimbursement by the Commission of State Mandates, to ensure that each student has sufficient materials within two months of the beginning of the school year in which the determination is made. (Education Code 60119)

**Complaints**

Note: Complaints regarding the contents of instructional materials are addressed in BP/AR 1312.2 - Complaints Concerning Instructional Materials. See AR 1312.4 - Williams Uniform Complaint Procedures for language regarding complaints about deficiencies in instructional materials.
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Complaints concerning instructional materials shall be handled in accordance with law, Board policy, and administrative regulation.

*(cf. 1312.2 - Complaints Concerning Instructional Materials)*

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

*Legal Reference: (see next page)*

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

*Legal Reference:*

EDUCATION CODE

220 Prohibition against discrimination  
1240 County superintendent, general duties  
1240.3 Definition of sufficiency for categorical flexibility  
33050-33053 General waiver authority  
33126 School accountability report card  
35272 Education and athletic materials  
42605 Tier 3 categorical flexibility  
44805 Enforcement of course of studies; use of textbooks, rules and regulations  
49415 Maximum textbook weight  
51501 Nondiscriminatory subject matter  
60000-60005 Instructional materials, legislative intent  
60010 Definitions  
60040-60052 Instructional requirements and materials  
60060-60062 Requirements for publishers and manufacturers  
60070-60076 Prohibited acts (re instructional materials)  
60110-60115 Instructional materials on alcohol and drug education  
60119 Public hearing on sufficiency of materials  
60200-60210 Elementary school materials  
60226 Requirements for publishers and manufacturers  
60240-60252 State Instructional Materials Fund  
60350-60352 Core reading program instructional materials  
60400-60411 High school textbooks  
60510-60511 Donation for sale of obsolete instructional materials  
60605 State content standards  
60605.8 Common Core Standards  
60605.86-60605.88 Supplemental instructional materials aligned with Common Core Standards  
CODE OF REGULATIONS, TITLE 5  
9505-9530 Instructional materials

*Management Resources:*

CSBA PUBLICATIONS

*Flexibility Provisions in the 2008 and 2009 State Budget: Policy Considerations for Governance Teams, Budget Advisory, March 2009*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

01-05 *Guidelines for Piloting Textbooks and Instructional Materials, September 2001*  
*Standards for Evaluating Instructional Materials for Social Content, 2000*

WEB SITES

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

Association of American Publishers: <http://www.publishers.org>

California Academic Content Standards Commission, Common Core Standards:  
<http://www.scoe.net/castandards>

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

## SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS

**Cautionary Notice:** As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs and provides that districts are deemed in compliance with the program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result of this flexibility, the district may choose to temporarily suspend certain provisions of the following policy or administrative regulation that reflect those requirements. However, this flexibility does not affect or alter any existing contract or bargaining agreement that the district may have in place. Thus, districts should examine the terms of those contracts and agreements and consult with district legal counsel for additional guidance. Also see BP 2210 - Administrative Discretion Regarding Board Policy.

### Criteria for Selection and Adoption of Instructional Materials

In recommending textbooks or other instructional materials for adoption by the Governing Board, the Superintendent or designee shall ensure that such materials:

1. Are aligned to any applicable academic content standards adopted by the State Board of Education (SBE) pursuant to Education Code 60605 and/or Common Core Standards adopted pursuant to Education Code 60605.8

*(cf. 6011 - Academic Standards)*

Note: The following paragraph is for use by districts that offer any of grades K-8. Pursuant to Education Code 60200, the State Board of Education (SBE) is responsible for adopting at least five basic instructional materials for grades K-8 in specified core subjects and any other subject for which the SBE determines that the adoption of instructional materials is necessary or desirable. AB 1246 (Ch. 668, Statutes of 2012) amended Education Code 60200, 60203, 60207, and 60209 to revise the process and timelines used by the state to adopt such materials. Although Education Code 60200.7 prohibits the SBE from adopting instructional materials until the 2015-16 school year, an exception established in Education Code 60207, as amended by AB 1246, authorizes the SBE to adopt K-8 instructional materials in mathematics by March 30, 2014.

Education Code 60210, as added by AB 1246, authorizes the Governing Board to select instructional materials for grades K-8 that have not been approved by the SBE, provided they are aligned with state academic content standards adopted by the SBE pursuant to Education Code 60605 or Common Core Standards adopted pursuant to Education Code 60605.8 and have been reviewed through a process that requires a majority of the participants in the process to be classroom teachers who are assigned to the subject area or grade level for which the materials will be used; also see the accompanying Board policy.

Because state adoptions of instructional materials are postponed, Education Code 60605.86, as added by SB 140 (Ch. 623, Statutes of 2011), and Education Code 60605.87-60605.88, as added by AB 1719 (Ch. 636, Statutes of 2012), require the California Department of Education (CDE) to recommend and the SBE to approve lists of K-8 supplementary instructional materials aligned with the Common Core Standards in English language arts by September 30, 2012, mathematics by July 30, 2013, and English language development by June 30, 2014. See BP 6161.11 - Supplementary Instructional Materials.

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

For grades K-8, the Superintendent or designee shall select instructional materials from among the list of materials adopted by the SBE and/or other materials that have not been adopted by the SBE but are aligned with the state academic content standards and/or the Common Core Standards. (Education Code 60200, 60210)

*(cf. 6161.11 - Supplementary Instructional Materials)*

Note: The following **optional** paragraph is for use by districts offering any of grades 9-12 and may be revised to reflect district practice. One way to ensure that instructional materials in core courses for grades 9-12 are aligned to state standards is through a review of standards maps created by the CDE. A template of the standards map is available on the CDE's web site.

**OK**

For grades 9-12, the Superintendent or designee shall review instructional materials in history-social science, mathematics, English/language arts, and science using a standards map in order to determine the extent to which the materials are aligned to state academic content standards.

Note: Item #2 below is for use by districts that offer any of grades 9-12.

2. For grades 9-12, are provided by publishers that comply with the requirements of Education Code 60040-60052, 60060-60062, and 60226 (Education Code 60400)
3. Do not reflect adversely upon persons because of their race or ethnicity, gender, religion, disability, nationality, sexual orientation, occupation, or other characteristic listed in Education Code 220, nor contain any sectarian or denominational doctrine or propaganda contrary to law (Education Code 51501, 60044)

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

4. To the satisfaction of the Board, are accurate, objective, current, and suited to the needs and comprehension of district students at their respective grade levels (Education Code 60045)
5. With the exception of literature and trade books, use proper grammar and spelling (Education Code 60045)

Note: Education Code 60048 and 60200 require that the Board not adopt basic instructional materials that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo, unless it makes specific findings that the use has an educational purpose or is incidental to the general nature of an illustration, as provided in item #6 below. The SBE publication Standards for Evaluating Instructional Materials for Social Content details standards for the use of brand names and corporate logos in instructional materials.

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

6. Do not expose students to a commercial brand name, product, or corporate or company logo unless the Board makes a specific finding that the use is appropriate based on one of the following: (Education Code 60048, 60200)
- a. The commercial brand name, product, or corporate or company logo is used in text for an educational purpose as defined in guidelines or frameworks adopted by the SBE.
  - b. The appearance of a commercial brand name, product, or corporate or company logo in an illustration is incidental to the general nature of the illustration.

*(cf. 1325 - Advertising and Promotion)*

7. If the materials are technology-based materials, are both available and comparable to other, equivalent instructional materials (Education Code 60052)

Note: Education Code 60040-60043 require that specific subject matter be included in the district's instructional materials. Education Code 60040 requires that instructional materials include accurate portrayals of the cultural and racial diversity of society as specified. Education Code 60041 requires (1) accurate portrayal of humanity's place in ecological systems and the need to protect the environment and (2) the effects of tobacco, alcohol, and other drug use on the human system. Education Code 60042 requires the Board to adopt materials as it deems necessary to encourage thrift, fire prevention, and the humane treatment of animals and people. Education Code 60043 requires that the Board, when appropriate to the comprehension of students, adopt textbooks for social science, history, or civics classes that contain the Declaration of Independence and the Constitution of the United States. If desired, the district may expand item #8 below to list these specific requirements.

8. Meet the requirements of Education Code 60040-60043 for specific subject content

Note: Items #9-18 below are **optional** and may be revised to reflect district practice. The district may choose to develop subject-specific criteria as well as general criteria.

9. Support the district's adopted courses of study and curricular goals

*(cf. 6141 - Curriculum Development and Evaluation)*

*(cf. 6142.2 - World/Foreign Language Instruction)*

*(cf. 6142.8 - Comprehensive Health Education)*

*(cf. 6142.91 - English/Language Arts Instruction)*

*(cf. 6142.92 - Mathematics Instruction)*

*(cf. 6142.93 - Science Instruction)*

*(cf. 6142.94 - History-Social Science Instruction)*

*(cf. 6143 - Courses of Study)*

*(cf. 6146.1 - High School Graduation Requirements)*

10. Contribute to a comprehensive, balanced curriculum

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

11. Demonstrate reliable quality of scholarship as evidenced by:
  - a. Accurate, up-to-date, and well-documented information
  - b. Objective presentation of diverse viewpoints
  - c. Clear, concise writing and appropriate vocabulary
  - d. Thorough treatment of subject matter
12. Provide for a wide range of materials at all levels of difficulty, with appeal to students of varied interests, abilities, and developmental levels
13. Include materials that stimulate discussion of contemporary issues and improve students' thinking and decision-making skills
14. Contribute to the proper articulation of instruction through grade levels
15. As appropriate, have corresponding versions available in languages other than English
16. Include high-quality teacher's guides
17. Meet high standards in terms of the quality, durability, and appearance of paper, binding, text, and graphics

Note: 5 CCR 9517.2 sets the following maximum weight standards for each student textbook: three pounds for grades K-4, four pounds for grades 5-8, and five pounds for grades 9-12. 5 CCR 9517.2 requires publishers submitting textbooks to the SBE that exceed those weight standards to provide lighter weight alternatives, such as split volumes or electronic editions, soft cover editions, or other alternate physical formats. For materials for grades 9-12, publishers must disclose the availability of lighter weight alternatives. Item #18 below includes textbook weight as one of the criteria for Board consideration.

18. When available, include options for lighter weight materials in order to help minimize any injury to students by the combined weight of instructional materials

**Conflict of Interest**

Note: The following **optional** section is for use by districts that choose to require individuals who will participate in the review process to first complete a disclosure statement which provides an opportunity to disclose any conflict of interest or appearance of conflict of interest.

The following conflict of interest rules are not applicable to "public officials" (including Board members and designated staff) who are subject to the district's conflict of interest code pursuant to the Political

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

Reform Act. Such persons who are making decisions concerning instructional materials must comply with the more stringent conflict of interest requirements described in BB 9270 - Conflict of Interest.

To ensure integrity and impartiality in the evaluation and selection of instructional materials, any district employee who is participating in the evaluation of instructional materials and not otherwise designated in the district's conflict of interest code shall sign a disclosure statement indicating that he/she:

Note: Education Code 60061 requires publishers to provide instructional materials free of charge within California to the same extent that they provide free materials to other states or school districts; see Price List of Adopted Instructional Materials on the CDE web site. However, Education Code 60071 forbids publishers from offering "valuable thing(s)" to school officials for the purpose of influencing the purchase of instructional materials. The CDE's Instructional Materials FAQ clarifies that, in accordance with the definition of "technology-based materials" in Education Code 60010, districts may accept electronic equipment necessary to make use of technology-based materials provided that such equipment is used by students and teachers as a learning resource, not to replace computers or related equipment in an existing computer lab or to establish a new computer lab.

1. Shall not accept any emolument, money, or other valuable thing or inducement to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material (Education Code 60072)

Sample copies of instructional materials are excepted from this prohibition. (Education Code 60075)

Note: Items # 2-4 below are **optional** and should be modified to reflect district practice.

2. Is not employed by nor receives compensation from the publisher or supplier of the instructional materials or any person, firm, organization, subsidiary, or controlling entity representing it
3. Does not have and will not negotiate a contractual relationship with the publisher or supplier of the instructional materials or any person, firm, organization, subsidiary, or controlling entity representing it
4. Does not have an interest as a contributor, author, editor, or consultant in any textbook or other instructional material submitted to the district

(cf. 9270 - Conflict of Interest)

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**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS****RESOLUTION ON SUFFICIENCY OF INSTRUCTIONAL MATERIALS**

Note: As a condition of receiving instructional materials funding from any state source, Education Code 60119 requires that the Governing Board hold an annual public hearing regarding the sufficiency of textbooks or other instructional materials and determine through a resolution whether each student has sufficient materials; see the accompanying Board policy. "Sufficient textbooks or instructional materials," as defined in Education Code 60119, means that each student in the district, including each English learner, has a standards-aligned textbook or instructional materials, which may include materials in a digital format under specified conditions, to use in class or to take home.

The following sample resolution is based on the 2008 sample resolution developed by the California Department of Education (CDE) but has been updated to reflect new law. This resolution may be used to certify compliance with Education Code 60119.

Whereas, the Governing Board of the (*name of school district/county office of education*), in order to comply with the requirements of Education Code 60119, held a public hearing on (*date*), at (*time*) o'clock, which is on or before the eighth week of school (between the first day that students attend school and the end of the eighth week from that day) and which did not take place during or immediately following school hours, and;

Whereas, the Board provided at least 10 days notice of the public hearing by posting it in at least three public places within the district stating the time, place, and purpose of the hearing, and;

Whereas, the Board encouraged participation by parents/guardians, teachers, members of the community, and bargaining unit leaders in the public hearing, and;

Whereas, information provided at the public hearing detailed the extent to which sufficient textbooks or instructional materials were provided to all students, including English learners, in the (*name of school district/county office of education*), and;

Whereas, the definition of "sufficient textbooks or instructional materials" means that each student, including each English learner, has a standards-aligned textbook or instructional materials to use in class and to take home, which may include materials in a digital format but shall not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage, and;

Note: Education Code 1240.3 and 42605 specify that, for the 2008-09 through 2014-15 fiscal years, "sufficiency" means that all students in the district who are enrolled in the same "course" have standards-aligned textbooks and instructional materials from the same adoption cycle; see the accompanying Board policy.

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

Whereas, the definition of "sufficient textbooks or instructional materials" also means that all students who are enrolled in the same course within the (*name of school district/county office of education*), have standards-aligned textbooks or instructional materials from the same adoption cycle, and;

Note: Pursuant to Education Code 60119, as amended by AB 1246 (Ch. 668, Statutes of 2012), a determination as to whether the instructional materials are "standards-aligned" may be based on alignment to either state academic content standards adopted by the State Board of Education pursuant to Education Code 60605 or the Common Core Standards adopted pursuant to Education Code 60605.8.

Whereas, textbooks or instructional materials in core curriculum subjects should be aligned with state academic content standards adopted by the State Board of Education pursuant to Education Code 60605 and/or the Common Core Standards adopted pursuant to Education Code 60605.8;

**Finding of Sufficient Textbooks or Instructional Materials**

Note: The following section is for use when the Board is making a finding that the district has "sufficient" materials. According to the CDE, *Education Code* 60119 requires documentation of sufficiency of textbooks or instructional materials to be presented at the public hearing. Survey forms are available on the CDE's web site which may be used as a self-study and county office validation tool for grades K-12.

Whereas, sufficient standards-aligned textbooks or instructional materials that are consistent with the cycles and content of the curriculum frameworks were provided to each student, including each English learner, in the following subjects:

Note: To provide complete information about the basis for the Board's determination of sufficiency, the district may wish to include the names of the textbooks or instructional materials provided to students, as well as the applicable state adoption cycle.

- Mathematics: (*List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.*)  
\_\_\_\_\_  
\_\_\_\_\_
  
- Science: (*List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.*)  
\_\_\_\_\_  
\_\_\_\_\_
  
- History-social science: (*List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.*)  
\_\_\_\_\_  
\_\_\_\_\_

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

- English language arts, including the English language development component of an adopted program: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

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Note: Pursuant to Education Code 60119, the Board must also include a written determination for the following subject areas, although these determinations are not a condition for receipt of state instructional materials funds.

- Foreign language: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

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- Health: *(List adopted textbooks or instructional materials for this subject for each grade level or school as well as applicable state adoption cycle.)*

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Note: The following paragraph is for use by districts that maintain grades 9-12. The Board may provide a list of the science laboratory classes offered in grades 9-12 and details on the science laboratory equipment available for these classes.

Whereas, laboratory science equipment was available for science laboratory classes offered in grades 9-12, inclusive;

Therefore, it is resolved that for the *(year)* school year, the *(name of school district/county office of education)* has provided each student with sufficient standards-aligned textbooks or instructional materials that are consistent with the cycles and content of the curriculum frameworks.

**Finding of Insufficient Textbooks or Instructional Materials**

Note: The following section is for use when the Board is making a finding of "insufficient" materials. Education Code 60119 requires that the Board's resolution list, for each school for which an insufficiency exists, the percentage of students at each grade level who lack sufficient materials in each of the subject areas listed below. The provision of sufficient foreign language and health materials is not a condition of receipt of instructional materials funds.

Whereas, information provided at the public hearing and to the Board at the public meeting detailed that insufficient standards-aligned textbooks or instructional materials were provided to students in the following subjects and grade levels at district schools: *(For each school,*

**SELECTION AND EVALUATION OF INSTRUCTIONAL MATERIALS** (continued)

*list the percentage of students who lack sufficient standards-aligned textbooks or instructional materials in mathematics, science, history-social science, English language arts, foreign language, and health.)*

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Whereas, sufficient textbooks or instructional materials were not provided at each school listed above due to the following reasons: *(For each school at which there is an insufficiency, list the reasons that each student does not have sufficient instructional materials in each subject and grade level listed above.)*

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Therefore, it is resolved, that for the *(year)* school year, the *(name of school district/county office of education)* has not provided each student with sufficient textbooks or instructional materials that are consistent with the cycles and content of the curriculum framework, and;

Be it further resolved, that the following actions will be taken to ensure that all students have sufficient standards-aligned textbooks or instructional materials in all subjects that are consistent with the cycles and content of the curriculum frameworks within two months of the beginning of the school year in which this determination is made. *(List actions to be taken to resolve insufficiency. See Education Code 60119(a)(2)(B) for other funds that may be used to ensure sufficient instructional materials.)*

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PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at a meeting, by the following vote:

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**SUPPLEMENTARY INSTRUCTIONAL MATERIALS**

Note: The following **optional** policy addresses the selection of instructional materials that are used to supplement the basic textbooks and other instructional materials adopted by the Governing Board for use in grades K-8 pursuant to Education Code 60200 or for grades 9-12 pursuant to Education Code 60400. See BP/AR 6161.1 - Selection and Evaluation of Instructional Materials for requirements pertaining to the selection of those basic instructional materials.

The Governing Board encourages the use of supplementary instructional materials to enrich the curriculum and enhance student learning. Such materials shall be aligned with district goals, curriculum objectives, and academic standards and shall supplement and not supplant the use of Board-adopted basic instructional materials that serve as the primary learning resources.

*(cf. 0000 - Vision)*

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

*(cf. 6011 - Academic Standards)*

*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*

*(cf. 6163.1 - Library Media Centers)*

*Supplementary instructional materials* include, but are not limited to, instructional materials that are designed to serve one or more of the following purposes: (Education Code 60010)

1. To provide more complete coverage of one or more subjects included in a given course
2. To meet the various learning ability levels of students in a given age group or grade level
3. To meet the diverse educational needs of students with a language disability in a given age group or grade level
4. To meet the diverse educational needs of students reflective of a condition of cultural pluralism
5. To use current, relevant technology that further engages interactive learning in the classroom and beyond

*(cf. 6142.91 - English/Language Arts Instruction)*

*(cf. 6142.92 - Mathematics Instruction)*

*(cf. 6142.93 - Science Instruction)*

*(cf. 6142.94 - History-Social Science Instruction)*

Supplementary instructional materials may be selected by the Superintendent or designee, school administrators, or teachers, as applicable, and obtained through donations to the district and/or available funding sources designated for these purposes.

## **SUPPLEMENTARY INSTRUCTIONAL MATERIALS** (continued)

*(cf. 1260 - Educational Foundation)*

*(cf. 3290 - Gifts, Grants and Bequests)*

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

Note: In McCarthy v. Fletcher, a California appellate court clarified that the Board may exclude materials from classroom teaching because they are educationally unsuitable and unrelated to the goals specified in Education Code 233.5, but not simply because the materials contain ideas to which Board or community members object.

As appropriate, supplementary instructional materials shall meet the criteria developed for the selection and evaluation of basic instructional materials as described in AR 6161.1 - Selection and Evaluation of Instructional Materials. Supplementary instructional materials shall be directly related to the course of study in which they are being used and shall be appropriate for the age and maturity level of the students.

The use or reproduction of supplementary instructional materials shall be in accordance with federal copyright law.

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

### **Supplementary Materials Aligned with Common Core Standards**

Note: The following **optional** section is for use by districts that maintain any of grades K-8. Pursuant to Education Code 60605.8, the State Board of Education (SBE) has adopted Common Core Standards in English language arts and mathematics; see BP 6011 - Academic Standards. In November 2012, the SBE adopted updated English language development standards for English learners which are aligned to the Common Core Standards. However, the SBE has not yet adopted K-8 textbooks and instructional materials aligned to the Common Core Standards because Education Code 60200.7 suspended state adoptions of instructional materials until the 2015-16 school year. To bridge the gap, Education Code 60605.86, as added by SB 140 (Ch. 623, Statutes of 2011), and Education Code 60605.87-60605.88, as added by AB 1719 (Ch. 636, Statutes of 2012), require the California Department of Education (CDE) to recommend and the SBE to approve lists of supplementary instructional materials aligned with the Common Core Standards in English language arts by September 30, 2012, mathematics by July 30, 2013, and English language development by June 30, 2014. These lists of supplementary materials will be available on the CDE's web site and are informational only; districts are not required to purchase any of the supplementary materials.

To prepare district students to achieve the Common Core Standards in English language arts and mathematics and the English language development standards, as applicable, the Board may select supplementary instructional materials from the lists of materials determined by the State Board of Education (SBE) to be aligned with those standards. (Education Code 60605.86-60605.88)

**SUPPLEMENTARY INSTRUCTIONAL MATERIALS** (continued)

Note: Pursuant to Education Code 60605.86-60605.88, as added by SB 140 (Ch. 623, Statutes of 2011) and AB 1719 (Ch. 636, Statutes of 2012), the district may select supplementary materials that are not on the SBE-approved lists. Such materials must be reviewed and recommended by content review experts who are selected by the Board, meet specified qualifications, and serve without compensation. The Board must ensure that the selected materials comply with SBE-approved evaluation criteria, which are available on the CDE's web site, and specified legal requirements for instructional materials, including social content review requirements.

The Board may approve supplementary instructional materials that are not on the lists approved by the SBE but which are aligned with the Common Core Standards provided that the materials comply with the evaluation criteria established by the SBE and Education Code 60050, 60060-60062, and 60226. The Board shall select content review experts who possess the qualifications specified in law to review and recommend such supplementary materials. The majority of the content review experts shall be teachers who are credentialed and/or authorized in the subject area they are reviewing and the remainder shall include appropriate persons from postsecondary educational institutions, school and district curriculum administrators, and other persons who are knowledgeable in the subject area. (Education Code 60605.86-60605.88)

**Appropriateness of Materials**

Note: The following **optional** section may be revised to reflect district practice, including any district criteria for the appropriateness of supplementary instructional materials and/or circumstances under which materials should be submitted to the principal or other designee for review prior to their use (e.g., when materials relate to controversial issues or are presented in a controversial manner or context, such as when materials contain nudity, sexual content, graphic violence, or extensive profanity). The district is encouraged to consult legal counsel prior to adopting such criteria or processes or when banning films, electronic resources, or other materials solely on the basis of industry ratings.

Whenever a district employee proposes to use a supplementary resource which is not included in the approved learning resources of the district, he/she shall preview the material to determine whether, in his/her professional judgment, it is appropriate for the grade level taught and is consistent with district criteria for the selection of supplementary instructional materials.

The employee shall confer with the Superintendent or designee as necessary to determine the compliance of the material with district criteria. The primary considerations should be the educational value, appropriateness, and relevance of the materials as well as the ages and maturity of the students.

*(cf. 6141.2 - Recognition of Religious Beliefs and Customs)*  
*(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)*  
*(cf. 6144 - Controversial Issues)*

*Legal Reference: (see next page)*

**SUPPLEMENTARY INSTRUCTIONAL MATERIALS** (continued)

*Legal Reference:*

EDUCATION CODE

233.5 *Duty regarding instruction in morals, manners, and citizenship*

18111 *Exclusion of books by governing board*

51510 *Prohibited study or supplemental materials*

51511 *Religious matters properly included*

51933 *Sex education materials*

60010 *Definitions*

60050 *Social content review of instructional materials*

60060-60062 *Requirements of publishers*

60200.7 *Suspension of state instructional materials adoptions*

60226 *Learner verification of instructional materials*

60242 *Uses of instructional materials funds*

60400 *Adoption of high school instructional materials*

60605.8 *Common Core Standards*

60605.86-60605.88 *Supplemental instructional materials aligned with Common Core Standards*

60811.3 *English language development standards*

COURT DECISIONS

*McCarthy v. Fletcher*, (1989) 207 Cal. App. 3d 130

*Fowler v. Board of Education of Lincoln County*, (1978) 819 F.2d 657

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*Standards for Evaluating Instructional Materials for Social Content, 2000*

WEB SITES

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

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

**EDUCATION FOR FOSTER YOUTH**

**Definitions**

*Foster youth* means a child who has been removed from his/her home pursuant to Welfare and Institutions Code 309, is the subject of a petition filed under Welfare and Institutions Code 300 or 602, or has been removed from his/her home and is the subject of a petition filed under Welfare and Institutions Code 300 or 602. (Education Code 48853.5)

Note: In instances where the rights of the parent/guardian have been limited, the court may appoint an educational representative on a temporary or long-term basis to make educational decisions for the student.

*Person holding the right to make educational decisions* means a responsible adult appointed by a court pursuant to Welfare and Institutions Code 361 or 726.

*School of origin* means the school that the foster youth attended when permanently housed or the school in which he/she was last enrolled. If the school the foster youth attended when permanently housed is different from the school in which he/she was last enrolled, or if there is some other school that the foster youth attended within the preceding 15 months and with which the youth is connected, the district liaison for foster youth shall determine, in consultation with and with the agreement of the foster youth and the person holding the right to make educational decisions for the youth, and in the best interests of the foster youth, which school is the school of origin. (Education Code 48853.5)

Note: Education Code 48850 expresses the legislative intent that the "best interests of the child" include educational stability as well as placement in the least restrictive educational program, as provided below.

*Best interests* means that, in making educational and school placement decisions for a foster youth, consideration is given to, among other factors, educational stability, the opportunity to be educated in the least restrictive educational setting necessary to achieve academic progress, and the foster youth's access to academic resources, services, and extracurricular and enrichment activities that are available to all district students. (Education Code 48850, 48853)

**District Liaison**

Note: Pursuant to Education Code 48853.5, districts are required to designate a staff person as an educational liaison for foster youth. This person may be the same individual designated as the liaison for homeless students as required by 42 USC 11432; see AR 6173 - Education for Homeless Children. In addition, Education Code 48853.5 requires that, for districts operating a foster youth services program, the liaison be affiliated with that program. The duties of the liaison are as specified below.

**EDUCATION FOR FOSTER YOUTH** (continued)

The Superintendent designates the following position as the district's liaison for foster youth:  
(Education Code 48853.5)

Assistant Superintendent of Student Services

(position or title)

201 6<sup>th</sup> Street, Coronado, CA 92118

(address)

619-522-8900

(phone number)

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

The liaison for foster youth shall:

1. Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of students in foster care (Education Code 48853.5)

Note: Education Code 48645.5 requires districts to accept for credit full or partial coursework completed in a public school or nonpublic nonsectarian school or agency in addition to a juvenile court school; see BP 6146.3 - Reciprocity of Academic Credit.

2. Ensure proper transfer of credits, records, and grades when students in foster care transfer from one school to another or from one district to another (Education Code 48645.5, 48853.5)

When a student in foster care is enrolling in a district school, the liaison shall contact the school last attended by the student to obtain, within two business days, all academic and other records. When a foster youth is transferring to a new school, the liaison shall provide the student's records to the new school within two business days of receiving the new school's request. (Education Code 48853.5)

*(cf. 5117 - Interdistrict Attendance)*

*(cf. 5125 - Student Records)*

*(cf. 6146.3 - Reciprocity of Academic Credit)*

Note: Pursuant to Education Code 48853.5, 48911, and 48915.5, as amended by AB 1909 (Ch. 849, Statutes of 2012), and Education Code 48918.1, as added by AB 1909, the district liaison is required to invite or notify a foster youth's attorney and the appropriate official of the county child welfare agency in certain circumstances when expulsion-related proceedings are pending against the foster youth. For specific situations requiring such invitation or notice, see AR 5144.1 - Suspension and Expulsion/Due Process.

3. When required by law, notify the foster youth's attorney and the representative of the appropriate county child welfare agency when the foster youth is undergoing any expulsion or other disciplinary proceeding, including, for a student with a disability, a

**EDUCATION FOR FOSTER YOUTH** (continued)

manifestation determination prior to a change in the student's placement. (Education Code 48853.5, 48911, 48915.5, 48918.1)

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

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

Note: Items #4-8 below are <b>optional</b> and should be modified to reflect district practice.
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4. As needed, make appropriate referrals to ensure that students in foster care receive necessary special education services and services under Section 504 of the federal Rehabilitation Act of 1973

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*

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

5. As needed, ensure that students in foster care receive appropriate school-based services, such as counseling and health services, supplemental instruction, and after-school services

*(cf. 5141.6 - School Health Services)*

*(cf. 5148.2 - Before/After School Programs)*

*(cf. 5149 - At-Risk Students)*

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

*(cf. 6172 - Gifted and Talented Student Program)*

*(cf. 6174 - Education for English Language Learners)*

*(cf. 6177 - Summer School)*

*(cf. 6179 - Supplemental Instruction)*

6. Develop protocols and procedures for creating awareness for district staff, including principals, school registrars, and attendance clerks, of the requirements for the proper enrollment, placement, and transfer of foster youth

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

7. Collaborate with the county placing agency, social services, probation officers, juvenile court officers, nonprofit organizations, and advocates to help coordinate services for the district's foster youth

*(cf. 1020 - Youth Services)*

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

*(cf. 5113.1 - Chronic Absence and Truancy)*

**EDUCATION FOR FOSTER YOUTH** (continued)

8. Monitor the educational progress of foster youth and provide reports to the Superintendent or designee and the Governing Board based on indicators identified in Board policy

Note: The following paragraph is **optional**. Because the district's liaison for foster youth often has additional duties pertaining to other programs, CSBA's policy brief [Educating Foster Youth: Best Practices and Board Considerations](#) recommends periodic evaluation of the liaison's caseload to determine whether he/she is able to adequately fulfill his/her duties with respect to foster youth.

**OK** The Superintendent or designee shall regularly monitor the caseload of the liaison, as well as his/her additional duties outside of the foster youth program, to determine whether adequate time and resources are available to meet the needs of foster youth in the district.

*(cf. 4115 - Evaluation/Supervision)*  
*(cf. 4315 - Evaluation/Supervision)*

**Enrollment**

A foster youth placed in a licensed children's institution or foster family home within the district shall attend programs operated by the district unless one of the following circumstances applies: (Education Code 48853, 48853.5)

1. The student has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

*(cf. 6159 - Individualized Education Program)*  
*(cf. 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education)*

Note: Education Code 48853 requires districts to educate foster youth in the least restrictive environment necessary for their educational achievement. However, pursuant to Education Code 48853, as amended by SB 121 (Ch. 571, Statutes of 2012), a district may be discharged from this obligation when the parent/guardian or other person with the right to make educational decisions for the foster youth unilaterally decides to place the foster youth in another educational program and provides the district a written statement as specified in item #2 below.

2. The parent/guardian or other person holding the right to make educational decisions for the student determines that it is in the best interest of the student to be placed in another educational program and submits a written statement to the district indicating that determination and that:
  - a. He/she is aware that the student has a right to attend a regular public school in the least restrictive environment.
  - b. The alternate educational program is a special education program, if applicable.

**EDUCATION FOR FOSTER YOUTH** (continued)

- c. The decision to unilaterally remove the student from the district school and to place him/her in an alternate education program may not be financed by the district.
- d. Any attempt to seek reimbursement for the alternate education program may be at the expense of the parent/guardian or other person holding the right to make educational decisions for the student.

*(cf. 6159.3 - Appointment of Surrogate Parent for Special Education Students)*

<p>Note: Pursuant to Education Code 48853.5, a foster youth may continue his/her education in the school of origin under the circumstances stated below. SB 1568 (Ch. 578, Statutes of 2012) amended Education Code 48853.5 to authorize a former foster youth to continue in the school of origin until high school graduation after the court's jurisdiction is terminated (item c below). Elementary and high school districts should delete any item (b or c) that is not applicable to the grade levels served by the district.</p>
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- 3. At the initial placement or any subsequent change in placement, the student exercises his/her right to continue in his/her school of origin, as defined above.
  - a. The student may continue in the school of origin for the duration of the court's jurisdiction.
  - b. If the court's jurisdiction over a grade K-8 student is terminated prior to the end of a school year, the student may continue in his/her school of origin for the remainder of the school year.
  - c. If the court's jurisdiction is terminated while the student is in high school, the student may continue in his/her school of origin until he/she graduates.
  - d. If the student is transitioning between school grade levels, he/she shall be allowed to continue in the district of origin in the same attendance area to provide him/her the benefit of matriculating with his/her peers in accordance with the established feeder patterns of school districts. A student who is transitioning to a middle school or high school shall be allowed to enroll in the school designated for matriculation in another school district.

The liaison may, in consultation with and with the agreement of the foster youth and the person holding the right to make educational decisions for the youth, recommend that the youth's right to attend the school of origin be waived and he/she be enrolled in any school that students living in the attendance area in which the foster youth resides are eligible to attend. All decisions shall be made in accordance with the foster youth's best interests. (Education Code 48853.5)

**EDUCATION FOR FOSTER YOUTH** (continued)

Prior to making any recommendation to move a foster youth from his/her school of origin, the liaison shall provide the youth and the person holding the right to make educational decisions for the youth with a written explanation of the basis for the recommendation and how this recommendation serves the youth's best interests. (Education Code 48853.5)

The role of the liaison shall be advisory with respect to placement decisions and determination of the school of origin. (Education Code 48853.5)

Note: Pursuant to Education Code 48853.5 and Health and Safety Code 120341, a district is required to immediately enroll any foster youth transferring into the district even when it has not received the foster youth's medical records, including his/her immunization records. However, pursuant to Health and Safety Code 120341, the district must, subsequent to the enrollment, take steps to obtain the foster youth's immunization records or ensure that he/she is properly immunized. See BP/AR 5141.31 - Immunizations.

If the liaison, in consultation with the foster youth and the person holding the right to make educational decisions for the foster youth, agrees that the best interests of the youth would be served by his/her transfer to a school other than the school of origin, the principal or designee of the new school shall immediately enroll the foster youth. The foster youth shall be immediately enrolled even if he/she: (Education Code 48853.5)

1. Has outstanding fees, fines, textbooks, or other items or monies due to the school last attended

*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*

2. Does not have clothing normally required by the school, such as school uniforms

*(cf. 5132 - Dress and Grooming)*

3. Is unable to produce records normally required for enrollment, such as previous academic records, proof of residency, and medical records, including, but not limited to, immunization records or other documentation

*(cf. 5141.26 - Tuberculosis Testing)*

*(cf. 5141.31 - Immunizations)*

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

Note: Education Code 48853 and 48853.5 specify that, if a dispute arises regarding school placement, the district shall use an existing dispute resolution process available to any district student. The following paragraph should be modified to reflect district practice.

If the foster youth or a person with the right to make educational decisions for the foster youth disagrees with the liaison's enrollment recommendation, he/she may appeal to the Superintendent. The Superintendent shall make a determination within 30 calendar days of

## **EDUCATION FOR FOSTER YOUTH** (continued)

receipt of the appeal. Within 30 calendar days of receipt of the Superintendent's decision, the parent/guardian or foster youth may appeal that decision to the Board. The Board shall consider the issue at its next regularly scheduled meeting. The Board's decision shall be final.

*(cf. 9320 - Meetings and Notices)*

If any dispute arises regarding the request of a foster youth to remain in the school of origin, the youth has the right to remain in the school of origin pending resolution of the dispute. (Education Code 48853.5)

### **Transportation**

Note: Pursuant to Education Code 48853.5, districts may, but are not required to, provide transportation to allow a foster youth to attend a school or school district of origin, unless otherwise required by federal law or pursuant to the individualized education program of a student with a disability. An example of when transportation might be required under federal law is when a foster youth is homeless, pursuant to the McKinney-Vento Homeless Assistance Act (42 USC 11431-11435).

Option 1 is for use by districts that do not provide transportation. Option 2 is for use by districts that choose to provide transportation to foster youth to their school of origin and may be revised to reflect district practice.

**OPTION 1:** The district shall not be responsible for providing transportation to and from the school of origin.

~~**OPTION 2:** Upon request, the district may provide transportation for a foster youth to and from his/her school of origin when the student is residing within the district and the school of origin is within district boundaries.~~

*(cf. 3540 - Transportation)*

*(cf. 3541 - Transportation Routes and Services)*

### **Transfer of Coursework and Applicability of Graduation Requirements**

Note: The following section is for use by districts maintaining high schools. Education Code 51225.2 addresses the transferability of coursework completed by foster youth, as provided below. See BP 6146.1 - High School Graduation Requirements.

When a foster youth transfers into a district school, the district shall accept and issue full credit for any coursework that the foster youth has satisfactorily completed while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency and shall not require the foster youth to retake the course. (Education Code 51225.2)

**EDUCATION FOR FOSTER YOUTH** (continued)

If the foster youth did not complete the entire course, he/she shall be issued partial credit for the coursework completed and shall be required to take the portion of the course that he/she did not complete at his/her previous school. However, the district may require the foster youth to retake the portion of the course completed if, in consultation with the holder of educational rights for the foster youth, the district finds that the foster youth is reasonably able to complete the requirements in time to graduate from high school. Whenever partial credit is issued to a foster youth in any particular course, he/she shall be enrolled in the same or equivalent course, if applicable, so that he/she may continue and complete the entire course. (Education Code 51225.2)

In no event shall the district prevent a foster youth from taking or retaking a course to meet the eligibility requirements for admission to the California State University or the University of California. (Education Code 51225.2)

Note: Pursuant to Education Code 51225.3, any foster youth who transfers into the district or between district schools in grades 11-12 is exempted from locally established high school graduation requirements, as provided below. This exemption does not apply to state graduation requirements for course completion or the high school exit examination.

When a foster youth in grade 11 or 12 transfers into the district from another school district or transfers between high schools within the district, he/she shall be exempted from all coursework and other graduation requirements adopted by the Board that are in addition to the statewide coursework requirements specified in Education Code 51225.3 and the high school exit examination, unless the district makes a finding that the student is reasonably able to complete the additional requirements in time to graduate from high school while he/she remains in foster care. (Education Code 51225.3, 60851)

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6162.52 - High School Exit Examination)*

The Superintendent or designee shall notify any student who is granted an exemption and, as appropriate, the person holding the right to make educational decisions for the student, if any of the requirements that are waived will affect the student's ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges. (Education Code 51225.3)

**Grades/Credits**

Grades for a student in foster care shall not be lowered if the student is absent from school due to either of the following circumstances: (Education Code 49069.5)

**EDUCATION FOR FOSTER YOUTH** (continued)

1. A decision by a court or placement agency to change the student's placement, in which case the student's grades and credits shall be calculated as of the date he/she left school
2. A verified court appearance or related court-ordered activity

*(cf. 5121 - Grades/Evaluation of Student Achievement)*

**Eligibility for Extracurricular Activities**

Note: Education Code 48850 provides that, when the residence of a student in foster care changes pursuant to a court order or decision of a child welfare worker, the student shall be immediately deemed to meet all residency requirements for participation in extracurricular activities and interscholastic sports. For additional information about eligibility requirements, see BP 6145 - Extracurricular and Cocurricular Activities.

A foster youth who changes residences pursuant to a court order or decision of a child welfare worker shall be immediately deemed to meet all residency requirements for participation in interscholastic sports or other extracurricular activities. (Education Code 48850)

*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS**

Note: Proposition 227 (Education Code 300-340), which was enacted in June 1998, requires that English learners be educated through a program of "sheltered English immersion," as defined in law and the accompanying administrative regulation, with the goal that students learn English as rapidly and effectively as possible. In McLaughlin v. State Board of Education, the court held that the State Board of Education (SBE) may not grant districts waivers related to Education Code 300-340 pursuant to its waiver authority in Education Code 33050.

During the Federal Program Monitoring (FPM) process, California Department of Education (CDE) staff will expect to see evidence that the district has complied with major program requirements. See the CDE web site for FPM compliance monitoring instruments.

The Governing Board intends to provide English learners with challenging curriculum and instruction that develop proficiency in English as rapidly and effectively as possible while facilitating student achievement in the district's regular course of study.

Note: Pursuant to Education Code 60811, the SBE has adopted state academic content standards for English language development for students whose primary language is a language other than English. In November 2012, the SBE approved English language development standards that have been updated to align with the state's Common Core Standards for English language arts as required by Education Code 60811.3, as added by AB 124 (Ch. 605, Statutes of 2012). The standards describe what students should know and be able to do in the early stages of and at exit from each of three proficiency levels: emerging, expanding, and bridging.

The SBE has been unable to adopt K-8 textbooks and instructional materials aligned to the Common Core Standards because Education Code 60200.7 suspended state adoptions of instructional materials until the 2015-16 school year. To bridge the gap, Education Code 60605.87, as added by AB 1719 (Ch. 636, Statutes of 2012), requires the CDE to recommend and the SBE to approve, by June 30, 2014, a list of supplementary instructional materials aligned with the updated English language development standards. This list of supplementary materials will be available on the CDE's web site and is informational only; see BP 6161.11 - Supplementary Instructional Materials.

English learners shall be provided English language development instruction targeted to their English proficiency level and aligned with state content standards. The district's program shall be based on sound instructional theory and adequately supported in order to assist students in accessing the full educational program.

*(cf. 6011 - Academic Standards)*

*(cf. 6141 - Curriculum Development and Evaluation)*

*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*

*(cf. 6161.11 - Supplementary Instructional Materials)*

*(cf. 6171 - Title I Programs)*

Note: Education Code 44253.1-44253.11, related Title 5 regulations, and Commission on Teacher Credentialing (CTC) leaflet CL-622, Serving English Learners, describe requirements pertaining to the qualifications of teachers of English learners. A teacher who is assigned to provide English language development, specially designed academic instruction in English, and/or primary language instruction to English learners must hold an appropriate authorization from the CTC; see AR 4112.22 - Staff Teaching English Language Learners.

## **EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

The Superintendent or designee shall ensure that all staff employed to teach English learners possess the appropriate authorization from the Commission on Teacher Credentialing.

*(cf. 4112.22 - Staff Teaching English Language Learners)*

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

The Superintendent or designee shall encourage parent and community involvement in the development, implementation, and evaluation of English language development programs. In addition, to support students' English language development, the Superintendent or designee may provide an adult literacy training program for parents/guardians and community members that leads to English fluency.

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 6020 - Parent Involvement)*

### **Identification and Assessment**

Note: Pursuant to 5 CCR 11511, the district must initially administer the California English Language Development Test (CELDT) to any student whose native language is not English and who has not been previously identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test. Once identified as an English learner, the student must continue to be assessed on an annual basis until reclassified based on the CELDT, teacher evaluation, parental opinion and consultation, and performance on a statewide assessment of basic skills. See the accompanying administrative regulation for further information about test administration and identification and reclassification criteria.

The Superintendent or designee shall maintain procedures which provide for the accurate identification of English learners and an assessment of their proficiency and needs in the areas of listening, speaking, reading, and writing in English.

Once identified as an English learner, a student shall be annually assessed for language proficiency until he/she is reclassified based on criteria specified in administrative regulation.

### **Placement of English Learners**

Note: Education Code 305-306 require that English learners be initially placed in a "sheltered English immersion" or "structured English immersion" classroom, as defined in law and the accompanying administrative regulation. Students will be placed in an English language mainstream classroom when they have acquired a reasonable level of English proficiency or when the student's parent/guardian so requests.

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

Students who are English learners shall be educated through "sheltered English immersion" or "structured English immersion," as defined in law and administrative regulation, during a temporary transition period not normally intended to exceed one year. Nearly all of the classroom instruction in the district's structured English immersion program shall be in English, but with the curriculum and presentation designed for students who are learning the language. (Education Code 305-306)

Note: The Education Code does not define the term "nearly all" for purposes of ensuring that nearly all instruction is provided in English pursuant to Education Code 306, and the SBE has declared that it is the responsibility of districts to determine the appropriate ratio of English and native language instruction. The district could establish a minimum percentage of classroom instructional time to be conducted in English or specify the types of courses to be conducted in English and the courses (e.g., science, algebra) to be taught in the student's primary language. "Nearly all" could be cautiously defined as to provide that all classroom instruction be conducted in English except for clarification, explanation, and support as needed. The following paragraph should be completed with the district's definition of "nearly all."

For purposes of determining the amount of instruction conducted in English in the structured English immersion classroom, "nearly all" shall be defined as follows:

**all classroom instruction be conducted in English except for clarification, explanation, and support as needed.**

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Note: Pursuant to Education Code 305-306 and 5 CCR 11301, when a student has acquired a reasonable level of English proficiency, as measured by state or local assessment instruments, he/she shall be removed from the structured English immersion classroom and placed in an English mainstream classroom in which the language of instruction is overwhelmingly in English. The term "overwhelmingly" is not defined in the Education Code nor in the state regulations.

The definition of "reasonable level of proficiency" is one that must be made at the local level. The following paragraph should be revised to specify the types of assessment instruments and scores and/or other local tools (e.g., student portfolios or grades) which will be used to determine whether a student has achieved a reasonable level of English proficiency for purposes of qualifying for transfer to an English mainstream classroom. The district should fill in the blanks below with its definition of "reasonable level of proficiency."

When an English learner has acquired a reasonable level of English proficiency as measured by any of the state-designated assessments approved by the California Department of Education, any district assessments, and/or other criteria adopted by the Board, he/she shall be transferred from a structured English immersion classroom to an English language mainstream classroom in which the instruction is overwhelmingly in English. (Education Code 305-306; 5 CCR 11301)

*(cf. 6162.5 - Student Assessment)*

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

An English learner has acquired a "reasonable level of English proficiency" when he/she has achieved the following:

Utilizing the CELDT as the primary criterion, an Early Advanced or Advanced level overall on the CELDT with all language domain scores at an Intermediate level or above, along with teacher and parental concurrence based on grades, classroom performance, and parental opinion and consultation, and an acceptable student performance in basic skills on standards based assessments, qualify an English Learner (EL) designated student for redesignation to Fluent English Proficient (RFEP).

Note: 5 CCR 11301 allows a parent/guardian to have his/her child moved into an English language mainstream classroom at any time during the school year. According to the CDE, the parent/guardian only needs to request this placement; he/she does not need to go through the waiver process described below in the section entitled "Parental Exception Waivers."

Education Code 320 grants parents/guardians legal standing to sue Board members, teachers, or administrators if their child has been "willfully and repeatedly" denied the option of an English language curriculum. The constitutionality of this section was upheld by the Ninth Circuit Court of Appeals in California Teachers Association v. the State Board of Education. Therefore, districts should ensure that requests from parents/guardians to place their child in an English language mainstream classroom are granted immediately.

At any time during the school year, the parent/guardian of an English learner may have his/her child moved into an English language mainstream program. (5 CCR 11301)

**Parental Exception Waivers**

Note: Pursuant to Education Code 310-311, the district may, in three narrowly defined circumstances, grant parental exception waivers from the requirements of Education Code 305 regarding placement in the structured English immersion program and instead be taught through bilingual education or other permitted methodologies. For detailed procedures, see the accompanying administrative regulation.

When allowed by law, the parent/guardian of an English learner may submit a request that his/her child be exempted from placement in a structured English immersion program and instead be placed in a class where he/she is taught English and other subjects through bilingual education techniques or other generally recognized educational methodologies permitted by law. (Education Code 310-311)

Each waiver request shall be considered on its individual merits with deference given to parental preference for student placement.

Note: 5 CCR 11309 **mandates** that the district's procedure contain the following paragraph. Pursuant to 5 CCR 11309, the district is required to grant all parental exception waiver requests, unless the principal and educational staff have determined that an alternative program offered at the school would not be better suited for the overall educational development of the student; see the accompanying administrative regulation. Therefore, the burden is on the district staff to show why a waiver request should not be granted.

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

In 83 Ops.Cal.Atty.Gen. 40 (2000), the Attorney General opined that a district may not deny a parent/guardian request for a waiver on the sole ground that the district has no alternative program.

A waiver request shall be granted in accordance with law unless the principal and educational staff have determined that an alternative program would not be better suited to the student's overall educational development. (5 CCR 11309)

Note: The following appeal process is **optional**.

If the Superintendent or designee denies the waiver request, he/she shall provide a written justification to the parent/guardian describing the reasons for the denial. A parent/guardian may appeal the decision in writing to the Board. The Board may consider the matter at its next regular Board meeting. The Board may decide not to hear the appeal, in which case the Superintendent's decision shall be final. If the Board hears the appeal, the Superintendent shall send the Board's decision to the parent/guardian within seven working days.

Note: Pursuant to 5 CCR 11310, any parent/guardian who applies for a waiver may request that the SBE review the district's guidelines or procedures. The SBE shall review the guidelines only to make a determination as to whether the guidelines comply with 5 CCR 11309. In addition, the SBE may request that the Board submit the guidelines for review.

**Program Evaluation**

Note: The following section may be revised to reflect indicators agreed upon by the Board and Superintendent or designee for measuring the effectiveness of the district's educational program for English learners.

Education Code 313.1, as added by AB 2193 (Ch. 427, Statutes of 2012), defines "long-term English learner" and "English learner at risk of becoming a long-term English learner"; see definitions in the accompanying administrative regulation. Pursuant to Education Code 313.2, as added by AB 2193, the CDE is required to annually determine the number of students in each district and school who are, or at risk of becoming, long-term English learners and to report that information to districts and schools.

To evaluate the effectiveness of the district's educational program for English learners, the Superintendent or designee shall report to the Board, at least annually, regarding the progress of English learners towards proficiency in English, the number and percentage of English learners reclassified as fluent English proficient, the number and percentage of English learners who are or are at risk of being classified as long-term English learners, the achievement of English learners on standards-based tests in core curricular areas, and a comparison of current data with data from at least the previous year. The Superintendent or designee also shall provide the Board with regular reports from any district or schoolwide English learner advisory committees.

## **EDUCATION FOR ENGLISH LANGUAGE LEARNERS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

300-340 *English language education*  
430-446 *English Learner and Immigrant Pupil Federal Conformity Act*  
33050 *State Board of Education waiver authority*  
44253.1-44253.11 *Qualifications for teaching English learners*  
48985 *Notices to parents in language other than English*  
51101-51101.1 *Rights of parents*  
52130-52135 *Impacted Languages Act of 1984*  
52160-52178 *Bilingual Bicultural Act*  
52180-52186 *Bilingual teacher training assistance program*  
54000-54028 *Programs for disadvantaged children*  
60200.7 *Suspension of state instructional materials adoptions*  
60605.87 *Supplemental instructional materials, English language development*  
60810-60812 *Assessment of language development*  
62005.5 *Continuation of advisory committee after program sunsets*

#### CODE OF REGULATIONS, TITLE 5

11300-11316 *English learner education*  
11510-11517 *California English Language Development Test*

#### UNITED STATES CODE, TITLE 20

1701-1705 *Equal Educational Opportunities Act*  
6312 *Local education agency plans*  
6801-6871 *Title III, Language instruction for limited English proficient and immigrant students*  
7012 *Parental notification*

#### COURT DECISIONS

*Valeria G. v. Wilson*, (2002) 307 F.3d 1036  
*California Teachers Association v. State Board of Education et al.*, (9th Circuit, 2001) 271 F.3d 1141  
*McLaughlin v. State Board of Education*, (1999) 75 Cal.App.4th 196  
*Teresa P. et al v. Berkeley Unified School District et al.*, (1989) 724 F.Supp. 698

#### ATTORNEY GENERAL OPINIONS

83 *Ops.Cal.Atty.Gen.* 40 (2000)

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*California English Language Development Test (CELDT): 2012-13 CELDT Information Guide, 2012*  
*English Language Development Standards for California Public Schools: Kindergarten Through Grade Twelve, 2012*

*Matrix of Test Variations, Accommodations, and Modifications for Administration of California Statewide Assessments*

#### U.S. DEPARTMENT OF EDUCATION NONREGULATORY GUIDANCE

*Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students*, May 2007

#### WEB SITES

California Department of Education: <http://www.cde.ca.gov/sp/el>  
U.S. Department of Education: <http://www.ed.gov>

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS****Definitions**

*English learner*, also known as a limited English proficient student, means a student who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English. (Education Code 306)

Note: Education Code 313.1, as added by AB 2193 (Ch. 427, Statutes of 2012), establishes the following definitions of "long-term English learner" and "English learner at risk of becoming a long-term English learner." Pursuant to Education Code 313.2, as added by AB 2193, the California Department of Education (CDE) is required to annually determine the number of students in each district and school who are, or at risk of becoming, long-term English learners and to report that information to districts and schools; see the accompanying Board policy.

*Long-term English learner* means an English learner who is enrolled in grades 6-12, has been enrolled in schools in the United States for more than six years, has remained at the same English language proficiency level for two or more consecutive years as determined by the California English Language Development Test (CELDT) or any successor test, and scores far below basic or below basic on the English language arts test of the California Standards Tests or any successor test. (Education Code 313.1)

*English learner at risk of becoming a long-term English learner* means an English learner who is enrolled in grades 5-11 in the United States for four years, scores at the intermediate level or below on the CELDT or any successor test, and scores in the fourth year at the below basic or far below basic level on the English language arts test of the California Standards Tests or any successor test. (Education Code 313.1)

*English language classroom* means a classroom in which the language of instruction used by the teaching personnel is overwhelmingly the English language, and in which such teaching personnel possess a good knowledge of the English language. (Education Code 306)

*English language mainstream classroom* means a classroom in which the students either are native English language speakers or already have acquired reasonable fluency in English. (Education Code 306)

*Sheltered English immersion* or *structured English immersion* means an English language acquisition process in which nearly all classroom instruction is in English but with the curriculum and presentation designed for students who are learning the language. (Education Code 306)

*Bilingual education/native language instruction* means a language acquisition process for students in which much or all instruction, textbooks, and teaching materials are in the student's native language. (Education Code 306)

## **EDUCATION FOR ENGLISH LANGUAGE LEARNERS (continued)**

### **Identification and Assessment**

Note: 5 CCR 11307 and 11511 require the district to administer a home language survey to all enrolled students and, for students who are determined by the home survey to have a primary language other than English, to follow up with administration of the California English Language Development Test (CELDT) as provided in the following paragraphs. According to the CDE's 2012-13 CELDT Information Guide, these requirements also apply to students in a transitional kindergarten program, who are expected to have the same level of services as kindergarten students; see BP 6170.1 - Transitional Kindergarten.

Upon enrollment in the district, each student's primary language shall be determined through use of a home language survey. (5 CCR 11307)

Any student who is identified as having a primary language other than English as determined by the home language survey, and who has not been previously identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test, shall be assessed for English proficiency using the CELDT. The test shall be administered between 60 calendar days before the date of first enrollment in a district school and 30 calendar days after the date of first enrollment, but not before July 1 of that school year. (5 CCR 11511)

The CELDT shall be administered in accordance with 5 CCR 11511-11516.7.

Note: 5 CCR 11516-11516.6 specify allowable variations and accommodations in CELDT administration. These variations and accommodations are generally the same as those allowed for the Standardized Testing and Reporting Program; see AR 6162.51 - Standardized Testing and Reporting Program. A matrix of allowable accommodations is available on the CDE's web site.

Variations and accommodations in test administration may be provided pursuant to 5 CCR 11516-11516.7. Any student with a disability shall be allowed to take the CELDT with those accommodations for testing that the student has regularly used during instruction and classroom assessment as delineated in the student's individualized education program (IEP) or Section 504 plan that are appropriate and necessary to address the student's individual needs. If he/she is unable to participate in the assessment or a portion of the assessment with such accommodations, he/she shall be administered an alternate assessment for English language proficiency as set forth in his/her IEP. (5 CCR 11516-11516.7)

*(cf. 6152.51 - Standardized Testing and Reporting Program)*

*(cf. 6159 - Individualized Education Program)*

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

## **EDUCATION FOR ENGLISH LANGUAGE LEARNERS (continued)**

### **Parental Notifications**

Note: The following section specifies notifications that must be sent to parents/guardians regarding assessment results and available programs for English learners. The district may choose to combine these notifications with notifications required for parental exception waivers, as detailed in the section "Parental Exception Waivers" below. The CDE has developed sample notification letters, available on its web site in multiple translations, to notify parents/guardians of the initial identification of the student as an English learner or as initially fluent English proficient and to notify them of the results of the annual assessment.

Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to their parents/guardians must be written in English and in the primary language and may be answered by the parent/guardian in either language.

As provided in the following paragraph, 5 CCR 11511.5 requires the district to notify parents/guardians of their child's CELDT results within 30 calendar days following receipt of the results from the test contractor. According to the CDE's 2012-13 CELDT Information Guide, individual student performance results are received approximately eight weeks after the completed tests are sent to the test contractor for scoring.

The district shall notify parents/guardians of their child's results on the CELDT within 30 calendar days following receipt of the results from the test contractor. (5 CCR 11511.5)

*(cf. 5145.6 - Parental Notifications)*

At the beginning of each school year, parents/guardians shall be informed of the placement of their child in a structured English immersion program and shall be notified of an opportunity to apply for a parental exception waiver. (Education Code 310; 5 CCR 11309)

Note: The remainder of this section is for use by districts that receive federal Title III funds. Pursuant to Education Code 440 and 20 USC 7012, districts receiving federal Title III funds must notify parents/guardians of their child's assessment of English proficiency, as specified below.

Not later than 30 calendar days after the beginning of the school year, each parent/guardian of a student participating in, or identified for participation in, a language instruction program supported by federal Title III funds shall receive notification of the assessment of his/her child's English proficiency. The notice shall include all of the following: (Education Code 440; 20 USC 7012)

1. The reason for the student's classification as an English learner
2. The level of English proficiency
3. A description of the program for English language development instruction, including a description of all of the following:
  - a. The manner in which the program will meet the educational strengths and needs of the student

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

- b. The manner in which the program will help the student develop his/her English proficiency and meet age-appropriate academic standards
  - c. The specific exit requirements for the program, the expected rate of transition from the program into classrooms not tailored for English learners, and the expected rate of graduation from secondary school if applicable
  - d. Where the student has been identified for special education, the manner in which the program meets the requirements of the student's IEP
4. Information regarding a parent/guardian's option to decline to allow the student to be enrolled in the program or to choose to allow the student to be enrolled in an alternative program
  5. Information designed to assist a parent/guardian in selecting among available programs, if more than one program is offered

**Parental Exception Waivers**

Note: Pursuant to Education Code 311, parents/guardians may request a waiver of their child's placement in a structured English immersion program under the circumstances described below. See the accompanying Exhibit for a sample form that may be used to obtain and process the parent/guardian's waiver request.

A parent/guardian may, by personally visiting the school, request that the district waive the requirements pertaining to the placement of his/her child in a structured English immersion program if one of the following circumstances exists: (Education Code 310-311)

1. The student already possesses good English language skills, as measured by standardized tests of English vocabulary comprehension, reading, and writing, in which the student scores at or above the state average for his/her grade level or at or above the fifth-grade average, whichever is lower.
2. The student is age 10 years or older, and it is the informed belief of the principal and educational staff that an alternate course of study would be better suited to the student's rapid acquisition of basic English skills.

Note: Education Code 311 provides that a waiver may be granted when the student has such special physical, emotional, psychological, or educational needs that an alternate course of study would be better suited to the student's overall educational development, as provided in item #3 below. The State Board of Education (SBE) has declared that the definition of "special needs" is broader than special education, or any other specific medical condition, in that expert documentation justifying the waiver need not be presented by the parent/guardian. Rather, the determination as to whether a child has "special needs" should be based on the parent/guardian's opinion that an alternative program is better for his/her child. According to the CDE, for a special education student, the IEP determines placement of that student, and therefore a waiver pursuant to this section is not required.

**EDUCATION FOR ENGLISH LANGUAGE LARNERS** (continued)

3. The student already has been placed, for a period of not less than 30 calendar days during that school year, in an English language classroom and it is subsequently the informed belief of the principal and educational staff that the student has special physical, emotional, psychological, or educational needs and that an alternate course of educational study would be better suited to the student's overall educational development.

Note: 5 CCR 11309 **mandates** that districts establish procedures for granting parental exception waivers that contain the following two paragraphs. Pursuant to Education Code 311, waivers granted pursuant to item #3 above are subject to approval by the Superintendent under guidelines adopted by the Governing Board and ultimately subject to SBE guidelines.

Upon request for a waiver, the Superintendent or designee shall provide parents/guardians with a full written description and, upon request, a spoken description of the intent and content of the structured English immersion program, any alternative courses of study, all educational opportunities offered by the district and available to the student, and the educational materials to be used in the different educational program choices. For a request for waiver pursuant to item #3 above, the Superintendent or designee shall notify the parent/guardian that the student must be placed for a period of not less than 30 calendar days in an English language classroom and that the waiver must be approved by the Superintendent pursuant to any guidelines established by the Governing Board. (Education Code 310, 311; 5 CCR 11309)

The principal and educational staff may recommend a waiver to a parent/guardian pursuant to item #2 or #3 above. Parents/guardians shall be informed in writing of any recommendation for an alternative program made by the principal and staff and shall be given notice of their right to refuse to accept the recommendation. The notice shall include a full description of the recommended alternative program and the educational materials to be used for the alternative program as well as a description of all other programs available to the student. If the parent/guardian elects to request the alternative program recommended by the principal and educational staff, the parent/guardian shall comply with district procedures and requirements otherwise applicable to a parental exception waiver, including Education Code 310. (Education Code 311; 5 CCR 11309)

Note: If standardized tests are not available to measure a student's English language skills and for waivers pursuant to item #1 above, 5 CCR 11309 provides that the district may use equivalent measures as determined by the Board. The following **optional** paragraph should be revised to reflect district practice.

When evaluating waiver requests pursuant to item #1 above and other waiver requests for those students for whom standardized assessment data are not available, other equivalent assessment measures may be used. These equivalent measures may include district standards and assessment and teacher evaluations of such students.

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

Parental exception waivers pursuant to item #2 above shall be granted if it is the informed belief of the principal and educational staff that an alternate course of educational study would be better suited to the student's rapid acquisition of basic English language skills. (Education Code 311)

Parental exception waivers pursuant to item #3 above shall be granted by the Superintendent if it is the informed belief of the principal and educational staff that, due to the student's special physical, emotional, psychological, or educational needs, an alternate course of educational study would be better suited to the student's overall educational development. (Education Code 311)

All parental exception waivers shall be acted upon within 20 instructional days of submission to the principal. However, parental waiver requests pursuant to item #3 above shall not be acted upon during the 30-day placement in an English language classroom. Such waivers shall be acted upon no later than 10 calendar days after the expiration of that 30-day English language classroom placement or within 20 instructional days of submission of the waiver to the principal, whichever is later. (5 CCR 11309)

Note: Education Code 310 provides that when 20 or more students in the same grade level at the same school receive a waiver, the school is required to offer an alternative class; otherwise it must allow the students to transfer to a public school in which such a class is offered. Districts that have questions about the requirement to offer a program should consult legal counsel as necessary.

Any individual school in which 20 students or more of a given grade level receive a waiver shall offer an alternative class where the students are taught English and other subjects through bilingual education techniques or other generally recognized educational methodologies permitted by law. Otherwise, the students shall be allowed to transfer to a public school in which such a class is offered. (Education Code 310)

In cases where a parental exception waiver pursuant to item #2 or #3 above is denied, the parent/guardian shall be informed in writing of the reason(s) for the denial and advised that he/she may appeal the decision to the Board if the Board authorizes such an appeal, or to the court. (5 CCR 11309)

Waiver requests shall be renewed annually by the parent/guardian. (Education Code 310)

**Reclassification/Redesignation**

Note: The following section reflects procedures established by law and state regulations for the reclassification of English learners to fluent English proficient. Education Code 313.5, as added by SB 1108 (Ch. 434, Statutes of 2012), requires the CDE to review the criteria, policies, and practices of a sampling of school districts and to recommend to the Legislature and the SBE, by January 1, 2014 and again by January 1, 2017, any guidelines or regulatory or statutory changes needed to identify when English learners are prepared for the successful transition to classrooms and curricula that require English proficiency.

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

The district shall continue to provide additional and appropriate educational services to English learners for the purposes of overcoming language barriers until they: (5 CCR 11302)

1. Demonstrate English language proficiency comparable to that of the district's average native English language speakers
2. Recoup any academic deficits which may have been incurred in other areas of the core curriculum as a result of language barriers

English learners shall be reclassified as fluent English proficient when they are able to comprehend, speak, read, and write English well enough to receive instruction in an English language classroom and make academic progress at a level substantially equivalent to that of students of the same age or grade whose primary language is English and who are in the regular course of study. (Education Code 52164.6)

Note: 5 CCR 11303 **mandates** that the district's reclassification process include the criteria specified in items #1-4 below. The CDE's 2012-13 CELDT Information Guide includes recommendations for assessing each of the following criteria.

The following measures shall be used to determine whether an English learner shall be reclassified as fluent English proficient: (Education Code 313; 5 CCR 11303)

1. Assessment of English language proficiency using an objective assessment instrument, including, but not limited to, the CELDT.
2. Participation of the student's classroom teacher and any other certificated staff with direct responsibility for teaching or placement decisions related to the student.
3. Parent/guardian opinion and consultation. The Superintendent or designee shall provide the parent/guardian with notice and a description of the reclassification process and of his/her opportunity to participate in the process and shall encourage his/her involvement in the process.
4. Student performance on a statewide assessment of basic skills in English.

Note: 5 CCR 11304 requires the district to monitor the progress of reclassified students to ensure that their classification and placement are correct. During the Federal Program Monitoring process, CDE staff will check whether the district monitors the progress of reclassified students for at least two years and whether such monitoring includes a determination of additional academic support needed.

The Superintendent or designee shall monitor the progress of reclassified students to ensure their correct classification and placement. (5 CCR 11304)

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

Students shall be monitored for at least two years following their reclassification. As part of this evaluation, the Superintendent or designee shall identify whether the student needs any additional academic support to ensure his/her language and academic success.

**Advisory Committees**

Note: The following section should be revised to reflect district practice. Pursuant to 5 CCR 11308, parent/guardian advisory committees are required for any district with over 50 English learners and for schools with over 20 English learners. Duties of the advisory committee are specified in 5 CCR 11308. Also see BP/AR 5020 - Parent Rights and Responsibilities for information about the rights of parents/guardians of English learners.

At the district level when there are more than 50 English learners in the district and at each school with more than 20 English learners, parent/guardian advisory committees shall be maintained to serve the advisory functions specified in law. (5 CCR 11308)

Parents/guardians of English learners shall constitute committee membership in at least the same percentage as their children represent of the total number of students in the school. (Education Code 52176)

The district's English language advisory committee shall advise the Board on at least the following tasks: (5 CCR 11308)

1. The development of a district master plan of education programs and services for English learners, taking into consideration the school site plans for English learners
2. The districtwide needs assessment on a school-by-school basis
3. Establishment of a district program, goals, and objectives for programs and services for English learners
4. Development of a plan to ensure compliance with applicable teacher or aide requirements
5. Administration of the annual language census
6. Review of and comment on the district's reclassification procedures
7. Review of and comment on the written notification required to be sent to parents/guardians pursuant to 5 CCR 11300-11316

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 5020 - Parent Rights and Responsibilities)*

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

*(cf. 6020 - Parent Involvement)*

In order to assist advisory members in carrying out their responsibilities, the Superintendent or designee shall ensure that committee members receive appropriate training and materials. This training shall be planned in full consultation with the members. (5 CCR 11308)

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS**

**PARENTAL EXCEPTION WAIVER  
EDUCATION CODE 311**

Student's Name: \_\_\_\_\_ Grade: \_\_\_\_\_

School: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Student's Primary Language: \_\_\_\_\_

I request a waiver of the placement of my child in the school's structured/sheltered English immersion program for the following reason:

- My child possesses good English language skills. (Education Code 311(a))
- My child is 10 years of age or older and I believe that an alternate course of study is better suited to my child's rapid acquisition of English. (Education Code 311(b))
- I believe that my child has special needs and that an alternate course of study is better suited to his/her educational development. (Education Code 311(c))

I understand that the objective for my child is to be taught English as rapidly and effectively as possible. I have been provided a full written description of the intent and content of the structured English immersion program; any alternative courses of study offered by the district and made available to my child; all educational opportunities offered by the district and made available to my child; and the educational materials to be used in the different educational program choices.

I have personally visited the school to apply for this waiver.

I understand that I must request that this waiver be reconsidered annually, each school year.

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**EDUCATION FOR ENGLISH LANGUAGE LEARNERS** (continued)

**For School Use Only:**

For waivers pursuant to Education Code 311(a), student's English standardized test scores:  
(Scores must be at or above the state average for the child's grade level or above the 5th  
grade average) \_\_\_\_\_

Waiver Granted/Denied: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

**GENERAL OBLIGATION BONDS**

Note: Article 16, Section 18 of the California Constitution permits school districts to issue bonds for the construction of school facilities with either a 66.67 percent or 55 percent approval by local voters. To qualify for the lower 55 percent (Proposition 39) threshold, districts must use the bond funds for more limited purposes and fulfill additional accountability requirements, as specified in this Board policy and accompanying administrative regulation.

Education Code 15100 sets forth conditions under which the Governing Board may call for a bond election. Pursuant to Education Code 15266, these conditions must be satisfied if the Board is seeking either the 66.67 percent or 55 percent approval threshold. The following paragraph is consistent with Education Code 15100.

In 88 Ops.Cal.Atty.Gen. 46 (2005), the Attorney General opined that a school district may use district funds to hire a consultant to assess the feasibility of developing a bond measure and to assess the public's support and opposition. However, according to the Attorney General, a district may not use district funds to hire a consultant to develop and implement a strategy to build a coalition to support the bond because such activities would be an impermissible use of public funds for campaign purposes in violation of Education Code 7054. For further discussion regarding use of district funds for political purposes, see BP 1160 - Political Processes.

The Governing Board recognizes that school facilities are an essential component of the educational program and that the Board has a responsibility to ensure that the district's facilities needs are met in the most cost-effective manner possible. When the Board determines that it is in the best interest of district students, it may order an election on the question of whether bonds shall be issued to pay for school facilities.

*(cf. 1160 - Political Processes)*  
*(cf. 7110 - Facilities Master Plan)*  
*(cf. 7210 - Facilities Financing)*

Note: For bonds requiring a 55 percent majority, Education Code 15268 and 15270 set limits as to the maximum amount of the bond and the tax rate that may be levied as a result of the bond. Limitations for bonds requiring a 66.67 percent majority are detailed in Education Code 15102-15109.

The Board shall determine the appropriate amount of the bonds in accordance with law.

Note: Education Code 15122.5 requires the inclusion of the statement specified in the following paragraph in the ballot for a bond measure, when any of the projects to be funded by the bond will require state matching funds.

When any project to be funded by bonds will require state matching funds for any phase of the project, the ballot for the bond measure shall include a statement as specified in Education Code 15122.5, advising voters that, because the project is subject to approval of state matching funds, passage of the bond measure is not a guarantee that the project will be completed. (Education Code 15122.5)

**GENERAL OBLIGATION BONDS** (continued)

**Bonds Requiring 55 Percent Approval by Local Voters**

Note: Pursuant to Education Code 15266, upon adoption of the resolution specified below, the district must comply with the accountability provisions required for the 55 percent threshold, even if the bond ultimately passes by a 66.67 percent majority of the voters.

The Board may decide to pursue the authorization and issuance of bonds by approval of 55 percent majority of the voters pursuant to Article 13A, Section 1(b)(3) and Article 16, Section 18(b) of the California Constitution. If two-thirds of the Board agrees to such an election, the Board shall vote to adopt a resolution to incur bonded indebtedness if approved by a 55 percent majority of the voters. (Education Code 15266)

*(cf. 9323.2 - Actions by the Board)*

Note: Education Code 15266 requires that the bond election be held only during a regularly scheduled local election at which all of the electors (voters) in the district are entitled to vote. Therefore, those school districts whose boundaries encompass more than one city or county or whose board members are elected by trustee area must ensure that the bond election is on a ballot in which all of the electors in the district are entitled to vote, such as a statewide primary, general, or special election.

The bond election may only be ordered at a primary or general election, a statewide special election, or a regularly scheduled local election at which all of the electors of the school district are entitled to vote. (Education Code 15266)

Bonded indebtedness incurred by the district shall be used only for the following purposes: (California Constitution Article 13A, Section 1(b)(3) and 1(b)(3)(A))

1. The construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities
2. The acquisition or lease of real property for school facilities

The proposition approved by the voters shall include the following accountability requirements: (California Constitution Article 13A, Section 1(b)(3))

1. A requirement that proceeds from the sale of the bonds be used only for the purposes specified in items #1-2 above, and not for any other purposes including teacher and administrative salaries and other school operating expenses
2. A list of specific school facility projects to be funded and certification that the Board has evaluated safety, class size reduction, and information technology needs in developing that list

*(cf. 0440 - District Technology Plan)*

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 6151 - Class Size)*

**GENERAL OBLIGATION BONDS** (continued)

Note: The question of whether or not bond proceeds may be used to pay the costs of the audits required pursuant to items #3-4 below should be referred to the district's legal counsel. However, an Attorney General opinion (87 Ops.Cal.Atty.Gen. 157 (2004)) supports the use of bond proceeds to pay the salaries of district employees to the extent they perform administrative oversight work on bond projects. According to the opinion, because these audits are expressly required by Proposition 39 and are directly related to the bond projects rather than routine school operations, these project administration costs may be considered as coming within the purposes specified in California Constitution Article 13A, Section 1(b)(3)(A) and therefore are an appropriate expenditure of bond proceeds.

The performance audit described in item #3 may include an evaluation of the planning, financing, and implementation of the overall facilities program. To assist districts with this requirement, CSBA provides a Proposition 39 Bond Performance Audits service; see CSBA's web site for further information.

3. A requirement that the Board conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed
4. A requirement that the Board conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects

Note: If the district has a general obligation bond approved under the 55 percent threshold, Education Code 15278 requires that the Board appoint a citizens' oversight committee. See the accompanying administrative regulation for requirements related to the composition and duties of the committee.

If a district general obligation bond requiring a 55 percent majority is approved by the voters, the Board shall appoint an independent citizens' advisory oversight committee. This committee shall be appointed within 60 days of the date that the Board enters the election results in its minutes pursuant to Education Code 15274. (Education Code 15278)

*(cf. 1220 - Citizen Advisory Committees)*  
*(cf. 9324 - Minutes and Recordings)*

The Superintendent or designee shall ensure that the annual, independent performance and financial audits conducted pursuant to items #3 and #4 above are issued in accordance with the U.S. Comptroller General's Government Auditing Standards. He/she shall submit the audits to the citizens' oversight committee by March 31 of each year. (Education Code 15286)

**Bonds Requiring 66.67 Percent Approval by Local Voters**

The Board may decide to pursue the authorization and issuance of bonds by approval of 66.67 percent majority of the voters pursuant to Education Code 15100 and Article 13A, Section 1(b)(2) of the California Constitution. If a majority of the Board agrees to such an election, or upon a petition of the majority of the qualified electors residing in the district, the Board shall adopt a resolution ordering an election on the question of whether to incur bonded indebtedness if approved by a 66.67 percent majority of the voters. (Education Code 15100)

**GENERAL OBLIGATION BONDS** (continued)

Note: Pursuant to Education Code 15101, an election for a bond measure that requires 66.67 percent approval may be held only on specified days. Districts using this option should coordinate efforts with their local elections officials to ensure compliance with law.

The bond election may be ordered to occur on any Tuesday, except a Tuesday that is a state holiday or the day before or after a state holiday, is within 45 days before or after a statewide election unless conducted at the same time as the statewide election, or is an established election date pursuant to Elections Code 1000 or 1500. (Education Code 15101)

Bonds shall be sold to raise money for any of the following purposes: (Education Code 15100)

1. Purchasing school lots
2. Building or purchasing school buildings
3. Making alterations or additions to school building(s) other than as may be necessary for current maintenance, operation, or repairs
4. Repairing, restoring, or rebuilding any school building damaged, injured, or destroyed by fire or other public calamity
5. Supplying school buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature
6. Permanently improving school grounds
7. Refunding any outstanding valid indebtedness of the district, evidenced by bonds or state school building aid loans
8. Carrying out sewer or drain projects or purposes authorized in Education Code 17577
9. Purchasing school buses with a useful life of at least 20 years
10. Demolishing or razing any school building with the intent to replace it with another school building, whether in the same location or in any other location

Except for refunding any outstanding indebtedness, any of the purposes listed above may be united and voted upon as a single proposition by order of the Board and entered into the minutes. (Education Code 15100)

Note: The following paragraph is **optional**. Districts that have had approval of a bond with 66.67 percent majority vote are not required by law to appoint a citizens' oversight committee but may, at their discretion, form an oversight committee under requirements and guidelines adopted by the Board.

**GENERAL OBLIGATION BONDS** (continued)

The Board may appoint a citizens' oversight committee to review and report to the Board and the public as to whether the expenditure of bond revenues complies with the intended purposes of the bond.

**Certificate of Results**

Note: The following section applies to bond elections requiring either a 55 percent or 66.67 percent approval by local voters. Pursuant to Elections Code 15372, following a bond election, the county elections official must submit a certificate of the election results to the Board, which then must provide certification to the County Board of Supervisors, as specified below.

If the certificate of election results received by the Board shows that the appropriate majority of the voters is in favor of issuing the bonds, the Board shall record that fact in its minutes. The Board shall then certify to the County Board of Supervisors all proceedings it had in connection with the election results. (Education Code 15124, 15274)

**Resolutions Regarding Sale of Bonds**

Note: The following section applies to bond elections requiring either a 55 percent or 66.67 percent approval by local voters. Pursuant to Education Code 15140, bonds may be offered for sale by either the County Board of Supervisors or the County Superintendent of Schools. However, the County Board of Supervisors may adopt a resolution authorizing a district to sell bonds on its own behalf when the district has not received a qualified or negative certification in its most recent interim financial report; see BP/AR 3460 - Financial Reports and Accountability.

In addition to districts' authority to issue bonds pursuant to Education Code 15100-15254, Government Code 53506-53509 provide them with an alternative method. However, the requirements under this alternative method are different from those applicable under Education Code 15100. Under the alternative method, (1) the Board can offer the bonds for sale directly without going through the County Board of Supervisors or County Superintendent of Schools; (2) the maturity date of the bond is up to 40 years, contrary to Education Code 15144 which limits the maturity to 25 years; and (3) the maximum interest rate allowed is 12 percent, contrary to the maximum rate of 8 percent set by Education Code 15143. Districts using the alternative method may need to further modify this policy and accompanying administrative regulation and should consult with legal counsel as necessary.

Following passage of the bond measure by the appropriate majority of voters, the Board shall pass a resolution directing the issuance and sale of bonds. The resolution shall prescribe the total amount of bonds to be sold and may also prescribe the maximum acceptable interest rate, not to exceed eight percent, and the time(s) when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. However, if the Board elects to issue the bonds pursuant to Government Code 53508, the maximum acceptable interest rate shall not exceed 12 percent and the time(s) when the whole or any part of the principal shall be payable shall not be more than 40 years. (Education Code 15140; Government Code 53508)

**GENERAL OBLIGATION BONDS** (continued)

Note: Boards should be aware of their responsibility to be good stewards of district resources and should take steps to ensure prudence in the expenditure of those resources. Thus, the Board should carefully compare all available funding instruments, such as current interest bonds, capital appreciation bonds, and convertible capital appreciation bonds, and whether the bonds will be sold by competitive or negotiated sale, when determining the method by which approved bonds will be funded. Pursuant to Education Code 15146, the Board's comparison should include the suitability of each option for the project to be financed; the projected interest rates, debt service ratios, and other costs associated with each option; prepayment and repayment terms; and other relevant factors. Districts deciding on a method of bond sale and kinds of bonds to sell are encouraged to review CSBA's Governance Brief Bond Sales - Questions and Considerations for Districts.

Prior to the sale of bonds, the Board shall disclose, as an agenda item at a public meeting, either in the bond issuance resolution or a separate resolution, all of the following information: (Education Code 15146; Government Code 53508.9)

1. Express approval of the method of sale (i.e., competitive, negotiated, or hybrid)
2. Statement of the reasons for the method of sale selected
3. Disclosure of the identity of the bond counsel, and the identities of the bond underwriter and the financial adviser if either or both are utilized for the sale, unless these individuals have not been selected at the time the resolution is adopted, in which case the Board shall disclose their identities at the public meeting occurring after they have been selected
4. Estimates of the costs associated with the bond issuance, including, but not limited to, bond counsel and financial advisor fees, printing costs, rating agency fees, underwriting fees, and other miscellaneous costs and expenses of issuing the bonds

After the sale, the Board shall be presented with the actual issuance cost information and shall disclose that information at the Board's next scheduled meeting. The Board shall ensure that an itemized summary of the costs of the bond sale and all necessary information and reports regarding the sale are submitted to the California Debt and Investment Advisory Commission. (Education Code 15146; Government Code 53509.5)

**Bond Anticipation Notes**

Note: The following **optional** section applies to bonds required to be passed by both 55 percent and 66.67 percent of local voters and may be revised to reflect district practice. Pursuant to Education Code 15150, a district is authorized to issue a bond anticipation note, when the Board determines by resolution that it is in the best interest of the district, to finance a facilities project on an interim basis in anticipation of the sale of bonds that has been approved by voters. The note may only be issued in accordance with law and subject to terms and conditions prescribed by the Board.

**GENERAL OBLIGATION BONDS** (continued)

Whenever the Board determines that it is in the best interest of the district, it may, by resolution, issue a bond anticipation note, on a negotiated or competitive-bid basis, to raise funds that shall be used only for a purpose authorized by a bond that has been approved by the voters of the district in accordance with law. (Education Code 15150)

Note: Education Code 15150, as amended by AB 794 (Ch. 715, Statutes of 2012), clarifies that interest on a bond anticipation note may be paid at maturity from the proceeds of the sale of the bond in anticipation of which it was issued or paid periodically from a property tax levied for that purpose if certain conditions are satisfied.

Payment of principal and interest on any bond anticipation note shall be made at note maturity, not to exceed five years, from the proceeds derived from the sale of the bond in anticipation of which that note was originally issued or from any other source lawfully available for that purpose, including state grants. Interest payments may also be made from such sources. However, interest payments may be made periodically and prior to note maturity from an increased property tax if the following conditions are met: (Education Code 15150)

1. A resolution of the Board authorizes the property tax for that purpose.
2. The principal amount of the bond anticipation note does not exceed the remaining principal amount of the authorized but unissued bonds.

Note: Pursuant to Education Code 15268 and 15270, the bond anticipation notes may only be issued if the tax rate levied to pay interest on the notes periodically would not cause the district to exceed \$30 per \$100,000 of assessed value of property for an elementary or high school district and \$60 per \$100,000 of assessed value of property for a unified district. The district may revise the following paragraph to reflect the applicable tax rate limitation.

The notes may be issued only if the tax rate levied to pay interest on the notes periodically would not cause the district to exceed the tax rate limitations set forth in Education Code 15268 or 15270, as applicable.

*Legal Reference continued: (see next page)*

## GENERAL OBLIGATION BONDS (continued)

### Legal Reference:

#### EDUCATION CODE

7054 Use of district property, campaign purposes

15100-15254 Bonds for school districts and community college districts

15264-15288 Strict Accountability in Local School Construction Bonds Act of 2000

17577 Sewers and drains

17584.1 Deferred maintenance, reports

47614 Charter school facilities

#### ELECTIONS CODE

324 General election

328 Local election

341 Primary election

348 Regular election

356 Special election

357 Statewide election

1302 School district election

15372 Elections official certificate

#### GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

8855 California Debt and Investment Advisory Commission

53506-53509.5 General obligation bonds

53580-53595.5 Bonds

54952 Definition of legislative body, Brown Act

#### CALIFORNIA CONSTITUTION

Article 13A, Section 1 Tax limitation

Article 16, Section 18 Debt limit

#### COURT DECISIONS

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

#### ATTORNEY GENERAL OPINIONS

88 Ops.Cal.Atty.Gen. 46 (2005)

87 Ops.Cal.Atty.Gen. 157 (2004)

### Management Resources:

#### CSBA PUBLICATIONS

Bond Sales - Questions and Considerations for Districts, Governance Brief, December 2012

Legal Guidelines: Use of Public Resources for Ballot Measures and Candidates, Fact Sheet, February 2011

#### WEB SITES

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

California Debt and Investment Advisory Commission: <http://www.treasurer.ca.gov/cdiac>

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

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

**GENERAL OBLIGATION BONDS**

**Cautionary Notice:** As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009), ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), and SB 70 (Ch. 7, Statutes of 2011), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs and provides that districts are deemed in compliance with the program and funding requirements for these programs for the 2008-09 through 2014-15 fiscal years. As a result of this flexibility, the district may choose to temporarily suspend certain provisions of the following policy or administrative regulation that reflect those requirements. However, this flexibility does not affect or alter any existing contract or bargaining agreement that the district may have in place. Thus, districts should examine the terms of those contracts and agreements and consult with district legal counsel for additional guidance. Also see BP 2210 - Administrative Discretion Regarding Board Policy.

**Election Notice**

Note: Notice and ballot requirements for bond elections are specified in Education Code 15120-15126. Additional requirements for bond measures with a 55 percent (Proposition 39) threshold are contained in Education Code 15272.

Whenever the Governing Board orders an election on the question of whether general obligation bonds shall be issued to pay for school facilities, the Superintendent or designee shall ensure that election notice and ballot requirements comply with Education Code 15120-15126 and 15272, as applicable.

**Citizens' Oversight Committee**

Note: The following **optional** section is for use by districts that have appointed an independent citizens' oversight committee, as required by Education Code 15278 for districts that have had a general obligation bond approved under the 55 percent threshold. The section may also be adapted for use by districts that have had approval of a bond with 66.67 percent majority vote that choose to appoint an oversight committee at their discretion; see the accompanying Board policy.

If a bond is approved under the 55 percent majority threshold pursuant to Proposition 39 (Article 13A, Section 1(b)(3) and Article 16, Section 18(b) of the California Constitution), then the district's citizens' oversight committee shall consist of at least seven members, including, but not limited to: (Education Code 15282)

1. One member active in a business organization representing the business community located within the district
2. One member active in a senior citizens organization
3. One member active in a bona fide taxpayers' organization
4. One member who is a parent/guardian of a child enrolled in the district

**GENERAL OBLIGATION BONDS** (continued)

5. One member who is a parent/guardian of a district student and is active in a parent-teacher organization, such as the Parent Teacher Association or school site council

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

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 1230 - School-Connected Organizations)*

Members of the citizens' oversight committee shall be subject to the conflict of interest prohibitions regarding incompatibility of office pursuant to Government Code 1125-1129 and financial interest in contracts pursuant to Government Code 1090-1099. (Education Code 15282)

*(cf. 9270 - Conflict of Interest)*

No employee, Board member, vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. (Education Code 15282)

Note: Pursuant to Education Code 15282, as amended by AB 1199 (Ch. 73, Statutes of 2012), members of a citizens' oversight committee may now serve for three consecutive terms rather than two.
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Members of the citizens' oversight committee shall serve for a minimum term of two years without compensation and for no more than three consecutive terms. (Education Code 15282)

The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The committee shall actively review and report on the proper expenditure of taxpayers' money for school construction and shall convene to provide oversight for, but not limited to, the following: (Education Code 15278)

1. Ensuring that bond revenues are expended only for the purposes described in Article 13A, Section 1(b)(3) of the California Constitution including the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities
2. Ensuring that, as prohibited by Article 13A, Section 1(b)(3)(A) of the California Constitution, no funds are used for any teacher and administrative salaries or other school operating expenses

In furtherance of its purpose, the committee may engage in any of the following activities: (Education Code 15278)

**GENERAL OBLIGATION BONDS** (continued)

1. Receiving and reviewing copies of the annual, independent performance and financial audits required by Article 13A, Section 1(b)(3)(C) and (D) of the California Constitution

*(cf. 3460 - Financial Reports and Accountability)*

2. Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of Article 13(A), Section 1(b)(3) of the California Constitution
3. Receiving and reviewing copies of any deferred maintenance proposals or plans developed by the district, including any reports required by Education Code 17584.1
4. Reviewing efforts by the district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, the following:
  - a. Mechanisms designed to reduce the costs of professional fees
  - b. Mechanisms designed to reduce the costs of site preparation
  - c. Recommendations regarding the joint use of core facilities

*(cf. 1330.1 - Joint Use Agreements)*

- d. Mechanisms designed to reduce costs by incorporating efficiencies in school site design
- e. Recommendations regarding the use of cost-effective and efficient reusable facility plans

*(cf. 7110 - Facilities Master Plan)*

The district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of the committee's purpose and sufficient resources to publicize the committee's conclusions. (Education Code 15280)

Note: Pursuant to Government Code 54952, open meeting laws (the Brown Act) apply to any commission, committee, board, or other body created by formal action of the Governing Board, regardless of whether that body is permanent or temporary, decision-making or advisory.
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All citizens' oversight committee proceedings shall be open to the public and noticed in the same manner as proceedings of the Board. Committee meetings shall be subject to the provisions of the Ralph M. Brown Act. (Education Code 15280; Government Code 54952)

**GENERAL OBLIGATION BONDS** (continued)

*(cf. 9320 - Meetings and Notices)*

The citizens' oversight committee shall issue regular reports, at least once a year, on the results of its activities. Minutes of the proceedings and all documents received and reports issued shall be a matter of public record and shall be made available on the district's web site. (Education Code 15280)

*(cf. 1113 - District and School Web Sites)*  
*(cf. 1340 - Access to District Records)*

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

The citizens' oversight committee may be disbanded following its review of the final performance and financial audits.

**Reports**

Note: The following section applies to all bond elections.

Within 30 days after the end of each fiscal year, the district shall submit to the County Superintendent of Schools a report concerning any bond election(s) containing the following information: (Education Code 15111)

1. The total amount of the bond issue, bonded indebtedness, or other indebtedness involved
2. The percentage of registered electors who voted at the election
3. The results of the election, with the percentage of votes cast for and against the proposition

## AGENDA/MEETING MATERIALS

### Agenda Content

Note: Government Code 54954.2 requires Governing Board meeting agendas to briefly describe each item to be discussed, including closed session items, and states that a brief general description of an item generally need not exceed 20 words. For information regarding the different types of meetings and meeting location requirements, see BB 9320 - Meetings and Notices. For agenda requirements regarding closed session agenda items, see BB 9321 - Closed Session Purposes and Agendas.

Governing Board meeting agendas shall state the meeting time and place and shall briefly describe each business item to be transacted or discussed, including items to be discussed in closed session. (Government Code 54954.2)

*(cf. 9320 - Meetings and Notices)*  
*(cf. 9321- Closed Session Purposes and Agendas)*

The agenda shall provide members of the public the opportunity to address the Board on any agenda item before or during the Board's consideration of the item. The agenda shall also provide members of the public an opportunity to testify at regular meetings on matters which are not on the agenda but which are within the subject matter jurisdiction of the Board. (Education Code 35145.5; Government Code 54954.3)

*(cf. 9323 - Meeting Conduct)*

Note: Pursuant to Government Code 54957.5, when agenda materials are distributed to the Board less than 72 hours before a meeting, the agenda must include the address of the location where the public can inspect those agenda materials. Also see section below entitled "Agenda Dissemination to Members of the Public."

Each meeting agenda shall list the address designated by the Superintendent or designee for public inspection of agenda documents that have been distributed to the Board less than 72 hours before the meeting. (Government Code 54957.5)

Note: Government Code 54954.2 requires that the agenda include information regarding how, when, and to whom a request for a disability-related accommodation or modification may be made. See BB 9320 - Meetings and Notices. The following paragraph should be modified to reflect district practice as to when and to whom such a request should be made.

The agenda shall specify that an individual should contact the Superintendent or designee if he/she requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting. (Government Code 54954.2)

### Agenda Preparation

Note: Education Code 35145.5 **mandates** that the Board adopt reasonable regulations to ensure that members of the public can place matters directly related to school district business on Board meeting agendas. In Mooney v. Garcia, a California appeals court reaffirmed boards' discretion in determining what agenda items are related to school district matters.

**AGENDA/MEETING MATERIALS** (continued)

The following section, including the timelines, should be revised to reflect district practice. Districts are free to establish their own timelines for placing an item on the agenda, taking into account staff time and resources, as long as the established timeline is a reasonable one. In Caldwell v. Roseville Joint Union High School District, a federal district court upheld a district bylaw requiring members of the public to submit a written request in order to place items on a meeting agenda. The plaintiff had alleged that his First Amendment rights were violated when the district did not place his item on the agenda in response to his oral request because the district disagreed with his religious beliefs. However, the court held that the district's bylaw requiring that requests first be made in writing was content-neutral and thus a reasonable restriction.

The Board president and the Superintendent, as secretary to the Board, shall work together to develop the agenda for each regular and special meeting. Each agenda shall reflect the district's vision and goals and the Board's focus on student learning.

*(cf. 0000 - Vision)*

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

*(cf. 9121 - President)*

*(cf. 9122 - Secretary)*

Any Board member or member of the public may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular meeting. The request shall be submitted in writing to the Superintendent or designee with supporting documents and information, if any, at least ~~one week~~ 10 business days before the scheduled meeting date. Items submitted less than ~~a week~~ 10 business days before the scheduled meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue.

The Board president and Superintendent shall decide whether a request is within the subject matter jurisdiction of the Board. Items not within the subject matter jurisdiction of the Board may not be placed on the agenda. In addition, before placing the item on the agenda, the Board president and Superintendent shall determine if the item is merely a request for information or whether the issue is covered by an existing policy or administrative regulation.

The Board president and Superintendent shall decide whether an agenda item is appropriate for discussion in open or closed session, and whether the item should be an action item subject to Board vote, an information item that does not require immediate action, or a consent item that is routine in nature and for which no discussion is anticipated.

Any Board action that involves borrowing \$100,000 or more shall be discussed, considered, and deliberated upon as a separate item of business on the meeting agenda. (Government Code 53635.7)

*(cf. 9323.2 - Actions by the Board)*

## **AGENDA/MEETING MATERIALS** (continued)

All public communications with the Board are subject to requirements of relevant Board policies and administrative regulations.

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.2 - Complaints Concerning Instructional Materials)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 1312.4 - Williams Uniform Complaint Procedures)*  
*(cf. 3320 - Claims and Actions Against the District)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

### **Consent Agenda/Calendar**

Note: The following **optional** section is for boards that use the consent agenda or calendar to take action on matters of a routine nature for which discussion may not be necessary. It is important for such boards to limit the use of the consent agenda to noncontroversial matters and to establish rules that help ensure that any use of the consent agenda does not reduce transparency in the board's conduct of district business or result in violation of the open meeting laws. In addition, boards should be aware that, by law, certain items may not be placed on the consent agenda. For example, pursuant to Government Code 54960.2, as added by SB 1003 (Ch. 732, Statutes of 2012), a board's decision to approve or rescind its unconditional commitment to refrain from taking certain actions in violation of the Brown Act must be made as a separate item and not on the consent agenda. See BB 9323.2 - Actions by the Board.

In order to promote efficient meetings, the Board may bundle a number of items and act upon them together by a single vote through the use of a consent agenda. Consent agenda items shall be items of a routine nature and items for which Board discussion is not anticipated and for which the Superintendent recommends approval.

When any Board member requests the removal of an item from the consent agenda, the item shall be removed and given individual consideration for action as a regular agenda item.

The agenda shall provide an opportunity for members of the public to comment on any consent agenda item that has not been previously considered. However, the agenda need not provide an opportunity for public comment when the consent agenda item has previously been considered at an open meeting of a committee comprised exclusively of all the Board members provided that members of the public were afforded an opportunity to comment on the item at that meeting, unless the item has been substantially changed since the committee considered it. (Government Code 54954.3)

### **Agenda Dissemination to Board Members**

Note: The following section is **optional** and should be modified to reflect district practice. Pursuant to Government Code 6252.7, when the Board, in the conduct of its duties, is authorized by law to access any writing of the district, including agenda and supporting documents, the district is prohibited from discriminating between or among Board members as to when and which records will be made available.

**AGENDA/MEETING MATERIALS** (continued)

CSBA's Agenda Online, an electronic board meeting agenda service for use by districts and county offices of education, allows development of and access to Board meeting agendas, supporting documents, and minutes from any computer that has Internet access. Further information can be found on CSBA's web site.

At least three days before each regular meeting, each Board member shall be provided a copy of the agenda and agenda packet, including the Superintendent or designee's report; minutes to be approved; copies of communications; reports from committees, staff, citizens, and others; and other available documents pertinent to the meeting.

When special meetings are called, the Superintendent or designee shall make every effort to distribute the agenda and supporting materials to Board members as soon as possible before the meeting.

Board members shall review agenda materials before each meeting. Individual members may confer directly with the Superintendent or designee to ask questions and/or request additional information on agenda items. However, a majority of Board members shall not directly or through intermediaries or electronic means discuss, deliberate, or take action on any matter within the subject matter jurisdiction of the Board.

*(cf. 9012 - Board Member Electronic Communications)*

**Agenda Dissemination to Members of the Public**

The Superintendent or designee shall mail a copy of the agenda or a copy of all the documents constituting the agenda packet to any person who requests the items. The materials shall be mailed at the time the agenda is posted or upon distribution of the agenda to a majority of the Board, whichever occurs first. (Government Code 54954.1)

Note: Government Code 54957.5 requires that when agenda materials are distributed to the Board less than 72 hours before a regular meeting, the district must also make the documents available for public inspection, as specified below. However, only those documents that are "public records" under the Public Records Act and which relate to an agenda item scheduled for the open session portion of a regular meeting need to be made available for inspection.

If a document which relates to an open session agenda item of a regular Board meeting is distributed to the Board less than 72 hours prior to a meeting, the Superintendent or designee shall make the document available for public inspection at a designated location at the same time the document is distributed to all or a majority of the Board, provided the document is a public record under the Public Records Act. The Superintendent or designee may also post the document on the district's web site in a position and manner that makes it clear that the document relates to an agenda item for an upcoming meeting. (Government Code 54957.5)

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

*(cf. 1340 - Access to District Records)*

**AGENDA/MEETING MATERIALS** (continued)

Any document prepared by the district or Board and distributed during a public meeting shall be made available for public inspection at the meeting. Any document prepared by another person shall be made available for public inspection after the meeting. These requirements shall not apply to a document that is exempt from public disclosure under the Public Records Act. (Government Code 54957.5)

Note: Pursuant to Government Code 54954.1, upon request, the agenda and supporting documentation must be made available in appropriate alternative formats to persons with a disability, as required under the Americans with Disabilities Act (42 USC 12132). Examples of alternative formats, also referred to as "auxiliary aids and services," are listed in 28 CFR 36.303 and include audio recordings or Braille materials.

Upon request, the Superintendent or designee shall make the agenda, agenda packet, and/or any writings distributed at the meeting available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. (Government Code 54954.1)

Any request for mailed copies of agendas or agenda packets shall be in writing and shall be valid for the calendar year in which it is filed. Written requests must be renewed following January 1 of each year. (Government Code 54954.1)

Note: The following **optional** paragraph is for use by districts that charge a fee for mailing the agenda or agenda packet. Government Code 54954.1 authorizes districts to charge a fee for mailing the agenda or agenda packet as long as the fee does not exceed the cost of providing the service. Pursuant to Government Code 54957.5, a surcharge may not be imposed for providing the agenda and other public record documents in alternative formats to persons with disabilities.

Persons requesting mailing of the agenda or agenda packet shall pay an annual fee, as determined by the Superintendent or designee, not to exceed the cost of providing the service.

*Legal Reference: (see next page)*

**AGENDA/MEETING MATERIALS (continued)**

*Legal Reference:*

EDUCATION CODE

35144 *Special meetings*

35145 *Public meetings*

35145.5 *Right of public to place matters on agenda*

GOVERNMENT CODE

6250-6270 *Public Records Act*

53635.7 *Separate item of business*

54954.1 *Mailed agenda of meeting*

54954.2 *Agenda posting requirements; board actions*

54954.3 *Opportunity for public to address legislative body*

54954.5 *Closed session item descriptions*

54956.5 *Emergency meetings*

54957.5 *Public records*

54960.2 *Challenging board actions; cease and desist*

UNITED STATES CODE, TITLE 42

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.160 *Effective communications*

36.303 *Auxiliary aids and services*

COURT DECISIONS

*Mooney v. Garcia, (2012) 207 Cal.App.4th 229*

*Caldwell v. Roseville Joint Union High School District, 2007 U.S. Dist. LEXIS 66318*

*Management Resources:*

CSBA PUBLICATIONS

*Call to Order: A Blueprint for Great Board Meetings, 2010*

*The Brown Act: School Boards and Open Meeting Laws, rev. 2009*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Legislative Bodies, rev. 2003*

WEB SITES

CSBA, *Agenda Online*: <http://www.csba.org>

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

**ACTIONS BY THE BOARD**

Note: Pursuant to Education Code 35164, a majority vote of all members of the Governing Board is necessary for an item to carry, even in those cases where some members are absent. Thus, for districts with a five-member board, an item will pass with three votes, even if only three members are present or there is a vacancy. Education Code 35165 details the effect of a vacancy in districts with a seven-member board. For language regarding vote requirements when a board member abstains, see BB 9323 - Meeting Conduct.

The law specifies certain board actions as requiring more than a majority vote; see E(1) 9323.2 for a specific list of such actions.

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164)

*(cf. 9000 - Role of the Board)*

*(cf. 9005 - Governance Standards)*

*(cf. 9012 - Board Member Electronic Communications)*

*(cf. 9200 - Limits of Board Member Authority)*

Note: In some instances, the law requires that a hearing be conducted before the Board takes action on an item (e.g., before adopting the district's budget or expelling a student). Notice and other requirements for hearings may be more extensive than those for regular or special meetings and will depend upon the specific requirements in applicable statutes.

An "action" by the Board means: (Government Code 54952.6)

1. A collective decision by a majority of the Board members
2. A collective commitment or promise by a majority of the Board members to make a positive or negative decision
3. A vote by a majority of the Board members when sitting as the Board upon a motion, proposal, resolution, order, or ordinance

The Board shall not take action by secret ballot, whether preliminary or final. (Government Code 54953)

Actions taken by the Board in open session shall be recorded in the Board minutes. (Education Code 35145)

*(cf. 9324 - Minutes and Recordings)*

**Action on Non-Agenda Items**

Note: The Brown Act (Government Code 54950-54963) generally prohibits any action or discussion of items not on the posted agenda. However, Government Code 54954.2 provides for three specific and narrow situations in which the Board can act on an item not on the agenda, as specified below. Board members may also briefly respond to questions raised by members of the public concerning items not on the agenda; see BB 9323 - Meeting Conduct.

## **ACTIONS BY THE BOARD** (continued)

After publicly identifying the item, the Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions: (Government Code 54954.2)

1. When a majority of the Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
2. When two-thirds of the members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the district's attention after the agenda was posted
3. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier

*(cf. 9320 - Meetings and Notices)*

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

## **Challenging Board Actions**

Note: Government Code 54960 grants authority to the district attorney or any interested person to file a civil action asking the court to order the Board to stop or prevent Brown Act violations specified below. The Board should be careful to respond to legal challenges to its actions and consult legal counsel when necessary. Pursuant to Government Code 54960.5, a court may award court costs and reasonable attorney's fees to a plaintiff who successfully invalidates a Board action in violation of the Brown Act or successfully enforces one of the Brown Act's civil remedies provided in Government Code 54960-54960.2.

The district attorney's office or any interested person may file an action in court to stop or prevent the Board's violation or threats of violations of the Brown Act, to determine the applicability of the Brown Act to ongoing or future threatened Board actions, to determine the validity, under California or federal law, of any Board rule or action to penalize any of its members or otherwise discourage the member's expression, or to compel the Board to audio record its closed sessions because of its violation of any applicable Government Code provision. (Government Code 54960)

Note: Pursuant to Government Code 54960.1, the district attorney's office or any interested person may file a lawsuit to invalidate (i.e., declare null and void) actions that violate specific provisions of the Brown Act listed in Government Code 54960.1 and specified below. However, even when the action may normally be subject to invalidation, Government Code 54960.1 provides that in certain circumstances (e.g., when there has been substantial compliance with the Brown Act or the Board created a contractual obligation), the action may not be invalidated.

Before seeking court action, the person who believes a violation occurred must send a written demand to the Board to "cure or correct" the action as specified below. Because the laws regarding these provisions are complex, it is recommended that the district consult with legal counsel upon receipt of a "cure and correct" demand.

**ACTIONS BY THE BOARD** (continued)

The district attorney or any interested person may present a demand that the Board cure and correct a Board action which he/she alleges is in violation of law regarding any of the following: (Government Code 54960.1)

1. Open meeting and teleconferencing (Government Code 54953)
2. Agenda posting (Government Code 54954.2)
3. Closed session item descriptions (Government Code 54954.5)
4. New or increased tax assessments (Government Code 54954.6)
5. Special meetings (Government Code 54956)
6. Emergency meetings (Government Code 54956.5)

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation and shall be presented to the Board in writing within 90 days of the date when the action was taken. If the alleged violation concerns action taken in an open session but in violation of Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1)

Within 30 days of receiving the demand, the Board shall do one of the following: (Government Code 54960.1)

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

<p>Note: Pursuant to Government Code 54960, as amended by SB 1003 (Ch. 732, Statutes of 2012), past Board actions that occur on or after January 1, 2013 but which are not specified in Government Code 54960.1 may also be challenged. However, prior to commencing such an action, the district attorney or other interested person must comply with the requirements specified in Government Code 54960.2, as added by SB 1003, including sending a cease and desist letter to the Board within nine months of the alleged violation.</p>
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**ACTIONS BY THE BOARD** (continued)

In addition, the district attorney's office or any interested party may file an action in court to determine the applicability of the Brown Act to any past Board action not specified in Government Code 54960.1, if the following conditions are met: (Government Code 54960.2)

1. Within nine months of the alleged violation, a cease and desist letter is submitted to the Board, clearly describing the past Board action and the nature of the alleged violation.

Note: Pursuant to Government Code 54960.2, the Board may respond within 30 days of receiving the cease and desist letter. If the Board decides to respond to the letter with an unconditional commitment to desist from repeating the past action, the unconditional commitment is required to be substantially in the same form provided in Government Code 54960.2 and to be approved in an open session of the Board's regular or special meeting. For a sample unconditional commitment letter, see E(2) 9323.2.

2. The time for the Board to respond has expired and the Board has not provided an unconditional commitment to cease and desist from and not repeat the past action alleged to have violated the Brown Act.

*Legal Reference:*

EDUCATION CODE

15266 School construction bonds

17466 Declaration of intent to sell or lease real property

17481 Lease of property with residence for nondistrict purposes

17510-17511 Resolution requiring unanimous vote of all members constituting board

17546 Private sale of personal property

17556-17561 Dedication of real property

17582-17583 District deferred maintenance fund

35140-35149 Meetings

35160-35178.4 Powers and duties

48660-48661 Community day schools, establishment and restrictions

CODE OF CIVIL PROCEDURE

425.16 Special motion to strike in connection with a public issue

1245.240 Eminent domain vote requirements

1245.245 Eminent domain, resolution adopting different use

*Legal Reference continued: (see next page)*

**ACTIONS BY THE BOARD** (continued)

*Legal Reference: (continued)*

GOVERNMENT CODE

53090-53097.5 *Regulation of local agencies by counties and cities*

53724 *Parcel tax resolution requirements*

53790-53792 *Exceeding the budget*

53820-53833 *Temporary borrowing*

53850-53858 *Temporary borrowing*

54950-54963 *The Ralph M. Brown Act, especially:*

54952.6 *Action taken, definition*

54953 *Meetings to be open and public; attendance; secret ballots*

54960-54960.5 *Actions to prevent violations*

65352.2 *Coordination with planning agency*

PUBLIC CONTRACT CODE

3400 *Bid specifications*

20111 *Contracts over \$50,000; contracts for construction; award to lowest responsible bidder*

20113 *Emergencies, award of contracts without bids*

COURT DECISIONS

*Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313*

*McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310*

*Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672*

*Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109*

*Management Resources:*

CSBA PUBLICATIONS

*The Brown Act: School Boards and Open Meeting Laws, 2009*

ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Local Legislative Bodies, 2003*

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public IV: A Guide to the Ralph M. Brown Act, 2007*

WEB SITES

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

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

Institute of Local Government: <http://www.ca-ilg.org>

**ACTIONS BY THE BOARD**

**UNCONDITIONAL COMMITMENT LETTER**

Note: Government Code 54960, as amended by SB 1003 (Ch. 732, Statutes of 2012), authorizes the district attorney or other interested person to file an action in court to determine the applicability of the Ralph M. Brown Act to any past Governing Board action which is not specified in Government Code 54960.1 and which occurs on or after January 1, 2013; see the accompanying administrative regulation. Prior to commencing such an action, the district attorney or other interested person must send a cease and desist letter to the Board within nine months of the alleged violation. Within 30 days of receiving the cease and desist letter, the Board may respond by sending an unconditional commitment, substantially in the same form provided in Government Code 54960.2, to desist from repeating the past action. If the Board so responds, the district attorney or other interested person may not file an action in court. The following exhibit presents a sample unconditional commitment letter.

To: *(Name of district attorney or any interested person)*

The Governing Board of *(name of school district)* has received your cease and desist letter dated *(date)* alleging that the following described past action taken by the Board violates the Ralph M. Brown Act: *(Describe alleged past action as set forth in the cease and desist letter.)*

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Board hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action described above. The Board may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address(es) you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, a notice will be delivered to you by the same means as this commitment, or by mail to an address that you have designated in writing, and you will have the right to commence legal action pursuant to Government Code 54960(a).

Sincerely,

*(Name)*

*(Title of Board President or other designee)*