

CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3260(a)

FEES AND CHARGES

Note: Pursuant to 5 CCR 350, districts may charge fees only when specifically authorized by law. The following list specifies fees currently authorized by law and should be revised to reflect the types of fees that have been approved by the Governing Board; see the accompanying Board policy. Other permissible fees may exist and be identified in the future. For further information about fees and charges, see the California Department of Education's (CDE) Fiscal Management Advisory ~~12-02~~, **17-01, Pupil Fees, Deposits and Other Charges.**

Pursuant to Education Code 49011, a district is prohibited from requiring a student to pay fees or charges in order to participate in an educational activity. A complaint alleging the unauthorized charging of student fees **may should** 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 particular fee may be charged should consult with legal counsel.

When approved by the Governing Board, the Superintendent or designee may impose a fee for the following: (5 CCR 350)

1. Insurance for athletic team members, with an exemption providing for the district to pay the cost of the insurance for any team member who is financially unable to pay (Education Code 32221)

(cf. 5143 - Insurance)

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

Note: In its Fiscal Management Advisory ~~12-02-17-01~~, the CDE interprets Education Code 35330 as permitting the district, at its discretion, to charge fees for any field trip, provided that no student is prevented from participating in a field trip due to a lack of funds. **AB 341 (Ch. 40, Statutes of 2017) amended Education Code 35330 to delete the prohibition against the use of district funds for the expenses of students participating in an out-of-state field trip, thereby giving districts discretion as to whether or not to charge students a fee to participate in such trips**

3. Expenses of students' participation in a field trip or excursion within the state or 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, as long as the fee does not exceed the actual costs associated with the program (Education Code 32390)

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

FEES AND CHARGES (continued)

5. School camp programs in outdoor science education, conservation education, or forestry operated pursuant to Education Code 8760-8774, provided that the fee is not mandatory and no student is denied the opportunity to participate for nonpayment of the fee (Education Code 35335)

(cf. 6142.5 - Environmental Education)

Note: Education Code 17551 permits the district to sell to a student any **nonperishable** property of the district which has been fabricated by the student, as provided in item #6 below. CDE Fiscal Management Advisory ~~12-02~~ **17-01** clarifies that this cost applies to materials ~~the students~~ will take home for ~~his/her~~ **their** own possession and use, such as wood shop, art, or sewing projects.

6. Reimbursement **to the district** for the direct cost of materials **provided by the district to a student for the fabrication of nonperishable personal property the student used by students to fabricate property they** will take home for ~~his/her~~ **their** own possession and use, such as wood shop, art, or sewing projects kept by ~~the students~~ (Education Code 17551)
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, **the district provides a waiver based on financial need, and an exemptions are is made for indigent and disabled students any student with a disability whose individualized education program includes transportation as a related service necessary to receive a free appropriate public education** (Education Code 39807.5)

(cf. 3250 - Transportation Fees)

(cf. 6159 - Individualized Education Program)

(cf. 6178.2 - Regional Occupational Center/Program)

8. Transportation for students to and from their places of employment in connection with any summer employment program for youth (Education Code 39837)
9. Deposit for school band instruments, music, uniforms, and other regalia which school band members take on excursions to foreign countries (Education Code 38120)
10. Sale or lease of personal computers or of Internet appliances that allow a person to connect to or access the district's educational network, provided that the items are sold or leased to parents/guardians at no more than cost and the district provides network access for families who cannot afford it (Education Code 17453.1)

(cf. 0440 - District Technology Plan)

(cf. 6163.4 - Student Use of Technology)

FEES AND CHARGES (continued)

11. An adult education or secondary school community service class in civic, vocational, literacy, health, homemaking, and technical and general education, not to exceed the cost of maintaining the class (Education Code 51810-51815)

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

12. Eye safety devices worn in courses or activities involving the use of hazardous substances likely to cause injury to the eyes, when being sold to students and/or teachers or instructors to keep and at a price not to exceed the district's actual costs (Education Code 32033)

(cf. 3514.1 - Hazardous Substances)

(cf. 5142 - Safety)

13. Actual cost of furnishing copies of any student's records, except that no charge shall be made for furnishing up to two transcripts or two verifications of a former student's records or for reproducing records of a student with a disability when the cost would effectively prevent the parent/guardian from exercising the right to receive the copies (Education Code 49065, 56504)

(cf. 5125 - Student Records)

14. Actual cost of duplication for reproduction of the prospectus of school curriculum or for copies of public records (Education Code 49091.14; Government Code 6253)

(cf. 1340 - Access to District Records)

(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. 3552 - Summer Meal Program)

(cf. 3553 - Free and Reduced Price Meals)

(cf. 3554 - Other Food Sales)

16. ~~As allowed in~~ **In accordance with** law, replacement cost or reimbursement for lost or willfully damaged district books, supplies, or property, or for district property loaned to a student that ~~he/she~~ **the student** fails to return (Education Code 19910-19911, 48904)

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

FEES AND CHARGES (continued)

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

(cf. 5111.1 - District Residency)

(cf. 5111.2 - Nonresident Foreign Students)

18. Adult education books, materials, transportation, and classes, except that no fee may be charged for classes in elementary subjects, classes for which high school credit is granted when taken by a person who does not hold a high school diploma, or classes in English and citizenship (Education Code 39801.5, 52612, 60410)

(cf. 6200 - Adult Education)

19. Preschool and child care and development services, in accordance with the fee schedule established by the Superintendent of Public Instruction, unless the family qualifies for subsidized services or the program is **exempted from fees by law for severely disabled children and the student is eligible to enroll in it** (Education Code 8239, 8250, 8263)

(cf. 5148 - Child Care and Development)

(cf. 5148.3 - Preschool/Early Childhood Education)

Note: Pursuant to Education Code 8422 and 8482.6, as amended by AB 2615 (Ch. 470, Statutes of 2016), districts are permitted to charge family fees for participation in After School Education and Safety (ASES) programs, 21st Century Community Learning Centers (21st CCLC), and 21st Century High School After School Safety and Enrichment for Teens programs, as long as fees are waived or reduced for families with students who are eligible for free or reduced-price meals. In regard to ASES and 21st CCLC, commencing July 1, 2017, no fees may be charged if the district knows the student is a homeless youth or in foster care.

20. Participation in a before-school or after-school program that is funded as an After School Education and Safety (ASES) program, 21st Century Community Learning Center (21st CCLC), or 21st Century High School After School Safety and Enrichment for Teens program, provided that fees are waived or reduced for families with students who are eligible for free or reduced-price meals and, in regard to ASES and 21st CCLC programs, fees are not charged if the district knows the student is a homeless or foster youth (Education Code 8422, 8482.6)

(cf. 5148.2 - Before/After School Programs)

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

Note: In Fiscal Management Advisory **12-02, the 17-01**, CDE lists Advanced Placement and International Baccalaureate examination fees as permissible. Some districts choose to reduce the cost of the fees for low-income students through the use of district funds or other funding sources; see BP 6141.4 - International Baccalaureate Program and BP 6141.5 - Advanced Placement.

FEES AND CHARGES (continued)

21. Advanced Placement and International Baccalaureate Diploma examinations for college credits, as long as the examination is not a course requirement and the results have no impact on student grades or credits in the course

(cf. 6141.4 - International Baccalaureate Program)

(cf. 6141.5 - Advanced Placement)

Note: In its **Addendum to Fiscal Management Advisory 12-02 issued in October 2013**, the CDE clarifies **17-01, CDE advises** that a district that requires its students to wear a cap and gown as a condition for their participation in the high school graduation ceremony may not require such students to purchase the cap and gown. CDE recommends that such districts provide the graduates with a cap and gown for their use at the graduation ceremony and inform them that those interested may purchase a cap and gown from a vendor.

Collection of Debt

Note: Education Code 49014 (the Public School Fair Debt Collection Act), as added by AB 1974 (Ch. 577, Statutes of 2018), establishes requirements for districts to follow when seeking to recover a debt owed by students and/or parents/guardians, including a requirement to provide the parent/guardian with an itemized invoice that references the district's policies relating to debt collection and the rights established pursuant to Education Code 49014 and 49557.5 (unpaid meal fees). It is recommended that districts include references to this administrative regulation and the accompanying Board policy, as well as BP/AR 3551 - Food Service Operations/Cafeteria Fund. For additional rights established by Education Code 49014, including prohibitions against directly billing a student or former student or imposing any negative action on a student, see the accompanying Board policy.

Before pursuing payment of any debt that has accumulated from unpaid permissible fees, the Superintendent or designee shall provide an itemized invoice for any amount owed by the parent/guardian on behalf of a student or former student. The invoice shall reference district policies related to debt collection and the rights established pursuant to Education Code 49014 and 49557.5. For each payment received, the district shall provide a receipt to the parent/guardian. (Education Code 49014)

The Superintendent or designee shall not sell debt owed by a parent/guardian of a student or former student. (Education Code 49014)

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3515.4(a)

RECOVERY FOR PROPERTY LOSS OR DAMAGE

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

Pursuant to Education Code 48904, parents/guardians are liable to the district for the costs of damages caused by the willful misconduct of their minor children (1) that results in damage to school property, an employee's personal property, or injury or death of a district student, employee, or volunteer, and (2) for any reward paid by the district for information leading to the identification and apprehension of persons who willfully damage or destroy property.; see section below entitled "Rewards." These amounts are adjusted annually for inflation by the Superintendent of Public Instruction. For 2018-2019, the liability of a parent/guardian must not exceed \$19,600 \$20,300 for damages and \$19,600 \$20,300 for the reward. For situations not addressed by the Education Code, Civil Code 1714.1 provides for parent/guardian liability for the willful misconduct of their minor child which results in injury, death, or property damage. The limit under this statute is adjusted every two years for cost-of-living by the Judicial Council of California and, effective July 1, 2017, parent/guardian liability must not exceed \$42,100.

Pursuant to Penal Code 640.5 and 640.6, an individual who has been found to have defaced district property with graffiti may be fined or ordered by a court to perform community service. Depending on the amount of damage, Penal Code 594 also specifies that an individual, or the parent/guardian of a minor, who has been convicted of vandalism may be ordered to clean up and repair the property and to keep the property free from graffiti for one year.

The following optional policy may be modified to reflect district practice.

The Governing Board desires to create a safe and secure learning environment and to minimize acts of vandalism and damage to school property. To discourage such acts, When district property is damaged due to the willful misconduct of a student or other person, the district shall seek reimbursement of damages, within the limitations specified in law, from any individual, or from the parent/guardian of any a minor child or from any other responsible individual, who has committed theft or has willfully damaged district or employee property.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 3515 - Campus Security)

(cf. 4156.3/4256.3/4356.3 - Employee Property Reimbursement)

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

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

(cf. 5131 - Conduct)

(cf. 5131.5 - Vandalism and Graffiti)

(cf. 5136 - Gangs)

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

Note: Pursuant to Education Code 49014, as added by AB 1974 (Ch. 577, Statutes of 2018), the district may collect debt owed to the school by a student who willfully cuts, defaces, or otherwise injures district property or fails to return property that was loaned by the district, unless the student is a current or former homeless student or foster youth.

RECOVERY FOR PROPERTY LOSS OR DAMAGE (continued)

The district may collect debt owed by a student or former student as a result of vandalism or to cover the replacement cost of district books, supplies, or property loaned to a student that the student willfully fails to return or that is willfully cut, defaced, or otherwise injured. However, this policy shall not apply to a student who is a current or former homeless or foster child or youth. (Education Code 48904, 49014)

(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)

Rewards

Note: The following section is optional. Government Code 53069.5 authorizes the Governing Board to offer rewards for information leading to the identification and apprehension of persons who willfully damage or destroy property.

When district or law enforcement officials have not been able to identify the person(s) responsible for the theft or vandalism of district property, the Board may authorize a reward for the identification and apprehension of the responsible person(s). **The Board may offer and pay a reward for information leading to the determination of the identity of, and the apprehension of, any person who willfully damages or destroys any district property. (Government Code 53069.5)**

Note: The **Governing** Board may set any amount for the reward it deems to be appropriate; **H**owever, as detailed above, Education Code 48904 specifies a limit on the amount of parent/guardian liability for repayment of the reward.

Option 1 below allows the Superintendent or designee to offer a reward up to \$2,500 without Board approval. Option 2 provides that the Board will determine the amount of any reward offered. Both options may be revised, including the specified reward amount, to reflect district practice.

OPTION 1: The Board authorizes the Superintendent or designee to offer a reward in any amount ~~he/she deems~~ **deemed** appropriate, not exceeding \$2,500. A reward in excess of \$2,500 shall be authorized in advance by the Board.

OPTION 2: ~~The Board shall determine the appropriate amount for the reward.~~

Note: The following paragraph applies to all districts.

The Superintendent or designee shall disburse the reward when the guilt of the person responsible for the act has been established by a criminal conviction or other appropriate judicial procedure. **If more than one person provides information, the reward shall be divided among them as appropriate.**

Legal Reference: (see next page)

Current Practice

RECOVERY FOR PROPERTY LOSS OR DAMAGE (continued)

Legal Reference:

EDUCATION CODE

19910 Libraries, malicious cutting, tearing, defacing, breaking or injuring

19911 Libraries, willful detention of property

44810 Willful interference with classroom conduct

48904 Liability of parent/guardian for willful misconduct

49014 Public School Fair Debt Collection Act

CIVIL CODE

1714.1 Liability of parent or guardian for act of willful misconduct by a minor

GOVERNMENT CODE

53069.5 Reward for information concerning person causing death, injury, or property damage

53069.6 Actions to recover damages

54951 Local agency, definition

PENAL CODE

484 Theft defined

594 Vandalism

594.1 Aerosol paint and etching cream

640.5 Graffiti; facilities or vehicles of governmental entity

640.6 Graffiti

Management Resources:

WEB SITES

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

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

Judicial Council of California: <http://www.courts.ca.gov>

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CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3515.4(a)

RECOVERY FOR PROPERTY LOSS OR DAMAGE

Note: The following administrative regulation is **optional** and should be modified to reflect district practice.

Reports by Staff

District employees shall report any damage to or loss of school property to the **principal Superintendent** or designee immediately after such damage or loss is discovered. ~~In those instances in which insurance reimbursement may be involved, the principal or designee shall contact the appropriate district official.~~

(cf. 3530 - Risk Management/Insurance)
(cf. 5131.5 - Vandalism and Graffiti)

Investigation

Note: Certain acts of graffiti or vandalism may trigger the need for an investigation pursuant to the district's sexual harassment or nondiscrimination grievance procedures (e.g., graffiti that is sexual in nature or disparaging to a class of individuals protected by the district's nondiscrimination policies). See BP 5131.5 - Vandalism and Graffiti.

The Superintendent or designee shall conduct a complete investigation of any instance of damage to or loss of school property and shall consult law enforcement officials when appropriate. ~~If it is determined that the damage has been committed by any district student, the Superintendent or designee shall initiate appropriate disciplinary procedures against the student.~~

(cf. 3515.3 - District Police/Security Department)
~~*(cf. 5131 - Conduct)*~~
~~*(cf. 5144 - Discipline)*~~
~~*(cf. 5144.1 - Suspension and Expulsion/Due Process)*~~
~~*(cf. 5145.3 - Nondiscrimination/Harassment)*~~
~~*(cf. 5145.7 - Sexual Harassment)*~~
~~*(cf. 5145.9 - Hate Motivated Behavior)*~~

Recovery of Damages

When the individual causing the damage or loss has been identified and the costs of repair, replacement, or cleanup determined, the Superintendent or designee shall take all practical and reasonable steps to recover the district's costs and shall consult with the district's legal counsel and/or insurance **administrator carrier**, as appropriate.

RECOVERY FOR PROPERTY LOSS OR DAMAGE (continued)

Such steps may include the filing of a civil complaint in a court of competent jurisdiction to recover damages from the responsible person and, if the responsible person is a minor, from **his/her the** parent/guardian in accordance with law. Damages may include the cost of repair or replacement of the property, the payment of any reward, interest, court costs, and all other damages as provided by law.

Note: If a student's parents/guardians are unable to pay the damages, Education Code 48904 requires the district to offer an option for the student to provide work in lieu of payment. Pursuant to Education Code 49014, as added by AB 1974 (Ch. 577, Statutes of 2018), a district may offer any student or former student alternative, nonmonetary means to settle debt owed as a result of damage or loss of district property, regardless of the parents/guardians' ability to pay. However, the district is prohibited from collecting debt from a current or former homeless student or foster youth, and therefore cannot offer or require such a student to work or provide an alternative form of compensation.

If the responsible person is a minor student of the district and the student's parents/guardians are unable to pay for the damages or to return the property, the district shall offer a program of voluntary work for the student in lieu of the payment of monetary damages. The district may offer any other student or former student, with parent/guardian permission, the option to provide service, work, or other alternative, nonmonetary forms of compensation to settle the debt owed as a result of property loss or damage. Service or work exchanged for repayment of a debt shall comply with all provisions of the Labor Code related to youth employment. (Education Code 48904, 49014)

The Superintendent or designee may withhold the student's grades, diploma, and/or transcripts until the student's parents/guardians have paid for the damages or the voluntary work has been completed. Prior to withholding a student's grades, diploma, or transcripts, due process shall be afforded the student in accordance with law. (Education Code 48904)

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

If it is determined that the damage has been committed by any district student, In addition, the Superintendent or designee shall initiate appropriate disciplinary procedures against the student.

(cf. 5131 - Conduct)

(cf. 5144 - Discipline)

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

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

RECOVERY FOR PROPERTY LOSS OR DAMAGE (continued)

Payment of Reward

~~When authorized according to Board policy, the Superintendent or designee shall pay the a reward to the party who provides information sufficient to identify and apprehend the person(s) subsequently determined to be responsible for the damage or loss. If more than one person provides information, the reward shall be divided among them as appropriate.~~

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CSBA Sample Board Policy

All Personnel

BP 4030(a)

NONDISCRIMINATION IN EMPLOYMENT

Note: The following Board policy and accompanying administrative regulation are **mandated** pursuant to Government Code 11138 and 2 CCR 11023, ~~as added by Register 2015, No. 50.~~ The California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibits **employers districts and district employees** from **harassing or** discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, **religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status,** sex, sexual orientation, gender, gender identity, **or gender expression.** ~~religious creed, physical or mental disability, medical condition, marital status, or genetic information.~~ Pursuant to 2 CCR 11009, as amended by Register 2015, No. 50, these same protections apply to unpaid interns and volunteers. Consequently, the district is required to also notify unpaid interns and volunteers about these protections. For more information about volunteers, see BP/AR 1240 – Volunteer Assistance. Pursuant to Government Code 12940, these protections apply to employees, job applicants, persons who serves in an unpaid internship or other limited-duration program to gain unpaid work experience, volunteers, and independent contractors.

The same or similar protections are available to employees and job applicants 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 is determined to provide ~~district employees, interns, volunteers, and job applicants~~ a safe, positive environment where **they all district employees** are assured of full and equal employment access and opportunities, protection from harassment ~~of and~~ intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. **For purposes of this policy, employees include** ~~This policy shall apply to all district employees and, to the extent required by law, to job applicants, interns, volunteers, and job applicants and persons who contracted with the district to provide services, as applicable.~~

(cf. 1240 - Volunteer Assistance)

(cf. 3312 - Contracts)

(cf. 3600 - Consultants)

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

Note: 2 CCR 11027.1, as added by Register 2018, No. 20, provides a definition of "national origin" for the purpose of implementing state nondiscrimination laws.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, **religious creed,** color,

NONDISCRIMINATION IN EMPLOYMENT (continued)

ancestry, national origin, ancestry, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, gender expression, sex, or sexual orientation or his/her association with a person or group with one or more of these actual or perceived characteristics.

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

Note: 2 CCR 11028, as amended by Register 2018, No. 20, prohibits inquiry into an employee's immigration status or discrimination on the basis of such status, unless the district provides clear and convincing evidence that it is required to do so in order to comply with federal immigration law. Districts should consult legal counsel as necessary.

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that it is necessary to comply with federal immigration law. (2 CCR 11028)

Note: The following paragraph items illustrates unlawful discriminatory practices as specified in Government Code 12940. Pursuant to Labor Code 1197.5, an employer is prohibited from paying an employee at wage rates less than the rates paid to employees of the opposite sex for work requiring equal skill, effort, and responsibility and performed under similar conditions, except when the payment is based on some other bona fide factor such as education, training, or experience. In addition, Labor Code 1197.5, as amended by SB 1063 (Ch. 866, Statutes of 2016), prohibits the payment of different wage rates to employees for similar work based on sex, race, or ethnicity and prohibits the use of prior salary history by itself to justify any disparity in compensation under the bona fide factor exception.

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment

(cf. 4151/4251/4351 - Employee Compensation)
(cf. 4154/4254/4354 - Health and Welfare Benefits)

2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training

(cf. 4151/4251/4351 - Employee Compensation)
(cf. 4154/4254/4354 - Health and Welfare Benefits)

3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities, or that has

NONDISCRIMINATION IN EMPLOYMENT (continued)

the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment

Note: Item #4 below addresses the numerous-specific practices prohibited under Government Code 12940 or 2 CCR 11006-11086 in relation to certain protected categories. For example, because "sex" as defined in Government Code 12926 includes pregnancy, childbirth, breastfeeding, or related medical conditions, any of these conditions may be the basis for an employee's sex discrimination claim. As the specific prohibitions are too numerous to list in policy, it is recommended that district legal counsel be consulted when questions arise as to any specific claim.

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
- a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status

(cf. 4033 - Lactation Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

- b. Religious creed discrimination based on an employee's religious belief or observance, including his/her religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement.

(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)

- c. ~~Disability discrimination based on a district r~~Requirement for a medical or psychological examination of a job applicant, or an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

- d. ~~Disability discrimination based on the district's ff~~Failure to make reasonable accommodation for the known physical or mental disability of an employee, or to engage in a timely, good faith, interactive process with an employee, **who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee** for the employee, when he/she has requested reasonable accommodation for a known physical or mental disability or medical condition

(cf. 4032 - Reasonable Accommodation)

NONDISCRIMINATION IN EMPLOYMENT (continued)

Note: Retaliation against complainants or other participants in the grievance procedures is prohibited by Government Code 12940 and 34 CFR 110.34. In addition to the general prohibition against retaliation, Government Code 12940 provides that an employee who requests accommodation for his/her a physical or mental disability or religious belief is protected from retaliation as specified below. CSBA recommends that this protection be extended to all protected characteristics, **as provided below, and has modified the policy accordingly.** In *Thompson v. North American Stainless LP*, the U.S. Supreme Court held that a third party may file an anti-retaliation suit.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; **2 CCR 11028**)

Note: Pursuant to Government Code 12964.5, as added by SB 1300 (Ch. 955, Statutes of 2018), the district is prohibited from requiring an employee, in exchange for a raise or bonus or as a condition of employment or continued employment, to sign a nondisparagement agreement or similar document that would deny the employee the right to disclose information about unlawful acts in the workplace or requiring an employee to release the right to file a claim or civil action against the district.

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign any document that releases the employee's right to file a claim against the district or to disclose information about harassment or other unlawful employment practices. (Government Code 12964.5)

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

Note: Pursuant to 2 CCR 11019, in certain instances, an employee's (especially a supervisor's) knowledge or notice of prohibited conduct of another employee or individual 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, **as amended by SB 1300**, provides that **an employer a district** may be responsible for **the sexual harassment of employees by nonemployees where the employer district knows or should have known of the conduct and failed to take immediate and corrective action, taking into consideration the extent of the district's control and other legal responsibility that the district may have with respect to the conduct of those nonemployees.** Also sSee BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

See the accompanying administrative regulation for requirements related to the identification of the employee who will be responsible for compliance with the nondiscrimination laws.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, **including harassment of an employee by a**

NONDISCRIMINATION IN EMPLOYMENT (continued)

nonemployee, shall report the incident to the Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately. The district shall protect any employee who reports such incidents from retaliation.

Note: Government Code 12940 **and 2 CCR 11023** requires districts to take all reasonable steps, ~~including training,~~ to prevent prohibited discrimination and harassment, **including, but not limited to, dissemination of the district's policy on the prevention of harassment, discrimination, and retaliation.** ~~In addition, 2 CCR 11023, as added by Register 2015, No. 15, imposes an affirmative duty on the district to create a workplace environment that is free from all prohibited practices.~~ **In addition, Government Code 12950 requires districts to post, in prominent and accessible locations on district premises, posters developed by the California Department of Fair Employment and Housing (DFEH), which are available on DFEH's web site. For further information on prevention strategies, For details of such measures, see the accompanying administrative regulation.**

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy. ~~He/she shall provide,~~ **including providing** training and information to employees about how to recognize harassment, discrimination, or other related conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

~~In addition, the Superintendent or designee shall post, in a conspicuous place on district premises, the California Department of Fair Employment and Housing publication on workplace discrimination and harassment issued pursuant to 2 CCR 11013.~~

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. 4118 - Dismissal/Suspension/Disciplinary Action)

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

Legal Reference: (see next page)

NONDISCRIMINATION IN EMPLOYMENT (continued)*Legal Reference:*EDUCATION CODE200-262.4 *Prohibition of discrimination*CIVIL CODE51.7 *Freedom from violence or intimidation*GOVERNMENT CODE11135 *Unlawful discrimination*11138 *Rules and regulations*12900-12996 *Fair Employment and Housing Act, especially:***12940-12952 *Unlawful employment practices*****12960-12976 *Unlawful employment practices; complaints***PENAL CODE422.56 *Definitions, hate crimes*CODE OF REGULATIONS, TITLE 211006-11086 *Discrimination in employment, especially:*11013 *Recordkeeping*11019 *Terms, conditions and privileges of employment*11023 *Harassment and discrimination prevention and correction*11024 *Sexual harassment training and education***11027-11028 *National origin and ancestry discrimination***CODE OF REGULATIONS, TITLE 54900-4965 *Nondiscrimination in elementary and secondary education programs*UNITED STATES CODE, TITLE 201681-1688 *Title IX of the Education Amendments of 1972*UNITED STATES CODE, TITLE 29621-634 *Age Discrimination in Employment Act*794 *Section 504 of the Rehabilitation Act of 1973*UNITED STATES CODE, TITLE 422000d-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 2835.101-35.190 *Americans with Disabilities Act*CODE OF FEDERAL REGULATIONS, TITLE 34100.6 *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**Shephard v. Loyola Marymount, (2002) 102 Cal.App.4th 837*

NONDISCRIMINATION IN EMPLOYMENT (continued)

Management Resources:

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment, December 2014

Transgender Rights in the Workplace

Workplace Harassment Guide for California Employers

Your Rights and Obligations as a Pregnant Employee

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

New Compliance Manual Section 15: Race and Color Discrimination, April 2006

EEOC Compliance Manual

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>

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CSBA Sample Administrative Regulation

All Personnel

AR 4030(a)

NONDISCRIMINATION IN EMPLOYMENT

Note: Pursuant to Government Code 11138 and 2 CCR 11023, as added by Register 2015, No. 50, districts are **mandated** to adopt rules and regulations to ensure that district programs and activities are free from unlawful discriminatory practices. Pursuant to 2 CCR 11009, as amended by Register 2015, No. 50, it is ~~unlawful to discriminate against~~ **Government Code 12940, protections against discrimination apply to employees, job applicants, any person persons** who serves in an unpaid internship or other limited-duration program to gain unpaid work experience, **volunteers, and independent contractors** ~~on any basis protected by Government Code 12940.~~

All allegations of discrimination in employment, including those involving an **employee, job applicant, intern, volunteer, or job applicant person contracted to provide services to the district** shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

- (cf. 0410 - Nondiscrimination in District Programs and Activities)*
- (cf. 1240 - Volunteer Assistance)*
- (cf. 3312 - Contracts)*
- (cf. 3600 - Consultants)*
- (cf. 4032 - Reasonable Accommodation)*

Note: Many nondiscrimination laws and regulations require identification of an employee who will be responsible for compliance with the nondiscrimination laws. For example, pursuant to 34 CFR 104.7, 106.8, and 110.25, the district is required to designate the person(s) responsible for the overall implementation of the requirements of federal laws which prohibit discrimination on the basis of disability, sex, and age, i.e., Section 504 of the Rehabilitation Act of 1973 (29 USC 794), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), and the Age Discrimination in Employment Act (29 USC 621-634). The district should fill in the blanks below to designate the responsible employee and **his/her** contact information.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to coordinate the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

Superintendent
(position title)
540 A 6th St., Arbutle
(address)
(530) 476-2892
(telephone number)
cgeyer@pierce.k12.ca.us
(email)

NONDISCRIMINATION IN EMPLOYMENT (continued)**Measures to Prevent Discrimination**

Note: Pursuant to Government Code 12940 and 2 CCR 11023, ~~as added by Register 2015, No. 50~~, the district is required to take all reasonable steps to prevent unlawful discrimination and harassment. 2 CCR 11023, ~~as added~~, specifies certain requirements to be included in the district's policy. The following section reflects the requirements of 2 CCR 11023 and other applicable laws or regulations, as indicated.

To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:

Note: Pursuant to Government Code 12950, districts are required to post the California Department of Fair Employment and Housing's (DFEH) posters entitled California Law Prohibits Workplace Discrimination and Harassment and Transgender Rights in the Workplace, as provided in item #1. DFEH rules require that these materials be posted electronically and in every location where the district has employees (e.g., district office, hiring office, each school site). These posters and the rules for posting are available on the DFEH web site.

In addition, 2 CCR 11049 requires posting a notice of the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

- 1. Display in a prominent and accessible location at every work site where the district has employees and post electronically on computers in a conspicuous location, the California Department of Fair Employment and Housing (DFEH) posters in regard to workplace discrimination and harassment and the rights of transgender employees (Government Code 12950)**

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

- 1.2.** Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.9)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
 - b. Posting them in all district schools and offices, including staff lounges and other prominent locations
 - c. Posting them on the district's web site and providing easy access to them through district-supported social media, when available

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

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

NONDISCRIMINATION IN EMPLOYMENT (continued)

- 2.3.** Disseminate the district's nondiscrimination policy to all employees by one or more of the following methods: (2 CCR 11023)
- a. Printing and providing a copy of the policy to all employees, with an acknowledgment form for each employee to sign and return
 - b. Sending the policy via email with an acknowledgment return form
 - c. Posting the policy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
 - d. Discussing the policy with employees upon hire and/or during a new hire orientation session
 - e. Any other way that ensures employees receive and understand the policy

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

- 3.4.** Provide to employees a handbook **that which** contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to ~~anyone who feels that he/she has~~ **employees who believe they have** been the victim of any discriminatory or harassing behavior

Note: Item #5 below provides for training regarding the district's discrimination policy and reporting procedures. For requirements specifically pertaining to sexual harassment training, see AR 4119.11/4219.11/4319.11 - Sexual Harassment. Pursuant to Government Code 12950.1, if the district has 50 or more employees, it must provide at least two hours of staff development regarding sexual harassment to all supervisory employees within six months of their assumption of a supervisory position and once every two years thereafter. As amended by SB 1343 (Ch. 956, Statutes of 2018), Government Code 12950.1 requires any district that has five or more employees to provide at least two hours of sexual harassment training to supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020 and once every two years thereafter.

- 4.5.** Provide training to employees, volunteers, and interns regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made

Note: Pursuant to 2 CCR 11023, as added by Register 2015, No. 50, if the district has 50 or more employees, its sexual harassment prevention training must include instruction for its supervisors as specified in the following paragraph

NONDISCRIMINATION IN EMPLOYMENT (continued)

~~Training for supervisors shall include the requirement to report any complaint of misconduct to a designated representative, such as the coordinator, human resources manager, or Superintendent or designee as a topic in the sexual harassment prevention training required pursuant to 2 CCR 11024. (2 CCR 11023)~~

Note: Pursuant to Government Code 12950.2, as added by SB 1300 (Ch. 955, Statutes of 2018), districts are authorized, but not required, to provide bystander intervention training as provided below.

The district may also provide bystander intervention training to employees that includes information and practical guidance on how to recognize potentially problematic behaviors and motivates them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention. (Government Code 12950.2)

~~(cf. 1240 - Volunteer Assistance)~~

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

~~(cf. 4131 - Staff Development)~~

~~(cf. 4231 - Staff Development)~~

~~(cf. 4331 - Staff Development)~~

6. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law
7. For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce

Complaint Procedure

Note: ~~2 CCR 11023, as added by Register 2015, No. 50,~~ **mandates** that a district's policy include a complaint process with specified requirements. Some of the requirements of 2 CCR 11023 are similar to those required under existing case law.

Courts have held that an employer may mitigate liability for hostile environment employment discrimination when (1) the employer took reasonable care to prevent and promptly correct the discriminatory or harassing conduct (i.e., provided a complaint procedure) and (2) the aggrieved employee unreasonably failed to take advantage of corrective opportunities offered by the employer (i.e., failure to file a complaint). In its June 1999 Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, the Equal Employment Opportunity Commission (EEOC) outlines the elements of an effective complaint procedure to include (1) a clear explanation of the process; (2) protection against retaliation; (3) designation of multiple individuals authorized to receive complaints; (4) a mechanism for prompt, thorough, and impartial investigation; (5) assurance of immediate and appropriate corrective action; and (6) information about time frames for filing charges with **the EEOC or the California Department of Fair Employment and Housing (DFEH).**

NONDISCRIMINATION IN EMPLOYMENT (continued)

While the EEOC's guidance recommends a "prompt" investigation, neither the law nor the EEOC delineates a specific time frame for resolution. The EEOC's guidance acknowledges that whether an investigation is considered "prompt" may vary depending on the seriousness and complexity of the circumstances and that intermediate measures may be necessary to prevent further harassment during the investigation.

The following section, including the listed timelines, is consistent with the EEOC's guidance and should be modified to reflect district practice.

Any complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** A complainant may inform his/her a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. **The employee's direct supervisor may be bypassed in filing a complaint where the supervisor is the subject of the complaint.**

The complainant may file a written complaint in accordance with this procedure, ~~or, if he/she is an employee, or~~ may first attempt to resolve the situation informally with his/her the employee's supervisor.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. **Investigation Process:** The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. ~~He/she~~ **The coordinator** shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

NONDISCRIMINATION IN EMPLOYMENT (continued)*(cf. 3580 - District Records)**(cf. 4112.6/4212.6/4312.6 - Personnel Files)**(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

If the coordinator determines that a detailed fact-finding investigation is necessary, ~~he/she shall begin~~ the investigation **shall begin** immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out ~~his/her the~~ investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator **also** shall **also** determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to ensure that further incidents are prevented. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of ~~his/her the~~ findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report **also** shall **also** include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. **The report shall be presented to the Superintendent or designee.**

~~The report~~ **A summary of the findings** shall be presented to the complainant, **and** the person accused, ~~and the Superintendent or designee.~~

4. **Appeal to the Governing Board:** The complainant or the person accused may appeal any findings to the Board within 10 business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an

NONDISCRIMINATION IN EMPLOYMENT (continued)

appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 9321 - Closed Session Purposes and Agendas)

Other Remedies

Note: Items #1-3 below state the time limits within which employees must file their complaints. The EEOC's guidance states that it is important for employers' nondiscrimination policies to contain information about timeframes for filing charges of unlawful discrimination or harassment with the EEOC or DFEH. Employees should be informed that the deadline for filing charges starts to run from the last date of the unlawful act, not from the conclusion of the employer's district's complaint investigation. Pursuant to DFEH procedures, DFEH will automatically forward any complaint it has accepted for investigation to the EEOC when the matter falls within the EEOC's jurisdiction.

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

Note: Pursuant to Government Code 12960, an employee has one year to file a complaint with DFEH, although that period may be extended under certain circumstances, such as when a person obtains knowledge of the unlawful practice after the expiration of the one-year period.

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960

Note: 42 USC 2000e-5 specifies that a person must file a discrimination complaint with the EEOC within 180 days of the alleged discriminatory act. Pursuant to 42 USC 2000e-5, the 180-day timeline for compensation discrimination starts when the discriminatory paycheck is received and that each discriminatory paycheck restarts the timeline for the filing of a complaint.

2. To file a valid complaint directly with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. To file a valid complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier (42 USC 2000e-5)

(12/15 ~~12/16~~) 3/19

CSBA Sample Administrative Regulation

Certificated Personnel

AR 4161.1(a)
4361.1

PERSONAL ILLNESS/INJURY LEAVE

Note: The following administrative regulation is subject to collective bargaining. Education Code 44978 provides a minimum of 10 days of personal illness or injury leave (sick leave) per year for certificated employees working five days a week. The Governing Board may allow additional days at its discretion; if it does so, the following paragraph should be revised accordingly.

Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act) require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days **or more** within a year of their employment, including temporary and substitute employees. Pursuant to Labor Code 246, a district may use a different sick leave accrual method which provides for the accrual to be on a regular basis so that **an employee** accrues at least 24 hours of sick leave or paid time off by the 120th calendar day of **his/her/their** employment or each calendar year or 12-month period.

The provisions of Labor Code 245-249 are very broad and **only** district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all of the conditions for this exemption, this administrative regulation has been drafted to include the requirements of Labor Code 245-249. Any district **whose which has a** collective bargaining agreement **that** meets all of the conditions for exemption may modify this administrative regulation accordingly.

For additional requirements of Labor Code 245-249, see the section titled "Healthy Workplaces, Healthy Families Act Requirements" below. For paid sick leave for temporary and substitute certificated employees, see BP/AR 4121 - Temporary/Substitute Personnel. For sick leave for classified employees, see AR 4261.1 - Personal Illness/Injury Leave.

Certificated employees employed five school days per week are entitled to 10 days' leave of absence with full pay for personal illness or injury (sick leave) per school year of service. Employees who work less than five school days per week (part-time employees) shall be granted sick leave in proportion to the time they work. However, any part-time employees who **is are** entitled to less than three days of paid sick leave per year due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246, if **he/she is they are** eligible. (Education Code 44978; Labor Code 245-249)

(cf. 4161/4261/4361 - Leaves)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

Use of Sick Leave

Note: Items #1-8 below reflect allowable uses of sick leave specified in law. The district may expand this list to include any additional purposes authorized by law, authorized by the district, or included in a bargaining agreement.

PERSONAL ILLNESS/INJURY LEAVE (continued)

Certificated employees may use sick leave for absences due to:

1. Accident or illness, whether or not the absence arises out of ~~or~~ **and** in the course of employment; quarantine which results from contact **in the course of employment** with other persons having a contagious disease ~~during the employee's performance of his/her duties~~; or temporary inability to perform assigned duties because of illness, accident, or quarantine (Education Code 44964)

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

2. Pregnancy, miscarriage, childbirth, and related recovery (Education Code 44965, 44978)

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

3. Personal necessity (Education Code 44981)

(cf. 4161.2/4261.2/4361.2 - Personal Leaves)

Note: **Optional** item #4 below may be revised as desired to specify a different minimum increment for sick leave.

4. Medical and dental appointments, in increments of not less than one hour
5. Industrial accidents or illnesses when leave granted specifically for that purpose has been exhausted (Education Code 44984)

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

Note: Pursuant to the Family and Medical Leave Act (FMLA) (29 USC 2612) and California Family Rights Act (CFRA) (Government Code 12945.2), a district is required to grant leave to an eligible employee to bond with a child after the birth, adoption, or foster care placement of the child, if the district employs 50 or more employees within 75 miles of the worksite where the employee requesting the leave is employed. For this purpose, employees may, but are not required to, use sick leave for any otherwise unpaid FMLA or CFRA leave.

Government Code 12945.6, ~~as added by SB 63 (Ch. 686, Statutes of 2017)~~, extends the right to parental leave to an eligible employee who is not covered by FMLA or CFRA when the district employs 20-49 employees within 75 miles of the worksite where the employee requesting the leave is employed.

For further information regarding parental leave, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

PERSONAL ILLNESS/INJURY LEAVE (continued)

6. Need of the employee to bond with a child within one year of the child's birth, adoption, or foster care placement (parental leave) (Education Code 44977.5; Government Code 12945.2, 12945.6; 29 USC 2612; 29 CFR 825.112)

Note: Pursuant to Labor Code 233, any district that provides sick leave to its employees is required to permit them to use sick leave, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the purposes specified in items #7-8 below.

For the purpose of using sick leave to attend to the health care needs of a family member, as specified in item #7 below, Labor Code 245.5 defines "family member" as an employee's spouse, registered domestic partner, child (biological, adopted, or foster child; stepchild; legal ward; or a child to whom the employee stands in loco parentis), parent (biological, adoptive, or foster parent; stepparent; legal guardian of an employee or the employee's spouse or registered domestic partner; or a person who stood in loco parentis when the employee was a minor child), grandparent, grandchild, or sibling.

For additional information about leaves for victims of domestic violence, sexual assault, or stalking granted in accordance with item #8 below, see AR 4161.2/4261.2/4361.2 - Personal Leaves.

7. Need of the employee or **his/her employee's** family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care (Labor Code 233, 246.5)
8. Need of the employee to seek or obtain any relief or medical attention specified in Labor Code 230(c) and/or 230.1(a) for the health, safety, or welfare of the employee or **his/her the employee's** child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 233, 246.5)

For the purposes specified in items #7-8, an employee may use, in any calendar year, the amount of sick leave **he/she would that would be** accrued during six months at **his/her the employee's then** current rate of entitlement. (Labor Code 233)

An employee may take sick leave at any time during the school year, even if credit for sick leave has not yet been accrued. (Education Code 44978)

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

An employee shall reimburse the district for any unearned sick leave used as of the date of **his/her** termination.

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 44978)

PERSONAL ILLNESS/INJURY LEAVE (continued)

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

At the beginning of each school year, employees shall be notified of the amount of sick leave they have accumulated.

The district shall not require new employees to waive leave accumulated in a previous district. (Education Code 44979, 44980)

Note: Pursuant to Education Code 44979-44980, a-certificated employees **are is** entitled to have **his/her their** accumulated sick leave transferred with **him/her them** in the circumstances specified in the following **optional** paragraph.

The Superintendent or designee shall notify any certificated employee who leaves the district after at least one school year of employment that if the employee accepts a certificated position in another district, county office of education, or community college district within one year, **he/she the employee** may request that the district transfer **his/her any** accumulated sick leave to the new employer. (Education Code 44979, 44980)

Additional Leave for Disabled Military Veterans

Note: Education Code 44978.2, as amended by SB 731 (Ch. 597, Statutes of 2017), provides that an employee who is a military veteran or a former or current member of the California National Guard or a federal reserve component is entitled to additional sick leave with pay for up to 10 days for the purpose of undergoing medical treatment for a qualifying military service-connected disability (i.e., an injury or disease that occurred during active duty or was made worse by active military service and that has a disability rating by the U.S. Department of Veterans Affairs of 30 percent or higher). As amended, Education Code 44978.2 provides that credit for such leave begins on either the effective date of the employee's disability rating decision from the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later.

In addition to any other entitlement for sick leave with pay, a certificated employee who is a former active duty member of the U.S. Armed Forces or a former or current member of the California National Guard or a federal reserve component shall be entitled to sick leave with pay of up to 10 days for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or more by the U.S. Department of Veterans Affairs. An eligible employee who works less than five days per week shall be entitled to such leave in proportion to the time **he/she works worked**. (Education Code 44978.2)

The amount of leave shall be credited to the employee either on the date the employee receives confirmation of the submission of **his/her the** disability application to the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later. When the employee receives **his/her the**

PERSONAL ILLNESS/INJURY LEAVE (continued)

disability rating decision, **he/she the employee** shall report that information to the Superintendent or designee. If the disability rating decision makes the employee eligible for the leave, the time used before the decision shall be counted toward the 10-day maximum leave. If the disability rating decision makes the employee ineligible for the leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance. (Education Code 44978.2)

Note: Pursuant to Education Code 44978.2, the district may require proof that a leave granted under this law is used for treatment of a military service-connected disability. The following paragraph may be revised to reflect district practice.

The Superintendent or designee may require verification, in accordance with the section "Verification Requirements" below, that the employee used the leave to obtain treatment of a military service-connected disability.

Leave for military-service connected disability shall be available for 12 months following the first date that the leave was credited. Leave not used during the 12-month period shall not be carried over and shall be forfeited. (Education Code 44978.2)

Notification of Absence

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

An employee shall notify the district of **his/her the** need to be absent as soon as such need is known, so that substitute services may be secured. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than three o'clock in the afternoon of the day preceding the day on which **he/she the employee** intends to return to work. If the employee fails to notify the district and the failure results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

(cf. 4121 - Temporary/Substitute Personnel)

Continued Absence After Available Sick Leave Is Exhausted/Differential Pay

Note: Pursuant to Education Code 44977, **an employees who is are absent due to illness** for up to five months after exhausting all **his/her** available sick leave must receive **his/her their** regular salary minus the cost of a substitute. **Option 1 below reflects this requirement. However, Alternatively, Education Code 44983 provides that Education Code 44977 does not apply to those districts that allows districts to** adopt a rule that gives certificated employees 50 percent or more of their regular salary during the period of absence. **Option 2 below is for use by districts that choose to specify such a level of compensation; these districts are mandated to adopt a rule to this effect.** When an employee is absent for a **period of more than five months,**

PERSONAL ILLNESS/INJURY LEAVE (continued)

~~or is absent for a~~ cause other than illness, Education Code 44977 and 44983 provide that the amount deducted from ~~his/her~~ **the employee's** salary shall be determined according to the rules and regulations adopted by the Board as long as such rules are not in conflict with State Board of Education regulations.

Option 1 below is for use by districts that subtract the cost of a substitute from the absent employee's salary pursuant to Education Code 44977. Option 2 is mandated pursuant to Education Code 44983 for districts that choose to give certificated employees 50 percent or more of their regular salary during the period of absence, and may be revised to specify a percentage higher than 50 percent in accordance with district practice.

If not covered in the district's bargaining agreement, the district may add provisions to this section reflecting salary deductions for employees absent longer than five months.

OPTION 1:

During each school year, when a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or accident, continues to be absent ~~from his/her duties~~ for an additional period of up to five school months, ~~the employee shall receive his/her~~ **the district shall deduct from the employee's** regular salary ~~minus for that period~~ the actual cost of a substitute to fill the position. If the district has made every reasonable effort to secure the services of a substitute and has been unable to do so, the amount that would have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

An employee shall not be provided more than one five-month period per illness or accident. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)

Note: Option 2 below is **mandated** for use by districts that choose to provide employees at least 50 percent of their regular salary during the period of absence pursuant to Education Code 44983. The following paragraph specifies 50 percent and should be modified by districts that have set a higher percentage.

OPTION 2:

After a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or accident, continues to be absent an additional period of up to five months, ~~he/she~~ **the employee** shall receive **at least** 50 percent of ~~his/her~~ **the employee's** regular salary during the additional period of absence. (Education Code 44983)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Absence Beyond Five-Month Period/Reemployment List

Note: The following paragraph is required for districts that select Option 1 (i.e., differential pay) in the section "Continued Absence After Available Sick Leave Is Exhausted/Differential Pay" above and should be carefully considered by districts that select Option 2 (i.e., 50 percent pay). Education Code 44978.1 requires the establishment of a reemployment list for employees who are unable to resume their duties after the five-month period provided pursuant to Education Code 44977.

Although Education Code 44978.1 does not explicitly require a reemployment list for districts selecting Option 2, such districts should be aware that failure to establish a reemployment list may subject employees to termination following a five-month absence. Therefore, any district that selects Option 2 and currently maintains a reemployment list for employees who are absent beyond the five-month period, or that wishes to establish such a list, should consult legal counsel before changing its policy or practices.

If a certificated employee is not medically able to ~~resume his/her duties~~ **return to work** after the five-month period provided pursuant to Education Code 44977, the employee shall be placed either in another position or on a reemployment list. Placement on the reemployment list shall be for 24 months for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period. If during this time the employee becomes medically able, ~~he/she~~ **the employee** shall be returned to employment in a position for which ~~he/she~~ **the employee** is credentialed and qualified. (Education Code 44978.1)

(cf. 4116 - Probationary/Permanent Status)

Parental Leave

Note: The following section is subject to any conflicting provision in a collective bargaining agreement that provides greater parental leave rights.

During each school year, a certificated employee may use all available sick leave, including accumulated sick leave, for the purpose of parental leave for a period **of** up to 12 work weeks. The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of such parental leave. (Education Code 44977.5)

Note: Unlike leave taken pursuant to Government Code 12945.2, leave taken pursuant to Education Code 44977.5 does not require an employee to have at least 1,250 hours of service with the district during the previous 12-month period in order to be eligible for parental leave. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for further information on requirements related to the California Family Rights Act.

Eligibility for such leave shall not require 1,250 hours of service with the district during the previous 12 months. (Education Code 44977.5)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Note: Pursuant to Education Code 44977.5, the district is required to provide differential pay to a certificated employee **when he/she for up to 12 work weeks when the employee** has exhausted all available sick leave, including accumulated sick leave, and continues to be absent due to parental leave pursuant to Government Code 12945.2. Such an employee is entitled to receive differential pay, calculated in the same manner described in Option 1 or 2 in the section "Continued Absence After Available Sick Leave Is Exhausted/Differential Pay" above, **for up to 12 work weeks. As amended by AB 2012 (Ch. 994, Statutes of 2018), Education Code 44977.5 requires that, regardless of the type of differential pay system used by the district, employees must receive at least 50 percent of their regular salary for any portion of the 12-week parental leave that remains following the exhaustion of sick leave. The following paragraph may be revised to specify a percentage higher than 50 percent in accordance with district practice.**

Since Education Code 44977.5 does not expressly require districts to provide differential pay to employees who are eligible for parental leave pursuant to Government Code 12945.6, **as added by SB 63 (Ch. 686, Statutes of 2017)**, it is unclear whether such employees would be entitled to differential pay. Districts should consult legal counsel if they have questions regarding differential pay for such employees.

An employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave shall receive differential pay **of at least 50 percent of the employee's regular salary** for the remainder of the 12 work weeks. (Education Code 44977.5)

Parental leave taken pursuant to Education Code 44977.5 shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 or 12945.6, and the aggregate amount of parental leave shall not exceed 12 work weeks in a 12-month period. (Education Code 44977.5; Government Code 12945.2, 12945.6)

Verification Requirements

Note: Education Code 44978 **mandates** the Board to adopt regulations requiring proof of illness or injury and prescribing the means of verification. However, Education Code 44978 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. For verification requirements for employees on leave pursuant to the Family and Medical Leave Act, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. The following section should be modified to reflect district practice and any procedures which have been specified in bargaining agreements.

Labor Code 233 requires districts to allow their employees to use sick leave for the purposes specified in Labor Code 246.5, the paid sick leave law. Because the paid sick leave law is silent on requests for verification, and actually requires an employer to provide an employee with paid sick days upon oral or written request, districts should be cautious in requiring verification for sick leave used for the purposes specified in Labor Code 246.5 (items #7-8 in the section "Use of Sick Leave" above). Although a district is permitted to require verification from an employee who is a victim of domestic violence, sexual assault, or stalking, pursuant to Labor Code 230 and 230.1, a general insistence on verification could be deemed a violation of Labor Code 246.5. Any district with questions regarding its authority related to verification should consult legal counsel.

PERSONAL ILLNESS/INJURY LEAVE (continued)

After any absence due to illness or injury, the employee shall verify the absence by submitting a completed and signed district absence form to ~~his/her~~ **the employee's** immediate supervisor.

The Superintendent or designee may require verification whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the Superintendent or designee may require an employee to visit a physician selected by the district, at district expense, in order to receive a report on ~~the medical condition of the employee. The report shall include a statement as to~~ the employee's need for further leave of absence and a prognosis as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, deny further leave.

Note: 42 USC 2000ff-1, the Genetic Information Nondiscrimination Act, and its implementing regulations, 29 CFR 1635.1-1635.12, specify that it is unlawful for a district to request, require, or purchase ~~an~~ employee's ~~ss'~~ or ~~his/her~~ **their** family member's individual genetic information except in complying with the medical certification requirements for family care and medical leave purposes or with the employee's prior written authorization. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. Pursuant to 29 CFR 1635.9, any such information received by the district must be kept confidential as specified below.

Any district request for additional verification by an employee's physician or a district-selected physician shall be in writing and shall specify that the report to be submitted to the district should not contain the employee's genetic information. Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and ~~shall~~ not be disclosed except in accordance with 29 CFR 1635.9.

Before returning to work, an employee who has been absent for surgery, hospitalization, or extended medical treatment may be asked to submit a letter from ~~his/her~~ **a** physician stating that ~~he/she~~ **the employee** is able to return to duty and stipulating any necessary restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Healthy Workplaces, Healthy Families Act Requirements

Note: Pursuant to Labor Code 245-249, all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act

PERSONAL ILLNESS/INJURY LEAVE (continued)

could result in an enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this **new** law should consult its legal counsel.

No employee shall be denied the right to use accrued sick days, and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249.

To ensure the district's compliance with Labor Code 245-249, the Superintendent or designee shall:

1. At a conspicuous location in each workplace, display a poster on paid sick leave that includes the following information:
 - a. That an employee is entitled to accrue, request, and use paid sick days
 - b. The **amount number** of sick days provided by Labor Code 245-249
 - c. The terms of use of paid sick days
 - d. That discrimination or retaliation against an employee for requesting and/or using sick leave is prohibited by law and that an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against **him/her the employee**
2. Provide at least 24 hours or three days of paid sick leave to each eligible employee to use per year and allow eligible employees to use accrued sick leave upon reasonable request
3. Provide eligible employees written notice, on their pay stub or other document issued with their pay check, of the amount of paid sick leave they have available

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

4. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years

Legal Reference: (see next page)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Legal Reference:

EDUCATION CODE

- 44964 Power to grant leave of absence in case of illness, accident, or quarantine
- 44965 Granting of leaves of absence for pregnancy and childbirth
- 44976 Transfer of leave rights when school is transferred to another district
- 44977 Salary deduction during absence from duties up to five months after sick leave is exhausted
- 44977.5 Differential pay during parental leave up to 12 weeks after sick leave is exhausted
- 44978 Provisions for sick leave of certificated employees
- 44978.1 Inability to return to duty; placement in another position or on reemployment list
- 44978.2 Leave for military service connected disability
- 44979 Transfer of accumulated sick leave to another district
- 44980 Transfer of accumulated sick leave to a county office of education
- 44981 Leave of absence for personal necessity
- 44983 Exception to sick leave when district adopts specific rule
- 44984 Industrial accident or illness
- 44986 Leave of absence for disability allowance applicant

GOVERNMENT CODE

- 12945.1-12945.2 California Family Rights Act
- 12945.6 Parental leave

LABOR CODE

- 220 Sections inapplicable to public employees
- 230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off
- 230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off
- 233 Illness of child, parent, spouse or domestic partner
- 234 Absence control policy
- 245-249 Healthy Workplaces, Healthy Families Act of 2014

CODE OF REGULATIONS, TITLE 5

- 5601 Transfer of accumulated sick leave

UNITED STATES CODE, TITLE 29

- 2601-2654 Family and Medical Leave Act of 1993, as amended

UNITED STATES CODE, TITLE 42

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

CODE OF FEDERAL REGULATIONS, TITLE 29

- 825.100-825.702 Family and Medical Leave Act of 1993

- 1635.1-1635.12 Genetic Information Nondiscrimination Act of 2008

COURT DECISIONS

- Veguez v. Governing Board of Long Beach Unified School District, (2005) 127 Cal.App.4th 406

(3/17 3/18) 3/19

CSBA Sample Administrative Regulation

Classified Personnel

AR 4261.1(a)

PERSONAL ILLNESS/INJURY LEAVE

Note: The following administrative regulation is subject to collective bargaining. Twelve days of paid personal illness or injury leave (sick leave) per year is the minimum prescribed by Education Code 45191 for classified employees employed five days a week in both merit and non-merit system districts. The Governing Board may allow more sick leave at its discretion; if it does so, the following paragraph should be revised accordingly.

Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act) require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including classified employees. Pursuant to Labor Code 246, a district may use a different sick leave accrual method which provides for the accrual to be on a regular basis so that **an employee** accrues at least 24 hours of sick leave or paid time off by the 120th calendar day of **his/her** their employment or each calendar year or 12-month period.

The provisions of Labor Code 245-249 are very broad and **only** district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all of the conditions for this exemption, this administrative regulation reflects the requirements of Labor Code 245-249. Any district **whose which has a** collective bargaining agreement **that** meets all of the conditions for exemption may modify this administrative regulation accordingly.

For additional requirements of Labor Code 245-249, see sections titled "Short-Term and Substitute Employees" and "Healthy Workplaces, Healthy Families Act Requirements" below. For sick leave for certificated employees, see AR 4161.1/4361.1 - Personal Illness/Injury Leave.

Classified employees employed five days a week are entitled to 12 days' leave of absence with full pay for personal illness or injury (sick leave) per fiscal year. Employees who work less than a full fiscal year or fewer than five days a week (part-time employees) shall be granted sick leave in proportion to the time they work. However, **any** part-time employees **whose work hours are so few as to entitle him/her** **who are entitled** to less than 24 hours of paid sick leave per fiscal year **due to the amount of time worked** shall be granted sick leave pursuant to Labor Code 246, if **he/she is** **they are** eligible. (Education Code 45191; Labor Code 245-249)

(cf. 4161/4261/4361 - Leaves)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

Use of Sick Leave

Note: Items #1-8 below reflect allowable uses of sick leave specified in law. The district may expand this list to include any additional purposes authorized by law, authorized by the district, or included in a bargaining agreement.

A classified employee may use sick leave for absences due to:

PERSONAL ILLNESS/INJURY LEAVE (continued)

1. Accident or illness, whether or not the absence arises out of or in the course of employment, or by quarantine which results from contact **in the course of employment** with other persons having a contagious disease **during the employee's performance of his/her duties** (Education Code 45199)

2. Pregnancy, childbirth, and recovery (Education Code 45193)

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

3. Personal necessity as specified in Education Code 45207

(cf. 4161.2/4261.2/4361.2 - Personal Leaves)

Note: **Optional** item #4 below may be revised to specify a different minimum increment.

4. Medical **or and** dental appointments, in increments of not less than one hour
5. Industrial accident or illness when leave granted specifically for that purpose has been exhausted (Education Code 45192)

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

Note: Pursuant to the Family and Medical Leave Act (FMLA) (29 USC 2612) and California Family Rights Act (CFRA) (Government Code 12945.2), a district is required to grant leave to an eligible employee to bond with a child after the birth, adoption, or foster care placement of the child, if the district employs 50 or more employees within 75 miles of the worksite where the employee requesting the leave is employed. For this purpose, employees may, but are not required to, use sick leave for any otherwise unpaid FMLA or CFRA leave.

Government Code 12945.6, **as added by SB 63 (Ch. 686, Statutes of 2017)**, extends the right to parental leave to an eligible employee who is not covered by FMLA or CFRA when the district employs 20-49 employees within 75 miles of the worksite where the employee requesting the leave is employed.

For further information regarding parental leave, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

6. Need of an employee to bond with a child within one year of the child's birth, adoption, or foster care placement (parental leave) (Education Code 45196.1; Government Code 12945.2, 12945.6; 29 USC 2612; 29 CFR 825.112)

Note: Pursuant to Labor Code 233, any district that provides sick leave to its employees is required to permit them to use sick leave, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the purposes specified in items #7-8 below.

PERSONAL ILLNESS/INJURY LEAVE (continued)

For the purpose of using sick leave to attend to the health care needs of a family member, as specified in item #7 below, Labor Code 245.5 defines "family member" as an employee's spouse, registered domestic partner, child (biological, adopted, or foster child; stepchild; legal ward; or a child to whom the employee stands in loco parentis), parent (biological, adoptive, or foster parent; stepparent; legal guardian of an employee or the employee's spouse or registered domestic partner; or a person who stood in loco parentis when the employee was a minor child), grandparent, grandchild, or sibling.

For additional information about leaves for victims of domestic violence, sexual assault, or stalking granted in accordance with item #8 below, see AR 4161.2/4261.2/4361.2 - Personal Leaves.

7. Need of the employee or **his/her the employee's** family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care (Labor Code 233, 246.5)
8. Need of the employee to seek or obtain any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee; or **his/her the employee's** child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 233, 246.5)

For the purposes specified in items #7-8, an employee may use, in any calendar year, the amount of sick leave **he/she would that would be** accrued during six months at **his/her the employee's then** current rate of entitlement. (Labor Code 233)

An employee may take leave for personal illness or injury at any time during the year, even if credit for such leave has not yet been accrued. However, a new full-time classified employee shall not be entitled to more than six days of sick leave, **or the proportionate amount to which the employee may be entitled,** until **he/she the first day of the month after the employee** has completed six months of active service with the district. (Education Code 45191)

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 45191)

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

An employee shall reimburse the district for any unearned sick leave used as of the date of **his/her** termination.

The district shall not require newly employed classified employees to waive leave accumulated in a previous district. However, if the employee's previous employment was terminated for cause, the transfer of the accumulated leave shall be made only if approved by the Governing Board. (Education Code 45202)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Note: Pursuant to Education Code 45202, a-classified employees who is are terminated after at least one year of employment for any reason unrelated to discipline is are entitled to have his/her their accumulated sick leave transferred with him/her them in certain circumstances. The following paragraph, which provides for the notification of employees as a way to implement this provision, is optional and may revised to reflect district practice.

The Superintendent or designee shall notify any classified employee whose employment with the district is terminated after at least one calendar year for reasons other than for cause that, if he/she the employee accepts employment in another district, county office of education, or community college district within one year of the termination of employment, he/she the employee may request that the district transfer his/her any accumulated sick leave to the new employer. (Education Code 45202)

Additional Leave for Disabled Military Veterans

Note: Education Code 45191.5, as amended by SB 731 (Ch. 597, Statutes of 2017), provides that an employee who is a military veteran or is a former or current member of the California National Guard or federal reserve component is entitled to additional sick leave with pay for up to 12 days for the purpose of undergoing medical treatment for a qualifying military service-connected disability (i.e., an injury or disease that occurred during active duty or was made worse by active military service and that has a disability rating by the U.S. Department of Veterans Affairs of 30 percent or higher). As amended, Education Code 45191.5 provides that credit for such leave begins on the effective date of the employee's disability rating decision from the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later.

In addition to any other entitlement for sick leave with pay, a classified employee who is a former active duty member of the U.S. Armed Forces or a former or current member of the California National Guard or a federal reserve component shall be entitled to sick leave with pay of up to 12 days for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or higher by the U.S. Department of Veterans Affairs. An eligible employee who works less than five days per week shall be entitled to such leave in proportion to the time he/she works worked. (Education Code 45191.5)

The amount of leave shall be credited to the employee either on the date the employee receives confirmation of the submission of his/her the disability application to the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later. When the employee receives his/her the disability rating decision, he/she the employee shall report that information to the Superintendent or designee. If the disability rating decision makes the employee eligible for the leave, the time used before the decision shall be counted toward the 12-day maximum leave. If the disability rating decision makes the employee ineligible for the leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance. (Education Code 45191.5)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Note: Pursuant to Education Code 45191.5, the district may require proof that a leave granted under this law is used for treatment of a military service-connected disability. The following paragraph may be revised to reflect district practice.

The Superintendent or designee may require verification, in accordance with the section "Verification Requirements" below, that the employee used the leave to obtain treatment of a military service-connected disability.

Leave for military-service connected disability shall be available for 12 months following the first date that the leave was credited. Leave not used during the 12-month period shall not be carried over and shall be forfeited. (Education Code 45191.5)

Notification of Absence

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

An employee shall notify the Superintendent or the designated manager or supervisor of **his/her the** need to be absent as soon as such need is known so that the services of a substitute may be secured as necessary. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than three o'clock in the afternoon of the day preceding the day on which **he/she the employee** intends to return to work. If the employee fails to notify the district and the failure results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

Continued Absence After Available Sick Leave Is Exhausted/Differential Pay

Note: Pursuant to Education Code 45196, **a district is authorized to pay any employees who has exhausted his/her paid leaves his/her salary minus the actual pay received by a substitute for the remainder of a five-month absence to which the employee is entitled (Option 1 below). Alternatively, such an employee may be compensated at 50 percent or more of his/her salary for up to 100 working days, regardless of whether or not a substitute is hired (Option 2 below). districts may choose one of two methods for compensating classified employees who have exhausted their sick leave and continue to be absent due to illness or injury.**

Option 1 below is for use by districts that subtract the actual cost of a substitute from the absent employee's salary for up to five months. Pursuant to Education Code 45196, the amount paid to a substitute must be less than the absent employee's salary unless the Board has adopted a salary schedule for substitutes. In California School Employees Association v. Tustin Unified School District, the court ruled that a district could deduct from the absent employee's salary only the cost of an outside substitute employee, not the cost of existing classified employee(s) working additional hours to fill the position during the absence.

PERSONAL ILLNESS/INJURY LEAVE (continued)

Option 2 is mandated pursuant to Education Code 45196 for districts that annually credit regular classified employees with at least 100 working days of paid sick leave and, after they have exhausted all fully paid leaves, compensate them at 50 percent or more of their regular salary for the remainder of the 100 working days. Option 2 may be revised to specify more than 100 working days and/or the level of compensation the district will pay an employee, if it chooses to pay more than 50 percent of the employee's salary.

Districts that maintain a catastrophic leave program for their classified employees should specify how the program will affect the differential leave pay to which the employee may be entitled.

OPTION 1:

Note: In 53 Ops.Cal.Atty.Gen. 111 (1970), the Attorney General clarified that a classified employee is entitled to a total period of five months, commencing with the first day of illness, during which the amount deducted from his/her salary may not exceed the sum which is actually paid a substitute. This five-month period runs concurrently with any other paid leave. After the employee has exhausted all paid leaves, he/she is entitled to differential pay for the balance of the five-month period.

In *California School Employees Association v. Tustin Unified School District*, the court ruled that a district could deduct from the absent employee's salary only the cost of an outside substitute employee, not the cost of existing classified employee(s) working additional hours to fill the position during the absence.

Pursuant to Education Code 45196, the amount paid to a substitute must be less than the absent employee's salary unless the Board has adopted a salary schedule for substitutes.

A When a classified employee who has exhausted all paid leaves, including sick leave, shall for the remainder of the five-month period of absence to which he/she is entitled, receive his/her salary minus the actual amount paid a substitute to fill the employee's position during his/her absence and continues to be absent on account of illness or injury for a period of five months or less, the district shall deduct from the employee's regular salary for that period an amount that does not exceed the actual cost of a substitute to fill the position. (Education Code 45196)

The five-month period shall commence on the first day of the leave of absence and shall run concurrently with any other paid leave.

OPTION 2:

Note: Education Code 45196 authorizes, but does not require, a district to annually credit regular classified employees with at least 100 working days of paid sick leave, and to compensate any such employee at 50 percent or more of the employee's regular salary for the remainder of the 100 working days after the employee has exhausted all leaves for which he/she would be entitled to a full salary. Any district that chooses this option is **mandated** to adopt a rule to that effect. Such districts should note that this option is exclusive of other paid leave, holidays, or vacation. In *California School Employees Association v. Colton Joint Unified School District*, the court ruled that the district's practice of coordinating or combining vacation with the 100 days of differential leave contradicts the express provision of Education Code 45196.

PERSONAL ILLNESS/INJURY LEAVE (continued)

The following paragraph may be revised to specify more than 100 working days and/or the level of compensation the district will pay an employee, if it chooses to pay more than 50 percent of the employee's salary.

Each year, each regular classified employee shall be credited with no fewer than 100 working days of paid leave for personal illness or **accident injury**, including current year and accumulated days of leave. When the current year and accumulated days at full pay are exhausted, the remainder of the 100 days shall be compensated at **least** 50 percent of the employee's regular salary. Any of the 100 days of leave not used during the year in which they are credited shall be forfeited and shall not accumulate from year to year. This paid leave shall be exclusive of any other paid leave, holidays, vacation, or compensatory time to which the employee may be entitled. (Education Code 45196)

Parental Leave

Note: The following section is subject to any conflicting provision in a collective bargaining agreement that provides greater parental leave rights.

During each school year, a classified employee may use all available sick leave, including accumulated sick leave, for the purpose of parental leave for a period **of** up to 12 work weeks. The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of such parental leave. (Education Code 45196.1)

Note: Unlike leave taken pursuant to Government Code 12945.2, leave taken pursuant to Education Code 45196.1 does not require an employee to have at least 1,250 hours of service with the district during the previous 12-month period in order to be eligible for parental leave. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for further information on requirements related to the California Family Rights Act.

Eligibility for such leave shall not require 1,250 hours of service with the district during the previous 12 months. (Education Code 45196.1)

Note: Pursuant to Education Code 45196.1, the district is required to provide differential pay to a classified employee **for up to 12 work weeks when the employee** when he/she has exhausted all available sick leave, including accumulated sick leave, and continues to be absent due to parental leave pursuant to Government Code 12945.2. Such an employee is entitled to receive differential pay, calculated in the same manner described in Option 1 or 2 in the section "Continued Absence After Available Sick Leave Is Exhausted/Differential Pay" above, **for up to 12 work weeks. As amended by AB 2012 (Ch. 994, Statutes of 2018), Education Code 45196.1 requires that, regardless of the type of differential pay system used by the district, employees must receive at least 50 percent of their regular salary for any portion of the 12-week parental leave that remains following the exhaustion of sick leave. The following paragraph may be revised to specify a percentage higher than 50 percent in accordance with district practice.**

Since Education Code 45196.1 does not expressly require districts to provide differential pay to employees who are eligible for parental leave pursuant to Government Code 12945.6, **as added by SB 63 (Ch. 686, Statutes of 2017)**, it is unclear whether such employees would be entitled to differential pay. Districts should consult legal counsel if they have questions regarding differential pay for such employees.

PERSONAL ILLNESS/INJURY LEAVE (continued)

An employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave shall receive differential pay **of at least 50 percent of the employee's regular salary** for the remainder of the 12 work weeks. (Education Code 45196.1)

Parental leave taken pursuant to Education Code 45196.1 shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 or 12945.6, and the aggregate amount of parental leave shall not exceed 12 work weeks in a 12-month period. (Education Code 45196.1; Government Code 12945.2, 12945.6)

Extension of Leave

Note: Pursuant to Education Code 45195, the following extension of leave may be either paid or unpaid, and the Board may grant full pay for the full 18 months' allowable absence, if desired.

A permanent employee who is absent because of a personal illness or injury and who has exhausted all available sick leave, vacation, compensatory overtime, and any other paid leave shall be so notified, in writing, and offered an opportunity to request additional leave. The Board may grant the employee additional leave, paid or unpaid, for a period not to exceed six months and may renew this leave for two additional six-month periods or for lesser periods. The total additional leave granted shall not exceed 18 months. (Education Code 45195)

(cf. 4216 - Probationary/Permanent Status)

If the employee is still unable to **resume his/her duties return to work** after all available paid and unpaid leaves have been exhausted, the employee shall be placed on a reemployment list for a period of 39 months. If during this time the employee becomes **medically able, to resume the duties of his/her position, he/she the employee** shall be offered reemployment in the first vacancy in the classification of **his/her the employee's** previous assignment. During the 39 months, the employee's reemployment shall take preference over all other applicants except those laid off for lack of work or lack of funds, in which case the employee shall be ranked according to **his/her** seniority. (Education Code 45195)

Verification Requirements

Note: Education Code 45191 **mandates** the Board to adopt regulations that require proof of illness or injury and prescribe the means of verification. However, Education Code 45191 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. The following section should be modified to reflect district practice and any procedures that have been specified in bargaining agreements.

Labor Code 233 requires districts to allow their employees to use sick leave for the purposes specified in Labor Code 246.5, the paid sick leave law. Because the paid sick leave law is silent on requests for verification, and actually requires an employer to provide an employee with paid sick days upon oral or

PERSONAL ILLNESS/INJURY LEAVE (continued)

written request, districts should be cautious in requiring verification for sick leave used for the purposes specified in Labor Code 246.5 (items #7-8 in the section "Use of Sick Leave" above). Although a district is permitted to require verification from an employee who is a victim of domestic violence, sexual assault, or stalking, pursuant to Labor Code 230 and 230.1, a general insistence on verification could be deemed a violation of Labor Code 246.5. Any district with questions regarding its authority related to verification should consult legal counsel.

After any absence due to illness or injury, the employee shall submit a completed and signed district absence form to **his/her the employee's** immediate supervisor.

The Superintendent or designee may require verification whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the Superintendent or designee may require an employee to visit a physician selected by the district, at district expense, in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for additional leave of absence and a prognosis as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, deny the request for additional leave.

Note: 42 USC 2000ff-1, the Genetic Information Nondiscrimination Act, and its implementing regulations, 29 CFR 1635.1-1635.12, specify that it is unlawful for a district to request, require, or purchase an employee's or **his/her** family member's individual genetic information except in complying with the medical certification requirements for family care and medical leave purposes or with the employee's prior written authorization. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. Pursuant to 29 CFR 1635.9, any such information received by the district must be kept confidential as specified below.

Any district request for additional verification by an employee's physician or a district-selected physician shall be in writing and shall specify that the report to be submitted to the district should not contain the employee's genetic information. Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and shall not be disclosed except in accordance with 29 CFR 1635.9.

Before returning to work, an employee who has been absent for surgery, hospitalization, or extended medical treatment may be asked to submit a letter from **his/her a** physician stating that **he/she the employee** is able to return to work and stipulating any **recommended necessary** restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

PERSONAL ILLNESS/INJURY LEAVE (continued)**Short-Term and Substitute Employees**

Note: Pursuant to Labor Code 245-249, the district is required to grant a minimum of one hour of paid sick leave for every 30 hours worked by an employee who works for 30 days within a year of his/her employment. In implementing this requirement, Labor Code 246 permits the district to use any of the options specified below. Option 1 provides for paid leave accrual based on one hour for every 30 hours worked. Option 2 allows an accrual method that provides for a regular accrual basis and ensures that the employee receives 24 hours of paid sick leave by the 120th calendar day of his/her employment or each calendar year or 12-month period. Option 3 is for any district that credits employees with 24 hours or three days of paid sick leave at the beginning of each year and does not allow unused sick leave to carry over to the next year. In addition, pursuant to Labor Code 245.5, retired annuitants who have not reinstated to the applicable public retirement system are excluded from participation in these leave benefit provisions. The district should select the option below which corresponds to its approach under Labor Code 246.

See section below titled "Healthy Workplaces, Healthy Families Act Requirements" for additional requirements.

OPTION 1:

Except for a retired annuitant who is not reinstated to the retirement system, any short-term or substitute employees who works for 30 or more days within a year of his/her their employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

OPTION 2:

Except for a retired annuitant who is not reinstated to the retirement system, any short-term or substitute employees who works for 30 or more days within a year of his/her their employment shall accrue, on a regular basis, paid sick leave of up to 24 hours by the 120th calendar day of his/her their employment or each calendar year or 12-month period. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

OPTION 3:

Except for a retired annuitant who is not reinstated to the retirement system, any short-term or substitute employees who works for 30 or more days within a year of his/her their employment shall be credited with 24 hours or three days of paid sick leave for that year. Unused sick leave shall not carry over to the following year of employment. (Labor Code 246)

Note: The following paragraph applies to all the above options.

PERSONAL ILLNESS/INJURY LEAVE (continued)

Any short-term or substitute employees may begin to use accrued paid sick days on the 90th day of his/her their employment, after which he/she they may use the sick days as they are accrued. (Labor Code 246)

Note: The following paragraph applies to all of the above options and reflects the intent of the Healthy Workplaces, Healthy Families Act to enable California workers to address their own and their family's health needs and to provide them with economic security when they need to take time off work for reasons of domestic violence, sexual assault, or stalking. The following paragraph may be revised to include additional reasons for which short-term or substitute employees may use sick leave, pursuant to district policy or practice. Pursuant to Labor Code 247.5, a district is not required to inquire into the purposes for which an employee uses paid leave.

A short-term or substitute employee may use accrued sick leave for absences due to: (Labor Code 246.5)

1. His/her The employee's own need or the need of a family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care
2. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or his/her the employee's child, when the employee has been a victim of domestic violence, sexual assault, or stalking

Healthy Workplaces, Healthy Families Act Requirements

Note: Pursuant to Labor Code 245-249, all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act could result in an enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this new law should consult its legal counsel.

No employee, including a short-term or substitute employee, shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249.

To ensure the district's compliance with Labor Code 245-249, the Superintendent or designee shall:

1. At a conspicuous location in each workplace, display a poster on paid sick leave that includes the following information:
 - a. That an employee is entitled to accrue, request, and use paid sick days

PERSONAL ILLNESS/INJURY LEAVE (continued)

- b. The **amount number** of sick days provided by Labor Code 245-249
 - c. The terms of use of paid sick days
 - d. That discrimination or retaliation against an employee for requesting and/or using sick leave is prohibited by law and that an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against **him/her the employee**
2. Provide at least 24 hours or three days of paid sick leave to each eligible employee to use per year and allow eligible employees to use accrued sick leave upon reasonable request
 3. Provide eligible employees written notice, on their pay stub or other document issued with their pay check, of the amount of paid sick leave they have available

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

4. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years

Legal Reference: (see next page)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Legal Reference:

EDUCATION CODE

- 45103 Substitute employees
- 45190 Leaves of absence and vacations
- 45191 Leaves of absence for illness and injury
- 45191.5 Leave for military service connected disability
- 45193 Leave of absence for pregnancy (re use of sick leave under certain circumstances)
- 45195 Additional leave for nonindustrial accident or illness; reemployment preference
- 45196 Salary; deductions during sick leave
- 45196.1 Differential pay during parental leave up to 12 weeks after sick leave is exhausted
- 45202 Transfer of accumulated sick leave and other benefits

GOVERNMENT CODE

- 12945.1-12945.2 California Family Rights Act
- 12945.6 Parental leave

LABOR CODE

- 230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off
- 230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off
- 233 Illness of child, parent, spouse or domestic partner
- 245-249 Healthy Workplaces, Healthy Families Act of 2014

UNITED STATES CODE, TITLE 29

- 2601-2654 Family and Medical Leave Act of 1993, as amended

UNITED STATES CODE, TITLE 42

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

CODE OF FEDERAL REGULATIONS, TITLE 29

- 825.100-825.702 Family and Medical Leave Act of 1993
- 1635.1-1635.12 Genetic Information Nondiscrimination Act of 2008

COURT DECISIONS

California School Employees Association v. Colton Joint Unified School District, (2009) 170 Cal.App.4th 957

California School Employees Association v. Tustin Unified School District, (2007) 148 Cal.App.4th 510

ATTORNEY GENERAL OPINIONS

53 Ops. Cal. Atty. Gen. 111 (1970)

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CSBA Sample Board Policy

Students

BP 5117(a)

INTERDISTRICT ATTENDANCE

Note: The Education Code provides a number of options under which a district may enroll a student whose parent/guardian does not reside within district boundaries. Under an "interdistrict attendance permit" or "reciprocal agreement" pursuant to Education Code 46600-~~46611~~**46610**, a student may attend school in a different district when both the district of residence and the district of proposed attendance agree (Option 1 below). Alternatively, pursuant to Education Code 48300-48317, the Governing Board may declare the district to be a "school district of choice" willing to accept a specific number of interdistrict transfers into the district through a random selection process (Option 2 below). In order to maintain the integrity of the random selection process, it is recommended that a school district of choice not also accept transfers under the interdistrict attendance permit option except when extraordinary circumstances exist, as provided in Option 2 below. Districts that wish to use both sources of authority should consult legal counsel.

In addition, pursuant to Education Code 48204, a district may authorize a student whose parent/guardian is employed within district boundaries to attend a school in the district (Allen bill transfer); see AR 5111.1 - District Residency. ~~A student attending a school identified as low achieving on the state's Open Enrollment List may transfer to a school in any other district in the state, pursuant to Education Code 48350-48361; see BP/AR 5118 - Open Enrollment Act Transfers.~~

The Governing Board recognizes that parents/guardians of students who reside within the geographic boundaries of one district may, for a variety of reasons, desire to enroll their children in a school in another district.

(cf. 5111.1 - District Residency)

(cf. 5116.1 - Intradistrict Open Enrollment)

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

OPTION 1: Interdistrict Attendance Agreements and Permits

Note: The following section is for use by districts that have entered into an agreement with one or more other districts to accept **student** transfers through interdistrict attendance permits pursuant to Education Code 46600-~~46611~~ **46610**. Districts selecting this option should also select Option 1 in the accompanying administrative regulation.

The Board may enter into an agreement with any other school district, for a term not to exceed five school years, for the interdistrict attendance of students who are residents of the districts. (Education Code 46600)

Note: Education Code 46600 requires that the interdistrict attendance agreement specify the terms and conditions under which individual permits may be granted or denied. In addition, pursuant to Education Code 46600, students who have been granted an interdistrict attendance permit must be allowed to continue to attend the school without having to reapply unless the agreement between the two districts contains specific agreed-upon standards for reapplication; see the accompanying administrative regulation. Districts also may include in the agreement their agreed-upon standards for revocation of students' interdistrict attendance. Examples of conditions that may result in revocation include falsification of information stated on the permit application, unsatisfactory attendance, continual disruption, or poor academic achievement.

INTERDISTRICT ATTENDANCE (continued)

The agreement shall specify the terms and conditions under which interdistrict attendance shall be permitted or denied. It also may contain standards agreed to by both districts for reapplication and/or revocation of the student's permit. (Education Code 46600)

Note: Pursuant to Education Code 46600, it is the responsibility of the **attendance supervisor superintendent or designee** of the district of residence, subject to board policies of the district of residence and terms of the agreement, to issue an individual permit verifying the district's approval of an interdistrict transfer out of the district. The permit shall become valid when endorsed by the board's designee in the district of proposed **attendance-enrollment**.

See the accompanying administrative regulation for procedures to follow when the permit is denied.

Upon receiving a permit for transfer into the district that has been approved by the student's district of residence, or upon receiving a written request from the parent/guardian of a district student who wishes to enroll in another district, the Superintendent or designee shall review the request and may approve or deny the permit subject to the terms and conditions of the interdistrict attendance agreement.

OPTION 2: School District of Choice Program

Note: The following section is for use by districts that elect to participate in the school district of choice program pursuant to Education Code 48300-48317. **Pursuant to Education Code 48301, such a district must register as a school district of choice with the Superintendent of Public Instruction and County Board of Education before enrolling students under this option.** Districts selecting this option should also select Option 2 in the accompanying administrative regulation.

Pursuant to Education Code 48301, as amended by AB 99 (Ch. 15, Statutes of 2017), any district that elects to participate in this program must, on or before July 1, 2018, register as a school district of choice with the Superintendent of Public Instruction and the County Board of Education. Pursuant to Education Code 48317, as amended by AB 99, failure to register will result in the loss of a portion of the district's local control funding formula apportionment attributable to the average daily attendance (ADA) of students enrolled through the school district of choice program in the previous year.

The Board has designated the district as a "school district of choice" and shall accept students who reside **within** other California **school** districts who wish to attend a district school.

Each year, the Superintendent or designee shall recommend to the Board the number of transfer students that the district will be able to accept and shall identify the schools, grade levels, and programs that will be able to accept these students.

Note: Education Code 48301, as amended by AB 99 (Ch. 15, Statutes of 2017), requires that a school district of choice accept all transfers up to the maximum number established by the Board.

The Board shall, by resolution, annually establish the number of students who will be accepted into the district through this program **based on recommendations by the**

INTERDISTRICT ATTENDANCE (continued)

Superintendent or designee as to the number of transfer students the district will be able to accept and the schools, grades, and programs that will be able to accept the students. Once established, the district shall accept all students who apply to transfer into the district until the district is at maximum capacity, **as required pursuant to** (Education Code 48301).

Note: ~~Whenever the number of student applications exceeds the number of transfers that the Board has established,~~ Education Code 48301 requires a random, unbiased process for selecting students who will be admitted **through the school district of choice program** and prohibits consideration of certain **characteristics and factors in making the selections.** AB 99 (Ch. 15, Statutes of 2017) amended Education Code 48301 to expand the list of factors that must not be considered. Pursuant to Education Code 48301, family income may only be considered to the extent necessary to determine enrollment priority pursuant to Education Code 48306; see the accompanying administrative regulation.

~~The Board shall establish a selection process which ensures that students are~~ **Students shall be** admitted to district schools through an unbiased process that prohibits an inquiry into or evaluation or consideration of whether or not a student should be enrolled based upon **his/her the student's** academic or athletic performance, physical condition, proficiency in English, any of the individual characteristics set forth in Education Code 200, or family income. (Education Code 48301)

If the number of transfer applications exceeds the number of transfers the Board has elected to accept, approval for transfer shall be determined by a random drawing held in public at a regularly scheduled Board meeting. (Education Code 48301)

Note: Because the school district of choice program requires a random selection process, it is recommended that participating districts not admit students through the interdistrict attendance permit process described in Option 1 above except under extraordinary circumstances. Such circumstances might include approving interdistrict attendance permits for students who are victims of an act of bullying. Such students are given priority for interdistrict attendance permits pursuant to Education Code 46600; see the accompanying administrative regulation.

Because the district admits students in accordance with the school district of choice program, the Superintendent or designee shall not admit students based on individual interdistrict attendance permits pursuant to Education Code 46600-~~46611~~**46610** except under extraordinary circumstances.

Note: ~~Education Code 48313 requires a school district of choice to maintain and report specified information regarding requests for transfers and the disposition of those requests. As amended by AB 99 (Ch. 15, Statutes of 2017), Education Code 48313 requires this report to include the eligibility for free or reduced-price meals of students transferring into or out of the district and the number of students provided transportation; see items #3 and 5 below.~~

The Superintendent or designee shall ~~maintain a record~~ **keep an accounting** of **all** requests for admittance **and a record of their disposition, including,** ~~that includes,~~ but **is** not limited to, all of the following: (Education Code 48313)

INTERDISTRICT ATTENDANCE (continued)

1. The number of requests granted, denied, or withdrawn and, for denied requests, the reason for the denial
2. The number of students transferred into and out of the district pursuant to this program
3. The race, ethnicity, gender, self-reported socioeconomic status, eligibility for free or reduced-price meals, and the district of residence for each student transferred into or out of the district pursuant to this program
4. The number of students transferred into or out of the district pursuant to this program who are classified as English learners or students with disabilities

Note: Education Code 48311 authorizes, but does not require, a school district of choice to provide transportation to participating students to the extent that the district provides transportation assistance to other students. See section on "Transportation" below. Item #5 may be deleted by districts that do not provide transportation.

5. As applicable, the number of students described in items #3 and 4 above who are provided transportation assistance to a district school or program, and the total number of students provided transportation assistance, pursuant to the school district of choice program

Note: AB 99 (Ch. 15, Statutes of 2017) amended Education Code 48313 to revise the deadline for submitting the above report and to delete the requirement to submit the report to the Department of Finance. As amended, Education Code 48313 requires the California Department of Education to collect and report statewide data on its web site and to share the information with specified state agencies.

The Superintendent or designee shall report to the Board, at a regularly scheduled meeting, the information specified in items #1-5 above. No later than October 15 of each year, the Superintendent or designee shall provide the same information for the current school year, as well as information regarding the district's status as a school district of choice in the upcoming school year, to each geographically adjacent school district, the county office of education, and the Superintendent of Public Instruction. (Education Code 48313)

The district's compliance with **specified** program requirements shall be **subject to reviewed as part of** the annual district audit conducted pursuant to Education Code 41020. (Education Code 48301)

(cf. 3460 - Financial Reports and Accountability)

Transportation

Note: The following **optional** section is for use by all districts and should be revised to reflect district practice. Districts are not required to provide transportation or transportation assistance to students admitted

INTERDISTRICT ATTENDANCE (continued)

under an interdistrict attendance permit pursuant to Education Code 46600-~~46611~~ **46610**. Pursuant to Education Code 48311, a school district of choice is authorized, but not required, to provide transportation assistance to the extent that the district otherwise provides transportation assistance to students.

The district shall not provide transportation beyond any school attendance area. Upon request of a student's parent/guardian, the Superintendent or designee may authorize transportation for an interdistrict transfer student to and from designated bus stops within the attendance area of the school that the student attends if space is available.

*Legal Reference:*EDUCATION CODE

41020 Annual district audits

46600-~~46611~~ **46610** Interdistrict attendance agreements

48204 Residency requirements for school attendance

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

~~48350-48361 Open Enrollment Act~~

48900 Grounds for suspension or expulsion; definition of bullying

48915 Expulsion; particular circumstances

48915.1 Expelled individuals: enrollment in another district

48918 Rules governing expulsion procedures

48980 Notice at beginning of term

48985 Notices to parents in language other than English

52317 Regional occupational center/program, enrollment of students, interdistrict attendance

CALIFORNIA CONSTITUTION

Article 1, Section 31 Nondiscrimination on the basis of race, sex, color, ethnicity, or national origin

ATTORNEY GENERAL OPINIONS87 *Ops. Cal. Atty. Gen.* 132 (2004)84 *Ops. Cal. Atty. Gen.* 198 (2001)COURT DECISIONSWalnut Valley Unified School District v. the Superior Court of Los Angeles County, (2011) 192 Cal.App.4th 234Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275*Management Resources:*WEB SITESCSBA: <http://www.csba.org>California Department of Education: <http://www.cde.ca.gov>

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CSBA Sample Administrative Regulation

Students

AR 5117(a)

INTERDISTRICT ATTENDANCE

OPTION 1: Interdistrict Attendance Agreements and Permits

Note: The following option is for use by districts that have entered into an agreement with one or more other school districts to accept transfers through the "interdistrict attendance permit" or "reciprocal agreement" process pursuant to Education Code 46600-~~46611~~ **46610**. (See Option 1 in the accompanying Board policy.) In 87 Ops.Cal.Atty.Gen. 132 (2004), the Attorney General opined that districts could not charge students a fee for processing applications for interdistrict attendance.

In accordance with an agreement between the Governing Board and the board of another district, a permit authorizing a **student's attendance outside his/her district of residence student of either district to enroll in the other district** may be issued upon approval of both **districts** ~~the district of residence and the district of attendance~~.

Note: Pursuant to Education Code 46600.2, as added by AB 2826 (Ch. 550, Statutes of 2018), districts are required to post on their web sites, in a manner accessible to the public without a password, the procedures and timelines regarding a request for an interdistrict transfer permit.

The district shall post on its web site the procedures and timelines for requesting an interdistrict transfer permit, including a link to BP 5117 - Interdistrict Attendance. The posted information shall include, but is not limited to: (Education Code 46600.1, 46600.2)

- 1. The date upon which the district will begin accepting and processing interdistrict transfer requests for the following school year**
- 2. The reasons for which the district may approve or deny a request, and any information or documents that must be submitted as supporting evidence**
- 3. If applicable, the process and timelines by which a denial of a request may be appealed within the district before the district renders a final decision**
- 4. A statement that failure of a parent/guardian to meet any timelines established by the district shall be deemed an abandonment of the request**
- 5. Applicable timelines for processing a request, including the following statements:**
 - a. For an interdistrict transfer request received by the district 15 or fewer calendar days before the commencement of instruction in the school year for which the transfer is sought, the district will notify the parent/guardian of its final decision within 30 calendar days from the date the request was received.**

INTERDISTRICT ATTENDANCE (continued)

- b. For an interdistrict transfer request received by the district more than 15 days before the commencement of instruction in the school year for which the interdistrict transfer is sought, the district will notify the parent/guardian of its final decision as soon as possible, but no later than 14 calendar days after the commencement of instruction in the school year for which transfer is sought.

6. The conditions under which an existing interdistrict transfer permit may be revoked or rescinded

The Superintendent or designee may approve an interdistrict attendance permit for a student for any of the following reasons when stipulated in the agreement:

Note: Education Code 46600 requires districts to give priority for interdistrict attendance permits to a student who is a victim of an act of bullying, as provided below. For this purpose, Education Code 48900(r) defines bullying to include, but not be limited to, bullying committed by means of an electronic act directed specifically toward the student; see AR 5144.1 - Suspension and Expulsion/Due Process.

1. When the Priority for interdistrict attendance shall be given to a student who has been determined by staff of either the district of residence or district of proposed attendance enrollment to be a victim of an act of bullying, as defined in Education Code 48900(r), committed by a student of the district of residence. Such a student shall be given priority for interdistrict attendance under any existing interdistrict attendance agreement or, in the absence of an agreement, shall be given consideration for the creation of a new permit. (Education Code 46600)

(cf. 5131.2 - Bullying)

In addition, the Superintendent or designee may approve an interdistrict attendance permit for a student for any of the following reasons when stipulated in the agreement:

Note: **Optional** items #~~2-12~~ **1-11** below should be revised and/or deleted to reflect district practice.

- 2.1. To meet the child care needs of the student, Such a student may be allowed to continue to attend district schools only as long as he/she continues to use a the student's child care provider remains within district boundaries.

(cf. 5148 - Child Care and Development)

- 3.2. To meet the student's special mental or physical health needs as certified by a physician, school psychologist, or other appropriate school personnel.

(cf. 6159 - Individualized Education Program)

INTERDISTRICT ATTENDANCE (continued)

- 4.3.** When the student has a sibling attending school in the receiving district, to avoid splitting the family's attendance;
- 5.4.** To allow the student to complete a school year when ~~his/her~~ **the student's** parents/guardians have moved out of the district during that year;
- 6.5.** To allow the student to remain with a class graduating that year from an elementary, middle, or senior high school;
- 7.6.** To allow a high school senior to attend the same school ~~he/she~~ attended as a junior, even if ~~his/her~~ **the student's** family moved out of the district during the junior year;
- 8.7.** When the parent/guardian provides written evidence that the family will be moving into the district in the immediate future and would like the student to start the **school** year in the district;
- 9.8.** When the student will be living out of the district for one year or less;
- 10.9.** When recommended by the school attendance review board or by county child welfare, probation, or social service agency staff in documented cases of serious home or community problems which make it inadvisable for the student to attend the school of residence;

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5113.12 - District School Attendance Review Board)

- 11.10.** When there is valid interest in a particular educational program not offered in the district of residence;
- 12.11.** To provide a change in school environment for reasons of personal and social adjustment;

Note: In 84 Ops.Cal.Atty.Gen. 198 (2001), the Attorney General opined that a lack of school facilities is a justifiable reason for denial of the interdistrict attendance permit request. However, according to the Attorney General, once the student is admitted, the district may not later deny the student continued attendance at a district school because of overcrowding. Although Attorney General opinions are not binding on the courts, they are generally afforded deference in the court when there is no specific statutory or case law to the contrary. The following paragraph is based on this Attorney General opinion.

The Superintendent or designee may deny initial requests for interdistrict attendance permits due to limited district resources, overcrowding of school facilities at the relevant grade level, or other considerations that are not arbitrary. However, once a student is admitted, the district ~~may~~ **shall** not deny ~~him/her~~ continued attendance because of overcrowded facilities at the relevant grade level.

INTERDISTRICT ATTENDANCE (continued)

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

Note: Education Code 46600.2, as added by AB 2826, establishes the following timelines for notifying a student's parents/guardians of the district's final decision regarding the interdistrict transfer request.

If the transfer request is for a school year that begins within 15 calendar days of the receipt of the request, the Superintendent or designee shall notify the parent/guardian of the final decision within 30 calendar days of receiving the request. If the transfer request is for a school year that begins more than 15 calendar days after the receipt of the request, the parent/guardian shall be notified of the final decision as soon as possible, but no later than 14 calendar days after the commencement of instruction during that school year. (Education Code 46600.2)

Note: Education Code 46601 requires that, within 30 days of a request for an interdistrict permit, parents/guardians whose permit application was denied must be informed about their right to appeal to the County Board of Education. This notice shall be provided by the district denying the request, or, in the absence of an agreement between the districts, by the district of residence. Education Code 46600.2, as added by AB 2826, requires a district that denies a request for an interdistrict transfer to give written notice to the parent/guardian of the right to appeal to the County Board of Education.

Pursuant to Education Code 46601, parents/guardians may submit their appeal **to the County Board** within 30 calendar days of the ~~failure or refusal to issue~~ **district's final denial of** the permit. The County Board then has 30 calendar days, unless extended by an additional five school days for good cause, to make its determination as to whether the student should be allowed to attend the district of **proposed enrollment and the applicable period of attendance his/her choice**. However, ~~as amended by SB 344 (Ch. 461, Statutes of 2017),~~ Education Code 46601 allows a class 1 county (i.e., a county with a 1994-95 average daily attendance (ADA) of 500,000 or more for all districts in the county), **until July 1, 2023,** 60 calendar days to make its determination, ~~and a class 2 county (i.e., a county with a 1994-95 ADA of 180,000-499,999) 45 calendar days to make its determination.~~

Pursuant to Education Code 46602, if the County Board determines that the student should be permitted to attend the district of ~~his/her choice~~ **proposed enrollment**, the district shall admit the student without delay.

~~Within 30 calendar days of a request for an interdistrict permit,~~ **If a student's interdistrict transfer request is denied,** the Superintendent or designee shall, **in writing,** notify the parents/guardians of ~~a student who is denied interdistrict attendance regarding the process for~~ **their right to** appeal to the County Board of Education ~~as specified in Education Code 46601~~ **within 30 calendar days from the date of the final denial.** (Education Code ~~46601~~ **46600.2-46601**)

(cf. 5145.6 - Parental Notifications)

All notices to parents/guardians regarding the district's decision on any request for interdistrict transfer shall conform to the translation requirements of Education Code 48985, and may be provided by regular mail, electronic format if the parent/guardian provides an email address, or by any other method normally used to communicate with parents/guardians in writing. (Education Code 46600.2)

INTERDISTRICT ATTENDANCE (continued)

Pending a decision by the two districts or ~~an appeal~~ by the County Board ~~on appeal~~, the Superintendent or designee may provisionally admit a student who resides in another district for a period not to exceed two school months, **provided the district is the district of proposed enrollment. If the decision has not been rendered by the conclusion of two school months and the districts or County Board is still operating within the prescribed timelines, the student shall not be allowed to continue attending the district school to which the student was provisionally admitted.** (Education Code 46603)

Students who are under consideration for expulsion or who have been expelled may not appeal interdistrict attendance denials or ~~decisions~~ **rescissions** while expulsion proceedings are pending or during the term of the expulsion. (Education Code 46601)

(cf. 5119 - Students Expelled from Other Districts)

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

Note: Pursuant to Education Code 46600, once an interdistrict permit is granted and the student is enrolled in the new school, the district of enrollment (1) may not require the student to reapply; (2) must allow the student to continue to attend the school, unless the permit contains specific standards for reapplication; and (3) along with the district of residence, may not revoke the student's existing permit if he/she is entering grade 11 or 12. Therefore, even if an interdistrict attendance agreement between the two districts has expired, the student may be allowed to continue attending the school to which he/she has transferred, unless the agreement contains specific language requiring reapplication.

Once a student is admitted to a school on the basis of an interdistrict attendance permit, ~~he/she~~ **the student** shall not be required to reapply for an interdistrict transfer and shall be allowed to continue to attend the school ~~in which he/she is enrolled~~ **of enrollment**, unless reapplication standards are otherwise specified in the interdistrict attendance agreement. Existing interdistrict attendance permits shall not be rescinded **after June 30 following a student's completion of grade 10 or for any students** entering grade 11 or 12 in the subsequent school year. (Education Code 46600)

OPTION 2: School District of Choice Program

Note: The following section is for use by districts that elect to participate in the school district of choice program pursuant to Education Code 48300-48317. (See Option 2 in the accompanying Board policy.)

The Superintendent or designee shall communicate with parents/guardians regarding transfer opportunities under the school district of choice program. Communications sent to parents/guardians shall be available in all languages for which translations are required pursuant to Education Code 48985, shall be factually accurate, and shall not target particular neighborhoods or individual parents/guardians on the basis of a child's actual or perceived academic or athletic skill or any other personal characteristic. (Education Code 48301, 48980)

INTERDISTRICT ATTENDANCE (continued)

Note: The following paragraph may be revised to reflect district practice. Education Code 48312, as amended by AB 99 (Ch. 15, Statutes of 2017), requires a school district of choice to make public announcements regarding district schools, programs, policies, and procedures, including transportation options. Education Code 48302, as amended by AB 99, encourages districts to hold informational meetings and make public announcements regarding the current educational programs offered by the district so that parents/guardians may make informed decisions regarding their child's education and provide input on methods to improve the current programs.

The Superintendent or designee shall also make public announcements regarding district schools, programs, policies, and procedures, including transportation options if applicable, during the enrollment period. (Education Code 48312)

Note: The following optional paragraph reflects Education Code 48302, which encourages districts to hold informational meetings as described below, and may be revised to reflect district practice..

The Superintendent or designee may hold informational meetings on the district's current educational programs, so that parents/guardians can provide input to the district on methods to improve current programs and make informed decisions regarding their children's education. (Education Code 48302)

Note: Education Code 48301, as amended by AB 99 (Ch. 15, Statutes of 2017), requires that application information be posted on the district's web site.

The process for student transfers into the district under the school district of choice program, including, but not limited to, any applicable form, the timeline for a transfer, and an explanation of the selection process, shall be posted on the district's web site. (Education Code 48301)

(cf. 1113 - District and School Web Sites)

Parents/guardians shall submit applications for interdistrict attendance to the district office **by before** January 1 of the school year preceding the school year for which the student **may is requesting to** be transferred. The application deadline may be waived upon agreement between the district and the student's district of residence. (Education Code 48308)

The application deadline shall not apply to an application requesting a transfer if the parent/guardian with whom the student resides is enlisted in the military and was relocated by the military within 90 days prior to submitting the application. (Education Code 48308)

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

Note: Education Code 48306, as amended by AB 99 (Ch. 15, Statutes of 2017), adds a requirement that second priority for admission under the school district of choice program be given to students who are eligible for free and reduced-price meals and that third priority be given to children of military personnel.

INTERDISTRICT ATTENDANCE (continued)

Priority for transfer under the school district of choice program shall be granted as follows: (Education Code 48306)

1. First priority shall be given to siblings of students already in attendance in the district.

2. Second priority shall be given to students eligible for free or reduced-price meals.

(cf. 3553 – Free and Reduced Price Meals)

3. Third priority shall be given to children of military personnel.

Note: Pursuant to Education Code 48305, if the district chooses to use existing entrance criteria for specialized schools or programs, then the criteria must be uniformly applied. The following **optional** paragraph is for use by districts that choose to use existing entrance criteria.

Any existing entrance criteria for specialized schools or programs shall be uniformly applied to all applicants. (Education Code 48305)

Note: Items #1-2 below are **optional** and may be revised to reflect district practice. Education Code 48303 provides that a district may not deny a transfer because the additional cost of educating the student would exceed the amount of additional state aid to be received. However, pursuant to Education Code 48303, a transfer may be rejected if it would require the district to create a new program to serve the student, as specified in item #1.

The district may deny a transfer into the district under the school district of choice program under either of the following circumstances: 1. The **if the** transfer into the district would require the district to create a new program to serve that student, except that the district shall not reject the transfer of a student with disabilities or an English learner. (Education Code 48303)

Note: Pursuant to Education Code 48307, a school district of choice may prohibit a transfer into the district if the Governing Board determines that the transfer would negatively impact a court-ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the district. In Crawford v. Huntington Beach Union High School District, a California appellate court held that a district's intradistrict open enrollment policy, which contained a racial and ethnic balance component as authorized by Education Code 35160.5, was unconstitutional. According to the court, because the constitutional provisions added by Proposition 209 in 1996 (California Constitution, Article I, Section 31) prohibit discrimination against or preferential treatment for any individual or group on the basis of race, sex, color, ethnicity, or national origin, a district must not adopt a policy containing different admission criteria on the basis of race. However, pursuant to Education Code 48307, as amended by AB 99 (Ch. 15, Statutes of 2017), denial of transfers on the basis of a voluntary desegregation plan or the racial and ethnic balance of the district must be consistent with the provisions of Proposition 209. It is recommended that the district consult legal counsel before adopting a policy to allow the denial of transfers on either of these bases.

For language regarding student transfers out of the district for any of the reasons specified in item #2a-c, see section "Transfers Out of the District" below.

INTERDISTRICT ATTENDANCE (continued)

2. The Board determines that the transfer into the district would negatively impact any of the following: (Education Code 48307)
- a. A court-ordered desegregation plan
 - b. A voluntary desegregation plan of the district, consistent with the California Constitution, Article 1, Section 31
 - c. The racial and ethnic balance of the district, consistent with the California Constitution, Article 1, Section 31

Whenever the number of transfer applications exceeds the number of interdistrict transfers that may be accepted as annually determined by the Governing Board, students accepted for transfer shall be selected by a random drawing held in public at a regularly scheduled Board meeting **before February 15 of the school year preceding the school year for which the transfer is sought.** (Education Code 48301)

Priority for transfer under the school district of choice program shall be granted as follows: (Education Code 48306)

1. First priority shall be given to siblings of students already in attendance in the district.
2. Second priority shall be given to students eligible for free or reduced-price meals.
(*cf. 3553 - Free and Reduced Price Meals*)
3. Third priority shall be given to children of military personnel.

Note: Education Code 48308, as amended by AB 99 (Ch. 15, Statutes of 2017), requires that parents/guardians of students who have requested a transfer be provided the following notice by February 15.

Between January 1 and No later than February 15 of the school year preceding the school year for which the student is requesting to be transferred, the Superintendent or designee shall notify the parent/guardian in writing whether the application has been provisionally accepted or rejected or of the student's position on any waiting list. (Education Code 48308)

Note: Education Code 48308, as amended by AB 99 (Ch. 15, Statutes of 2017), requires the following notifications to the district of residence.

If a student's application for transfer is accepted, the Superintendent or designee shall so notify the student's district of residence no later than February 15 of the school year preceding the school year for which the student is requesting to be transferred. (Education Code 48308)

INTERDISTRICT ATTENDANCE (continued)

The number of students accepted for transfer into the district, by school and grade level, shall be reported to the district of residence on or before February 15. (Education Code 48308)

If a student's application is denied, the Superintendent or designee shall notify the student's parents/guardians that the number of students requesting to transfer exceeded the district's capacity and that the student was not selected during the random drawing. **The Such** determination shall be accurately recorded in the minutes of the Board meeting at which the determination was made. (Education Code 48308)

(cf. 9324 - Minutes and Recordings)

For a student whose parent/guardian was relocated by the military **less than** 90 days prior to the submission of the application, the district shall make a final decision to accept or reject the application within 90 days of its receipt. If the student's application has been submitted less than 90 days prior to the beginning of the school year, then the district shall accept or deny the application before the school year begins. Upon **his/her** acceptance, the student may immediately enroll in a district school. (Education Code 48308)

Vacancies may be filled from the waiting list until May 1 of the school year preceding the school year for which students are requesting to be transferred. (Education Code 48308)

The final number of students **accepted for transfer enrolled into the district through the school district of choice program**, by school and grade level, along with the names of the students, shall be reported to the district of residence on or before May 2. (Education Code 48308)

Students admitted through the school district of choice program are deemed to have fulfilled district residency requirements pursuant to Education Code 48204. (Education Code 48301)

(cf. 5111.1 - District Residency)

(cf. 5116.1 - Intradistrict Open Enrollment)

Final acceptance of the transfer is applicable for one school year and shall be renewed automatically each year unless the Board, by adoption of a resolution, withdraws from participation in the program and no longer accepts transfer students from other districts. (Education Code 48308)

| |
|--|
| Note: The following paragraph may be revised by districts that do not maintain high schools. |
|--|

Even if the district withdraws from participation in the program, students who attended or received a notice of acceptance into the district before the Board's resolution of withdrawal

INTERDISTRICT ATTENDANCE (continued)

shall be permitted to attend school in the district, and admitted high school students may continue attending school in the district until they graduate from high school. (Education Code 48307, 48308)

The district may accept any completed coursework, attendance, and other academic progress credited to an accepted student by any district(s) **the student he/she** has previously attended and may grant academic standing to the student based upon the district's evaluation of the student's academic progress. (Education Code 48309)

(cf. 6146.3 - Reciprocity of Academic Credit)

The district may revoke a student's enrollment if **he/she the student** is recommended for expulsion pursuant to Education Code 48918. (Education Code 48309)

Transfers Out of the District

Note: The following **optional** section is for use by all districts.

~~Pursuant to Education Code 48307, a district must not deny a student whose parent/guardian is in active military duty from transferring out of the district to any other district. In addition, Education Code 46600, as amended by AB 2659 (Ch. 186, Statutes of 2016), provides that a district must not prohibit the transfer of such a student out of the district to any other district that approves the transfer, regardless of whether or not an interdistrict transfer agreement exists or a permit is issued.~~

A student whose parent/guardian is in active military duty shall not be prohibited from transferring out of the district, provided the school district of proposed enrollment approves the application for transfer. (Education Code 46600, 48307)

The district may limit transfers out of the district to a school district of choice under any of the following circumstances: (Education Code 48307)

Note: Even if a district has not designated itself as a school district of choice, it has the authority pursuant to Education Code 48307 to limit the number of students transferring out of the district into other districts that have designated themselves as school districts of choice. A district with an ADA of more than 50,000 may annually limit the number of such transfers to one percent of its current year estimated ADA. A district with an ADA of 50,000 or less may limit the number of such transfers to three percent of its current estimated ADA and may limit the maximum number of such transfers for the duration of the program to 10 percent of the ADA for that period. In Walnut Valley Unified School District v. Superior Court of Los Angeles County, the appellate court held that the 10 percent cap on outbound transfers "for the duration of the program" should be based on the district's ADA over the entire life of the district of choice program (i.e., from the program's inception in 1994 until the present day). The district may revise item #1 to reflect the applicable percentage in Education Code 48307 based on its ADA.

1. The number of student transfers out of the district to a school district of choice has reached the limit specified in Education Code 48307 based on the district's average daily attendance.

INTERDISTRICT ATTENDANCE (continued)

2. The County Superintendent of Schools has given the district a negative budget certification or has determined that the district will not meet the state's standards and criteria for fiscal stability in the subsequent fiscal year exclusively as a result of student transfers from this district to a school district of choice.

(cf. 3100 - Budget)

Note: Item #3 is **optional** and should be revised to reflect district practice. ~~As noted above in the section "Option 2: School District of Choice Program,"~~ Education Code 48307 authorizes the district to prohibit a transfer ~~in or~~ out of the district under the school district of choice program if the Board determines that the transfer would negatively impact a court-ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the district. ~~As amended by AB 99 (Ch. 15, Statutes of 2017),~~ Education Code 48307 provides that denial of transfers on the basis of a voluntary desegregation plan or the racial and ethnic balance of the district must be consistent with the constitutional provisions added by Proposition 209 in 1996 (California Constitution, Article 1, Section 31). It is recommended that districts consult legal counsel before adopting policy to allow denial of transfers on either of these bases.

3. The Board determines that the transfer would negatively impact any of the following: (Education Code 48307)
- a. A court-ordered desegregation plan
 - b. A voluntary desegregation plan of the district, consistent with the California Constitution, Article 1, Section 31
 - c. The racial and ethnic balance of the district, consistent with the California Constitution, Article 1, Section 31

(7/12 10/17) 3/19

CSBA Sample Administrative Regulation

Students

AR 5125.2(a)

WITHHOLDING GRADES, DIPLOMA OR TRANSCRIPTS

Note: In certain limited circumstances, state law permits districts to withhold student grades, diplomas, and/or transcripts. Pursuant to Education Code 48904, parents/guardians of any minor the district may withhold the grades, diploma, and/or transcripts of a student who willfully cuts, defaces, or otherwise injures any real or personal property belonging to the district, or who willfully does not return district property that was loaned to the student, until the damages are paid. are liable for paying damages to the district up to the amount specified in law and annually adjusted for inflation. For more information regarding limits of damages, as annually adjusted for inflation, see BP/AR 3515.4 - Recovery for Property Loss or Damage. Until the damages are paid, the district is authorized to withhold the grades, diploma, and/or transcripts of the student responsible for the damage. Pursuant to Education Code 49014, as added by AB 1974 (Ch. 577, Statutes of 2018), a current or former homeless or foster youth is exempted from the requirement to pay damages.

If a student's parents/guardians are unable to pay the damages, Education Code 48904 requires the district to offer an option for the student to provide work in lieu of payment. Pursuant to Education Code 49014, a district may offer any other student regardless of the ability to pay, other than a current or former homeless or foster youth, alternative, nonmonetary means to settle the debt owed as a result of damage or loss of district property. In such cases, the district may withhold the student's grades, diploma, and/or transcripts until the work or other alternative is completed.

Education Code 48904 mandates the Governing Board to establish procedures for withholding a student's grades, diploma, and/or transcripts until reparation is made.

When a minor student willfully cuts, defaces, or otherwise injures real or personal property of the district or willfully does not return district property that has been loaned to him/her the student upon demand of a district employee, the student's parents/guardians may be required to pay the costs of all damages within the limits established pursuant to Education Code 48904. Until the student's parents/guardians have paid for the damages or the student has completed voluntary work or other nonmonetary alternative offered by the district in lieu of monetary damages, the Superintendent or designee may withhold the student's grades, diploma, and/or transcripts. (Education Code 48904, 49014)

(cf. 3515.4 - Recovery for Property Loss or Damage)
(cf. 5121 - Grades/Evaluation of Student Achievement)
(cf. 5125 - Student Records)
(cf. 5131.5 - Vandalism and Graffiti)
(cf. 6161.2 - Damaged or Lost Instructional Materials)

This administrative regulation shall not apply to a student who is a current or former homeless or foster youth. (Education Code 49014)

Before withholding the a student's grades, diploma, and/or transcripts, the Superintendent or designee shall inform the student's parents/guardians in writing of the student's alleged misconduct. (Education Code 48904)

WITHHOLDING GRADES, DIPLOMA OR TRANSCRIPTS (continued)*(cf. 5145.6 - Parental Notifications)*

Note: Education Code 48904 **mandates** that the district's procedures for withholding a student's grades, diploma, and/or transcripts conform to procedures established in the Education Code for student expulsion. For due process procedures related to student expulsion, see BP/AR 5144.1 - Suspension and Expulsion/Due Process.

The student shall be afforded due process consistent with procedures established for the expulsion of students. (Education Code 48904)

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

~~If the student and parents/guardians are unable to pay for the damages or return the property, the Superintendent or designee shall provide a program of voluntary work for the student in lieu of monetary damages. Upon completion of the voluntary work, the student's grades, diploma, and/or transcripts shall be released. (Education Code 48904)~~

When a student who is transferring into the district has had **his/her** grades, **a** diploma, and/or transcripts withheld by the previous district, the Superintendent or designee shall continue to withhold the student's grades, diploma, and/or transcripts until notified by the previous district that the decision to withhold has been rescinded. (Education Code 48904.3)

Upon receiving notice that a student whose grades, diploma, and/or transcripts have been withheld by this district has transferred to another district in California, the Superintendent or designee shall provide the student's records to the new district and notify the new district that the student's grades, diploma, and/or transcripts are being withheld from the student and parents/guardians pursuant to Education Code 48904.

The Superintendent or designee shall also notify the student's parents/guardians in writing that the decision to withhold the student's grades, diploma, and/or transcripts will be enforced by the new district. (Education Code 48904.3)

*Legal Reference:*EDUCATION CODE48904 *Liability of parent*48904.3 *Withholding grades, diplomas, or transcripts of pupils causing property damage or injury; transfer of pupils to new school districts; notice to rescind decision to withhold*48911 *Suspension by principal, designee or superintendent***49014 *Public School Fair Debt Collection Act***49069 *Absolute right to access*

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Policy Reference UPDATE Service

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CSBA Sample Board Policy

Students

BP 5127(a)

GRADUATION CEREMONIES AND ACTIVITIES

Note: The following **optional** policy is for use by any district that maintains a high school and should be modified to reflect district practice.

High school graduation ceremonies shall be held to recognize those students who have earned a diploma by successfully completing the required course of study, satisfying district standards, and passing any required assessments. The Governing Board believes that these students deserve the privilege of a public celebration that recognizes the significance of their achievement and encourages them to continue the pursuit of learning throughout their lives.

(cf. 6011 - Academic Standards)

(cf. 6143 - Courses of Study)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)

At the discretion of the Superintendent or designee, a student who will complete graduation requirements during the summer may **be allowed to** participate in graduation exercises without receiving **his/her a** diploma. When the requirements have been satisfied, a diploma shall be sent to the student.

Note: **There are three high school equivalency tests that are approved by the State Board of Education for the purpose of receiving a California High School Equivalency Certificate: the General Educational Development Test (GED), the High School Equivalency Test, and the Test Assessing Secondary Completion. In addition, students age 16 or older may take the California High School Proficiency Examination (CHSPE) for the purpose of receiving a Certificate of Proficiency, which is equivalent to a high school diploma. On its web site, the California Department of Education (CDE) indicates that a student's successful completion of a high school equivalency test or the CHSPE is not equivalent to completing all coursework required for regular graduation from high school. General Educational Development (GED) Test results may not be used by the district to satisfy the minimum course requirements for graduation. The following optional paragraph parallels this concept with regard to use of results of the GED and California High School Proficiency Examination for participation in graduation ceremonies provides that students receiving such certificates are not eligible to participate in graduation ceremonies and may be revised to reflect district practice.**

High school students who have passed **a high school equivalency test or** the California High School Proficiency Examination **or the General Educational Development Test** must also meet district graduation requirements in order to participate in graduation ceremonies.

(cf. 6146.2 - Certificate of Proficiency/High School Equivalency)

Note: School-sponsored and school-directed prayer at public high school graduation ceremonies has been ruled unconstitutional by both the U.S. Supreme Court (Lee v. Weisman) and the California Supreme Court (Sands v. Morongo Unified School District). However, the law is unclear as to whether student-led, student-

GRADUATION CEREMONIES AND ACTIVITIES (continued)

initiated prayer at graduation ceremonies is constitutional. In Cole v. Oroville Union High School District, the 9th Circuit Court of Appeals found that it would be unconstitutional for a district to allow a student to give a sectarian and proselytizing invocation at graduation. In that case, the district had developed a policy whereby students determined whether an invocation would be granted and, if so, would then select a fellow student to deliver it. The principal would then review the content of the student invocation for proselytizing messages. The court upheld the policy authorizing principal review, but did not rule on the underlying policy allowing the invocation in the first place. Some attorneys have argued that the U.S. Supreme Court's decision in Santa Fe Independent School District v. Doe, which found unconstitutional a district policy allowing student-led, student-initiated prayers at football games, would also apply to student-led, student-initiated prayer and invocations at graduation ceremonies. In Workman v. Greenwood Community School Corporation, a federal district court in Indiana relied on the holdings in Lee and Santa Fe to grant a preliminary injunction prohibiting the district from permitting students to lead a prayer during the graduation ceremony even though the invocation was chosen through election by the senior class. The court reasoned that attendance at the graduation was functionally obligatory and the election was school sponsored. Because this issue has not been authoritatively resolved by the courts, it is strongly recommended that districts consult legal counsel prior to adopting policies or procedures allowing prayer at graduation. See also the U.S. Department of Education's Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools.

Option 1 is for use by districts that prohibit prayer at graduation ceremonies. Option 2 is for use by those districts that allow a student-initiated, student-led prayer at graduation ceremonies. However, because the issue has not yet been authoritatively resolved by the courts, it is strongly recommended that districts selecting Option 2 consult legal counsel prior to the adoption of this policy and/or any other procedure allowing prayer at graduation ceremonies.

OPTION 1: Invocations, prayers, or benedictions shall not be included in graduation ceremonies. The school or district shall not sponsor other ceremonies or programs for graduates that include prayer.

OPTION 2: The school or district shall not direct invocations, prayers, or benedictions at graduation ceremonies.

(cf. 1330 - Use of School Facilities)
(cf. 5145.2 - Freedom of Speech/Expression)

Honors and Awards

Note: The following optional section may be modified to reflect district practice. Districts that choose to recognize students for outstanding academic performance should adopt procedures for selecting honorees and notifying students and their parents/guardians. Such rules, procedures, and criteria may be added to this section.

To honor superior academic achievement, graduation ceremonies shall include recognition of valedictorian(s) and salutatorian(s). Valedictorian(s) and salutatorian(s) shall be selected based on established criteria and procedures that use multiple measures of academic performance.

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

GRADUATION CEREMONIES AND ACTIVITIES (continued)

The Superintendent or designee shall identify other school-sponsored awards which may be given during graduation exercises. A separate awards program may be held to recognize graduating students receiving other school and non-school awards.

(cf. 5126 - Awards for Achievement)

Conduct at Graduation Attire Ceremonies

Note: The following section is optional. Graduation ceremonies are school-sponsored and/or school-related activities over which school boards have authority. Thus, the Governing Board may regulate student behavior at such events.

Any student participating in a graduation ceremony shall comply with district policies and regulations pertaining to student conduct.

(cf. 5131 - Conduct)

Note: Under the authority granted the Governing Board to regulate student conduct, the Board may require graduating students to wear ceremonial attire, such as cap and gown, at the ceremony. However, Education Code 35183.3, as added by AB 1463 (Ch. 296, Statutes of 2009), allows graduating students who are in active military service to wear their military dress uniforms to graduation ceremonies. In its Fiscal Management Advisory 17-01, Pupil Fees, Deposits, and other Charges, CDE advises that a district that requires its students to wear a cap and gown as a condition of their participation in the high school graduation ceremony may not require such students to purchase the cap and gown. CDE recommends that such districts provide the graduates with a cap and gown for their use at the graduation ceremony and inform them that those interested may purchase a cap and gown from a vendor. See AR 3260 - Fees and Charges.

The Superintendent or designee may require graduating students to wear ceremonial attire, such as cap and gown, at the ceremony.

(cf. 3260 - Fees and Charges)

However, any Any graduating student who has completed basic training and is an active member of any branch of the United States Armed Forces may, at his/her the student's option, wear his/her a military dress uniform at the ceremony. (Education Code 35183.3)

Note: The following optional paragraphs may be revised to reflect district practice. Education Code 35183.1, as added by AB 1248 (Ch. 804, Statutes of 2018), permits students to wear tribal regalia or recognized objects of religious or cultural significance as an adornment to the customary cap and gown. However, the district may exercise discretion to prohibit any item that is likely to cause a substantial disruption of, or material interference with, the ceremony.

Students shall be permitted to wear tribal regalia or recognized objects of religious or cultural significance as an adornment to the customary ceremonial attire, as long as the

GRADUATION CEREMONIES AND ACTIVITIES (continued)

adornment does not cause a substantial disruption of, or material interference with, the graduation ceremony. (Education Code 35183.1)

Students who desire to wear such adornments shall seek permission from the Superintendent or designee at least 14 days before the graduation ceremony.

Disciplinary Considerations

Note: **The following optional section may be revised to reflect district practice.** The withholding of a diploma is governed by Education Code 48904 and is separate from the denial of participation in graduation ceremonies; see AR 5125.2 - Withholding Grades, Diploma or Transcripts and BP 6161.2 - Damaged or Lost Instructional Materials. Even though the graduation ceremony is not an essential component to the granting of a diploma, it is an important symbolic event. Therefore, it is recommended that districts provide some due process before denying a student the privilege of participating in the ceremony.

~~In order to encourage high standards of student conduct and behavior, the principal may deny a student the privilege of participating in graduation ceremonies and/or activities, in accordance with school rules. Prior to denial of the privilege, the student, and where practicable his/her parent/guardian, shall be made aware of the grounds for such denial and shall be given an opportunity to respond. If a privilege is to be denied, the student and parent/guardian shall receive written notice of the denied privilege and the means whereby he/she may appeal the decision. Students are expected to comply with district and school policies, regulations, and rules throughout the school session, including during graduation and related events. Students shall not be denied the privilege of participating in graduation ceremonies except as discipline in cases of serious misconduct. In no event shall a student be denied participation in graduation ceremonies unless the principal or designee has informed the student and the student's parents/guardians of the misconduct and has given them an opportunity to respond.~~

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

~~(cf. 5131 - Conduct)~~

~~(cf. 5144 - Discipline)~~

~~(cf. 6161.2 - Damaged or Lost Instructional Materials)~~

During the graduation ceremony, a student may be removed from the ceremony for conduct that is disruptive or that poses a risk to safety.

High school seniors shall be notified of this policy in advance, through the student handbook or other means, and shall be required to acknowledge receiving it.

Legal Reference: (see next page)

GRADUATION CEREMONIES AND ACTIVITIES (continued)

Legal Reference:

EDUCATION CODE

35183.1 Graduation ceremonies; tribal regalia or recognized object of religious/cultural significance

35183.3 Graduation ceremonies; military dress uniforms

38119 Lease of personal property; caps and gowns

48904 Liability of parent or guardian; withholding of grades, diplomas, transcripts

51225.5 Honorary diplomas; foreign exchange students

51410-~~51412~~ **51413** Diplomas

COURT DECISIONS

***Workman v. Greenwood Community School Corporation*, (2010) Case No. 1:2010cv00293**

Cole v. Oroville Union High School District, (2000, 9th Cir.) 228 F.3d 1092

Santa Fe Independent School District v. Doe, (2000) 530 U.S. 290

Lee v. Weisman, (1992) 505 U.S. 577

Sands v. Morongo Unified School District, (1991) 53 Cal. 3d 863

Lemon v. Kurtzman, (1971) 403 U.S. 602

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Pupil Fees, Deposits and Other Charges, Fiscal Management Advisory 17-01, July 28, 2017

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, February 2003

WEB SITES

AASA The School Superintendents Association: <http://www.aasa.org>

Antidefamation League: <https://www.adl.org>

California Department of Education, High School: <http://www.cde.ca.gov/ci/gs/hs>

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

(7/01 ~~3/10~~) 3/19

CSBA Sample Exhibit

Students

E 5145.6(a)

PARENTAL NOTIFICATIONS

Cautionary Notice: Government Code 17581.5 releases districts from the obligation to perform specified mandated activities when the Budget Act does not provide reimbursement during that fiscal year. The Budget Act of 2018 (SB 840, Ch. 29, Statutes of 2018) extends the suspension of these requirements through the 2018-19 fiscal year. As a result, certain provisions of the following Exhibit related to scoliosis screening and bus safety instruction may be suspended.

Note: The following exhibit lists notices which the law explicitly requires be provided to parents/guardians. See the referenced Board policy, administrative regulation, or Board bylaw for further information about related program and notice requirements. For example, see AR 1312.3 - Uniform Complaint Procedures for the contents of the annual notice regarding uniform complaint procedures as mandated by 5 CCR 4622.

The exhibit does not include other notices that are recommended throughout CSBA's sample policy manual but are not required by law. The district may revise the exhibit to reflect additional notifications provided by the district.

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|-------------------------------|--|---|---|
| I. Annually | | | |
| Beginning of each school year | Education Code 222.5 | BP 5146 | Rights and options for pregnant and parenting students |
| Beginning of each school year | Education Code 234.7 | BP 0410 | Right to a free public education regardless of immigration status or religious beliefs |
| Beginning of each school year | Education Code 310 | BP 6142.2 AR 6174 | Information on the district's language acquisition programs |
| Beginning of each school year | Education Code 17611.5, 17612, 48980.3 | AR 3514.2 | Use of pesticide product, active ingredients, Internet address to access information, and, if district has no web site and uses certain pesticides, integrated pest management plan |
| By February 1 | Education Code 35256, 35258 | BP 0510 | School Accountability Report Card provided |
| Beginning of each school year | Education Code 35291, 48980 | AR 5144 AR 5144.1 | District and site discipline rules |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|---|--|--|
| I. Annually (continued) | | | |
| Beginning of each school year | Education Code 44050 | BP 4119.21 4219.21 4319.21 | Code of conduct addressing employee interactions with students |
| Beginning of each school year | Education Code 46010.1 | AR 5113 | Absence for confidential medical services |
| Beginning of each school year, if district has adopted policy on involuntary transfer of students convicted of certain crimes when victim is enrolled at same school | Education Code 48929, 48980 | BP 5116.2 | District policy authorizing transfer |
| Beginning of each school year | Education Code 48980 | BP 6111 | Schedule of minimum days and student-free staff development days |
| Beginning of each school year | Education Code 48980, 231.5; 5 CCR 4917 | AR 5145.7 | Copy of sexual harassment policy as related to students |
| Beginning of each school year | Education Code 48980, 32255-32255.6 | AR 5145.8 | Right to refrain from harmful or destructive use of animals |
| Beginning of each school year | Education Code 48980, 35160.5, 46600-46611, 48204, 48301, 48350-48361 | BP 5111.1 AR 5116.1 AR 5117 | All statutory attendance options, available local attendance options, options for meeting residency, form for changing attendance, appeals process |
| Beginning of each school year, if Board allows such absence | Education Code 48980, 46014 | AR 5113 | Absence for religious exercises or purposes |
| Beginning of each school year | Education Code 48980, 48205 | AR 5113 BP 6154 | Excused absences; grade/credit cannot be reduced due to excused absence if work or test has been completed; full text of Education Code 48205 |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|---|--|--|
| I. Annually (continued) | | | |
| Beginning of each school year | Education Code 48980, 48206.3, 48207, 48208 | AR 6183 | Availability of home/hospital instruction for students with temporary disabilities |
| Beginning of each school year | Education Code 48980, 49403 | BP 5141.31 | School immunization program |
| Beginning of each school year | Education Code 48980, 49423, 49480 | AR 5141.21 | Administration of prescribed medication |
| Beginning of each school year | Education Code 48980, 49451; 20 USC 1232h | AR 5141.3 | Right to refuse consent to physical examination |
| Beginning of each school year | Education Code 48980, 49471, 49472 | BP 5143 | Availability of insurance |
| Beginning of each school year | Education Code 49013; 5 CCR 4622 | AR 1312.3 | Uniform complaint procedures, available appeals, civil law remedies |
| Beginning of each school year | Education Code 49063 | AR 5125 AR 5125.3 | Challenge, review, and expunging of records |
| Beginning of each school year | Education Code 49063, 49069; 20 USC 1232g; 34 CFR 99.7 | AR 5125 | Student records: inspect and review, access, types, location, persons responsible, location of log, access criteria, cost of copies, amendment requests, criteria to determine legitimate educational interest, course prospectus availability |
| Beginning of each school year | Education Code 49063, 49073; 20 USC 1232g; 34 CFR 99.37 | AR 5125.1 | Release of directory information |
| Beginning of each school year and at least one more time during school year using specified methods | Education Code 49428 | None | How to access mental health services at school and/or in community |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|---|--|---|
| I. Annually (continued) | | | |
| Beginning of each school year | Education Code 49520, 48980; 42 USC 1758; 7 CFR 245.5 | AR 3553 | Eligibility and application process for free and reduced-price meals |
| Beginning of each school year | Education Code 51513; 20 USC 1232h | AR 5022 BP 6162.8 | Notice of privacy policy and dates of activities re: survey, health examination, or collection of personal information for marketing; process to opt out of such activities; inspection rights and procedures |
| Beginning of each school year | Education Code 56301 | BP 6164.4 | Parental rights re: special education identification, referral, assessment, instructional planning, implementation and review, and procedures for initiating a referral for assessment |
| Beginning of each school year | Education Code 58501, 48980 | AR 6181 | Alternative schools |
| Beginning of each school year | Health and Safety Code 104855 | AR 5141.6 | Availability of dental fluoride treatment; opportunity to accept or deny treatment |
| Annually | 5 CCR 852; Education Code 60615 | AR 6162.51 | Student's participation in state assessments; option to request exemption from testing |
| Beginning of each school year, if district receives Title I funds | 20 USC 6312; 34 CFR 200.48 | BP 4112.2 AR 4222 | Right to request information re: professional qualifications of child's teacher and paraprofessional |
| Beginning of each school year | 34 CFR 104.8, 106.9 | BP 0410 BP 6178 | Nondiscrimination |
| Beginning of each school year to parent, teacher, and employee organizations or, in their absence, individuals | 40 CFR 763.84, 763.93 | AR 3514 | Availability of asbestos management plan; any inspections, response actions or post-response actions planned or in progress |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|--------------------------------------|--|--|
| I. Annually (continued) | | | |
| Beginning of each school year | USDA SP-23-2017 | AR 3551 | District policy on meal payments |
| II. At Specific Times During the Student's Academic Career | | | |
| Beginning in grade 7, at least once prior to course selection and career counseling | Education Code 221.5, 48980 | BP 6164.2 | Course selection and career counseling |
| Upon a student's enrollment | Education Code 310 | BP 6142.2 AR 6174 | Information on the district's language acquisition programs |
| When child first enrolls in a public school, if school offers a fingerprinting program | Education Code 32390, 48980 | AR 5142.1 | Fingerprinting program |
| When participating in driver training courses under the jurisdiction of the district | Education Code 35211 | None | Civil liability, insurance coverage |
| Upon registration in K-6, if students have not previously been transported | Education Code 39831.5 | AR 3543 | School bus safety rules and information, list of stops, rules of conduct, red light crossing instructions, bus danger zones, walking to and from stops |
| Beginning of each school year for high school students, if high school is open campus | Education Code 44808.5, 48980 | AR BP 5112.5 | Open campus |
| Beginning of each school year in grades 9-12, if district allows career technical education (CTE) course to satisfy graduation requirement | Education Code 48980, 51225.3 | AR 6146.1 | How each graduation requirement does or does not satisfy college entrance a-g course criteria; district CTE courses that satisfy a-g criteria |
| Upon a student's enrollment | Education Code 49063 | AR 5125 AR 5125.3 | Specified rights related to student records |
| When students enter grade 7 | Education Code 49452.7 | AR 5141.3 | Specified information on type 2 diabetes |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|---|--|--|
| II. At Specific Times During the Student's Academic Career (continued) | | | |
| When in kindergarten, or first grade if not previously enrolled in public school | Education Code 49452.8 | AR 5141.32 | Requirement for oral health assessment, explanation of law, importance of oral health, agency contact, privacy rights |
| Beginning of each school year for students in grades 9-12 | Education Code 51229, 48980 | AR 6143 | College admission requirements, UC and CSU web sites that list certified courses, description of CTE, CDE Internet address, how students may meet with counselors |
| Beginning of each school year for students in grades 7-12, or at time of enrollment if after beginning of year | Education Code 51938, 48980 | AR 6142.1 | Sexual health and HIV prevention education, right to view A/V materials, whether taught by district staff or outside consultants, right to request specific Education Code sections, right to excuse |
| Within 20 working days of receiving results of standardized achievement tests or, if results not available in school year, within 20 working days of start of next school year | Education Code 60641; 5 CCR 863 | AR 6162.51 | Results of tests; test purpose, individual score and intended use |
| By October 15 for students in grade 12 | Education Code 69432.9 | AR 5121 AR 5125 | Forwarding of student's grade point average to Cal Grant program; timeline to opt out |
| When child is enrolled or reenrolled in a licensed child care center or preschool | Health and Safety Code 1596.7996 | AR 5148 | Information on risks and effects of lead exposure, blood lead testing |
| When child is enrolled in kindergarten | Health and Safety Code 124100, 124105 | AR 5141.32 | Health screening examination |
| To students in grades 11-12, early enough to enable registration for fall test | 5 CCR 11523 | AR 6146.2 | Notice of proficiency examination provided under Education Code 48412 |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|--|--|---|
| II. At Specific Times During the Student's Academic Career (continued) | | | |
| To secondary students, if district receives Title I funds | 20 USC 7908 | AR 5125.1 | Request that district not release name, address, phone number of child to military recruiters without prior written consent |
| III. When Special Circumstances Occur | | | |
| In the event of a breach of security of district records, to affected persons | Civil Code 1798.29 | BP 3580 | Types of records affected, date of breach, description of incident, contact information for credit reporting agencies |
| Upon receipt of a complaint alleging discrimination | Education Code 262.3 | AR 1312.3 | Civil law remedies available to complainants |
| When determining whether an English learner should be reclassified as fluent English proficient | Education Code 313; 5 CCR 11303 | AR 6174 | Description of reclassification process, opportunity for parent/guardian to participate |
| When student is identified as English learner and district receives Title I or Title III funds for English learner programs, not later than 30 days after beginning of school year or within two weeks of placement if identified during school year | Education Code 313.2, 440; 20 USC 6312 | AR 6174 | Reason for classification, level of English proficiency, identification as long-term English learner, description of program(s), option to decline program or choose alternate, option to remove student from program at any time, exit requirements of program |
| When homeless or foster youth applies for enrollment in before/after school program | Education Code 8483 | AR 5148.2 | Right to priority enrollment; how to request priority enrollment |
| Before high school student attends specialized secondary program on a university campus | Education Code 17288 | None | University campus buildings may not meet Education Code requirements for structural safety |
| At least 72 hours before use of pesticide product not included in annual list | Education Code 17612 | AR 3514.2 | Intended use of pesticide product |
| To members of athletic teams | Education Code 32221.5 | AR 5143 | Offer of insurance; no-cost and low-cost program options |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|---|--------------------------------------|--|---|
| III. When Special Circumstances Occur (continued) | | | |
| Annually to parents/guardians of student athletes before they participate in competition | Education Code 33479.3 | AR 6145.2 | Information on sudden cardiac arrest |
| If school has lost its WASC accreditation status | Education Code 35178.4 | BP 6190 | Loss of status, potential consequences |
| When district has contracted for electronic products or services that disseminate advertising | Education Code 35182.5 | BP 3312 | Advertising will be used in the classroom or learning center |
| At least six months before implementing uniform policy | Education Code 35183 | AR 5132 | Dress code policy requiring schoolwide uniform |
| Before implementing a year-round schedule | Education Code 37616 | BP 6117 | Public hearing on year-round schedule |
| When interdistrict transfer is requested and not approved or denied within 30 days | Education Code 46601 | AR 5117 | Appeal process |
| Before early entry to kindergarten, if offered | Education Code 48000 | AR 5111 | Effects, advantages and disadvantages of early entry |
| When student identified as being at risk of retention | Education Code 48070.5 | AR 5123 | Student at risk of retention |
| When student excluded due to quarantine, contagious or infectious disease, danger to safety or health | Education Code 48213 | AR 5112.2 BP 5141.33 | Student has been excluded from school |
| Before already admitted student is excluded for lack of immunization | Education Code 48216; 17 CCR 6040 | AR 5141.31 | Need to submit evidence of immunization or exemption within 10 school days; referral to medical care |
| When a student is classified as truant | Education Code 48260.5, 48262 | AR 5113.1 | Truancy, parental obligation, availability of alternative programs, student consequences, need for conference |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|--|--|---|
| III. When Special Circumstances Occur (continued) | | | |
| When a truant is referred to a SARB or probation department | Education Code 48263 | AR 5113.1 | Name and address of SARB or probation department and reason for referral |
| When a school is identified on the state's Open Enrollment List | Education Code 48354; 5 CCR 4702 | AR 5118 | Student's option to transfer to another school |
| Within 60 days of receiving application for transfer out of open enrollment school | Education Code 48357; 5 CCR 4702 | AR 5118 | Whether student's transfer application is accepted or rejected; reasons for rejection |
| When student requests to voluntarily transfer to continuation school | Education Code 48432.3 | AR 6184 | Copy of district policy and regulation on continuation education |
| Prior to involuntary transfer to continuation school | Education Code 48432.5 | AR 6184 | Right to request meeting prior to involuntary transfer to continuation school |
| To person holding educational rights, prior to recommending placement of foster youth outside school of origin | Education Code 48853.5 | AR 6173.1 | Basis for the placement recommendation |
| When student is removed from class and teacher requires parental attendance at school | Education Code 48900.1 | AR 5144.4 | Parental attendance required; timeline for attendance |
| Prior to withholding grades, diplomas, or transcripts | Education Code 48904 | AR 5125.2 | Damaged school property |
| When withholding grades, diplomas or transcripts from transferring student | Education Code 48904.3 | AR 5125.2 | Next school will continue withholding grades, diplomas, or transcripts |
| When student is released to peace officer | Education Code 48906 | BP 5145.11 | Release of student to peace officer for the purpose of removing minor from school, unless taken into custody as victim of suspected child abuse |
| At time of suspension | Education Code 48911 | BP 5144.1 AR 5144.1 | Notice of suspension |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|--------------------------------------|--|--|
| III. When Special Circumstances Occur (continued) | | | |
| When original period of suspension is extended | Education Code 48911 | AR 5144.1 | Extension of suspension |
| At the time a student is assigned to a supervised suspension classroom | Education Code 48911.1 | AR 5144.1 | The student's assignment to a supervised suspension classroom |
| Before holding a closed session re: suspension | Education Code 48912 | AR 5144.1 | Intent to hold a closed session re: suspension |
| When student expelled from another district for certain acts seeks admission | Education Code 48915.1, 48918 | BP 5119 | Hearing re: possible danger presented by expelled student |
| When readmission is denied | Education Code 48916 | AR 5144.1 | Reasons for denial; determination of assigned program |
| When expulsion occurs | Education Code 48916 | AR 5144.1 | Readmission procedures |
| At least 10 calendar days before expulsion hearing | Education Code 48918 | AR 5144.1 | Notice of expulsion hearing |
| When expulsion or suspension of expulsion occurs | Education Code 48918 | AR 5144.1 | Decision to expel; right to appeal to county board; obligation to inform new district of status |
| Before involuntary transfer of student convicted of certain crime when victim is enrolled at same school | Education Code 48929, 48980 | BP 5116.2 | Right to request a meeting with principal or designee |
| One month before the scheduled minimum day | Education Code 48980 | BP 6111 | When minimum days are scheduled after beginning of the school year |
| When parents/guardians request guidelines for filing complaint of child abuse at a school site | Education Code 48987 | AR 5141.4 | Guidelines for filing complaint of child abuse at a school site with local child protective agencies |
| When student in danger of failing a course | Education Code 49067 | AR 5121 | Student in danger of failing a course |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|--|--------------------------------------|--|---|
| III. When Special Circumstances Occur (continued) | | | |
| When student transfers from another district or private school | Education Code 49068 | AR 5125 | Right to receive copy of student's record and to challenge its content |
| When parent/guardian's challenge of student record is denied and parent/guardian appeals | Education Code 49070 | AR 5125.3 | If board sustains allegations, the correction or destruction of record; if denied, right to submit written objection |
| When district is considering program to gather safety-related information from students' social media activity | Education Code 49073.6 | BP 5125 | Opportunity for input on proposed program |
| When district adopts program to gather information from students' social media activity, and annually thereafter | Education Code 49073.6 | AR 5125 | Information is being gathered, access to records, process for removal or corrections, destruction of records |
| Within 24 hours of release of information to a judge or probation officer | Education Code 49076 | AR 5125 | Release of student record to a judge or probation officer for conducting truancy mediation program or for presenting evidence at a truancy petition |
| Before release of information pursuant to court order or subpoena | Education Code 49077 | AR 5125 | Release of information pursuant to court order or subpoena |
| When screening results in suspicion that student has scoliosis | Education Code 49452.5 | AR 5141.3 | Scoliosis screening |
| When test results in discovery of visual or hearing defects | Education Code 49456; 17 CCR 2951 | AR 5141.3 | Vision or hearing test results |
| Within 10 days of negative balance in meal account | Education Code 49557.5 | AR 3551 | Negative balance in meal account; encouragement to apply for free or reduced-price meals |
| Annually to parents/guardians of student athletes before their first practice or competition | Education Code 49475 | AR 6145.2 | Information on concussions and head injuries |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|---|--|--|---|
| III. When Special Circumstances Occur (continued) | | | |
| Within 30 days of foster youth, homeless youth, former juvenile court school student, or child of military family, or migrant student being transferred between high schools after second year of high school, or immigrant student enrolled in newcomer program in grades 11-12 | Education Code 51225.1 | BP 6146.1 AR 6173 AR 6173.1 AR 6173.3 AR 6175 | Exemption from local graduation requirements, effect on college admission, option for fifth year of high school |
| Before any test/survey questioning personal beliefs | Education Code 51513 | AR 5022 | Permission for test, survey questioning personal beliefs |
| At least 14 days before HIV prevention or sexual health instruction, if arrangement made for guest speaker after beginning of school year | Education Code 51938 | AR 6142.1 | Instruction in HIV prevention or sexual health by guest speaker or outside consultant |
| Prior to administering survey regarding health risks and behaviors to students in 7-12 | Education Code 51938 | AR 5022 | Notice that the survey will be administered |
| Within 30 calendar days of receipt of results of assessment or reassessment of English proficiency | Education Code 52164.1, 52164.3; 5 CCR 11511.5 | AR 6174 | Results of state test of English proficiency |
| When migrant education program is established | Education Code 54444.2 | BP 6175 AR 6175 | Parent advisory council membership composition |
| When child participates in licensed child care and development program | Health and Safety Code 1596.857 | AR 5148 | Parent/guardian right to enter facility |
| When district receives Tobacco-Use Prevention Education Funds | Health and Safety Code 104420 | AR 3513.3 | The district's tobacco-free schools policy and enforcement procedures |
| When testing by community water system finds presence of lead exceeding specified level | Health and Safety Code 116277 | AR 3514 | Elevated lead level at school |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|---|--------------------------------------|--|--|
| III. When Special Circumstances Occur (continued) | | | |
| When sharing student immunization information with an immunization system | Health and Safety Code 120440 | AR 5125 | Types of information to be shared, name and address of agency, acceptable use of the information, right to examine, right to refuse to share |
| At least 14 days prior to sex offender coming on campus as volunteer | Penal Code 626.81 | AR 1240 BP 1250 | Dates and times permission granted; obtaining information from law enforcement |
| When hearing is requested by person asked to leave school premises | Penal Code 627.5 | AR 3515.2 | Notice of hearing |
| When responding to complaint re: discrimination, special education, or noncompliance with law | 5 CCR 4631 | AR 1312.3 | Findings, disposition of complaint, any corrective actions, appeal rights and procedures |
| When child participates in licensed child care and development program | 5 CCR 18066 | AR 5148 | Policies re: excused and unexcused absences |
| Within 30 days of application for subsidized child care or preschool services | 5 CCR 18094, 18118 | AR 5148 AR 5148.3 | Approval or denial of services |
| Upon recertification or update of application for child care or preschool services | 5 CCR 18095, 18119 | AR 5148 AR 5148.3 | Any change in service, such as in fees, amount of service, termination of service |
| Upon child's enrollment in child care program | 5 CCR 18114 | AR 5148 | Policy on fee collection |
| When payment of child care fees is seven days late | 5 CCR 18114 | AR 5148 | Notice of delinquent fees |
| When district substantively changes policy on student privacy rights | 20 USC 1232h | AR 5022 | Notice of any substantive change in policy or regulation |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|---|---|--|---|
| III. When Special Circumstances Occur (continued) | | | |
| For districts receiving Title I funds, when child has been assigned or taught for four or more consecutive weeks by a teacher who does not meet state certification requirements for the grade level/subject taught | 20 USC 6312 | AR 4112.2 | Timely notice to parent/guardian of child's assignment |
| For districts receiving Title I funds, not later than 30 days after beginning of school year, to parents/guardians of English learners | 20 USC 6312 | AR 6174 | Reasons for placement, level of proficiency, instructional methods, how program meets child's strengths and teaches English, exit requirements, right to choose other program |
| For schools receiving Title I funds, upon development of parent involvement policy | 20 USC 6318 | AR 6020 | Notice of policy |
| When household is selected for verification of eligibility for free or reduced-price meals | 42 USC 1758; 7 CFR 245.6a | AR 3553 | Need to submit verification information; any subsequent change in benefits; appeals |
| When student is homeless or unaccompanied minor | 42 USC 11432; Education Code 48852.5 | AR 6173 | Educational and related opportunities; transportation services; placement decision and right to appeal |
| When student transfers out of state and records are disclosed without consent pursuant to 34 CFR 99.30 | 34 CFR 99.34 | AR 5125 | Right to review records |
| When district receives federal funding assistance for nutrition program | USDA FNS Instruction 113-1 | BP 3555 | Rights and responsibilities, nondiscrimination policy, complaint procedures |
| IV. Special Education Notices | | | |
| Prior to conducting initial evaluation | Education Code 56301, 56321, 56321.5, 56321.6, 56329; 20 USC 1415(d); 34 CFR 300.502, 300.503 | BP 6159.1 AR 6159.1 AR 6164.4 | Proposed evaluation plan, related parental rights, prior written notice, procedural safeguards |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|---|---|--|--|
| IV. Special Education Notices (continued) | | | |
| Before functional behavioral assessment begins | Education Code 56321 | AR 6159.4 | Notification and consent |
| 24 hours before IEP when district intending to record | Education Code 56341.1 | AR 6159 | Intention to audio-record IEP meeting |
| Early enough to ensure opportunity for parent/guardian to attend IEP meeting | Education Code 56341.5; 34 CFR 300.322 | AR 6159 | Time, purpose, location, who will attend, participation of others with special knowledge, transition statements if appropriate |
| When parent/guardian orally requests review of IEP | Education Code 56343.5 | AR 6159 | Need for written request |
| Within one school day of emergency intervention or serious property damage | Education Code 56521.1 | AR 6159.4 | Emergency intervention |
| Whenever there is a proposal or refusal to initiate or change the identification, evaluation, placement, or FAPE, including when parent/guardian revokes consent for services | 20 USC 1415(c); 34 CFR 300.300, 300.503 | AR 6159 AR 6159.1 | Prior written notice |
| Upon filing of state complaint | 20 USC 1415(d); 34 CFR 300.504 | AR 6159.1 | Procedural safeguards notice |
| When disciplinary measures are taken or change in placement | 20 USC 1415(k); 34 CFR 300.530 | AR 5144.2 | Decision and procedural safeguards notice |
| Upon requesting a due process hearing | 20 USC 1415(k); 34 CFR 300.508 | AR 6159.1 | Student's name, address, school, description of problem, proposed resolution |
| Eligibility for services under Section 504 | 34 CFR 104.32, 104.36 | AR 6164.6 | District responsibilities, district actions, procedural safeguards |

PARENTAL NOTIFICATIONS (continued)

| When to Notify | Education or Other Legal Code | Board Policy/ Administrative Regulation # | Subject |
|----------------------------------|--------------------------------------|---|---|
| V. Classroom Notices | | | |
| In each classroom in each school | Education Code 8235.5 , 35186 | AR 1312.4 E 1312.4 | Complaints re: sufficiency of instructional materials, teacher vacancy or misassignment, maintenance of facilities subject to Williams uniform complaint procedures |

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CSBA Sample Board Bylaw

Board Bylaws

BB 9323.2(a)

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)

ACTIONS BY THE BOARD (continued)**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.

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~~ **for the purpose of: (Government Code 54960, 54960.2)**

1. **Stopping** or **preventing** the Board's violation or ~~threats of~~ **threatened** violations of the Brown Act;
2. ~~to~~ **determining** the applicability of the Brown Act to ongoing or future threatened Board actions;

ACTIONS BY THE BOARD (continued)

3. ~~In addition, the district attorney's office or any interested party may file an action in court to determine~~ **Determining** the applicability of the Brown Act to ~~any a past Board action of the Board that is not specified in Government Code 54960.1, under the following conditions provided that:~~

a. 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.

b. 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.

c. **The action is brought within the time required by Government Code 54960.2.**

4. ~~to determine~~ **Determining** the validity, under **California state** or federal law, of any Board rule or action ~~to which penalizes any of its members or otherwise discourages their member's expression, or~~ **to which penalizes** any of its members or otherwise discourages **their** member's expression, ~~or~~

5. ~~to compel~~ **Compelling** the Board to audio record its closed sessions because of **a court's finding of the Board's 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~~ **action resulted in a contract with a party who detrimentally relied on the action in good faith and without notice of a challenge to its validity**), 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~~ **file an action in court to nullify a Board action which is alleged to be** 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)

Prior to bringing any action to nullify a Board action, the district attorney or other interested person shall present a ~~Any~~ demand to "cure and correct" ~~an~~ **the** alleged violation. **The demand** 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 **challenged** action.

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.

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: (see next page)

ACTIONS BY THE BOARD (continued)*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

17510-17511-17512 **Leasing for production of gas, r**Resolution requiring unanimous vote **of all members constituting board**

17546 Private sale of personal property

17556-17561 Dedication of real property

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

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; **prohibition against** 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

20114 Repairs, maintenance, and improvements to district facilities by day labor or force account**22034 Uniform Public Construction Cost Accounting Act informal bidding ordinance****22035 Repair or replacement of facilities in case of emergency****22050 Emergency contracting procedures**COURT DECISIONSLos Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109*Management Resources: (see next page)*

ACTIONS BY THE BOARD (continued)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 2014

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 2nd Edition, rev. July 2010 ~~2007~~

WEB SITES

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

~~California Attorney General's Office: <http://www.oag.ca.gov>~~

Institute of for Local Government: <http://www.ca-ilg.org>

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

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CSBA Sample Exhibit

Board Bylaws

E(1) 9323.2(a)

ACTIONS BY THE BOARD

ACTIONS REQUIRING A SUPER MAJORITY VOTE

Note: The following exhibit lists some of the Governing Board actions that require more than a simple majority vote. Other such actions may exist and may be identified in the future.

Actions Requiring a Two-Thirds Vote of the Board:

Note: For an action requiring a two-thirds vote to pass, a three-member board will need two board members to vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need five board members to vote in favor of the item.

1. Resolution declaring **the Governing Board's** intention to sell or lease real property (Education Code 17466)

(cf. 3280 - Sale or Lease of District-Owned Real Property)

2. Resolution declaring **the Board's** intent ~~of Governing Board~~ to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)
3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
4. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

Note: Item #5 below is different from temporary borrowing pursuant to Government Code 53850-53858 which requires only a majority vote of the Board.

5. Request for temporary borrowing ~~pursuant to Government Code 53820-53833~~, **of funds needed for immediate requirements of the district** to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)
6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code 53094)

ACTIONS BY THE BOARD (continued)

(cf. 7131 - Relations with Local Agencies)
 (cf. 7150 - Site Selection and Development)
 (cf. 7160 - Charter School Facilities)

7. When the district is organized to serve only grades K-8, **action and seeks** to establish a community day school for any of grades K-8 (Education Code 48660)

(cf. 6185 - Community Day School)

8. When the district **is organized to serve only grades K-8**, has an average daily attendance (ADA) of 2,500 or less, **or desires to operate a community day school to serve any of grades K-6 (and no higher grades)** and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)

- ~~9. When the district is organized to serve only grades K-8 and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)~~

- ~~10. When the district desires to operate a community day school to serve any of grades K-6 (and no higher grades) on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 48661)~~

- 11.9.** Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)

(cf. 7214 - General Obligation Bonds)

- ~~12.10.~~ Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code 15266)

(cf. 7213 - School Facilities Improvement Districts)

- ~~13.11.~~ Resolution to place a parcel tax on the ballot (Government Code 53724)

Note: Code of Civil Procedure 1245.240 requires that, prior to commencing an eminent domain action, the Board adopt a resolution of necessity approved by a two-thirds vote of the Board unless a greater vote is required by statute, charter, or ordinance. In addition, if the Board desires to use the property for a different purpose than stated in the resolution of necessity, then pursuant to Code of Civil Procedure 1245.245, the Board must adopt, by two-thirds vote, another resolution authorizing the different use unless a greater vote is required by statute, charter, or ordinance.

ACTIONS BY THE BOARD (continued)

14.12. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

Note: Item #13 is for use by three-member boards.

13. When the district has a three-member Board, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)

N/A

Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting:

1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session Purposes and Agendas)

Actions Requiring a Four-Fifths Vote of the Board:

Note: For an action requiring a four-fifths vote to pass, a three-member board will need a unanimous vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need six board members to vote in favor of the item.

1. Expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense (Government Code 53790-53792)

(cf. 3110 - Transfer of Funds)

ACTIONS BY THE BOARD (continued)

2. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)
3. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823-53824)
4. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

(cf. 3311 - Bids)

Note: Item #5 is for use by districts governed by a five-member or seven-member board.

5. **When the district has a five-member or seven-member Board, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)**

Note: AB 2249 (Ch. 169, Statutes of 2018) amended Public Contract Code 22034 to change the thresholds for public works projects bid pursuant to the Uniform Public Construction Cost Accounting Act, thereby increasing the amount requiring board resolution, as provided in item #6.

- ~~5.~~6. Resolution to award a contract for a public works project at \$~~187,500-212,500~~ or less to the lowest responsible bidder, when the district is using the informal process authorized under the Uniform Public Construction Cost Accounting Act for projects of \$~~175,000~~ **200,000** or less, all bids received are in excess of \$~~175,000-200,000~~, and the Board determines that the district's cost estimate was reasonable (Public Contract Code 22034)

(cf. 3311.1 - Uniform Public Construction Cost Accounting Procedures)

Actions Requiring a Unanimous Vote of the Board:

1. Resolution authorizing and prescribing the terms of a ~~community~~ lease **of district property** for extraction **and taking** of gas **not associated with oil** (Education Code 17510-17511)

ACTIONS BY THE BOARD (continued)

2. **Authorization of the use of day labor or force account, or w**Waiver of the competitive bid process pursuant to Public Contract Code 20111, when the Board determines that an emergency exists **requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property,** and upon approval of the County Superintendent of Schools (Public Contract Code 20113)

Action Requiring a Unanimous Vote of the Board Members Present at the Meeting:

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property **in the local dump** or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)

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CSBA Sample Exhibit

Board Bylaws

E(2) 9323.2

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 board bylaw. Pursuant to Government Code 54960.2, 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)

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