

POLICY GUIDE SHEET

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

BP 2121 - Superintendent's Contract

(BP revised)

Policy updated to add professional development as an optional component that may be addressed in the superintendent's contract, consistent with CSBA's Superintendent Contract Template. Section on "Termination of Contract" deletes material related to maximum cash settlement requirements for contracts executed prior to January 1, 2016, since state law limits the term of the contract to a maximum of four years.

BP 3600 - Consultants

(BP revised)

Policy updated to reflect **NEW LAW (AB 5)** which codifies a three-part test, established in *Dynamex Operations West Inc. v. Superior Court of Los Angeles*, to determine whether a person providing services for remuneration should be classified as an employee or an independent contractor. Policy also updates the statement on nondiscrimination to include additional protected categories, and reflects law regarding harassment of or by an independent contractor.

AR 4030 - Nondiscrimination in Employment

(AR revised)

Regulation updated to reflect **NEW LAW (SB 778)** which delays until January 1, 2021 a requirement for districts with 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 nonsupervisory employees. Regulation also reflects **NEW LAW (AB 9)** which allows complaints of employment discrimination to be filed with the Department of Fair Employment and Housing up to three years after the alleged act.

BP 4033 - Lactation Accommodation

(BP revised)

Policy updated to reflect **NEW LAW (SB 142)** which mandates districts to adopt policy that addresses an employee's right to request lactation accommodation, the process by which the employee makes the request, the district's obligation to respond to the request, and the employee's right to file a complaint with the Labor Commissioner alleging any violation of the right to lactation accommodation. Policy also reflects provisions of SB 142 requiring districts to provide a lactation room or location with prescribed features, prohibiting districts from discriminating or retaliating against an employee who exercises the right to lactation accommodation, and authorizing districts with fewer than 50 employees to seek an exemption from the requirement to provide lactation accommodation if the district demonstrates that the requirement poses an undue hardship.

BP 4151/4251/4351 - Employee Compensation

(BP revised)

Policy updated to clarify that, in determining whether an executive, administrative, or professional employee is exempt from overtime rules, the salary threshold established by state law supersedes the threshold established by federal law (as raised by new federal rule September 24, 2019). Policy also deletes complex information on Internal Revenue Service forms that must be completed by employees who earn compensation over 9 or 10 months but elect to spread salary payments over 12 months, thereby creating "deferred compensation."

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BP/AR 5116.1 - Intradistrict Open Enrollment

(BP/AR revised)

Policy and regulation updated to delete material related to transfers under the state Open Enrollment Act and federal Program Improvement, as those programs are no longer operational. Policy also reflects **NEW LAW (AB 1127)** which requires districts to approve an intradistrict transfer request for a student who is a victim of bullying, as defined. Optional item added for districts electing to offer intradistrict transfers to all students in a school identified by the California Department of Education (CDE) for comprehensive support and improvement (CSI), in which case priority must be given to the lowest achieving students from low-income families. Regulation revised to clarify timelines for transfers out of schools identified by CDE as "persistently dangerous." For districts that offer transfers out of CSI schools, regulation allows a transfer student the opportunity to remain in the school of enrollment until completing the highest grade offered at that school.

BP/AR/E 5118 - Open Enrollment Act Transfers

(BP/AR/E deleted)

Policy, regulation, and exhibit deleted since CDE no longer identifies low-achieving schools based on the Academic Performance Index for purposes of developing an Open Enrollment List of schools, in which students had the option to transfer to a higher achieving school within or outside the district.

AR 5125 - Student Records

(AR revised)

Regulation updated to reflect **NEW LAW (AB 711)** which requires districts to update the records of a former student who submits a written request or government-issued documentation of a name and/or gender change. Regulation also revised to reflect current law regarding the timeline for submitting the grade point average of students in grade 12 to the Student Aid Commission for use in the Cal Grant postsecondary financial aid program and the timeline for notifying students and parents/guardians of their right to opt out.

BP/AR 5131.2 - Bullying

(BP/AR revised)

Policy updated to reflect **NEW LAW (AB 1127)** which requires a district to approve an intradistrict transfer request for a victim of bullying and, if the district does not have another school with the same grade level, allows a victim of bullying to transfer out of the district. Regulation updated to reflect **NEW LAW (AB 34)** which requires districts to make specified information on bullying and harassment prevention readily accessible on their web sites beginning in the 2020-21 school year.

BP/AR 6143 - Courses of Study

(BP/AR revised)

Policy updated to include the prohibition against providing any course separately on the basis of specified characteristics or refusing the participation of a student on any such basis. Policy also reflects the requirement to provide a list of courses certified as meeting California college admission criteria (i.e., "a-g" course requirements) to parents/guardians as well as students in grades 9-12. Regulation updates the list of course offerings for grades 7-12 to revise the description of the Bracero program, update the terminology for "foreign language" to "world language" consistent with current state law, reflect **NEW LAW (AB 1595)** which replaces references to "homemaking" with "family and consumer sciences," and delete outdated date for beginning instruction in compression-only cardiopulmonary resuscitation. Regulation also adds requirement, effective in the 2020-21 school year, to provide specified information on how to properly complete and submit the Free Application for Federal Student Aid (FAFSA) or the Dream Act application, as appropriate, at least once before grade 12.

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BP 6154 - Homework/Makeup Work

(BP revised)

Policy updated to reflect **NEW LAW (AB 982)** which requires that, when a parent/guardian of a student who has been suspended for two or more days requests homework that the student would have otherwise been assigned, teachers must provide such homework.

AR 6174 - Education for English Learners

(AR revised)

Regulation updated to clarify the process for assessment and identification of English learners, including additional notification requirements. Section on "Reclassification/Redesignation" revised to require English learners who are reclassified as fluent English proficient to be monitored for at least four years following their reclassification, consistent with CDE's Federal Program Monitoring instrument. Regulation also adds further information regarding the composition and duties of the school-level and district-level English Learner Advisory Committee.

AR 6175 - Migrant Education Program

(AR revised)

Regulation updated to reflect **NEW LAW (AB 1319)** which requires the immediate enrollment of migrant students even if they have outstanding fees, fines, textbooks, or other items or monies due to the school last attended, do not have clothing normally required by the school, or are unable to produce records normally required for enrollment. Regulation also reflects provision of AB 1319 which grants migrant students the right to remain in their school of origin, or in a school within the district of origin, regardless of any change in residence of the student.

BB 9150 - Student Board Members

(BB revised)

Bylaw updated to reflect **NEW LAW (AB 709)** which requires student board members to be appointed to board subcommittees in the same manner as other board members, be invited to attend other functions of the board, and receive all materials received by other board members between open meetings except materials that pertain to closed session items. Bylaw also reflects provisions of AB 709 which clarify that student board members are not considered members of a legislative body for purposes of the Brown Act, authorize the board to award elective course credit for student board member service, and authorize the board to appoint an alternate student board member if the student board member's duties are not being fulfilled.

CSBA Sample

Board Policy

Administration

BP 2121(a)

SUPERINTENDENT'S CONTRACT

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

The Governing Board believes that the Superintendent's employment contract should outline the framework through which the Board and Superintendent ~~are to~~ **will** work together **as a governance team** to achieve district goals and objectives. When approving the Superintendent's employment contract, the Board shall consider the ~~need for~~ **value of** stability in district administration, ~~and shall ensure~~ the best use of district resources, **and the Board's duty to ensure accountability to the public for the performance of the district's schools.**

(cf. 0200 - Goals for the School District)

(cf. 0460 - Local Control and Accountability Plan)

(cf. 2120 - Superintendent Recruitment and Selection)

(cf. 4312.1 - Contracts)

(cf. 9000 - Role of the Board)

Note: The following list of contract components is consistent with a template for superintendent contracts developed by CSBA. The annotated template contract with additional context and suggestions is available **through CSBA's web site** ~~by contacting legal@csba.org.~~

The contract shall be reviewed by the district's legal counsel and may include the following:

1. Term of the contract, which shall be for no more than four years pursuant to Education Code 35031
2. Length of the work year and hours of work
3. Salary, health and welfare benefits, and other compensation for the position, **including a statement that any subsequent increase in the Superintendent's salary shall be at the sole discretion of the Board**

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

4. Reimbursement of work-related expenses, including mileage reimbursement, consistent with Board policies, regulations, and guidelines applicable to other professional administrative staff

(cf. 3350 - Travel Expenses)

SUPERINTENDENT'S CONTRACT (continued)

The contract may also address payment for professional dues and activities, the district's provision of cell phones or other technological devices, and the Superintendent's use of his/her a personal vehicle.

(cf. 4040 - Employee Use of Technology)

5. Vacation, illness and injury leave, and personal leaves

(cf. 4161/4261/4361 - Leaves)

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

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

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

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

6. Professional development

6.7. General duties and responsibilities of the position

(cf. 2110 - Superintendent Responsibilities and Duties)

7.8. Criteria, process, and procedure for annual evaluation of the Superintendent

(cf. 2140 - Evaluation of the Superintendent)

~~8. A statement that any subsequent increase in the Superintendent's salary shall be at the sole discretion of the Board~~

9. A statement that there shall be no automatic renewal or extension of the contract, although the Board can enter into a new contract with the Superintendent prior to the expiration of the existing contract

Note: Pursuant to Education Code 35031, if the Governing Board decides not to reemploy the Superintendent, it must notify him/her provide notification at least 45 days before the contract expires. If the Board fails to provide the required prior written notice, the Superintendent shall be deemed reemployed for a term of the same length as the one completed, under the same terms and conditions, and with the same compensation.

10. Timeline for providing written notice to the Superintendent if the Board does not wish to enter into a new contract, which shall be at least 45 calendar days in advance of the expiration of the term of the contract pursuant to Education Code 35031, and the responsibility of the Superintendent to remind the Board in writing and in a timely manner of the requirement to give notice

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

SUPERINTENDENT'S CONTRACT (continued)

Note: See section on "Termination of Contract" below for limitations to maximum cash settlements.

11. Conditions and process for termination of the contract, including the maximum cash settlement that the Superintendent may receive if the contract is terminated prior to its expiration date
12. Matters related to liability and indemnification against demands, claims, suits, actions, and legal proceedings brought against the Superintendent in **his/her the Superintendent's** official capacity in the performance of **employment-related** duties ~~related to his/her employment~~

Note: Pursuant to Government Code 54957, personnel matters related to the appointment or employment of an employee may be discussed in closed session under the "personnel exception." However, Government Code 54957 prohibits the use of closed session for discussion or action on any proposed change in compensation other than a reduction of compensation that results from the imposition of discipline. In San Diego Union v. City Council, a California Court of Appeal held that the "personnel exception" provided in Government Code 54957 does not extend to discussions of salary and compensation.

Notwithstanding Government Code 54957, the Board is authorized pursuant to Government Code 54957.6, the "labor exception," to hold closed sessions with the district's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees, including the Superintendent. The Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a board may only meet in closed session for such purposes with a designated representative who is involved with the "bona fide" negotiations with represented and/or unrepresented employees. The Attorney General's publication The Brown Act: Open Meetings for Local Legislative Bodies also states that the "labor exception" applies to meeting in closed session to instruct its representatives concerning negotiations with prospective employees. Boards wishing to discuss the Superintendent's salary in closed session under the "labor exception" are encouraged to consult legal counsel before doing so.

In addition, pursuant to Government Code 54956, the Board is prohibited from deliberating on the salary or other compensation of the Superintendent at a special meeting. See BB 9320 - Meetings and Notices and BB 9321 - Closed Session **Purposes and Agendas**.

The following paragraph should be revised to reflect district practice.

The Board may deliberate about terms of the contract in closed session at a regular meeting. However, discussions regarding the salary, salary schedule, or other compensation may occur in the closed session of a regular meeting only between the Board and its designated representative(s), as permitted under Government Code 54957.6 (the "labor exception"), for the purpose of reviewing the Board's position and/or instructing the designated representative(s) prior to or during bona fide negotiations with the current or prospective Superintendent. Such deliberations shall not be held during a special meeting. (Government Code 54956, 54957, 54957.6)

SUPERINTENDENT'S CONTRACT (continued)

The Board may consult with district legal counsel prior to holding a closed session with the designated representative(s) to discuss compensation to be paid to the current or prospective Superintendent.

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session ~~Purposes and Agendas~~)

(cf. ~~9321.1 - Closed Session Actions and Reports~~)

Terms of the contract shall remain confidential until the ratification process commences.

(cf. 9011 - Disclosure of Confidential/Privileged Information)

Note: Pursuant to Government Code 54953, ~~as amended by SB 1436 (Ch. 175, Statutes of 2016)~~, the Board must, in open session, orally report a summary of the recommendation for final action on the Superintendent's salary or benefits and must make related records available to the public in accordance with the California Public Records Act. Thus, Government Code 54953 limits the Board's ability to approve changes to salary or benefits as part of a consent calendar and instead requires such approval to be a separate agenda item. For identical requirements regarding final action on the salary or benefits ~~or of~~ other district executives, see BP 4312.1 - Contracts.

The Board shall take final action on the Superintendent's contract during an open session of a regularly scheduled Board meeting, and that action shall be reflected in the Board's minutes. At that meeting, prior to taking action, the Board shall orally report a summary of the recommendation for the final action on the Superintendent's salary or compensation in the form of fringe benefits. (Government Code 3511.1, 53262, 54953)

Copies of the contract and other public records created or received in the process of developing the recommendation related to the Superintendent's salary, benefits, and other compensation shall be available to the public upon request. (Government Code 53262, 54953, ~~54957.6~~)

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Termination of Contract

Note: Pursuant to Government Code 53260, every employee contract must include a provision limiting the maximum cash settlement the employee may receive upon termination of the contract to an amount equal to ~~his/her~~ **the** monthly salary multiplied by the number of months left on the contract. For a Superintendent contract, ~~executed prior to January 1, 2016, if the unexpired term is greater than 18 months, this maximum is equal to the monthly salary multiplied by 18. For a Superintendent contract executed on or after January 1, 2016,~~ Government Code 53260 provides that the maximum cash settlement is the monthly salary multiplied by 12. Cash settlements may be less than these maximums. The district must make **contracts of employment, which include the** termination agreements, available to the public upon request. See AR 4117.5/4217.5/4317.5 - Termination Agreements.

SUPERINTENDENT'S CONTRACT (continued)

Prior to the expiration of the contract, the Board may terminate the Superintendent's employment contract in accordance with law and applicable contract provisions.

(cf. 4117.5/4217.5/4317.5 - Termination Agreements)

In such an event, **any the maximum** cash settlement that the Superintendent may receive upon termination of the contract shall not exceed **his/her the Superintendent's** monthly salary multiplied by the number of months left on the contract or, ~~if the unexpired term of the contract is more than 18 months and the contract was executed prior to January 1, 2016, no greater than the Superintendent's monthly salary multiplied by 18. For any contract executed on or after January 1, 2016, any cash settlement shall not exceed~~ the Superintendent's monthly salary multiplied by 12, **whichever is less**. (Government Code 53260)

The cash settlement shall not include any noncash items other than health benefits, which may be continued for the same duration of time as covered in the settlement or until the Superintendent finds other employment, whichever occurs first. (Government Code 53260, 53261)

However, when the termination of the Superintendent's contract is based upon the Board's belief and subsequent confirmation through an independent audit that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, no cash or noncash settlement of any amount shall be provided. (Government Code 53260)

In addition, if the Superintendent is convicted of a crime involving an abuse of **his/her** office or position, **he/she the Superintendent** shall reimburse the district for payments **he/she receives received** as paid leave salary pending investigation or as cash settlement upon **his/her** termination, and for any funds expended by the district in **his/her defense defending the Superintendent** against a crime involving **his/her the Superintendent's** office or position. (Government Code 53243-53243.4, 53260)

Legal Reference: (see next page)

SUPERINTENDENT'S CONTRACT (continued)

Legal Reference:

EDUCATION CODE

35031 *Term of employment*

41325-~~41329.3~~ **41328** *Conditions of emergency apportionment*

GOVERNMENT CODE

3511.1-3511.2 *Local agency executives*

6250-6270 *California Public Records Act*

53243-53243.4 *Abuse of office*

53260-53264 *Employment contracts*

54953 *Oral summary of recommended salary and benefits of superintendent*

54954 *Time and place of regular meetings*

54956 *Special meetings*

54957 *Closed session personnel matters*

54957.1 *Closed session, public report of action taken*

54957.6 *Closed sessions regarding employee matters*

UNITED STATES CODE, TITLE 26

105 *Self-insured medical reimbursement plan; definition of highly compensated individual*

UNITED STATES CODE, TITLE 42

300gg-16 *Group health plan; nondiscrimination in favor of highly compensated individuals*

CODE OF FEDERAL REGULATIONS, TITLE 26

1.105-11 *Self-insured medical reimbursement plan*

COURT DECISIONS

San Diego Union v. City Council (1983) 146 Cal.App.3d 947

ATTORNEY GENERAL OPINIONS

57 *Ops. Cal. Atty. Gen.* 209 (1974)

Management Resources:

CSBA PUBLICATIONS

Superintendent Contract Template, ~~2015~~

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Local Legislative Bodies, 2003

WEB SITES

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

Association of California School Administrators: <http://www.acsa.org>

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

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Policy Reference UPDATE Service

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CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3600(a)

CONSULTANTS

The Governing Board authorizes the use of consultants **and other independent contractors** to provide expert professional advice or specialized technical or training services which are not needed on a continuing basis and which cannot be provided by district staff because of limitations of time, experience, or knowledge. Individuals, firms, or organizations employed as **consultants independent contractors** may assist management with decisions and/or project development related to financial, economic, accounting, engineering, legal, administrative, instructional, or other matters.

(cf. 3551 - Food Service Operations/Cafeteria Fund)

Note: Internal Revenue Service (IRS) Publication 15-A identifies 20 common law factors which the IRS uses to determine whether an individual is an employee or an independent contractor.

Labor Code 2750.3, as added by AB 5 (Ch. 296, Statutes of 2019), codifies the three-part "ABC" test established in Dynamex Operations West, Inc. v. Superior Court of Los Angeles to determine whether a person providing services for remuneration should be classified as an employee or an independent contractor. Although Labor Code 2750.3 does not explicitly state whether it applies to public agencies, CSBA recommends that districts adhere to its provisions.

AB 5 also amended Unemployment Insurance Code 606.5 and 621 to incorporate the three-part ABC test from the Dynamex decision. Since public school employers are subject to certain provisions in the Unemployment Insurance Code, districts should apply the three-part ABC test to determine a worker's eligibility for unemployment benefits.

Pursuant to Labor Code 2750.3, a person is considered to be an independent contractor rather than an employee if the person (1) is free from the control and direction of the district in connection with the performance of the work, (2) performs work that is outside the usual course of providing educational services, (i.e. services provided by the person's own independent business and not services that ordinarily would be performed by district employees), and (3) is customarily engaged in an independently established trade, occupation, or business.

Labor Code 2750.3 establishes exceptions to the use of the three-part ABC test, including (1) when a person's status as an employee or independent contractor is defined by the Labor Code, Unemployment Insurance Code, or an applicable wage order of the Industrial Welfare Commission; (2) when a court rules that the three-part test cannot be applied to a particular context; or (3) when specifically exempted within Labor Code 2750.3. Under the second and third scenarios, the determination of whether a person is an employee or independent contractor is then made pursuant to the court's decision in S.G. Borello & Sons, Inc. v. Department of Industrial Relations, which made employment status a fact-dependent ruling based on the extent to which the employer had a right to control the work that was being done. Tutors are potentially excepted from the three-part test in Labor Code 2750.3 if they develop and teach their own curriculum, but not if they teach a curriculum created by a public school or contract with a public school through a referral company.

CONSULTANTS (continued)

As this area of law is complex and may alter the legal and financial obligations of the district to particular workers (e.g., eligibility for workers compensation, unemployment and disability insurance benefits, and district health and welfare benefits), legal counsel should be consulted when questions arise regarding the status of those who provide services to the district for remuneration.

As part of the contract process, the Superintendent or designee shall determine, in accordance with Internal Revenue Service guidelines, that the consultant individual, firm, or organization is properly classified as an independent contractor. A person, firm, or organization shall be considered an employee rather than an independent contractor unless the district is able to demonstrate that all of the following conditions have been met: (Labor Code 2750.3)

1. The person or entity is free from the control and direction of the district in connection with the performance of the work.
2. The person or entity is performing work that is outside the usual course of the district providing educational services.
3. The person or entity is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed.

Specific statutory exceptions to this analysis for the determination of whether a person, firm, or organization is an independent contractor may apply. (Labor Code 2750.3)

District employees who perform extra duty consultant services shall not be retained as independent contractors. They shall be considered employees for all purposes, even if the additional services are not related to their regular duties.

All consultant contracts shall be brought to the Board for approval.

(cf. 3311 - Bids)

(cf. 3312 - Contracts)

(cf. 4132/4232/4332 - Publication or Creation of Materials)

The district shall not contract for consulting services that can be performed without charge by a public agency or official unless these services are unavailable from the public source for reasons beyond the district's control.

All qualified firms or resource persons independent contractors shall be accorded equal opportunity for consultant contracts regardless of actual or perceived race, creed, color, gender, national or ethnic origin, age or disability, 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

CONSULTANTS (continued)

identity, gender expression, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. (Education Code 220; Government Code 12940)

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

(cf. 0415 - Equity)

(cf. 3311 - Bids)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

(cf. 4030 - Nondiscrimination in Employment)

Independent contractors ~~applying for a consultant contract~~ shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend **the consultant's employment approval of the contract.**

Any consultant hired by the district who is subject to the filing requirements in the district's conflict of interest code shall file a Statement of Economic Interests within the time period required by law. (Government Code 87302)

(cf. 9270 - Conflict of Interest)

When employees of a public university, county office of education, or other public agency serve as consultants or ~~resource persons~~ **independent contractors in other capacities** for the district, they shall certify as part of the ~~consultant~~ agreement that they will not receive salary or remuneration other than vacation pay from any other public agency for the specific days when they work for ~~this~~ **the** district.

Note: Pursuant to Government Code 12940, certain protections afforded to employees are extended to independent contractors; see BP/AR 4030 - Nondiscrimination in Employment. Government Code 12940 also provides that the district may be held liable for sexual harassment committed against employees by nonemployees, including independent contractors, if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The Board prohibits the harassment of an independent contractor by any district employee or by any other person with whom the independent contractor comes in contact during the course of employment with the district. Additionally, the Board prohibits the harassment of a district employee by an independent contractor. Any complaint of harassment shall be investigated and resolved in accordance with applicable district complaint procedures. (Government Code 12940)

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

Legal Reference: (see next page)

CONSULTANTS (continued)

Legal Reference:

EDUCATION CODE

220 Prohibition of discrimination

10400-10407 Cooperative improvement programs

17596 Limit on continuing contracts

35010 Control of districts; prescription and enforcement of rules

35172 Promotional activities

35204 Contract with attorney

44925 Part-time readers employed as independent contractors

45103 Classified service in districts not incorporating the merit system

45103.5 Contracts for food service consulting services

45134-45135 Employment of retired classified employee

45256 Merit system districts; classified service; positions established for professional experts on a temporary basis

GOVERNMENT CODE

12940 Unlawful employment practices

53060 Contract for special services and advice

82019 Designated employee

87302 Conflict of interest code

LABOR CODE

2750.3 ABC three-part test: employees and independent contractors

UNEMPLOYMENT INSURANCE CODE

606.5 Determination of employment status

621 Employer and employee defined

CODE OF REGULATIONS, TITLE 2

18700.3 Consultant

COURT DECISIONS

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal. 5th 903

S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341

Management Resources:

INTERNAL REVENUE SERVICE PUBLICATIONS

15 A Employer's Supplemental Tax Guide

(9/88 10/96) 12/19

CSBA Sample

Administrative Regulation

All Personnel

AR 4030(a)

NONDISCRIMINATION IN EMPLOYMENT

Note: Pursuant to Government Code 11138 and 2 CCR 11023, districts are **mandated** to adopt rules and regulations to ensure that district programs and activities are free from unlawful discriminatory practices. Pursuant to Government Code 12940, protections against discrimination apply to employees, job applicants, persons who serve in ~~an~~ unpaid internship or other limited-duration programs to gain unpaid work experience, volunteers, and independent contractors.

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or **other** 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~~ **is** 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 contact information.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to ~~coordinate~~ **organize and manage** 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:

Director of Human Resources

(position title)

201 Sixth Street, Coronado, CA 92118

(address)

(619 522-8900 ext. 1010)

(telephone number)

armando.farias@coronadousd.net

(email)

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

Note: Pursuant to Government Code 12940 and 2 CCR 11023, the district is required to take all reasonable steps to prevent unlawful discrimination and harassment. 2 CCR 11023 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. **Also s**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 **in a conspicuous location** on computers ~~in a conspicuous location, the~~ **for employee use, up-to-date** California Department of Fair Employment and Housing (DFEH) posters ~~in regard to~~ **on the prohibition of workplace discrimination and harassment, and the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth** (Government Code 12950; **2 CCR 11013, 11023, 11049**)

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

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

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

NONDISCRIMINATION IN EMPLOYMENT (continued)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

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

3. Disseminate the district's nondiscrimination policy **and administrative regulation** 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 a copy via email with an acknowledgment return form
 - c. Posting the policy a copy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
 - d. Discussing the policy and regulation 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)

4. Provide to employees a handbook which contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior

Note: **Optional** 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, **as amended by SB 778 (Ch. 215, Statutes of 2019)**, ~~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 must** 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~~ **2021** and once every two years thereafter.

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

NONDISCRIMINATION IN EMPLOYMENT (continued)

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~~ **which** includes information and practical guidance on how to recognize potentially problematic behaviors and **which may** 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. 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 **(2 CCR 11023)**

Complaint Procedure

Note: 2 CCR 11023 **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 **may be mitigated** 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 EEOC or DFEH.

While EEOC's guidance recommends a "prompt" investigation, neither the law nor EEOC delineates a specific time frame for resolution. 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 EEOC's guidance and should be modified to reflect district practice.

NONDISCRIMINATION IN EMPLOYMENT (continued)

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 a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The ~~employee's~~ **complainant's** direct supervisor may be bypassed in filing a complaint ~~where~~ **when** the supervisor is the subject of the complaint.

The complainant may ~~file a written complaint in accordance with this procedure or may~~ first attempt to resolve the situation informally with the ~~employee's~~ **complainant's** supervisor **before filing a written complaint.**

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~~ **any available** 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. 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~~ **disclosed** as necessary to conduct an effective investigation.

(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)

NONDISCRIMINATION IN EMPLOYMENT (continued)

If the coordinator determines that a detailed fact-finding investigation is necessary, 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 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 shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed **in order** to ~~ensure that~~ **prevent** 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 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 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.

A summary of the findings shall be presented to the complainant and the person accused.

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 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.

NONDISCRIMINATION IN EMPLOYMENT (continued)

Other Remedies

Note: Items #1-3 below state the time limits within which ~~employees must file their~~ complaints **must be filed**. 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 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 district's complaint investigation. Pursuant to DFEH procedures, DFEH will automatically forward any complaint it has accepted for investigation to EEOC when the matter falls within EEOC's jurisdiction.

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

Note: **As amended by AB 9 (Ch. 709, Statutes of 2019), Government Code 12960 extends the period of time in which a complaint alleging employment discrimination pursuant to Government Code 12940-12952 may be filed with DFEH, from one year to three years following the alleged discriminatory act(s).** Pursuant to Government Code 12960, ~~an employee has one year to file a complaint with DFEH, although that~~ **That** period may be extended under certain circumstances. **Districts should consult legal counsel if any questions arise., such as when a person obtains knowledge of the unlawful practice after the expiration of the one year period.**

1. ~~To file a valid~~ **For filing a** complaint with DFEH **alleging a violation of Government Code 12940-12952**, within ~~one year~~ **three years** of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 **(Government Code 12960)**

Note: 42 USC 2000e-5 specifies that a person must file a discrimination complaint with 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~~ **For filing a** complaint ~~directly~~ with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. ~~To file a valid~~ **For filing a** 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)

(12/16 3/19) 12/19

CSBA Sample

Board Policy

All Personnel

BP 4033(a)

LACTATION ACCOMMODATION

Note: ~~The following optional policy may be revised to reflect district practice.~~ Pursuant to Labor Code 1034, as added by SB 142 (Ch. 720, Statutes of 2019), districts are mandated to develop policy regarding lactation accommodation with specified components, as provided below.

Both federal and state law require that employees be provided reasonable break time and an appropriate location to accommodate their desire to express milk for their infant children. ~~The Patient Protection and Affordable Care Act (P.L. 111-148, 2010) amended 29 USC 207, of the Fair Labor Standards Act (FLSA) to require~~s employers to provide reasonable break time for nursing ~~mothers~~ employees, but applies only to employees who are not exempt from the overtime pay requirements of the **Fair Labor Standards Act (FLSA)** (i.e., ~~classified employees~~). State law (Labor Code 1030-~~1033~~ **1034**) applies to all district employees. Where provisions of the two laws conflict, the statute providing greater protections for employees supersedes. The district should consult legal counsel if questions arise about the application of these laws to a particular employee.

~~The Fair Employment and Housing Commission has determined that, because breastfeeding is an activity intrinsic to females, termination of an employee because she was still breastfeeding after returning to work from pregnancy disability leave was sexual discrimination in violation of Government Code 12940 and 12945 (Chavez v. Acosta-Tacos).~~ Government Code 12926 includes breastfeeding or medical conditions related to breastfeeding within the definition of "sex" for purposes of sex discrimination under the California Fair Employment and Housing Act. Furthermore, Additionally, Labor Code 1033, as amended by SB 142, prohibits an employer from discharging or in any manner discriminating or retaliating against an employee for exercising or attempting to exercise any right related to lactation accommodation. Pursuant to Labor Code 1033, violation of Labor Code 1030-~~1033~~ **1034** may result in a citation from the Labor Commissioner and/or a civil penalty.

The district should ensure consistency of this policy with provisions in the district's collective bargaining agreement, if any, related to break times or other employment issues.

The Governing Board recognizes the immediate and long-term health **advantages** **benefits** of breastfeeding ~~for infants and mothers~~ and desires to provide a supportive environment for any district employee to express milk for **her an** infant child upon **her** returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee ~~who chooses~~ **for seeking an accommodation** to express breast milk for **her an** infant child while at work.

(cf. 4030 - Nondiscrimination in Employment)

Note: ~~Although 29 USC 207 limits the length of time that a classified employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030-1033 does not set a specific limit on the infant child's age and therefore provides greater benefits to employees.~~

~~The district shall provide a reasonable amount of break time to accommodate an employee each time she has a need to express breast milk for her infant child. (Labor Code 1030)~~

LACTATION ACCOMMODATION (continued)

Note: Labor Code 1030 and 29 USC 207 do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing milk. However, an employee who uses break time already provided by the district as paid time must be compensated for that break time in the same manner as any other employee. Any additional time beyond the authorized paid break time could be uncompensated, provided the employee is completely relieved from duty during that time. If the district chooses to provide compensation during extended break time, it should modify the following paragraph accordingly. The district also may provide flexible scheduling for those employees who choose to make up for any unpaid break time.

To the extent possible, such break time shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207)

Note: Labor Code 1031 requires the district to make reasonable efforts to provide an employee with the use of a private room or other location, except a toilet stall, in close proximity to the employee's work area, which may include the place where the employee normally works if the location otherwise meets legal requirements. 29 USC 207, applicable to classified employees, specifies that the location must be shielded from view and free from intrusion from coworkers and the public. A fact sheet issued by the U.S. Department of Labor's (DOL) Wage and Hour Division, Break Time for Nursing Mothers under the FLSA, clarifies that the location provided by the district could be a space temporarily created or converted into a space for expressing milk as long as it is functional and meets all requirements of law.

The DOL has preliminarily interpreted an employee's right to express milk for her infant child to include the ability to safely store the milk (75 Fed. Reg. 244, page 80076). According to the DOL, this might include providing access to a refrigerator or ice chest or allowing the employee to bring an insulated food container to work.

A fact sheet issued by the California Department of Public Health, Minimum Requirements of the California Lactation Accommodation Law, recommends that the location should have the following items: a comfortable chair, small table, electrical outlet, a sink with a safe water source, disinfectant dish soap, and paper towels.

The employee shall be provided a private location, other than a restroom, which is in close proximity to her work area and meets the requirements of Labor Code 1031 and 29 USC 207, as applicable.

Note: Labor Code 1034, as added by SB 142, mandates that the district's policy regarding lactation accommodation include the process by which the employee is to make a lactation accommodation request and the district's obligation to respond to the request. The following paragraph should be modified to reflect the district's process.

An employee shall notify their supervisor or other appropriate personnel in advance of their intent to make use of the request an accommodations offered for employees who are nursing mothers. As needed, the supervisor shall. The supervisor shall respond to the request and shall work with the employee to address make arrangements, and If needed, the supervisor shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.

LACTATION ACCOMMODATION (continued)

Note: Pursuant to Labor Code 1032, all districts are required to grant lactation accommodation except when granting the provides exceptions to the requirement for lactation accommodation when providing such accommodation would "seriously disrupt" district operations. "Serious disruption" is not defined in the law.

Additionally, Labor Code 1031, as amended by SB 142, 29 USC 207 provides an exceptions for districts with fewer than 50 employees when lactation accommodation would result in "undue hardship" based on significant difficulty or expense in relation to the size, financial resources, nature, or structure of the district. In this case, the exception is limited to districts with fewer than 50 employees and applies to classified employees only. When such a district is able to demonstrate undue hardship, Labor Code 1031 only requires that reasonable efforts be made to provide the employee with the use of a room or other location in close proximity to the employee's work area for the employee to express milk in private. Pursuant to Labor Code 1031, the provided room or location may not be a toilet stall.

Regardless of the size of the district, the determination of serious disruption or undue hardship should be made on a case-by-case basis and only in limited, stringent circumstances. The burden of demonstrating why accommodation could not be made, even if on a temporary basis or for less time than requested, would likely fall to the district.

Lactation accommodations may be denied only in limited circumstances shall be granted in accordance with law unless limited circumstances exist as specified in law. (Labor Code 1031, 1032; 29 USC 207)

Note: Labor Code 1034, as added by SB 142, mandates that the district's policy include a statement that the district provide a written response to an employee if the district is unable to comply with the break time or location requirements.

Before an employee's supervisor makes a determination is made to deny lactation accommodations to an employee, he/she the employee's supervisor shall consult with the Superintendent or designee. In any case in which When lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

The Superintendent or designee shall provide a written response to any employee who was denied the accommodation(s). (Labor Code 1034)

Note: Labor Code 1034, as added by SB 142, mandates that the district's policy regarding lactation accommodation be distributed to employees as provided in the following paragraph.

The district shall include this policy in its employee handbook or in any set of policies that the district makes available to employees. In addition, the Superintendent or designee shall distribute the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave. (Labor Code 1034)

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

LACTATION ACCOMMODATION (continued)**Break Time and Location Requirements**

Note: Although 29 USC 207 limits the length of time that a classified employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030-1033 does not set a specific limit on the infant child's age and therefore provides greater benefits to employees.

The district shall provide a reasonable amount of break time to accommodate an employee each time ~~she~~ **the employee** has a need to express breast milk for ~~her~~ **an** infant child. (Labor Code 1030)

Note: Labor Code 1030 and 29 USC 207 do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing milk. However, an employee who uses break time already provided by the district as paid time must be compensated for that break time in the same manner as any other employee. Any additional time beyond the authorized paid break time could be uncompensated, provided the employee is completely relieved from duty during that time. If the district **instead** chooses to provide compensation ~~during extended~~ **for such additional** break time, it should modify the following paragraph accordingly. The district also may provide flexible scheduling for those employees who choose to **work extra time** to make up for any ~~unpaid~~ **uncompensated** break time **beyond the authorized break time.**

To the extent possible, ~~such any~~ **any** break time **granted for lactation accommodation** shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207)

Note: Labor Code 1031, as amended by SB 142, requires the district to provide an employee with the use of a room or location, other than a bathroom, to express milk in private. This may include the place where the employee normally works if the location otherwise meets legal requirements, as specified below. Labor Code 1031 authorizes the district to designate a temporary location to express milk if the district is unable to provide a permanent location due to operational, financial, or space limitation, as long as the space is in close proximity to the employee's work area, shielded from view, free from intrusion while breast milk is being expressed, and is otherwise compliant with law.

The employee shall be provided ~~the~~ **the** use of a private room or location, other than a ~~restroom~~ **bathroom, which may be the employee's work area or another location that** ~~which~~ is in close proximity to ~~the employee's~~ **her** work area. ~~The room or location provided shall and meets the following requirements: of (Labor Code 1031; and 29 USC 207), as applicable.~~

1. **Is shielded from view and free from intrusion while the employee is expressing milk**
2. **Is safe, clean, and free of hazardous materials, as defined in Labor Code 6382**
3. **Contains a place to sit and a surface to place a breast pump and personal items**

LACTATION ACCOMMODATION (continued)

4. Has access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump
5. Has access to a sink with running water and a refrigerator or, if a refrigerator cannot be provided, another cooling device suitable for storing milk in close proximity to the employee's workspace

If a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes. (Labor Code 1031)

Dispute Resolution

Note: The following paragraph is mandated pursuant to Labor Code 1034, as added by SB 142.

An employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

(cf. 4144/4244/4344 - Complaints)

Legal Reference:

EDUCATION CODE

200-262.4 **Educational equity; p**rohibition of discrimination on the basis of sex

CIVIL CODE

43.3 Right of mothers to breastfeed in any public or private location

GOVERNMENT CODE

12926 Definition of sex; breastfeeding

12940 **Unlawful d**iscriminatory employment practices

12945 **Unlawful d**iscrimination based on pregnancy, childbirth, or related medical conditions

LABOR CODE

~~1030-1033~~ **1034** Lactation accommodation

6382 Procedure for listing hazardous substances

CODE OF REGULATIONS, TITLE 2

~~11035-11049~~ **11051 Unlawful s**ex discrimination; pregnancy and related medical conditions

UNITED STATES CODE, TITLE 29

207 Fair Labor Standards Act; lactation accommodation

Management Resources: (see next page)

LACTATION ACCOMMODATION (continued)

Management Resources:

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Rest Periods/Lactation Accommodation, Frequently Asked Questions

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

Minimum Requirements of the California Lactation Accommodation Law **Lactation Accommodation for Employers**

CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS

Lactation Support Program Toolkit

FEDERAL REGISTER

Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 75, No. 244, pages 80073-80079

OFFICE OF THE SURGEON GENERAL PUBLICATIONS

The Surgeon General's Call to Action to Support Breastfeeding, 2011

HEALTH RESOURCES AND SERVICES ADMINISTRATION PUBLICATIONS

The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008

U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, PUBLICATIONS

Frequently Asked Questions- Break Time for Nursing Mothers

Fact Sheet #73: Break Time for Nursing Mothers under the FLSA, rev. April 2018

Fact Sheet #3: Break Time for Nursing Mothers under the FLSA, rev. December 2010

WEB SITES

California Department of Industrial Relations, Division of Labor and Standards Enforcement:

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

California Women, Infants and Children **Program**: <http://www.wicworks.ca.gov>

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

Health Resources and Services Administration: <http://www.hrsa.gov>

Office of the Surgeon General: <http://www.surgeongeneral.gov>

U.S. Department of Labor, Wage and Hour Division, Break Time for Nursing Mothers:

<http://www.dol.gov/whd/nursingmothers>

(7/11) 12/19

CSBA Sample

Board Policy

All Personnel

BP 4151(a)

4251

EMPLOYEE COMPENSATION

4351

Note: Districts that include provisions related to employee compensation in their collective bargaining agreements should modify or delete the following **optional** policy accordingly.

In order to recruit and retain employees committed to the district's goals for student learning, the Governing Board recognizes the importance of offering a competitive compensation package which includes salaries and health and welfare benefits.

(cf. 3100 - Budget)

(cf. 3400 - Management of Districts Assets/Accounts)

(cf. 4000 - Concepts and Roles)

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

Note: Education Code 45023 and 45162 require the Governing Board to adopt salary schedules for certificated and classified employees, respectively. For districts operating under a merit system, Education Code 45268 specifies that the personnel commission will recommend a salary schedule for classified employees to the Board for approval and that the Board may not amend the schedule without first giving the commission an opportunity to respond to the amendments.

The Board shall adopt separate salary schedules for certificated, classified, and supervisory and administrative personnel. These schedules shall comply with law and collective bargaining agreements and shall be printed and made available for review at the district office. (Education Code 45022, 45023, 45160, 45162, **45268**)

(cf. 4121 - Temporary/Substitute Personnel)

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4143/4243 - Negotiations/Consultation)

Each certificated employee, except an employee in an administrative or supervisory position, shall be classified on the salary schedule on the basis of uniform allowance for **years of training—education level** and years of experience, unless the Board and employee organization negotiate and mutually agree to a salary schedule based on different criteria. Certificated employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the grade levels at which they teach. (Education Code 45028)

(cf. 4030 - Nondiscrimination in Employment)

Salary schedules for staff who are not a part of a bargaining unit shall be determined by the Board at the recommendation of the Superintendent or designee.

(cf. 4140/4240/4340 - Bargaining Units)

(cf. 4312.1 - Contracts)

EMPLOYEE COMPENSATION (continued)

Note: Pursuant to Education Code 45038, certificated employees may be paid once every two weeks, twice a month, or once every four weeks. The Board may also choose to pay certificated employees, or one or more individual employees, in 10, 11, or 12 equal payments **over the year** ~~instead of by the school month~~. Education Code 45039 provides that, if the Board arranges to pay certificated employees in 12 equal payments for the year, it may pay each monthly installment at the end of each calendar month, whether or not the employees are engaged in teaching during the month. Education Code 45165 addresses salary payments for classified employees who are employed 9-11 months per year.

~~Pursuant to 26 CFR 1.409A-1, the practice of paying employees who work 10 months per year is a form of "deferred compensation." If the district allows employees to "elect" whether to receive their paychecks in such a manner, then according to the IRS, such employees must submit written election forms to the district in order to avoid any additional tax on the deferred compensation. If the district requires employees to receive their paychecks in such a manner without offering them an option, then the employees do not need to complete election forms, but the district must develop a written document describing how the employees will be paid, including the dates, schedule, and amounts of payment.~~

Education Code 45048 and 45165 provide specific timelines for issuing salary payments depending on the frequency of payments. If payments are not made in a timely manner, the district is required to pay the employee interest on the unpaid amount.

The following paragraph may be revised to reflect the payroll schedule determined by the Board.

The Board shall determine the frequency and schedule of salary payments, including whether payments for employees who work less than 12 months per year will be made over the course of the school year or in equal installments over the calendar year. (Education Code 45038, 45039, 45048, 45165)

Note: Pursuant to 29 CFR 516.4, districts are required to post a notice of the minimum wage provisions of the Fair Labor Standards Act (**FLSA**) (29 USC 201-219) in a conspicuous place at all work sites. The poster that must be used by state and local governments is available on the web site of the U.S. Department of Labor's Wage and Hour Division.

The Superintendent or designee shall post a notice explaining the Fair Labor Standards Act's wage and hour provisions in a conspicuous place at each work site. (29 CFR 516.4)

Overtime Compensation

Note: Pursuant to the ~~Federal Fair Labor Standards Act (FLSA)~~ (29 CFR 553.20) **and Labor Code 510**, employees who are not specifically exempted by law must receive overtime pay at a rate not less than one and one-half times their regular rate of pay for hours worked in excess of 40 hours per work week. Furthermore, ~~state law (Labor Code 510)~~ entitles employees to an overtime pay rate after working eight hours in one day, unless an alternative **work week** schedule allowed by law is approved. **Pursuant to Labor Code 510, if an employee works more than 12 hours per work day or more than eight hours on the seventh consecutive day of work, the employee must be paid twice the regular salary.**

EMPLOYEE COMPENSATION (continued)

Pursuant to 29 CFR 541.0-541.710, employees are exempt from the FLSA overtime rules if they are executive, administrative, or professional staff, as defined, and their salary is at or above the salary level established in 29 CFR 541.600, as amended by 81 Fed. Reg. 32391. This salary level will automatically be updated every three years beginning January 1, 2020 according to the method specified in 29 CFR 541.607. Because the federal salary limit qualifying for exemption is higher than the California salary test, the federal limit prevails. On September 24, 2019, the U.S. Department of Labor issued a final rule (29 CFR 541.600) raising the federal salary threshold for this exemption. However, the threshold is higher in California and thus state law prevails. Pursuant to Labor Code 515, executive, administrative, or professional employees are exempt from the FLSA overtime rules if they are executive, administrative, or professional staff, as defined, and their monthly salary is at least twice the state minimum wage for full-time employment. Furthermore, the salary threshold is not affected by any local minimum wage that is higher than the state minimum wage.

When calculating the overtime rate of pay, 29 USC 207 requires that all remuneration for employment paid to or on behalf of the employee, with specified exclusions, be considered as part of the employee's regular rate of pay. In *Flores v. City of San Gabriel*, the appeals court ruled that cash payments made in lieu of benefits must be included in the calculation.

Overtime pay requirements are also not applicable to school administrators or teachers in elementary or secondary schools under specific exemptions in 29 USC 213 and 29 CFR 541.303. Pursuant to 29 CFR 541.303 and 541.600, teachers do not need to meet the salary level requirement to be exempt from overtime rules. 29 CFR 541.204 provides that, to be exempt from overtime rules, administrators must either meet the salary level requirement or be compensated on a salary basis that is at least equal to the entrance salary for teachers in the administrator's school to be exempt from overtime rules.

And District employees shall be paid an overtime rate of not less than one and one-half times his/her their regular rate of pay for any hours worked in excess of eight hours in one day or 40 hours in one work week, or twice their regular rate of pay for any hours worked in excess of 12 hours in one day or eight hours on the seventh consecutive day of work. However, employees shall be exempt from overtime rules if they are employed as teachers or school administrators or if they qualify as being employed in an executive, administrative, or professional capacity and are paid a fixed salary at or above the salary level established by federal regulations monthly salary that is at least twice the state minimum wage for full-time employment. (Labor Code 510, 515; 29 USC 213; 29 CFR 541.0-541.710, 553.27, 553.32)

Note: The following optional paragraph is for use by districts that allow employees to take compensatory time off in lieu of overtime compensation as authorized by 29 USC 207 and 29 CFR 553.20-553.25. Time off in lieu of overtime compensation is allowed only if provided for in a collective bargaining agreement or other agreement and must be provided at the rate of at least one and one-half hours for each hour of overtime work.

Pursuant to 29 CFR 553.21, an employee must be allowed to use earned compensatory time within a "reasonable period" after making the request. 29 CFR 553.25 provides that a "reasonable period" is determined on a case-by-case basis by considering customary work practices such as the normal work schedule, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff.

EMPLOYEE COMPENSATION (continued)

When authorized in a collective bargaining agreement or other agreement between the district and employees, an employee may take compensatory time off in lieu of overtime compensation, provided ~~he/she~~ **the employee** has not accrued compensatory time in excess of the limits specified in 29 USC 207. An employee who has requested the use of compensatory time shall be allowed to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt district operations. (29 USC 207; 29 CFR 553.20-553.25)

For each nonexempt employee, the Superintendent or designee shall maintain records on the employee's wages, hours, and other information specified in 29 CFR 516.5-516.6.

(cf. 3580 - District Records)

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

Legal Reference: (see next page)

EMPLOYEE COMPENSATION (continued)

Legal Reference:

EDUCATION CODE

45022-45061.5 Salaries, especially:

45023 Availability of salary schedule

45028 Salary schedule for certificated employees

45160-45169 Salaries for classified employees

45268 Salary schedule for classified service in merit system districts

GOVERNMENT CODE

3540-3549 Meeting and negotiating, especially:

3543.2 Scope of representation

3543.7 Duty to meet and negotiate in good faith

LABOR CODE

226 Employee access to payroll records

232 Disclosure of wages

510 Overtime compensation; length of work day and week; alternative schedules

515 Overtime exemption for administrative, executive, and professional employees

CODE OF REGULATIONS, TITLE 8

11040 Wages and hours; definitions of administrative, executive, and professional employees

UNITED STATES CODE, TITLE 26

409A Deferred compensation plans

UNITED STATES CODE, TITLE 29

201-219 Fair Labor Standards Act, especially:

203 Definitions

207 Overtime

213 Exemptions from minimum wage and overtime requirements

CODE OF FEDERAL REGULATIONS, TITLE 26

1.409A-1 Definitions and covered plans

CODE OF FEDERAL REGULATIONS, TITLE 29

516.4 Notice of minimum wage and overtime provisions

516.5-516.6 Records

541.0-541.710 Exemptions for executive, administrative, and professional employees

553.1-553.51 Fair Labor Standards Act; applicability to public agencies

COURT DECISIONS

Flores v. City of San Gabriel, 9th Cir., June 2, 2016, No. 14-56421

Management Resources:

WEB SITES

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

Internal Revenue Service: <http://www.irs.gov>

School Services of California, Inc.: <http://www.sscal.com>

U.S. Department of Labor, Wage and Hour Division: <https://www.dol.gov/whd>

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Policy Reference UPDATE Service

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CSBA Sample

Board Policy

Students

BP 5116.1(a)

INTRADISTRICT OPEN ENROLLMENT

Note: Education Code 35160.5 **mandates** that **governing boards the Governing Board** establish an open enrollment policy within the district for residents of the district. This requirement does not apply to districts with only one school or with schools that do not serve any of the same grade levels.

The Governing Board desires to provide enrollment options that meet the diverse needs and interests of district students and parents/guardians, while also maximizing the efficient use of district facilities **and resources**. The Superintendent or designee shall establish procedures for the selection and transfer of students among district schools in accordance with law, Board policy, and administrative regulation.

(cf. 5116.2 - Involuntary Student Transfers)
(cf. 5117 - Interdistrict Attendance)

Note: Education Code 35160.5 **mandates** that the district's intradistrict open enrollment policy contain the following provision.

The parents/guardians of any student who resides within district boundaries may apply to enroll their child in any district school, regardless of the location of their residence within the district. (Education Code 35160.5)

(cf. 5111.1 - District Residency)

The Board shall annually review this policy. (Education Code 35160.5, 48980)

Enrollment Priorities

No student currently residing within a school's attendance area shall be displaced by another student transferring from outside the attendance area. (Education Code 35160.5)

(cf. 5116 - School Attendance Boundaries)

Note: The following list of intradistrict enrollment priorities should be modified to reflect district practice. Districts must establish priority for circumstances under which the district is required by state or federal law to offer intradistrict enrollment opportunities (items #1-**3 4** below). Anticipated need for these transfers should be considered in determining capacity of district schools for other intradistrict transfers allowed by the district pursuant to items #**4-6 5-7** below.

The Every Student Succeeds Act (ESSA) (P.L. 114-95) repealed 20 USC 6316 which had required districts to offer intradistrict transfers to all students in Title I schools identified for program improvement in the first year or beyond. The district may, but is not required to, offer such transfers beginning in the 2016-17 school year. Districts that choose to offer such transfers may expand the following list accordingly.

INTRADISTRICT OPEN ENROLLMENT (continued)

The Superintendent or designee shall grant priority **for the enrollment of a student in a district school** to any district student to attend another district school, including a charter school, outside of his/her **the student's** attendance area, **if the student** as follows:

Note: Education Code 48350-48361 allow a student attending an "open enrollment" school, as identified by the Superintendent of Public Instruction, to transfer to another school that has a higher Academic Performance Index (API), either within the district or in another district. For details regarding such transfers, see BP/AR 5118 - Open Enrollment Act Transfers. However, the California Department of Education (CDE) did not produce an Open Enrollment Act list for the 2016-17 school year due to the suspension of the API. The CDE has posted the 2015-16 Open Enrollment Act list on its web site for use in the 2016-17 school year, but cautions that the list is based on the results of 2013 state assessments developed under prior state content standards and that the assessment results of schools on that list may have improved.

1. ~~Any student enrolled in a district school that has been identified on the state's Open Enrollment Act list (Education Code 48354)~~

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

- 2.1. **Any student Is** enrolled in a district school designated by the California Department of Education **(CDE)** as "persistently dangerous" (20 USC 7912; 5 CCR 11992)

(cf. 0450 - Comprehensive Safety Plan)

- 3.2. **Any student who is Is** a victim of a violent crime while on school grounds (20 USC 7912)

Note: Education Code 46600, as amended by AB 1127 (Ch. 781, Statutes of 2019), requires a district to approve an intradistrict transfer request for a student who is a victim of bullying, as defined in Education Code 48900.

If the school requested is at maximum capacity and no other district school offers the student's grade level, the student may request an interdistrict transfer and the transfer may not be prohibited by the district; see BP 5117 - Interdistrict Attendance and AR 5131.2 - Bullying.

3. **Is a victim of an act of bullying committed by another district student, as determined through an investigation following the parent/guardian's submission of a written complaint with the school, district, or local law enforcement agency pursuant to Education Code 234.1 (Education Code 46600)**

If the district school requested by the student is at maximum capacity, the Superintendent or designee shall accept an intradistrict transfer request for another district school. (Education Code 46600)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 5131.2 - Bullying)

INTRADISTRICT OPEN ENROLLMENT (continued)

Note: Education Code 35160.5 permits, but does not require, the district's policy to include any or all of the following priorities. Items #4-6 below are **optional** and should be deleted or modified to reflect enrollment priorities in the district.

Education Code 35160.5 makes no provision related to the duration of any transfer granted pursuant to items #4-6. See the accompanying administrative regulation.

4. ~~Upon a finding that~~ **Is experiencing** special circumstances ~~exist~~ that might be harmful or dangerous to the student in the current attendance area. ~~Special circumstances include,~~ **including**, but ~~are~~ not limited to, threats of bodily harm or threats to the emotional stability of the student. Any such student may transfer to a district school that is at capacity and otherwise closed to transfers. To grant priority under these circumstances, the Superintendent or designee must have received either: (Education Code 35160.5)
 - a. A written statement from a representative of an appropriate state or local agency, including, but not necessarily limited to, a law enforcement official, **or a social worker, or a properly licensed or registered professional, such as a psychiatrist, psychologist, or marriage and family therapist, including, but not necessarily limited to, a psychiatrist, psychologist, marriage and family therapist, clinical social worker, or professional clinical counselor**
 - b. A court order, including a temporary restraining order and injunction
5. **Is a** ~~Any~~ sibling of **a another** student already ~~in attendance in~~ **attending** that school
6. ~~Any student whose~~ **Has a** parent/guardian ~~is assigned to that school as his/her~~ **whose** primary place of employment **is that school**

Application and Selection Process

Note: **Education Code 48354 requires the district to give priority for enrollment to students residing in the district before admitting students seeking to transfer from an open enrollment school outside of the district. In order to accurately determine the number of slots available for interdistrict transfers, the district should set an application window for parents/guardians to apply for intradistrict open enrollment that precedes the district's application window under the Open Enrollment Act. For language regarding the application window under the Open Enrollment Act, see BP/AR 5118 – Open Enrollment Act Transfers.**

The district should specify the intradistrict open enrollment application window, if any, in the blank provided in the following paragraph.

In order to ensure that priorities for enrollment in district schools are implemented in accordance with law **and Board policy**, applications for intradistrict open enrollment shall be submitted beginning on February 3 of the school year preceding the school year for which the transfer is requested.

INTRADISTRICT OPEN ENROLLMENT (continued)

Note: Education Code 35160.5 **mandates** that the district's intradistrict open enrollment policy contain all the elements listed in the remainder of this section.

Education Code 35160.5 requires districts to calculate capacity in a nonarbitrary manner using student enrollment and available space. The law does not provide a specific formula for the calculation, but the district may want to include unique factors specific to the school to calculate available space, such as class size reduction requirements and space needs for specialized programs. The district may modify the following paragraph to include the specific formula for calculating school capacity for schools within the district.

The Superintendent or designee shall calculate each school's capacity in a nonarbitrary manner using student enrollment and available space. (Education Code 35160.5)

Note: Pursuant to Education Code 35160.5, the district must use a random, unbiased process (e.g., a lottery) to select students for intradistrict open enrollment when requests for admission exceed the capacity of the school. The California Attorney General (85 Ops.Cal.Atty.Gen. 95 (2002)) has opined that a "first come, first served" selection policy does not constitute a random, unbiased process.

An exception in Education Code 35160.5 gives districts the authority to maintain appropriate racial and ethnic balances across district schools. However, in Crawford v. Huntington Beach Union High School District, a California appellate court held that a district's intradistrict enrollment policy which contained a racial and ethnic balance component as authorized by Education Code 35160.5 was unconstitutional. According to the court, the constitutional provisions added by Proposition 209 prohibit a district from adopting a policy containing different admission criteria on the basis of race. Because of the legal uncertainty surrounding this issue, the following paragraph does not reflect the provisions of Education Code 35160.5 relative to racial and ethnic balance. The district should consult legal counsel regarding any policy or regulation dealing with maintenance of racial or ethnic balance.

Except for **the enrollment** priorities listed above, the Superintendent or designee shall use a random, unbiased selection process to determine **who which students** shall be admitted whenever **the a district** school receives admission requests that are in excess of the school's capacity. (Education Code 35160.5)

Enrollment decisions shall not be based on a student's academic or athletic performance. ~~except that~~ **However,** existing entrance criteria **may be used** for **enrolling students in** specialized schools or programs, ~~may be used~~ provided that the criteria are uniformly applied to all applicants. **In addition, a**Academic performance may be used to determine eligibility for, or placement in, programs for gifted and talented students. (Education Code 35160.5)

(cf. 6172 - Gifted and Talented Student Program)

INTRADISTRICT OPEN ENROLLMENT (continued)**Transportation**

Note: The following section is **optional** and may be revised to reflect district practice. **Districts that do not provide transportation should delete this section.**

Pursuant to the CDE's Every Student Succeeds Act 2016-17 School Year Transition Plan (April 2016) and its Public School Choice FAQs, districts must continue to set aside Title I, Part A funds for transportation costs for students who transferred out of program improvement schools prior to the 2016-17 school year and for students who the district chooses to allow to transfer in the 2016-17 school year. In accordance with the CDE's transition plan and the U.S. Department of Education's Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions (May 2016), any student who transferred under this option prior to the 2016-17 school year must be allowed to remain in the school of enrollment until he/she completes the highest grade offered in the school; see the accompanying administrative regulation.

The district is not obligated to provide transportation for students who are transferring pursuant to the Open Enrollment Act. The district **also** is not obligated to provide transportation for students who are victims of violent criminal offenses or those who wish to transfer out of "persistently dangerous" schools pursuant to 20 USC 7912. If a district chooses to make transportation available to such students, it may use certain federal funds (e.g., Title IV, Part A, and Title V, Part A) to cover the costs. When a district chooses to provide transportation, U.S. Department of Education Guidance (Unsafe School Choice Option) clarifies that the district is not obligated to continue providing or paying for transportation after the school is no longer designated as "persistently dangerous."

In addition, pursuant to 20 USC 6311, the district may use up to five percent of its Title I allocation to pay for the transportation of students who transferred out of a school identified by CDE for comprehensive support and improvement.

Except as required for students who transferred out of a Title I program improvement school, In general, the district shall not be obligated to provide transportation for students who attend school outside their attendance area.

Note: Pursuant to Education Code 46600, as amended by AB 1127, the district must provide transportation assistance to a student who is eligible for free or reduced-price meals and receives an intradistrict transfer as a result of being a victim of bullying. The district may, but is not required to, provide transportation assistance to any other student who is a victim of bullying.

However, upon parent/guardian request, the district shall provide transportation assistance to any student who is eligible for free or reduced-price meals and whose enrollment in a district school outside the student's attendance area is a result of being a victim of bullying. (Education Code 46600)

(cf. 3250 - Transportation Fees)
(cf. 3540 - Transportation)

Legal References next page.

INTRADISTRICT OPEN ENROLLMENT (continued)

Legal Reference:

EDUCATION CODE

200 Prohibition against discrimination

35160.5 District policies; rules and regulations

35291 Rules

35351 Assignment of students to particular schools

46600-46611 Interdistrict attendance agreements

48200 Compulsory attendance

48204 Residency requirements for school attendance

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

~~48350-48361 Open Enrollment Act~~

48980 Notice at beginning of term

CODE OF REGULATIONS, TITLE 5

11992-11994 Definition of persistently dangerous schools

UNITED STATES CODE, TITLE 20

6311 State plans

6313 Eligibility of schools and school attendance areas; funding allocation

7912 Transfers from persistently dangerous schools

COURT DECISIONS

Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275

ATTORNEY GENERAL OPINIONS

85 *Ops.Cal.Atty.Gen.* 95 (2002)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Public School Choice FAQs

Every Student Succeeds Act - Update #8, July 14, 2017

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

~~*Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions, rev. May 4, 2016*~~

Unsafe School Choice Option, May 2004

WEB SITES

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

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

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

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CSBA Sample Administrative Regulation

Students

AR 5116.1(a)

INTRADISTRICT OPEN ENROLLMENT

~~Note: The following administrative regulation addresses intradistrict transfers for victims of a violent criminal offense and students in a "persistently dangerous" school pursuant to 20 USC 7912 and other intradistrict open enrollment options authorized by Education Code 35160.5. For interdistrict transfers under the Open Enrollment Act pursuant to Education Code 48350-48361, see BP/AR 5118—Open Enrollment Act Transfers.~~

Transfers for Victims of a Violent Criminal Offense

Note: 20 USC 7912 requires the state to establish and implement a policy requiring that any student who becomes a victim of a violent criminal offense while on school grounds be provided an option to transfer to another district school, including a charter school; see the accompanying Board policy. 20 USC 7912 does not specify which offenses constitute a "violent criminal offense" for purposes of the victim transfer option. According to the California Department of Education (CDE), districts should consider the specific circumstances of the incident on a case-by-case basis, as specified below. The following two paragraphs are consistent with ~~the~~ CDE's guidance.

U.S. Department of Education (USDOE) Guidance, Unsafe School Choice Option, suggests that districts should notify parents/guardians of the transfer option "generally within 14 days" after the determination that the student has been a victim of a violent offense. ~~In making this offer, the Guidance encourages districts to take into account the needs and preferences of the affected student and parents/guardians.~~ A sample parent/guardian notification letter is available on ~~the~~ CDE's web site.

Within a reasonable amount of time, not to exceed 14 **calendar** days, after it has been determined that a student has been the victim of a violent criminal offense while on school grounds, the student's parents/guardians shall be offered an option to transfer their child to an eligible school identified by the Superintendent or designee. In making the determination that a student has been a victim of a violent criminal offense, the Superintendent or designee shall consider the specific circumstances of the incident and consult with local law enforcement as appropriate. Examples of violent criminal offenses include, but are not limited to, attempted murder, battery with serious bodily injury, assault with a deadly weapon, rape, sexual battery, robbery, extortion, or hate crimes.

The Superintendent or designee shall consider the needs and preferences of the affected student and ~~his/her~~ parent/guardian in making the offer. If the parent/guardian elects to transfer ~~his/her child~~ **the student**, the transfer shall be completed as soon as practicable.

Transfers from a "Persistently Dangerous" School

Note: 20 USC 7912 requires the state to establish and implement a policy requiring that all students attending a "persistently dangerous" school be provided an option to transfer to a safe school within the district, including a charter school; see the accompanying Board policy. Pursuant to 5 CCR 11992 and 11993, a school is designated as "persistently dangerous" based on the number of nonstudent firearms violations and the number of student expulsions pursuant to specified Education Code sections over a period of three consecutive years.

INTRADISTRICT OPEN ENROLLMENT (continued)

USDOE Guidance, Unsafe School Choice Option, provides that a district with one or more schools identified as "persistently dangerous" must, in a timely manner, notify parents/guardians about the school's designation and offer the opportunity to transfer. **Although the law does not specify a timeline for the notice, the Guidance provides an example of 10 school days from the time the district learns of the school's identification as "persistently dangerous."**

According to the USDOE Guidance, districts should complete transfers of students as quickly as possible, and must offer students who attend persistently dangerous schools the opportunity to transfer to a safe school at least 14 calendar days before the start of the school year. Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously. CDE suggests that transfers of students out of a "persistently dangerous" school generally be completed within 30 school days of notification of the school's designation. According to CDE, "timely notification" to parents/guardians should be made within 10 school days and a timely offer of transfer within 20 school days from the time the district learns of the designation, although these two notifications may be combined. Timelines in the following two optional paragraphs may **Timelines in the following section should** be revised to reflect district practice.

Upon receipt of notification from the California Department of Education (CDE) that a district school has been designated as "persistently dangerous," **the Superintendent or designee shall provide parents/guardians of students attending the school with the following notifications** **intradistrict transfers shall be granted as follows:**

1. Within 10 days of receipt of the notification from CDE, **the Superintendent or designee shall provide parents/guardians of students attending the school with notice of the school's designation. Along with this notification, or at least 14 calendar days before the start of the school year, the Superintendent or designee shall provide a list of other district schools to which any student of the school that is designated as persistently dangerous may transfer.**
- ~~2. Within 20 days of receipt of the notification from CDE, notice of the option to transfer their child~~

(cf. 0450 - Comprehensive Safety Plan)

2. Parents/guardians who desire to transfer their child out of a "persistently dangerous" **the** school shall provide a written **request response** to the Superintendent or designee and shall rank-order their preferences from among all schools identified by the Superintendent or designee as eligible to receive transfer students. **The Superintendent or designee may establish a reasonable timeline, not to exceed seven school days, for the submission of parent/guardian requests.**
3. The Superintendent or designee shall consider the needs and preferences of students and parents/guardians before making an assignment, but is not obligated to accept the parent/guardian's preference if the assignment is not feasible due to space constraints or other considerations. **The Superintendent or designee shall notify the parents/guardians of the assigned school.**

INTRADISTRICT OPEN ENROLLMENT (continued)

4. For students whose parents/guardians accept the offer, the transfer shall ~~generally be made within 30 school days of receiving the notice of the school's designation from the CDE~~ be made as quickly as possible. If the parents/guardians decline the assigned school, the student may remain in his/her the current school.

Notifications

Notifications shall be sent to parents/guardians at the beginning of each school year describing all current statutory attendance options and local attendance options available in the district. Such notification shall include: (Education Code 35160.5, 48980)

1. All options for meeting residency requirements for school attendance

(cf. 5111.1 - District Residency)

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

2. Program options offered within local attendance areas
3. A description of any special program options available on both an interdistrict and intradistrict basis
4. A description of the procedure for application for alternative attendance areas or programs and the appeals process available, if any, when a change of attendance is denied
5. A district application form for requesting a change of attendance
6. The explanation of attendance options under California law as provided by the CDE

(cf. 5145.6 - Parental Notifications)

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CSBA Sample Board Policy

Students

BP 5118(a)

OPEN ENROLLMENT ACT TRANSFERS

Note: The Open Enrollment Act (Education Code 48350-48361) provides students enrolled in one of the 1,000 "low-achieving" schools identified by the Superintendent of Public Instruction with the option to enroll in a higher-achieving school. However, because the Academic Performance Index has been suspended, the list of schools has not been updated since the 2015-16 school year and is based on the results of 2013 state assessments developed under prior state content standards.

The following **optional** policy and accompanying administrative regulation are for use by all districts since even districts without a school on the Open Enrollment List may receive applications from students attending a school on the list in a neighboring district.

The Governing Board desires to offer enrollment options in order to provide children with opportunities for academic achievement that meet their diverse needs. Such options shall also be provided to children who reside within another district's boundaries in accordance with law, Board policy, and administrative regulation.

Whenever a student is attending a district school on the Open Enrollment List as identified by the Superintendent of Public Instruction, he/she may transfer to another school within or outside of the district, as long as the school to which he/she is transferring has a higher Academic Performance Index. (Education Code 48354, 48356)

Note: It is unclear whether the Open Enrollment Act grants students who are attending an open enrollment school the right to transfer to another school within the district as well as outside of the district. In order to avoid conflict with the statute authorizing intradistrict open enrollment, the following policy and administrative regulation require students who wish to transfer to another district school to use the district's policy and procedures created pursuant to Education Code 35160.5; see BP/AR 5116.1—Intradistrict Open Enrollment. The following **optional** sentence should be modified to reflect district practice.

A parent/guardian whose child is attending a district school on the Open Enrollment List and who wishes to have his/her child attend another school within the district shall apply for enrollment using BP/AR 5116.1—Intradistrict Open Enrollment.

(cf. 5116.1—Intradistrict Open Enrollment)

(cf. 5117—Interdistrict Attendance)

Note: Education Code 48354 and 48356 require districts to establish a period of time for resident student enrollment and for accepting transfer applications. In establishing timelines for transfer applications under the Open Enrollment Act, the district should consider how these timelines will align with timelines for other student enrollment options. Education Code 48354 requires the district to give priority for enrollment to students residing in the district; thus, districts must first admit those students, as well as students applying for intradistrict transfers, before admitting students from an open enrollment school outside of the district. See BP/AR 5111—Admission, AR 5111.1—District Residency, and BP/AR 5116.1—Intradistrict Open

OPEN ENROLLMENT ACT TRANSFERS (continued)

Enrollment. In order to accurately predict the number of slots that may be available, the timelines for accepting transfer applications under the Open Enrollment Act should also be consistent with the district's timelines for interdistrict attendance permits; see BP/AR 5117—Interdistrict Attendance.

However, the timelines specified in Education Code 48354 and 48357 for Open Enrollment Act transfers may conflict with the deadlines for these other attendance options. Education Code 48354 specifies that these transfer applications must be submitted by January 1 of the preceding school year. Education Code 48357 requires the district to notify parents/guardians within 60 days whether their application for a transfer from an open enrollment school has been accepted or rejected. Therefore, if a parent/guardian submits a transfer application on October 1, the district would need to provide notification of the application's status by December 1, even though the enrollment period for residents might still be open and the district would not yet know how many slots would be available for transfers at a specific school.

One way for a district to comply with these inconsistent statutory provisions is for the Governing Board to waive the January 1 deadline for receipt of all transfer applications, as authorized by Education Code 48354, and create an application window for submission of applications. Such an application window will result in the 60-day deadline for notification of an application's status to fall after the district's deadline by which residents need to enroll their children, allowing residents to receive enrollment priority as required by law.

Districts should specify the transfer application window, if any, in the blank provided in the following paragraph. Because Education Code 48361 specifies that a discretionary decision by the Board regarding the district's administration of the program may only be overturned if the Board acted in an arbitrary and capricious manner, these timelines should be rationally related to the timelines for other intradistrict and interdistrict transfers.

In order to ensure that priorities for enrollment in district schools are implemented in accordance with law, the Board hereby waives the January 1 deadline in Education Code 48354 for all applications for transfer from nonresident parents/guardians of children attending a school on the Open Enrollment List in another district. Transfer applications shall be submitted between _____ (insert application window dates) _____ of the preceding school year for which the transfer is requested.

(cf. 5111.1—District Residency)

Note: Education Code 48355 authorizes the district of residence or the district of enrollment to limit the number of students transferring out of or into the district if the Board determines that the transfer would negatively impact a court-ordered or voluntary desegregation plan or the racial and ethnic balance of the district. However, in Crawford v. Huntington Beach Union High School District, an appellate court held that a district's intradistrict enrollment policy which contained a racial and ethnic balance component pursuant to Education Code 35160.5 was unconstitutional. According to the court, the constitutional provisions added by Proposition 209 prohibit a district from adopting a policy containing different admission criteria on the basis of race. Because of the legal uncertainty surrounding this issue, the following paragraph does not reflect the provisions of Education Code 48355 relative to racial and ethnic balance. Districts should consult legal counsel as necessary. The following optional paragraph is for use by districts with a court-ordered or voluntary desegregation plan.

OPEN ENROLLMENT ACT TRANSFERS (continued)

The Board may deny a transfer out of or into the district upon a determination by the Board that the transfer would negatively impact a court-ordered or voluntary desegregation plan in accordance with Education Code 48355.

Standards for Rejection of Transfer Applications

Note: Education Code 48356 authorizes the district of enrollment to adopt specific written standards for rejection of a transfer application which may include a consideration of the capacity of a program, class, grade level, or school building or any adverse financial impact that may result from the transfer. The law is unclear whether a district may also consider students' discipline history when evaluating transfer applications. Districts that wish to consider disciplinary history should consult legal counsel.

Because Education Code 48361 specifies that a discretionary decision by the Board regarding the district's administration of the program may only be overturned if a court finds that the Board acted in an arbitrary and capricious manner, it is recommended that the standards be included in a Board-adopted policy and be supported by data specific to the district's capacity and financial situation as well as any specific findings by the Superintendent or designee. **Items #1-2 below are examples only. The district should be careful to modify the following section to delete any standards that are not applicable and modify or add any specific district standards, as appropriate. Legal counsel should also be consulted.**

Pursuant to Education Code 48356, the Board has adopted the following standards for acceptance and rejection of transfer applications submitted by a parent/guardian of a student attending a school in another district on the Open Enrollment List. The Superintendent or designee shall apply these standards in accordance with Board policy and administrative regulation and shall ensure that the standards are applied uniformly and consistently.

As applicable, the Superintendent or designee may deny a transfer application under any of the following circumstances:

1. Upon a determination that approval of the transfer application would negatively impact the capacity of a program, class, grade level, or school building, including:
 - a. The class or grade level exceeding the district's limits pursuant to the state Class Size Reduction Program or the Morgan/Hart Class Size Reduction Program for Grades 9-12
 - b. The site, classroom, or program exceeding the maximum student teacher ratio specified in the district's collective bargaining agreement
 - c. The site or classroom exceeding the physical capacity of the facility pursuant to the district's facilities master plan or other facility planning document
 - d. The class or grade level exceeding capacity pursuant items #a-#c above in subsequent years as the student advances to other grade levels at the school

OPEN ENROLLMENT ACT TRANSFERS (continued)~~(cf. 6151—Class Size)~~~~(cf. 7110—Facilities Master Plan)~~

2. Upon a determination that approval of the transfer application would have an adverse financial impact on the district, including:

a. The hiring of additional certificated or classified staff

b. The operation of additional classrooms or instructional facilities

c. Expenses incurred by the district that would not be covered by the apportionment of funds received from the state resulting in a reduction of the resources available to resident students

Appeal Process for Denials of Transfer Applications

Note: Education Code 48361 specifies that a discretionary decision by the Board regarding the district's administration of the program may be overturned if a court finds that the Board acted in an arbitrary and capricious manner. In order to help ensure that any rejection of a transfer application was not arbitrary, it is recommended that the district adopt a process that allows parents/guardians to appeal the Superintendent's or designee's denial to the Board.

The following section is **optional** and should be modified to reflect district practice.

A parent/guardian may appeal the district's denial of a transfer application to the Board by filing a written request of appeal with the Superintendent or designee within 10 days of the receipt of the written notification of denial. In addition, a parent/guardian who believes he/she has been subject to discrimination may file an appeal using the district's Uniform Complaint Procedures.

~~(cf. 1312.3—Uniform Complaint Procedures)~~

The Board shall schedule an appeal hearing as soon as practicable at a regular or special meeting of the Board. At the hearing, the parent/guardian shall have the right to present oral or written evidence, rebut district evidence, and question any district witnesses. Unless the parent/guardian requests that the hearing be held in open session, the hearing shall be held in closed session in order to protect the privacy of students in accordance with law.

~~(cf. 9321—Closed Session Purposes and Agendas)~~

The Board shall make its decision by the next regularly scheduled meeting and shall send its decision to all concerned parties. The Board's decision shall be final.

OPEN ENROLLMENT ACT TRANSFERS (continued)**Program Evaluation**

Note: Education Code 48359 encourages each district to collect data regarding the number of requests granted, denied, or withdrawn; the number of students who transfer out of and into the district; the race, ethnicity, gender, socioeconomic status, and district to and from which students are transferring; and the number of students classified as English learners or identified as individuals with disabilities transferring out of and into the district.

The following **optional** paragraph is consistent with Education Code 48359 and requires the Superintendent or designee to collect data regarding enrollment patterns to determine the space available at specific schools.

The Superintendent or designee shall collect data regarding the number of students who transfer out of the district pursuant to the Open Enrollment Act. He/she also shall collect data regarding the number of students who apply to transfer into the district, the number of requests granted, denied, or withdrawn, and the district schools and programs receiving applications.

When the Superintendent or designee anticipates that a particular school will receive a large number of transfer applications, he/she shall study the enrollment pattern at that school in order to anticipate future resident enrollment at the school and at the district schools into which those students would normally matriculate.

The Superintendent or designee shall regularly report to the Board regarding the implementation of this program.

Legal Reference: (see next page)

OPEN ENROLLMENT ACT TRANSFERS (continued)**Legal Reference:****EDUCATION CODE**~~200 Prohibition of discrimination~~~~35160.5 District policies, rules, and regulations~~~~46600-46611 Interdistrict attendance agreements~~~~48200 Compulsory attendance~~~~48204 Residency requirements for school attendance~~~~48300-48316 Student attendance alternatives, school district of choice program~~~~48350-48361 Open Enrollment Act~~~~48915 Expulsion; particular circumstances~~~~48915.1 Expelled individuals: enrollment in another district~~~~52317 Regional Occupational Center/Program, enrollment of students, interdistrict attendance~~**FAMILY CODE**~~6500-6552 Caregivers~~**CODE OF REGULATIONS, TITLE 5**~~4700-4703 Open Enrollment Act~~**CODE OF FEDERAL REGULATIONS, TITLE 34**~~200.36 Dissemination of information~~~~200.37 Notice of program improvement status, option to transfer~~~~200.39 Program improvement, transfer option~~~~200.42 Corrective action, transfer option~~~~200.43 Restructuring, transfer option~~~~200.44 Public school choice, program improvement schools~~**ATTORNEY GENERAL OPINIONS**~~87 Ops. Cal. Atty. Gen. 132 (2004)~~~~84 Ops. Cal. Atty. Gen. 198 (2001)~~**COURT DECISIONS**~~Crawford v. Huntington Beach Union High School District, (2002) 98 Cal.App.4th 1275~~**Management Resources:****WEB SITES**~~CSBA: <http://www.csba.org>~~~~California Department of Education: <http://www.cde.ca.gov>~~

CSBA Sample

Administrative Regulation

Students

AR 5118(a)

OPEN ENROLLMENT ACT TRANSFERS

Definitions

District of enrollment means the district, other than the district in which the student's parent/guardian resides, in which the parent/guardian intends to enroll his/her child. (Education Code 48352)

District of residence means the district in which the parent/guardian of a student resides and in which the student would otherwise be required to enroll pursuant to Education Code 48200. (Education Code 48352)

(cf. 5111.1—*District Residency*)

Open enrollment school means a "low achieving" school identified by the Superintendent of Public Instruction (SPI) pursuant to Education Code 48352 and 5 CCR 4701. (Education Code 48352; 5 CCR 4701)

Transfer Applications into a District School

Note: Education Code 48354 requires a district to give priority for enrollment to students residing in the district; see the accompanying Board policy.

Enrollment priority shall be available to students who reside within this district. No student who resides within a school's attendance area or who is currently enrolled in a school shall be displaced by a student who is transferring pursuant Education Code 48350-48361 or 5 CCR 4700-4703. (Education Code 48354, 48356)

Applications shall be submitted within the deadlines established by Board policy.

However, 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 48354)

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

The parent/guardian's application may request enrollment of his/her child in a specific school or program. Requests for admission to a magnet school or program designed to serve gifted and talented students shall be subject to the usual admission requirements established by the district for district students. Except for such specialized admission requirements, the Superintendent or designee shall not consider the student's previous academic achievement, athletic performance, physical condition, English language proficiency, family income, or any of the prohibited bases for discrimination listed in Education Code 200. (Education Code 48354, 48356)

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

(cf. 6172—*Gifted and Talented Student Program*)

OPEN ENROLLMENT ACT TRANSFERS (continued)

Students applying for open enrollment transfers shall be assigned priority for approval as follows: (Education Code 48356)

1. First priority for the siblings of students who already attend the desired school
2. Second priority for students transferring from a program improvement school ranked in decile 1 on the Academic Performance Index (API)

If the number of students who request a particular school exceeds the number of spaces available at that school, the Superintendent or designee shall conduct a lottery, in the group priority order identified in items #1 and #2 above, to select students at random until all of the available spaces are filled. (Education Code 48356)

Within 60 days of receiving the application, the Superintendent or designee shall provide written notification to the parent/guardian and the student's district of residence as to whether the application has been accepted or rejected. If the application has been rejected, the notice shall state the reasons for the rejection. If the application has been approved, the notification shall specify the particular school site and the school's address to which the student has been admitted. (Education Code 48357; 5 CCR 4702)

Terms of Approval

The Superintendent or designee shall ensure that the school to which the student is transferring has a higher API than the school in which the student was previously enrolled. (Education Code 48356)

The parent/guardian shall enroll his/her child on or before the first day of instruction or within 14 calendar days of receipt of the district's notice of approval of the application, whichever is later. If the parent/guardian fails to enroll his/her child within this timeframe, the district may decline to enroll the student. (5 CCR 4703)

Upon enrollment, the district shall grant the student any credits toward graduation that he/she received from his/her district of residence. The student shall be eligible for graduation from district schools upon completion of state and district graduation requirements. (Education Code 48358)

(cf. 6143—*Courses of Study*)

(cf. 6146.1—*High School Graduation Requirements*)

(cf. 6146.5—*Elementary/Middle School Graduation Requirements*)

Note: 5 CCR 4702 specifies that once admitted to a school, the student shall not be required to reapply for enrollment to that school, regardless of whether his/her school of residence remains on the Open Enrollment List.

A student admitted to a district school through this process shall be deemed to have fulfilled district residency requirements pursuant to Education Code 48204 and shall not be required to reapply for enrollment in that school, regardless of whether his/her school of residence remains on the Open Enrollment List. (Education Code 48356; 5 CCR 4702)

OPEN ENROLLMENT ACT TRANSFERS (continued)

Note: 5 CCR 4702 specifies that the district of enrollment may allow the student to matriculate to a middle or high school in the district without having to reapply, regardless of whether the middle or high school in the student's district of residence is on the Open Enrollment List. Thus, unified districts, districts with elementary and middle schools, and districts with middle and high schools should be careful to ensure that the terms of approval and notification to parents/guardians clearly specify whether the approval of the transfer application extends to other school(s) in the district to which the student would matriculate or whether the student must reapply if he/she wishes to enroll in those schools upon completion of the course of study at the school to which he/she was originally admitted. **The following optional paragraph requires the student to reapply and should be modified to reflect district practice.**

Once admitted, a transfer student who wishes to matriculate into a district middle or high school or transfer to another district school shall reapply for admission to the new school pursuant to the requirements of Board policy and administrative regulation.

Parents/guardians are responsible for transporting their children to school.

Transfers out of District Schools on the Open Enrollment List

Note: The following **optional** section is for use by districts with schools on the Open Enrollment List pursuant to Education Code 48352. **Districts without schools on the list may delete this section.**

Education Code 48354 requires the district of residence to notify parents/guardians of students attending a school on the Open Enrollment List of their option to transfer to another school within the district or to a school in another district. Pursuant to 5 CCR 4702, this notice must be provided on the first day of instruction or, if the California Department of Education has not posted the list by the first day of instruction, within 14 calendar days after the posting of the list. It is anticipated that the Open Enrollment List will be posted in September of each year. See the accompanying Exhibit for a sample notification.

Upon identification by the California Department of Education (CDE) that a district school is on the Open Enrollment List, the Superintendent or designee shall notify the parents/guardians of each student enrolled in the school of the option to transfer. This notice shall be provided by the first day of instruction. However, if the CDE has not notified the district whether a school is on the list by the first day of instruction, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's web site. (Education Code 48354; 5 CCR 4702)

(cf. 5145.6 Parental Notifications)

CSBA Sample Exhibit

Students _____

E 5118(a)

OPEN ENROLLMENT ACT TRANSFERS

Note: Pursuant to Education Code 48354, if a school is identified by the Superintendent of Public Instruction for the Open Enrollment List, the district must notify parents/guardians of students attending the school of their option to transfer to a higher performing school. Pursuant to 5 CCR 4702, this notice must be provided on the first day of instruction or, if the California Department of Education has not posted the Open Enrollment List by the first day of instruction, within 14 calendar days of the posting of the list.

The following exhibit provides a sample parental notification when a school has been placed on the Open Enrollment List. This letter should be modified to reflect district practice.

PARENTAL NOTIFICATION: OPTION TO TRANSFER

[Date]

To the parents/guardians of students at _____ School:

The purpose of this letter is to inform you that our school has been identified by the California Department of Education (CDE) as an Open Enrollment school for the _____ school year.

Why is our school on the Open Enrollment List?

The Open Enrollment Act, which became law in the spring of 2010, requires the CDE to annually create a list of 1,000 schools ranked by their Academic Performance Index (API). A school's API is a number that ranges from 200 to 1,000 and is calculated using the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to meet annual growth targets until that goal is achieved. Annual API growth targets will vary for each school.

For more information about how the Open Enrollment List is created, please visit the CDE's web site: <http://www.cde.ca.gov/sp/eo/op>.

What right does a parent have to request a transfer?

All parents/guardians of students attending a school on the Open Enrollment List have the option to request a transfer of their child to another school in this district or in another California district. The school to which your child transfers must have a higher API than the school your child is leaving. Our school's API is _____.

The following district schools are available to accept transfers: *[List schools with space available and higher API scores.]*

OPEN ENROLLMENT ACT TRANSFERS (continued)

If you would like to transfer your child to one of the schools listed above, please contact that school for information about applying for intradistrict open enrollment. Information about the performance and academic achievement of each available school is enclosed.

If you would like to transfer your child to a school in another district, you must contact that school district for information regarding their application procedures and timelines. To find a school with a higher API, go to the CDE's website: <http://api.cde.ca.gov/reports>.

Parents/guardians are responsible for providing transportation to and from the new school.

We will keep you updated and informed about opportunities to discuss plans for our school. If you have questions, need additional information on how you can get involved in our school improvement efforts, or would like to discuss the school's instructional program, please feel free to call me and/or visit the school.

Sincerely,

[Name of Principal]

CSBA Sample Administrative Regulation

Students

AR 5125(a)

STUDENT RECORDS

Definitions

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

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

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

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

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

1. Directory information

(cf. 5125.1 - Release of Directory Information)

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

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

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

(cf. 3515 - Campus Security)

(cf. 3515.3 - District Police/Security Department)

STUDENT RECORDS (continued)

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

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

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

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

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

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

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

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

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

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

STUDENT RECORDS (continued)

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

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

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

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

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

Note: 34 CFR 99.31 defines "school officials and employees" for purposes of determining who may be given personally identifiable information from student records, as provided below. In 73 Fed. Reg. 74815 (2008), USDOE stated that local agencies are in the best position to determine the types of parties who may serve as school officials. Examples cited include school transportation officials (including bus drivers), school nurses, practicum and fieldwork students, unpaid interns, consultants, contractors, volunteers, and other outside parties providing institutional services and performing institutional functions, provided that each of the requirements in 34 CFR 99.31 has been met.

School officials and employees are officials or employees, **including teachers**, whose duties and responsibilities to the district, whether routine or as a result of special circumstances, require **that they have** access to student records. **(34 CFR 99.31)**

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

STUDENT RECORDS (continued)

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

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

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

Persons Granted Absolute Access

In accordance with law, absolute access to any student records shall be granted to:

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

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

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

(cf. 6159 - Individualized Education Program)

Access for Limited Purpose/Legitimate Educational Interest

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

Note: Education Code 49076 and 34 CFR 99.31 require that access to relevant records be given to parents/guardians of a dependent child, defined by 26 USC 152 as one who lives with his/her a parent/guardian for more than half the taxable year, meets the specified age requirements, has not provided more than half of his/her one's own support during that year, and has not filed a joint tax return with a spouse.

STUDENT RECORDS (continued)

1. Parents/guardians of ~~a student age 18 or older who is~~ a dependent child as defined under 26 USC 152 (Education Code 49076; 34 CFR 99.31)
2. Students who are age 16 or older or who have completed the 10th grade (Education Code 49076; ~~34 CFR 99.31~~)
3. School officials and employees, consistent with the definition provided in the section "Definitions" above (Education Code 49076; 34 CFR 99.31)
4. Members of a school attendance review board (SARB) **appointed pursuant to Education Code 48321** who are authorized representatives of the district and any volunteer aide age 18 or older who has been investigated, selected, and trained by the SARB to provide follow-up services to a referred student (Education Code 49076)

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5113.12 - District School Attendance Review Board)

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

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

Unless the annual parent/guardian notification issued pursuant to Education Code 48980 includes a statement that the district may disclose students' personally identifiable information to officials of another school, school system, or postsecondary institution where the student seeks or intends to enroll, the Superintendent or designee shall, when such a disclosure is made, make a reasonable attempt to notify the parent/guardian or adult student at **his/her the** last known address, provide a copy of the record that is disclosed, and give the parent/guardian or adult student an opportunity for a hearing to challenge the record. (34 CFR 99.34)

Note: Item #6 below is for use by districts that maintain high schools. Education Code 69432.9 provides that all students in grade 12 will be considered Cal Grant applicants and will have their grade point average (GPA) submitted to the Student Aid Commission, unless they opt out or are permitted under Commission rules to submit test scores in lieu of the GPA. Education Code 69432.9 requires that the report be submitted

STUDENT RECORDS (continued)

on a standardized form provided by the Commission. Pursuant to Education Code 69432.92, the Commission may also require that districts submit verification of high school graduation or its equivalent for all students who graduated in the prior academic year, except for students who have opted out.

Education Code 49432.9 requires that parents/guardians be notified that their child's GPA will be forwarded unless they opt out within the time period specified in the notice. This notification could be included in the annual parental notification issued pursuant to Education Code 48980.

6. The Student Aid Commission, to provide the grade point average (GPA) of all district students in grade 12 and, when **requested required**, verification of high school graduation or its equivalent of all students who graduated in the prior academic year, for use in the Cal Grant postsecondary financial aid program. However, such information shall not be submitted when students opt out **or** are permitted by the rules of the Student Aid Commission to provide test scores in lieu of the GPA. (Education Code 69432.9, 69432.92)

No later than **October 15 January 1** each year, the Superintendent or designee shall notify each student in grade **12 11**, and **his/her the student's** parents/guardians if the student is under age 18 years, that the student's GPA will be forwarded to the Student Aid Commission **by October 1** unless **he/she the student** opts out within a period of time specified in the notice, which shall not be less than 30 days. (Education Code 69432.9)

Students' social security numbers shall not be included in the submitted information unless the Student Aid Commission deems it necessary to complete the financial aid application and the Superintendent or designee obtains permission from the student's parent/guardian, or from the adult student, to submit the social security number. (Education Code 69432.9)

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

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

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

STUDENT RECORDS (continued)

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

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

10. Any district attorney who is participating in or conducting a truancy mediation program or participating in the presentation of evidence in a truancy petition (Education Code 49076)

11. A district attorney's office for consideration against a parent/guardian for failure to comply with compulsory education laws (Education Code 49076)

12. Any probation officer, district attorney, or counsel of record for a ~~minor~~ student **who is a minor** for the purposes of conducting a criminal investigation or an investigation in regards to declaring the minor ~~student~~ a ward of the court or involving a violation of a condition of probation, subject to evidentiary rules specified in Welfare and Institutions Code 701 (Education Code 49076)

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

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

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

Note: SB 233 (Ch. 829, Statutes of 2017) amended Education Code 49069.3 and 49076 to make certain types of records related to foster youth, including records related to attendance, discipline, online communications, and Section 504 plans, accessible to specified agencies and individuals.

STUDENT RECORDS (continued)

14. A foster family agency with jurisdiction over a currently enrolled or former student; short-term residential treatment program staff responsible for the education or case management of a student; or a caregiver who has direct responsibility for the care of a student, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined (Education Code 49076)

Such individuals shall have access to the student's current or most recent records of grades, transcripts, attendance, discipline, online communication on platforms established by schools for students and parents/guardians, and any individualized education program or Section 504 plan developed and maintained by the district (Education Code 49069.3)

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

(cf. 6173.1 - Education for Foster Youth)

15. A student age 14 years or older who is both a homeless student and an unaccompanied minor as defined in 42 USC 11434a (Education Code 49076)

(cf. 6173 - Education for Homeless Children)

16. An individual who completes items #1-4 of the caregiver's authorization affidavit pursuant to Family Code 6552 and signs the affidavit for the purpose of enrolling a minor in school (Education Code 49076)

17. A caseworker or other representative of a state or local child welfare agency or tribal organization that has legal responsibility **in accordance with state or tribal law** for the care and protection of a student, provided that **the individual is authorized by the agency or organization to receive the records and** the information **requested** is directly related to providing assistance to address the student's educational needs (Education Code 49076; 20 USC 1232(g))

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

When disclosing such records, the Superintendent or designee shall obtain written certification by the recipient of the records as described in item #12 above. (Education Code 49076)

19. Designated peace officers or law enforcement agencies in cases where the district is authorized by law to assist law enforcement in investigations of suspected criminal

STUDENT RECORDS (continued)

conduct or kidnapping and a written parental consent, lawfully issued subpoena, or court order is submitted to the district, or information is provided to it indicating that an emergency exists in which the student's information is necessary to protect the health or safety of the student or other individuals (Education Code 49076.5; 34 CFR 99.1-99.67)

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

When disclosing records for the above purposes, the Superintendent or designee shall obtain the necessary documentation to verify that the person, agency, or organization is a person, agency, or organization that is permitted to receive such records.

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

In addition, the parent/guardian or adult student may provide written consent for access to be granted to persons, agencies, or organizations not afforded access rights by law. The written consent shall specify the records to be released and the party or parties to whom they may be released. (Education Code **49061**, 49075)

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

(cf. 5021 - Noncustodial Parents)

Discretionary Access

At ~~his/her discretion~~, the **discretion of the** Superintendent or designee, **information** may **be released** ~~information~~ from a student's records to the following:

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

When releasing information to any such appropriate person, the Superintendent or designee shall record information about the threat to the health or safety of the student or any other person that formed the basis for the disclosure and the person(s) to whom the disclosure was made. (Education Code 49076; 34 CFR 99.32)

STUDENT RECORDS (continued)

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

Unless it would further endanger the health or safety of the student or other persons, the Superintendent or designee shall inform the parent/guardian or adult student within one week of the disclosure that the disclosure was made, of the articulable and significant threat to the health or safety of the student or other individuals that formed the basis for the disclosure, and of the parties to whom the disclosure was made.

2. Accrediting associations **in order to carry out their accrediting functions** (Education Code 49076; 34 CFR 99.31)
3. Under the conditions specified in Education Code 49076 and 34 CFR 99.31, organizations conducting studies on behalf of educational institutions or agencies for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction, provided that: (Education Code 49076; 34 CFR 99.31)
 - a. The study is conducted in a manner that does not permit personal identification of **students or** parents/guardians **and students** by individuals other than representatives of the organization who have legitimate interests in the information.
 - b. The information is destroyed when no longer needed for the purposes for which the study is conducted.
 - c. The district enters into a written agreement with the organization that complies with 34 CFR 99.31.
4. Officials and employees of private schools or school systems where the student is enrolled or intends to enroll, subject to the rights of parents/guardians as provided in Education Code 49068 and in compliance with 34 CFR 99.34 (Education Code 49076; 34 CFR 99.31, 99.34)
5. Local health departments operating countywide or regional immunization information and reminder systems and the California Department of Public Health, unless the parent/guardian has requested that no disclosures of this type be made (Health and Safety Code 120440)

Note: Education Code 49076 includes "contractors" and "consultants," as defined in the section "Definitions" above, among the categories of individuals to whom a student's personally identifiable information may be disclosed under certain circumstances. Unlike 34 CFR ~~99.34~~ **99.31**, however, Education Code 49076 prohibits disclosure of such information to volunteers and other parties.

STUDENT RECORDS (continued)

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

(cf. 3600 - Consultants)

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

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

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

When disclosing records for the above purposes, the Superintendent or designee shall obtain the necessary documentation to verify that the person, agency, or organization is a person, agency, or organization that is permitted to receive such records.

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

De-identification of Records

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

STUDENT RECORDS (continued)

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

When authorized by law for any program audit, educational research, or other purposes, the Superintendent or designee may release information from a student record without prior consent of the parent/guardian or adult student after the removal of all personally identifiable information. Prior to releasing such information, the Superintendent or designee shall make a reasonable determination that the student's identity is not personally identifiable, whether through single or multiple releases and taking into account other reasonably available information. (Education Code 49074, 49076; **20 USC 1232g**; 34 CFR 99.31)

Process for Providing Access to Records

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

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

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

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

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

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

STUDENT RECORDS (continued)

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

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

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

Note: 34 CFR 99.30 specifies information that must be included in the parent/guardian consent form, as provided below. The provisions in the following two paragraphs are required pursuant to the California Attorney General's model policy developed pursuant to Education Code 234.7, ~~as added by AB 699 (Ch. 493, Statutes of 2017)~~. See the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.

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

If the parent/guardian **or adult student** refuses to provide written consent for the release of student information, the Superintendent or designee shall not release the information, unless it is otherwise subject to release based on a court order or a lawful subpoena.

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

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

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

STUDENT RECORDS (continued)

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

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

Access Log

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

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

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

The custodian of records shall also make an entry in the log regarding any request for record(s) that was denied and the reason for the denial.

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

The log shall include requests for access to records by:

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

Note: Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), any request for student records information by a law enforcement agency for the purpose of enforcing immigration laws

STUDENT RECORDS (continued)

must be reported to the Superintendent and the Board; see the accompanying Board policy. Therefore, it is recommended that the custodian of records make an entry in the log regarding any such requests, as provided in item #6 below.

6. Law enforcement personnel seeking to enforce immigration laws

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

Duplication of Student Records

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

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

(cf. 3260 - Fees and Charges)

Changes to Student Records

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

(cf. 5125.3 - Challenging Student Records)

No additions **or change** ~~except routine updating~~ shall be made to a student's record after high school graduation or permanent departure, **other than routine updating, unless required by law or with** ~~without~~ prior consent of the parent/guardian or adult student. (**Education Code 49062.5, 49070;** 5 CCR 437)

~~A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.~~

Note: AB 711 (Ch. 179, Statutes of 2019) added Education Code 49062.5 and amended Education Code 49070 to require districts to update a student's or former student's records to change the student's name and/or gender, as specified below.

STUDENT RECORDS (continued)

When a former student submits a state-issued driver's license, birth certificate, passport, social security card, court order, or other government-issued documentation demonstrating that the former student's legal name and/or gender has changed, the district shall update the former student's records to reflect the updated legal name and/or gender. Upon request by the former student, the district shall reissue any documents conferred upon the former student, including, but not limited to, a transcript, a high school diploma, a high school equivalency certificate, or other similar documents. The district is not required to modify records that the former student has not requested for modification or reissuance. (Education Code 49062.5)

(cf. 5145.3 - Nondiscrimination/Harassment)

If the former student's name or gender is changed and the requested records are reissued, a new document shall be added to the former student's file that includes all of the following information: (Education Code 49062.5)

- 1. The date of the request**
- 2. The date the requested records were reissued to the former student**
- 3. A list of the records that were requested by and reissued to the former student**
- 4. The type of documentation, if any, provided by the former student to demonstrate a legal change to the student's name and/or gender**
- 5. The name of the employee who completed the request**
- 6. The current and former names and/or genders of the student**

Any former student who submits a request to change the legal name or gender on the student's records but is unable to provide any government-issued documentation demonstrating the legal name or gender change, may request a name or gender change through the process described in Education Code 49070 and AR 5125.3 - Challenging Student Records.

Retention and Destruction of Student Records

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

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

STUDENT RECORDS (continued)

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

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

(cf. 5111 - Admission)

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

(cf. 5111.1 - District Residency)

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

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

7. Verification of or exemption from required immunizations

(cf. 5141.31 - Immunizations)

8. Date of high school graduation or equivalent

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

1. Expulsion orders and the causes therefor

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

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

STUDENT RECORDS (continued)

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

(cf. 5141.32 - Health Screening for School Entry)

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

(cf. 6159 - Individualized Education Program)

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

5. Language training records

(cf. 6174 - Education for English Learners)

6. Progress slips/notices required by Education Code 49066 and 49067
7. Parental restrictions/stipulations regarding access to directory information
8. Parent/guardian or adult student rejoinders to challenged records and to disciplinary action
9. Parent/guardian authorization or **denial prohibition** of student participation in specific programs
10. Results of standardized tests administered within the past three years

(cf. 6162.51 - State Academic Achievement Tests)

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

(cf. 6158 - Independent Study)

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

1. Objective counselor and/or teacher ratings

STUDENT RECORDS (continued)

2. Standardized test results older than three years
3. Routine disciplinary data
(cf. 5144 - Discipline)
4. Verified reports of relevant behavioral patterns
5. All disciplinary notices
6. Supplementary attendance records

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

Transfer of Student Records

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

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

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

(cf. 4158/4258/4358 - Employee Security)
(cf. 5119 - Students Expelled From Other Districts)

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

When a student transfers from this district to another school district or to a private school, the Superintendent or designee shall forward a copy of the student's mandatory permanent record

STUDENT RECORDS (continued)

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

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

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

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

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

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

Notification of Parents/Guardians

Upon any student's initial enrollment, and at the beginning of each school year thereafter, the Superintendent or designee shall notify parents/guardians and eligible students, in writing, of their rights related to student records. If 15 percent or more of the students enrolled in the district speak a single primary language other than English, then the district shall provide these notices in that language. Otherwise, the district shall provide these notices in the student's home language insofar as practicable. The district shall effectively notify parents/guardians or eligible students with disabilities. (Education Code 49063, 48985; 34 CFR 99.7)

(cf. 5145.6 - Parental Notifications)

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

1. The types of student records kept by the district and the information contained therein
2. The title(s) of the official(s) responsible for maintaining each type of record
3. The location of the log identifying those who request information from the records

STUDENT RECORDS (continued)

4. District criteria for defining school officials and employees and for determining legitimate educational interest
5. District policies for reviewing and expunging student records
6. The right to inspect and review student records and the procedures for doing so
7. The right to challenge and the procedures for challenging the content of a student record that the parent/guardian or student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights
8. The cost, if any, charged for duplicating copies of records
9. The categories of information defined as directory information pursuant to Education Code 49073
10. The right to consent to disclosures of personally identifiable information contained in the student's records except when disclosure without consent is authorized by law
11. Availability of the curriculum prospectus developed pursuant to Education Code 49091.14 containing the titles, descriptions, and instructional aims of every course offered by the school

(cf. 5020 - Parent Rights and Responsibilities)

12. Any other rights and requirements set forth in Education Code 49060-49078 **49085**, and the right of parents/guardians to file a complaint with the U.S. Department of Education concerning an alleged failure by the district to comply with 20 USC 1232g

Note: Pursuant to 34 CFR 99.34, if the district's annual parental notification contains the information described in **optional** item #13 below, the district does not need to attempt to individually notify a parent/guardian or adult student when the district discloses an education record to officials of another school, school system, or postsecondary institution (see item #5 in the list of persons/agencies with legitimate educational interests in the section entitled "~~Persons Granted Access~~ **Access for Limited Purpose/Legitimate Educational Interest**" above).

13. A statement that the district forwards education records to other agencies or institutions that request the records and in which the student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment

Note: The following paragraph reflects the Attorney General's model policy developed pursuant to Education Code 234.7.

STUDENT RECORDS (continued)

In addition, the annual parental notification shall include a statement that a student's citizenship status, immigration status, place of birth, or any other information indicating national origin will not be released without parental consent or a court order.

Student Records from Social Media

Note: The following **optional** section is for use by districts that have adopted a program, pursuant to Education Code 49073.6, to gather or maintain any information obtained from students' social media activity that pertains directly to school safety or student safety. Districts that adopt such a program, as specified in the accompanying Board policy, must comply with the requirements described below. Districts that have not adopted such a program should delete the following section.

For the purpose of gathering and maintaining records of students' social media activity, the Superintendent or designee shall: (Education Code 49073.6)

1. Gather or maintain only information that pertains directly to school safety or student safety
2. Provide a student with access to any information that the district obtained from **his/her the student's** social media activity and an opportunity to correct or delete such information
3. Destroy information gathered from social media and maintained in student records within one year after a student turns 18 years of age or within one year after the student is no longer enrolled in the district, whichever occurs first
4. Notify each parent/guardian that the student's information is being gathered from social media and that any information maintained in the student's records shall be destroyed as provided in item #3 above. The notification shall also include, but is not limited to, an explanation of the process by which a student or **his/her the student's** parent/guardian may access the student's records for examination of the information gathered or maintained and the process by which removal of the information may be requested or corrections to the information may be made. The notification may be provided as part of the annual parental notification required pursuant to Education Code 48980.
5. If the district contracts with a third party to gather information on a student from social media, ensure that the contract:
 - a. Prohibits the third party from using the information for purposes other than those specified in the contract or from selling or sharing the information with any person or entity other than the district, the student, or **his/her the student's** parent/guardian

STUDENT RECORDS (continued)

- b. Requires the third party to destroy the information immediately upon satisfying the terms of the contract, or when the district notifies the third party that the student has turned 18 years of age or is no longer enrolled in the district, whichever occurs first

(12/15 5/18) 12/19

CSBA Sample

Board Policy

Students

BP 5131.2(a)

BULLYING

Note: Education Code 234.4, as added by AB 2291 (Ch. 491, Statutes of 2018), **mandates** districts to adopt, on or before December 31, 2019, procedures for preventing acts of bullying, including cyberbullying. The following policy and accompanying administrative regulation contain sample procedures that fulfill this mandate and may be revised to reflect district practice.

In addition, Education Code 234.1 and federal law **mandate** that the Governing Board adopt policy prohibiting discrimination, harassment, intimidation, and bullying based on specified characteristics and ensuring the protection of complainants from retaliation. Also see BP 5145.3 - Nondiscrimination/Harassment for language fulfilling this mandate.

In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education Office for Civil Rights (OCR) clarified that misconduct that falls under a district's general anti-bullying policy may also trigger responsibilities under one or more federal or state antidiscrimination laws if the bullying is on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, age, disability, and/or another legally protected category. Federal law requires the district to take immediate and appropriate action to investigate or otherwise determine what occurred and, if it finds that unlawful discrimination did occur, take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR's October 2014 Dear Colleague Letter: Responding to Bullying of Students with Disabilities points out that any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education and must be remedied under the federal Individuals with Disabilities Education Act. As necessary, the school may need to convene the student's individualized education program (IEP) team to determine whether the student's needs have changed as a result of the bullying and, if so, revise the IEP to ensure that the student continues to receive appropriate special education and related services.

Thus, while this policy is intended to prevent and address all types of bullying incidents among students, when "discriminatory bullying" is committed and the bullying is sufficiently serious to create a hostile educational environment for the alleged victim or to otherwise deny or limit the student's educational benefits and services, including denial of a free appropriate public education, the alleged victim must be afforded the protections specified under relevant state and/or federal law.

The Governing Board recognizes the harmful effects of bullying on student well-being, student learning, and school attendance and desires to provide a safe school environment that protects students from physical and emotional harm. No individual or group shall, through physical, written, verbal, visual, or other means, harass, sexually harass, threaten, intimidate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel, or retaliate against them for filing a complaint or participating in the complaint resolution process.

(cf. 5131 - Conduct)

(cf. 5136 - Gangs)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

BULLYING (continued)

Note: Because bullying and its effects extend beyond the school environment, collaboration among a variety of community agencies and organizations that serve youth may be helpful in preventing and responding to bullying. For further information about building a collaborative, see CSBA's publications [Safe Schools: Strategies for Governing Boards to Ensure Student Success](#) and [Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement](#).

The Superintendent or designee shall develop strategies for addressing bullying in district schools with the involvement of students, parents/guardians, and staff. As appropriate, the Superintendent or designee may also collaborate with social services, mental health services, law enforcement, courts, and other agencies and community organizations in the development and implementation of effective strategies to promote safety in schools and the community.

(cf. 1220 - Citizen Advisory Committees)

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

(cf. 6020 - Parent Involvement)

Note: Education Code 32282 encourages districts to include bullying prevention policies and procedures in their comprehensive safety plan; see BP 0450 - Comprehensive Safety Plan. In addition, Education Code 52060-52077 require the Board to adopt and annually update a local control and accountability plan which includes, among other specified state priorities, goals for addressing school climate; see BP/AR 0460 - Local Control and Accountability Plan. Pursuant to Education Code 52060, school climate should be measured by student suspension and expulsion rates and other local measures, including surveys of students, parents/guardians, and teachers on the sense of safety and school connectedness, as applicable.

Such strategies shall be incorporated into the comprehensive safety plan and, to the extent possible, into the local control and accountability plan and other applicable district and school plans.

(cf. 0420 - School Plans/Site Councils)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0460 - Local Control and Accountability Plan)

Note: Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on specified characteristics. Pursuant to 5 CCR 4600-4633, the uniform complaint procedures (UCP) must be used for this purpose. In addition, federal regulations require districts to adopt procedures providing for prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25).

Although some bullying incidents may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all bullying incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was bullied because of an actual or perceived membership in a legally protected class. Those bullying incidents found to involve discrimination based on the results of the investigation would then be resolved using the

BULLYING (continued)

UCP. When a bullying incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process. Districts that are concerned about the capacity of a single district compliance officer to handle a possible increase in the number of UCP complaints, or that prefer to handle certain incidents at the school site level whenever possible, may designate multiple compliance officers in accordance with AR 1312.3 - Uniform Complaint Procedures.

Any complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3. If, during the investigation, it is determined that a complaint is about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

(cf. 1312.3 - Uniform Complaint Procedures)

Note: Education Code 46600, as amended by AB 1127 (Ch. 781, Statutes of 2019), requires a district to approve an intradistrict transfer request for a victim of bullying. If there is no available school for an intradistrict transfer, the district cannot prohibit the student's interdistrict transfer. See BP/AR 5116.1 - Intradistrict Open Enrollment and AR 5117 - Interdistrict Attendance.

If the Superintendent or designee believes it is in the best interest of a student who has been the victim of an act of bullying, as defined in Education Code 48900, the Superintendent or designee shall advise the student's parents/guardians that the student may transfer to another school. If the parents/guardians of a student who has been the victim of an act of bullying requests a transfer for the student pursuant to Education Code 46600, the Superintendent or designee shall allow the transfer in accordance with law and district policy on intradistrict or interdistrict transfer, as applicable.

(cf. 5116.1 - Intradistrict Open Enrollment)

(cf. 5117 - Interdistrict Attendance)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

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

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

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

Legal Reference: (see next page)

BULLYING (continued)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 Comprehensive safety plan

32283.5 Bullying; online training

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

46600 Student transfers

48900-48925 Suspension or expulsion

48985 Translation of notices

52060-52077 Local control and accountability plan

PENAL CODE

422.55 Definition of hate crime

647 Use of camera or other instrument to invade person's privacy; misdemeanor

647.7 Use of camera or other instrument to invade person's privacy; punishment

653.2 Electronic communication devices, threats to safety

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

UNITED STATES CODE, TITLE 47

254 Universal service discounts (e-rate)

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Notification of nondiscrimination on the basis of age

COURT DECISIONS

Wynar v. Douglas County School District, (2013) 728 F.3d 1062

J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094

Lavine v. Blaine School District, (2002) 279 F.3d 719

Management Resources:

CSBA PUBLICATIONS

Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012

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

Cyberbullying: Policy Considerations for Boards, Policy Brief, rev. July 2010

Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Bullying Module

California's Social and Emotional Learning: Guiding Principles, 2018

Social and Emotional Learning in California: A Guide to Resources, 2018

Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008

Bullying at School, 2003

Management Resources continued: (see next page)

BULLYING (continued)

Management Resources: (continued)

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

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

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

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014

Guidance to America's Schools: Bullying of Students with Disabilities, October 2014

Dear Colleague Letter: Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, October 26, 2010

Dear Colleague Letter: Harassment and Bullying, October 2010

WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lr/ss>

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

Center on Great Teachers and Leaders: <https://gtlcenter.org>

Collaborative for Academic Social and Emotional Learning: <https://casel.org>

Common Sense Media: <http://www.commonsensemedia.org>

National School Safety Center: <http://www.schoolsafety.us>

Partnership for Children and Youth: <https://www.partnerforchildren.org>

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

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CSBA Sample Administrative Regulation

Students

AR 5131.2(a)

BULLYING

Note: Education Code 234.4, as added by AB 2291 (Ch. 491, Statutes of 2018), mandates districts to adopt, on or before December 31, 2019, procedures for preventing acts of bullying, including cyberbullying. The following administrative regulation may be revised to reflect district practice.

Definitions Examples of Prohibited Conduct

Note: The following section reflects definitions and examples of bullying and cyberbullying contained in the California Department of Education's (CDE) Bullying Module and may be revised to reflect district practice.

Education Code 48900 defines "bullying," including bullying via an electronic act, for purposes of establishing grounds for suspension or expulsion. See AR 5144.1 - Suspension and Expulsion/Due Process. In addition, Penal Code 653.2 makes it a crime to distribute another person's personally identifiable information electronically with the intent to place that person in reasonable fear of the person's own or a family member's safety and for the purpose of imminently causing harassment or injury by a third party.

Bullying is an **unwanted**, aggressive behavior that involves a real or perceived imbalance of power between individuals with the intent to cause emotional or physical harm. Bullying can be physical, verbal, or social/relational and **may** involve **a single severe act or** repetition or potential repetition of a deliberate act. **Bullying includes, but is not limited to, any act described in Education Code 48900(r).**

Cyberbullying includes the electronic creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images. Cyberbullying also includes breaking into another person's electronic account or assuming that person's online identity in order to damage that person's reputation.

(cf. 5145.2 - Freedom of Speech/Expression)

(cf. 6163.4 - Student Use of Technology)

Examples of the types of conduct that may constitute bullying and are prohibited by the district include, but are not limited to:

1. Physical bullying: **An act** that inflicts harm upon a person's body or possessions, such as hitting, kicking, pinching, spitting, tripping, pushing, taking or breaking someone's possessions, or making cruel or rude hand gestures
2. Verbal bullying: **An act** that includes saying or writing hurtful things, such as teasing, name-calling, inappropriate sexual comments, taunting, or threats to cause harm

BULLYING (continued)

3. Social/relational bullying: **An act** that harms a person's reputation or relationships, such as leaving a person out of an activity on purpose, influencing others not to be friends with someone, spreading rumors, or embarrassing someone in public
4. Cyberbullying: **An act** such as sending demeaning or hateful text messages or emails, ~~sending~~ **spreading** rumors by email or by posting on social networking sites, or posting **or sharing** embarrassing photos, videos, web site, or fake profiles

Measures to Prevent Bullying

The Superintendent or designee shall implement measures to prevent bullying in district schools, including, but not limited to, the following:

1. Ensuring that each school establishes clear rules for student conduct and implements strategies to promote a positive, collaborative school climate

(cf. 5131 - Conduct)

(cf. 5137 - Positive School Climate)

2. Providing **information** to students, through student handbooks, **district and school web sites and social media**, and other age-appropriate means, ~~information~~ about district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for engaging in bullying
3. Encouraging students to notify school staff when they are being bullied or when they suspect that another student is being bullied, and providing means by which students may report threats or incidents confidentially and anonymously
4. Conducting an assessment of bullying incidents at each school and, if necessary, increasing supervision and security in areas where bullying most often occurs, such as **classrooms**, playgrounds, hallways, restrooms, and cafeterias

Note: Although Pursuant to Education Code 234.1, the district must requires the district to adopt a policy requiring school personnel who witness acts of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying) against a student based on the actual or perceived status of the student belonging to a protected class to take immediate steps to intervene when it is safe to do so. It, it is recommended that districts apply this policy equally to all students; also . Also see AR 5145.3 - Nondiscrimination/Harassment.

5. Annually notifying district employees that, pursuant to Education Code 234.1, any school staff who witnesses an act of bullying against a student has a responsibility to immediately intervene to stop the incident when it is safe to do so

BULLYING (continued)**Staff Development**

Note: Education Code 32283.5, ~~as amended by AB 2291~~, requires districts to make available annually, to certificated staff and all other employees who have regular interaction with students, the CDE's online Bullying Module described below.

The Superintendent or designee shall **annually** make **available to all certificated staff and to other employees who have regular interaction with students** the California Department of Education's (CDE) online training module on the dynamics of bullying and cyberbullying, ~~which includes~~ **describing** the identification of bullying and cyberbullying and the implementation of strategies to address bullying, ~~available annually to all certificated staff and to other employees who have regular interaction with students.~~ (Education Code 32283.5)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Note: Pursuant to Education Code 234.7, districts are **mandated** to adopt policy, equivalent to that developed by the Attorney General, which requires the provision of staff training with the components specified below.

The Superintendent or designee shall provide training to teachers and other school staff to raise their awareness about the legal obligation of the district and its employees to prevent discrimination, harassment, intimidation, and bullying of district students. Such training shall be designed to provide staff with the skills to:

1. Discuss the diversity of the student body and school community, including their varying immigration experiences
2. Discuss bullying prevention strategies with students, and teach students to recognize the behavior and characteristics of bullying perpetrators and victims
3. Identify the signs of bullying or harassing behavior
4. Take immediate corrective action when bullying is observed
5. Report incidents to the appropriate authorities, including law enforcement in instances of criminal behavior

Information and Resources

Note: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts to make specified information on bullying and harassment prevention readily accessible on their web sites beginning in the 2020-21 school year. The following list reflects, but does not reproduce in exact form, all the items specified in Education Code 234.6.

BULLYING (continued)

The Superintendent or designee shall post on the district's web site, in a prominent location and in a manner that is easily accessible to students and parents/guardians, information on bullying and harassment prevention which includes the following: (Education Code 234.6)

Note: Education Code 215 mandates that any district serving students in grades 7-12 adopt a policy on student suicide prevention, intervention, and postvention; see BP/AR 5141.52 - Suicide Prevention. As amended by AB 1767 (Ch. 694, Statutes of 2019), Education Code 215 mandates policy on suicide prevention, intervention, and postvention for grades K-6 by 2020-21 school year. Districts that do not maintain any of grades K-6 should modify item #1 accordingly.

- 1. The district's policy on student suicide prevention, including a reference to the policy's age appropriateness for students in grades K-6**

(cf. 5141.52 - Suicide Prevention)

- 2. The definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8**

- 3. Title IX information included on the district's web site pursuant to Education Code 221.61, and a link to the Title IX information included on CDE's web site pursuant to Education Code 221.6**

- 4. District policies on student sexual harassment, prevention and response to hate violence, discrimination, harassment, intimidation, bullying, and cyberbullying**

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

- 5. A section on social media bullying that includes all of the references described in Education Code 234.6 as possible forums for social media**

- 6. A link to statewide resources, including community-based organizations, compiled by the CDE pursuant to Education Code 234.5.**

- 7. Any additional information the Superintendent or designee deems important for preventing bullying and harassment**

(cf. 1113 - District and School Web Sites)

BULLYING (continued)**Student Instruction**

Note: California content standards related to student education about bullying and violence prevention (e.g., recognizing the characteristics of bullying, examining the effects of bullying on others, demonstrating what to say and do when witnessing bullying) are addressed within the health education content standards adopted by the State Board of Education.

47 USC 254 mandates districts that receive e-rate discounts to adopt a policy which addresses educating students about appropriate online behavior, including the interaction with other individuals on social networking web sites and in chat rooms, as well as providing information about cyberbullying awareness and response. See BP 6163.4 - Student Use of Technology for language implementing this mandate.

As appropriate, the district shall provide students with instruction, in the classroom or other educational settings, that promotes social-emotional learning, effective communication and conflict resolution skills, character ~~values education~~ **development**, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

(cf. 6142.8 - *Comprehensive Health Education*)

(cf. 6142.94 - *History-Social Science Instruction*)

Note: Education Code 234.7 requires districts to educate students about the negative impact of bullying based on actual or perceived immigration status or religious beliefs and customs. The following paragraph reflects the California Attorney General's model policy developed pursuant to Education Code 234.7, contained in the Office of the Attorney General's publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, and has been expanded to include education about the impact of bullying based on any other individual characteristic.

The district shall also educate students about the negative impact of bullying, discrimination, intimidation, and harassment based on actual or perceived immigration status, religious beliefs and customs, or any other individual bias or prejudice.

Note: The remainder of this section reflects recommendations in CDE's Bullying Module and may be revised to reflect district practice.

Students should be taught the difference between appropriate and inappropriate behaviors, how to advocate for themselves, how to help another student who is being bullied, and when to seek assistance from a trusted adult. As role models for students, staff shall be expected to demonstrate effective problem-solving and anger management skills.

To discourage cyberbullying, teachers may advise students to be cautious about sharing passwords, personal data, or private photos online and to consider the consequences of making negative comments about others online.

Reporting and Filing of Complaints

BULLYING (continued)

Note: The following reporting process may be revised to reflect district practice.

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee.

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3 - Uniform Complaint Procedures. The student who is the alleged victim of the bullying shall be given an opportunity to describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

(cf. 1312.3 - Uniform Complaint Procedures)

Within one business day of receiving such a report, a staff member shall notify the principal of the report, whether or not a uniform complaint is filed. In addition, any school employee who observes an incident of bullying involving a student shall, within one business day, report such observation to the principal or a district compliance officer, whether or not the alleged victim files a complaint.

Within two business days of receiving a report of bullying, the principal shall notify the district compliance officer identified in AR 1312.3.

Note: Districts have the authority to monitor student use of the district's Internet system and to conduct individual searches of student accounts if there is reasonable suspicion that a user has violated district policy or the law; see BP/AR 5145.12 - Search and Seizure and BP/E 6163.4 - Student Use of Technology.

When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages that they feel constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated. When a student uses a social networking site or service to bully or harass another student, the Superintendent or designee may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

Discipline/Corrective Actions

Note: Pursuant to Education Code 48900-48900.4, "bullying" is a ground for suspension or expulsion; see AR 5144.1 - Suspension and Expulsion/Due Process.

The courts have generally upheld discipline for off-campus student conduct that poses an identifiable threat to the safety of other students, staff, or school property or presents a risk of substantial disruption of school activities, provided that the district is able to document the impact or disruption that the conduct has, or could be expected to have, on school activities (e.g., <u>Wynar v. Douglas County School District</u> , <u>Lavine v.</u>

BULLYING (continued)

Blaine School District). The court in J.C. v. Beverly Hills Unified School District found that the district would be able to discipline a student for a video recorded off campus and posted on YouTube, but that the discipline imposed on this particular student was not justified since the district did not present evidence of specific facts that led school officials to predict that the video would cause substantial disruption (e.g., the video was not violent or threatening nor did it lead to any confrontations between the students).

Consistent with these interpretations, Education Code 48900 defines bullying by means of an electronic act to include creation or transmission originating on or off the school site. Thus, for purposes of determining whether the conduct may be subject to suspension or expulsion, the act does not necessarily need to have been committed while at school, while coming to or from school, or during a school-sponsored activity. Nevertheless, the act needs to satisfy the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to the student's person or property, causing a substantially detrimental effect on the student's physical or mental health, causing substantial interference with the student's academic performance, or causing substantial interference with the student's ability to participate in or benefit from school services, activities, or privileges).

When the conduct does not rise to the level specified in Education Code 48900, the district may implement interventions other than suspension or expulsion to address the bullying. For further information, see CSBA's policy brief Cyberbullying: Policy Considerations for Boards. Also see BP 5131 - Conduct and BP 5145.2 - Freedom of Speech/Expression.

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

(cf. 5116.2 - Involuntary Student Transfers)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

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

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

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

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

Support Services

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

(cf. 6164.2 - Guidance/Counseling Services)

BULLYING (continued)

If any student involved in bullying exhibits warning signs of suicidal thought or intention or of intent to harm another person, the Superintendent or designee shall, as appropriate, implement district intervention protocols which may include, but are not limited to, referral to district or community mental health services, other health professionals, and/or law enforcement.

~~(cf. 5141.52 – Suicide Prevention)~~

CSBA Sample

Board Policy

Instruction

BP 6143(a)

COURSES OF STUDY

The Governing Board recognizes that a well-aligned sequence of courses fosters academic **progress growth** and provides for the best possible use of instructional time. The district's course of study shall provide students with opportunities to attain the skills, knowledge, and abilities they need to be successful ~~in school, college, and the workplace~~ **academically, professionally, and personally.**

(cf. 6011 - Academic Standards)

(cf. 6141 - Curriculum Development and Evaluation)

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

Note: The following **optional** paragraph should be revised to reflect the grade levels offered by the district. For example, unified school districts need to be concerned about articulation of courses within the district and with postsecondary institutions, whereas elementary districts and high school districts will ~~also~~ need to address articulation with each other.

The Superintendent or designee shall establish processes for ensuring the articulation of courses across grade levels within the district. As necessary, ~~he/she also~~ **the Superintendent or designee** shall work with representatives of appropriate area districts and postsecondary institutions to ensure articulation of courses with other institutions to which district students may matriculate. The sequence of courses shall be designed to ensure that each course provides adequate preparation for the next course in the sequence, **only utilizes prerequisites that are essential to success in a given program or course**, avoids significant duplication of content, and allows for reinforcement and progression in the subject matter.

The district shall not provide any course separately on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability or require or refuse participation by any of its students on any such basis. (5 CCR 4940)

(cf. 0415 - Equity)

(cf. 5145.3 - Nondiscrimination/Harassment)

Elementary Grades

Note: The following section is for use by districts offering elementary grades and may be revised to reflect district practice. Education Code 51225.4 **mandates** elementary school districts to certify to the Superintendent of Public Instruction that they have adopted a policy to implement a course of instruction that sufficiently prepares students for the secondary courses required for graduation pursuant to Education Code 51225.3.

COURSES OF STUDY (continued)

The Board shall adopt a course of study for elementary grades that sufficiently prepares students for the secondary course of study.

(cf. 6146.5 - Elementary/Middle School Graduation Requirements)

Secondary Grades

Note: Education Code 51228 requires districts to offer students in grades 7-12 a course of study that fulfills the requirements and prerequisites for admission to California colleges. Education Code 51228 also requires districts to offer such students the opportunity to attain entry-level employment skills. Pursuant to Education Code 51228, districts that adopt a course of study that meets or exceeds the state model curriculum standards in career technical education will be deemed to have satisfied the requirement.

Education Code 66204 prohibits a public school from establishing any policy or practice that directs any student away from choosing programs that prepare **him/her a student** academically for college, especially for cultural or linguistic reasons.

The following paragraph is for use by districts maintaining any of grades 7-12 and should be revised to reflect the grade levels offered by the district.

The district shall offer all otherwise qualified students in grades 7-12 a course of study that prepares them, upon graduation from high school, to meet the requirements and prerequisites for admission to California public colleges and universities and to attain entry-level employment skills in business or industry. (Education Code 51228)

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

(cf. 6141.5 - Advanced Placement)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6178 - Career Technical Education)

Note: The remainder of this policy is for use by districts maintaining any of grades 9-12.

In addition, the course of study for students in grades 9-12 shall include instruction in skills and knowledge for adult life, career technical training, and a timely opportunity for all otherwise qualified students to enroll, within four years **before graduation**, in each course necessary to fulfill the requirements and prerequisites for admission to California public colleges and universities **prior to graduation**. (Education Code 51224, 51228)

Note: Among the criteria for admission to the University of California (UC) or California State University system is a requirement that high school students satisfactorily complete 15 units of specified courses ("a-g" courses). These include a growing number of career technical education courses that connect knowledge of academic content with practical or work-related applications.

In order to qualify as an "a-g" course, the course must first be submitted to and approved by UC. Education Code 51229 requires that districts annually provide the list of certified courses to students in grades 9-12 **and their parents/guardians**; see the accompanying administrative regulation and E 5145.6 - Parental Notifications.

COURSES OF STUDY (continued)

The Superintendent or designee shall develop a process by which courses that meet **California** college admission criteria (referred to as "a-g" course requirements) are submitted to the University of California for review and certification. ~~He/she~~ **The Superintendent or designee** shall maintain an accurate list of all current high school courses that have been so certified, shall ensure that the list is provided annually to ~~each~~ **all** students in grades 9-12 **and their parents/guardians**, and shall make updated lists readily available. (Education Code 51229, 66204)

Legal Reference: (see next page)

COURSES OF STUDY (continued)

Legal Reference:

EDUCATION CODE

33319.3 Driver education; CDE materials on road rage
 33540 Government and civics instruction in interaction with government agencies
 48980 Parental notifications
 51202 Instruction in personal and public health and safety
 51203 Instruction on alcohol, narcotics and restricted dangerous drugs
 51204 Course of study designed for student's needs
 51204.5 Social science instruction; history of California; contributions of various groups
 51210-51212 Course of study for grades 1-6
 51220-51229 Course of study for grades 7-12
 51241 Exemption from physical education
 51911-51921 Comprehensive health education
 51930-51939 Comprehensive sexual health and HIV/AIDS prevention instruction
 51940 Curriculum for brain and spinal cord injury prevention
 60040-60052 Requirements for instructional materials
 66204 Certification of high school courses as meeting university admission criteria

HEALTH AND SAFETY CODE

11032 Definitions of dangerous drugs

CODE OF REGULATIONS, TITLE 5

4940 Nondiscrimination; course access

10020-~~10049~~ **10043** Automobile driver education and training

10060 Physical education program

UNITED STATES CODE, TITLE 20

~~6104~~ **6111**-6251 School-to-Work Opportunities Act of 1994

Management Resources:

WEB SITES

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

American Health Association: <https://www.heart.org>

American Red Cross, Hands-Only CPR: <https://www.redcross.org/take-a-class>

California Career Resource Network: <http://www.californiacareers.info>

California Colleges.edu: <http://www.californiacolleges.edu>

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

California State University, Admission Requirements: http://www.csumentor.edu/planning/high_school

University of California, a-g Course Submissions: <http://www.ucop.edu/a-g>

Guide/ag/course_submissions <https://hs-articulation.ucop.edu/guide/update-your-a-g-list/submitting-courses>

University of California, List of Approved a-g Courses:

<http://www.universityofcalifornia.edu/admissions/freshman/requirements> **<https://hs-articulation.ucop.edu/agcourselist>**

(11/07 11/11) 12/19

Policy Reference UPDATE Service

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CSBA Sample

Administrative Regulation

Instruction

AR 6143(a)

COURSES OF STUDY

Note: Education Code requirements for courses of study are generally classified into requirements for grades 1-6 and 7-12. Therefore, K-8 districts and high school districts need to collaborate with appropriate area districts to ensure that all required courses are offered sometime during grades 7-12.

The district should select the sections below ("Grades 1-6" and/or "Grades 7-12") that correspond with the grade levels it offers.

Grades 1-6

Note: Items #1-7 below are areas of study required by law for grades 1-6. The Governing Board may add other studies to this list.

Courses of study for grades 1-6 shall include the following:

(cf. 6146.5 - Elementary/Middle School Graduation Requirements)

1. English: knowledge and appreciation of language and literature, and the skills of speaking, reading, listening, spelling, handwriting, and composition (Education Code 51210)

(cf. 6142.91 - Reading/Language Arts Instruction)

2. Mathematics: concepts, operational skills, and problem solving (Education Code 51210)

(cf. 6142.92 - Mathematics Instruction)

3. Social sciences: age-appropriate instruction drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, including instruction in: (Education Code 51210)

- a. The history, resources, development, and government of California and the United States

Instruction shall include the early history of California and a study of the role and contributions of men and women, Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups to the economic,

COURSES OF STUDY (continued)

political, and social development of California and the United States, with particular emphasis on portraying the role of these groups in contemporary society. (Education Code 51204.5, 60040)

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

(cf. 6142.3 - Civic Education)

(cf. 6142.94 - History-Social Science Instruction)

- b. The development of the American economic system, including the role of the entrepreneur and labor
- c. The relations of persons to their human and natural environments
- d. Eastern and western cultures and civilizations
- e. Contemporary issues
- f. The wise use of natural resources

(cf. 6142.5 - Environmental Education)

- 4. Science: biological and physical aspects, with emphasis on experimental inquiry and the place of humans in ecological systems (Education Code 51210)

(cf. 6142.93 - Science Instruction)

- 5. Visual and performing arts: instruction in dance, music, theatre, and visual arts aimed at developing aesthetic appreciation and creative expression (Education Code 51210)

(cf. 6142.6 - Visual and Performing Arts Education)

Note: Education Code 51202 requires that certain health-related topics be addressed at "the appropriate elementary and secondary grade levels" during grades K-12. Districts may revise #6a-e below to indicate topics that will be addressed in grades K-6.

Education Code 51203 requires the Board to adopt regulations specifying the grade(s) and course(s) in which drug and alcohol education will be given. For language fulfilling this mandate, see AR 5131.6 - Alcohol and Other Drugs.

- 6. Health: principles and practices of individual, family, and community health, including instruction at the appropriate grade levels and subject areas in: (Education Code 51202, 51210)

COURSES OF STUDY (continued)

- a. Personal and public safety and accident prevention, including instruction in emergency first aid, hemorrhage control, treatment for poisoning, resuscitation techniques, and cardiopulmonary resuscitation when appropriate equipment is available

(cf. 6142.8 - Comprehensive Health Education)

- b. Fire prevention
- c. The protection and conservation of resources, including the necessity for the protection of the environment
- d. Venereal disease

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

- e. The effects of alcohol, narcotics, drugs, and tobacco upon the human body

(cf. 5131.6 - Alcohol and Other Drugs)

Note: The following item is optional pursuant to Education Code 51202.

- f. Violence as a public health issue
7. Physical education, with emphasis on physical activities conducive to health and vigor of body and mind (Education Code 51210)

(cf. 6142.7 - Physical Education and Activity)

Note: Item #8 below is optional . Education Code 51210.5 authorizes age-appropriate instruction on violence awareness and prevention within any area of study listed in items #1-7 above. Pursuant to Education Code 51210.5, such instruction may include personal testimony in the form of oral or video histories that illustrate the economic and cultural effects of violence within a city, the state, and the country. See BP 6142.94 - History-Social Science Instruction.

8. Violence awareness and prevention

Note: Optional item #9 below is not required by state law but is a highly recommended component of school-to-career instruction.

9. Career awareness exploration

(cf. 6178 - Career Technical Education)

COURSES OF STUDY (continued)

Grades 7-12

Note: Items #1-11 below are areas of study required by law for grades 7-12. The Board may add other studies to this list.

Courses of study for grades 7-12 shall include the following:

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6146.5 - Elementary/Middle School Graduation Requirements)

(cf. 6162.52 - High School Exit Examination)

1. English: knowledge and appreciation of literature, language, and composition, and the skills of reading, listening, and speaking (Education Code 51220)

(cf. 6142.91 - Reading/Language Arts Instruction)

2. Social sciences: age-appropriate instruction drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, with instruction in: (Education Code 51220)

- a. The history, resources, development, and government of California and the United States, including instruction in:

- (1) The early history of California and a study of the role and contributions of both men and women, Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups to the economic, political, and social development of California and the United States, with particular emphasis on portraying the role of these groups in contemporary society (Education Code 51204.5)

Note: Education Code 51221.3 and 51221.4 encourage, but do not require, instruction on the topics described in optional subitems #(2)-(4) below. These items may be modified or deleted to reflect district practice.

For districts that choose to offer such instruction, Education Code 51221.3 and 51221.4 encourage that a component be drawn from personal testimony, especially in the form of oral or video history. If oral histories are used, they must conform to the requirements of Education Code 51221.3 and 51221.4. See BP 6142.94 - History-Social Science Instruction.

- (2) World War II, including the role of Americans and Filipino Americans who served in the United States Army during that time

COURSES OF STUDY (continued)

- (3) The Vietnam War, including the "Secret War" in Laos and role of Southeast Asians in that war
 - (4) The Bracero program, ~~under which temporary contract laborers were imported pursuant to,~~ **in which there was** a 1942 agreement between the United States and Mexico **authorizing the temporary migration of laborers to the United States**
- b. The American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the state and federal constitutions

Note: The following optional paragraph is for use by districts that offer a teen court or peer court program.

This course may include participation in a teen court or peer court program.
(Education Code 51220.2)

(cf. 5138 - Conflict Resolution/Peer Mediation)

- c. The development of the American economic system, including the role of the entrepreneur and labor
- d. The relations of persons to their human and natural environments, including the wise use of natural resources (Education Code 51221)

(cf. 6142.5 - Environmental Education)

- e. Eastern and western cultures and civilizations

Note: Pursuant to Education Code 51220, instruction related to human rights issues, as provided in item #2f below, may include the study of the Armenian genocide. Education Code 51226.3 encourages the incorporation of oral testimony into instruction in human rights, including the Armenian, Cambodian, Darfur, and Rwandan genocides.

- f. Human rights issues, with particular attention to the study of the inhumanity of genocide (which may include, but is not limited to, the Armenian, Cambodian, Darfur, and Rwandan genocides), slavery, and the Holocaust
- g. Contemporary issues

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

(cf. 6142.3 - Civic Education)

(cf. 6142.94 - History-Social Science Instruction)

COURSES OF STUDY (continued)

3. **Foreign World** language(s): understanding, speaking, reading, and writing, beginning not later than grade 7 (Education Code 51220)

(cf. 6142.2 - World ~~Foreign~~ Language Instruction)

4. Physical education: with emphasis on physical activities conducive to health and vigor of body and mind, as required by Education Code 51222 (Education Code 51220)

(cf. 6142.7 - Physical Education and Activity)

5. Science: physical and biological aspects; emphasis on basic concepts, theories, and processes of scientific investigation and on the place of humans in ecological systems; appropriate applications of the interrelation and interdependence of the sciences (Education Code 51220)

(cf. 6142.93 - Science Instruction)

6. Mathematics: mathematical understandings, operational skills, and problem-solving procedures; algebra (Education Code 51220, 51224.5)

(cf. 6142.92 - Mathematics Instruction)

7. Visual and performing arts: dance, music, theatre, and visual arts, with emphasis upon development of aesthetic appreciation and creative expression (Education Code 51220)

(cf. 6142.6 - Visual and Performing Arts Education)

Note: The reference to "homemaking" within Education Code 51220, as amended by AB 1595 (Ch. 543, Statutes of 2019), has been changed to "family and consumer sciences."

8. Applied arts: consumer ~~and homemaking~~ **education, family and consumer sciences** education, industrial arts, general business education, or general agriculture (Education Code 51220)
9. Career technical/vocational-technical education: in the occupations and in the numbers appropriate to the personnel needs of the state and community served and relevant to the career desires and needs of students (Education Code 51220)

(cf. 6178 - Career Technical Education)

COURSES OF STUDY (continued)

Note: Education Code 51934 requires that students be provided comprehensive sexual health and HIV prevention instruction at least once in middle school or junior high school and at least once in high school. See BP/AR 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction for required components of such instruction.

Education Code 51934, as amended by AB 329 (Ch. 398, Statutes of 2015), requires that comprehensive sexual health education include information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking. In addition, pursuant to Education Code 51225.36, as added by SB 695 (Ch. 424, Statutes of 2015), districts that require a course in health education for high school graduation must include instruction in sexual harassment and violence with specified components.

10. Comprehensive sexual health and HIV prevention (Education Code 51225.36, 51934)

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

Note: Education Code 51202 requires that certain health-related topics be addressed at "the appropriate elementary and secondary grade levels" during grades K-12. Districts may revise item #11 below to indicate topics that will be addressed in grades 7-12.

Education Code 51203 requires the Board to adopt regulations specifying the grade(s) and course(s) in which drug and alcohol education will be given. For language fulfilling this mandate, see AR 5131.6 - Alcohol and Other Drugs.

11. Personal and public safety, accident prevention and health, including instruction in: (Education Code 51202, 51203)

- a. Emergency first aid, hemorrhage control, treatment for poisoning, resuscitation techniques, and cardiopulmonary resuscitation (CPR) when appropriate equipment is available

Note: The following paragraph is for use by districts that require a course in health education for high school graduation; see BP 6146.1 - High School Graduation Requirements. Pursuant to Education Code 51225.6, as added by AB 1719 (Ch. 556, 2016), such districts are required to include instruction in performing compression-only cardiopulmonary resuscitation (CPR), as described below, beginning in the 2018-19 school year. Such instruction must be based on national evidence-based emergency cardiovascular care guidelines for the performance of compression-only CPR, such as those developed by the American Heart Association or the American Red Cross, and must include hands-on practice in compression-only CPR. Before the start of the 2017-18 school year, On its web site, the CDE is required to provide guidance on how to implement this requirement, including, but not limited to, who may provide instruction.

Education Code 51225.6, as added, also encourages districts to provide students with general information on the use and importance of an automated external defibrillator.

Beginning in the 2018-19 school year, instruction shall be provided in compression-only CPR based on national guidelines and shall include

COURSES OF STUDY (continued)

hands-on practice. ~~Such instruction shall be based on national evidence-based guidelines and shall include hands on practice in compression only CPR.~~ (Education Code 51225.6)

- b. Fire prevention
- c. The protection and conservation of resources, including the necessity for the protection of the environment
- d. Venereal disease
- e. The effects of alcohol, narcotics, drugs, and tobacco upon the human body **and upon prenatal development**

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 6142.8 - Comprehensive Health Education)

Note: The following two items are **optional** pursuant to Education Code 51202.

- f. Prenatal care
- g. Violence as a public health issue

Note: Item #12 is **optional**. Education Code 51220.3 authorizes age-appropriate instruction on violence awareness and prevention within any area of study listed above for grades 7-12.

12. Violence awareness and prevention

Note: Item #13 is **optional**. Education Code 51226.7, ~~as added by AB 2016 (Ch. 327, Statutes of 2016), as amended by AB 114 (Ch. 413, Statutes of 2019),~~ requires the **SBE State Board of Education** to adopt a model curriculum in ethnic studies by March 31, ~~2020~~ **2021** and encourages districts to offer a course in ethnic studies based on that model curriculum as an elective course in social sciences or English language arts in at least one grade level during grades 9-12. At their discretion, districts may choose to offer a course in ethnic studies prior to the availability of the model curriculum.

13. Ethnic studies

Note: Education Code 51220.5 requires the equivalent content of a one-semester course in parenting skills and education in grade 7 and/or 8, subject to funding which was not subsequently appropriated; thus the following paragraph is currently **optional**.

In addition, the course of study for grade 7 and/or 8 may include parenting skills and education, including, but not limited to, child growth and development, parental

COURSES OF STUDY (continued)

responsibilities, household budgeting, child abuse and neglect issues, personal hygiene, maintenance of healthy relationships, teen parenting issues, and self-esteem. (Education Code 51220.5)

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

Note: The following paragraph is for use by districts that maintain high schools.

High schools shall offer automobile driver education that includes instruction in: (Education Code 51220, 51220.1, 51220.4)

1. Vehicle Code provisions and other relevant state laws
2. Proper acceptance of personal responsibility in traffic
3. Appreciation of the causes, seriousness, and consequences of traffic accidents
4. Knowledge and attitudes necessary for the safe operation of motor vehicles
5. The safe operation of motorcycles
6. The dangers involved in consuming alcohol or drugs in connection with the operation of a motor vehicle
7. The rights and duties of a motorist **pertaining as they pertain** to pedestrians and the rights and duties of pedestrians **pertaining as they pertain** to traffic laws and traffic safety

Certification of College Preparatory Courses

Note: The following optional section is for use by districts that maintain grades 9-12 and may be revised to reflect district practice. Among the criteria for admission to the University of California (UC) or California State University system is a requirement that students satisfactorily complete 15 units of specified courses ("a-g" courses). In order to qualify as an "a-g" course, the course must first be submitted to and approved by UC. The district or school should develop course descriptions using the templates provided by UC and submit them through UC's online system.

Education Code 51225.37 encourages districts that offer world language courses specifically designed for native speakers to submit those courses to UC for certification and addition to the school's "a-g" course list.

According to the Frequently Asked Questions on UC's web site, UC considers the principal to be the certifying agent of the school, although the district's curriculum coordinator or an assistant principal or head counselor from the school may be assigned this responsibility. The following paragraph may be revised to reflect the position in the district or school(s) that is responsible for submitting and updating "a-g" courses.

COURSES OF STUDY (continued)

The Superintendent or designee shall identify **district** courses **that may qualify for designation as "a-g" college preparatory courses, including courses** in history-social science, English, mathematics, laboratory science, languages other than English, visual and performing arts, career technical education, and college preparatory electives. ~~that may qualify for designation as "a-g" college preparatory courses. He/she~~ **The Superintendent or designee** shall submit ~~course information~~ **any necessary information regarding each identified course** to the University of California (UC) **for "a-g" designation.** ~~including, but not necessarily limited to, the course title, subject area, grade level(s), unit value, a brief course description, prerequisites and co-requisites, texts and supplemental instructional materials used in the course, whether the school is seeking designation of the course as an honors course, and whether the course is classified as a career technical education or regional occupational program course. He/she also shall electronically submit updates to UC whenever course content changes or a course will not be offered in a particular year.~~

Notification and Information to Students in Grades 9-12

Note: The following section is for use by districts that maintain grades 9-12.

At the beginning of each school year, the Superintendent or designee shall provide written notice to parents/guardians of students in grades 9-12 that, to the extent possible, shall not exceed one page in length and that includes all of the following: (Education Code 51229)

1. A brief explanation of the course requirements for admission to UC and the California State University (CSU)

Note: The UC maintains a searchable web site that lists certified "a-g" courses for all regular California public high schools; see the management resources in the accompanying Board policy.

2. A list of the current UC and CSU web sites that help students and their families learn about college admission requirements and that list high school courses that have been certified by UC as satisfying the requirements for admission to UC and CSU
3. A brief description of what career technical education is, as defined by the California Department of Education (CDE)
4. The Internet address for the portion of the CDE web site where students can learn more about career technical education
5. Information about how students may meet with school counselors to help them choose courses that will meet college admission requirements and/or enroll in career technical education courses

COURSES OF STUDY (continued)

Note: Education Code 51225.8 requires districts, beginning with the 2020-21 school year, to provide specified information on how to properly complete and submit the Free Application for Federal Student Aid (FAFSA) or the Dream Act application, as appropriate, at least once before grade 12. At the district's discretion, the information provided may be disseminated through in-class instruction, an existing program, family information sessions, group or individual sessions with school counselors, or other appropriate means.

The Superintendent or designee shall provide information to students and parents/guardians regarding the completion and submission of the Free Application for Federal Student Aid (FAFSA) and/or the Dream Act application at least once before grade 12. (Education Code 51225.8)

(cf. 5145.6 - Parental Notifications)

(cf. 6164.2 - Guidance/Counseling Services)

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CSBA Sample

Board Policy

Instruction

BP 6154(a)

HOMEWORK/MAKEUP WORK

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

The Governing Board recognizes that meaningful homework assignments can be a valuable extension of student learning time and assist students in developing good study habits. Homework shall be assigned when necessary to support classroom lessons, enable students to complete unfinished assignments, or review and apply academic content for better understanding.

The Superintendent or designee shall collaborate with school administrators and teachers to develop and regularly review guidelines for the assignment of homework and the related responsibilities of students, staff, and parents/guardians.

Note: The following **optional** paragraph may be revised to specify the average number of minutes of homework that may be expected per day at each grade level, or the district may adopt an administrative regulation that contains such guidelines.

Homework assignments shall be reasonable in length and appropriate to the grade level and course. The Board expects that the number, frequency, and degree of difficulty of homework assignments will increase with the grade level and the maturity of students. Teachers shall assign homework only as necessary to fulfill academic goals and reinforce current instruction.

(cf. 6011 - Academic Standards)

As needed, teachers may receive training in designing relevant homework assignments that reinforce classroom learning objectives.

(cf. 4131 - Staff Development)

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

Although on-time completion of homework is important to maintain academic progress, the Board recognizes that students learn at different rates. Students shall receive credit for work that is completed late in order to encourage their continued learning.

Age-appropriate instruction may be given to help students allocate their time wisely, meet their deadlines, **learn to work independently**, and develop good personal study habits.

HOMEWORK/MAKEUP WORK (continued)

At the beginning of the school year, teachers shall communicate homework expectations to students and their parents/guardians. Homework guidelines ~~also~~ shall **also** be included in student and/or parent/**guardian** handbooks. These communications shall include the manner in which homework relates to achievement of academic standards and course content, the impact of homework assignments on students' grades, any school resources and programs that are available to provide homework support, and ways in which parents/guardians may appropriately assist their children.

Although it is the student's responsibility to undertake assignments independently, parents/guardians may serve as a resource and are encouraged to ensure that their child's homework assignments are completed. When a student repeatedly fails to complete ~~his/her~~ homework, the teacher shall notify the student's parents/guardians as soon as possible so that corrective action can be taken prior to the release of any final grades or report cards.

(cf. 5020 - Parent Rights and Responsibilities)

(cf. 6020 - Parent Involvement)

Note: The following paragraph should be revised to reflect district practice. Pursuant to Education Code 8482.3, before-school and after-school programs operated under the After School Education and Safety Program (Education Code 8482-8484.65) and/or the federal 21st Century Community Learning Center program (Education Code 8484.7-8484.9; 20 USC 7171-7176) are required to include an educational and literacy component in which tutoring or homework assistance is provided in language arts, mathematics, history-social science, computer training, and/or science. If the district offers a before-school or after-school program under the 21st Century High School After School Safety and Enrichment for Teens program for grades 9-12 (Education Code 8420-8428; 20 USC 7171-7176), the program must include an academic assistance program, which may include homework assistance. See AR 5148.2 - Before/After School Programs. In addition, some districts offer a supervised study hall elective which high school students can take instead of other electives.

To further support students' homework efforts, the Superintendent or designee may establish and maintain ~~telephone help lines~~ **electronic forums**, provide access to school library media centers and technological resources, and/or provide before-school and after-school programs where students can receive homework assistance from teachers, volunteers, and/or student tutors. The Board encourages the Superintendent or designee to design class and transportation schedules that will enable students to make use of homework support services.

(cf. 1240 - Volunteer Assistance)

(cf. 1700 - Relations between Private Industry and the Schools)

(cf. 3541 - Transportation Routes and Services)

(cf. 5148 - Child Care and Development)

(cf. 5148.2 - Before/After School Programs)

(cf. 6112 - School Day)

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

(cf. 6163.1 - Library Media Centers)

HOMEWORK/MAKEUP WORK (continued)

Teachers shall review all completed homework to assess the student's understanding of academic content and shall provide timely feedback to the student.

Makeup Work

Note: Pursuant to Education Code 48205, students who miss school work because of an excused absence must be given full credit for makeup work satisfactorily completed within a reasonable period of time. State law does not require districts to give full credit for makeup work following an unexcused absence. However, CSBA's governance brief Research-Supported Strategies to Improve the Accuracy and Fairness of Grades recommends that student absence be dealt with separately from determining students' academic understanding and progress. Thus, the following paragraph provides for full credit to be awarded for satisfactory completion of makeup work regardless of the reason for the absence, an approach which is consistent with BP/AR 5121 - Grades/Evaluation for Student Achievement. Also see BP/AR 5113.1 - Chronic Absence and Truancy for strategies to address excessive excused and/or unexcused absences. The district may revise the following paragraph to reflect district practice, provided that it ensures compliance with Education Code 48205.

Students who ~~miss school work~~ **are absent from school** shall be given the opportunity to complete all assignments and tests that can be reasonably provided. As determined by the teacher, the assignments and tests shall be ~~reasonably~~ equivalent to, but not necessarily identical to, the assignments and tests missed during the absence. Students shall receive full credit for work satisfactorily completed within a reasonable period of time.

(cf. 5113 - Absences and Excuses)

The Superintendent or designee shall notify parents/guardians that no student may have ~~his/her~~ **a** grade reduced or lose academic credit for any excused absence when missed assignments and tests are satisfactorily completed within a reasonable period of time. Such notification shall include the full text of Education Code 48205. (Education Code 48980)

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

(cf. 5145.6 - Parental Notifications)

Suspended Students

Note: Education Code 48913.5, as added by AB 982 (Ch. 779, Statutes of 2019), requires that when a parent/guardian of a student who has been suspended for two or more school days requests homework that the student would otherwise have been assigned, the student's teacher shall provide such homework.

When a parent/guardian of a student who has been suspended for two or more school days requests homework that the student would otherwise have been assigned, the student's teacher shall provide such homework. If a homework assignment is requested and is turned in to the teacher by the student either upon the student's return from suspension or within the timeframe originally prescribed by the teacher, whichever is

HOMEWORK/MAKEUP WORK (continued)

later, and is not graded before the end of the academic term, the homework assignment shall not be included in the calculation of the student's overall grade in the class. (Education Code 48913.5)

The teacher of any class from which a student is suspended may require the student to complete any assignments and tests missed during the suspension. (Education Code 48913)

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

Legal Reference:

EDUCATION CODE

8420-8428 21st Century High School After School Safety and Enrichment for Teens

8482-8484.65 After School Education and Safety Program

8484.7-8484.9 21st Century Community Learning Centers

48205 Absences for personal reasons

48913 Completion of work missed by suspended student

48913.5 Homework assignments for suspended students

48980 Parental notifications

UNITED STATES CODE, TITLE 20

7171-7176 21st Century Community Learning Centers

Management Resources:

CSBA PUBLICATIONS

Research-Supported Strategies to Improve the Accuracy and Fairness of Grades, Governance Brief, July 2016

WEB SITES

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

California State PTA: <http://www.capta.org>

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CSBA Sample

Administrative Regulation

Instruction

AR 6174(a)

EDUCATION FOR ENGLISH LEARNERS

Definitions

English learner means a student who is age 3-21 years, who is enrolled or is preparing to enroll in an elementary or secondary school, and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student the ability to meet state academic standards, the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society. An English learner may include a student who was not born in the United States or whose native language is a language other than English; a student who is Native American or Alaska Native, or a native resident of the outlying areas, who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or a student who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. (Education Code 306; 20 USC 7801)

Designated English language development means instruction provided during a time set aside in the regular school day for focused instruction on the state-adopted English language development standards to assist English learners to develop critical English language skills necessary for academic content learning in English. (5 CCR 11300)

Integrated English language development means instruction in which the state-adopted English language development standards are used in tandem with the state-adopted academic content standards. Integrated English language development includes specially designed academic instruction in English. (5 CCR 11300)

Native speaker of English means a student who has learned and used English at home from early childhood and English has been the primary means of concept formation and communication. (Education Code 306)

Identification and Assessments

Note: Education Code 52164.1 and 5 CCR 11307 require the district to administer a home language survey to all enrolled students. A sample home language survey form in English and Spanish is available on the California Department of Education's (CDE) web site.

Upon enrollment in the district, each student's primary language shall be determined through the use of a home language survey. (Education Code 52164.1; 5 CCR 11307, **11518.5**)

EDUCATION FOR ENGLISH LEARNERS (continued)

Note: When the home language survey indicates that a student's proficiency in English should be tested, Education Code 313 requires the district to administer a state assessment of English language proficiency. The English Language Proficiency Assessments for California (ELPAC) are used for initial identification of language proficiency and subsequently for annual assessment of language proficiency.

Any student who is identified as having a primary language other than English as determined by the home language survey, and who has not previously been identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test, shall be initially assessed for English proficiency using the English Language Proficiency Assessments for California (ELPAC). **Prior to administering the ELPAC, the Superintendent or designee shall notify the student's parent/guardian in writing that the student will be administered the initial ELPAC.** (Education Code 313, 52164.1; 5 CCR 11518.5)

~~Each year after a student is identified as an English learner and until the student is redesignated as English proficient, the summative assessment of the ELPAC shall be administered to the student during a four-month period after January 1 as determined by the California Department of Education. (Education Code 313)~~

Note: 5 CCR 11518.35 specifies "universal tools" that may be used with all students in ELPAC administration, and "designated supports" and "accommodations" that may be used with students with disabilities when specified in their individualized education program or Section 504 plan.

The Individuals with Disabilities in Education Act (20 USC 1412) requires that students with disabilities be included in all state assessments, including the ELPAC as appropriate. Pursuant to 5 CCR 11518.30, students with the most significant cognitive disabilities who cannot participate in the assessment, even with appropriate accommodations, must be given an alternate assessment of English proficiency. 34 CFR 200.16 provides that, if an English learner with a disability is unable to take the assessment with accommodations, the state accountability system must include the student's score on any part(s) of the test for which it is possible to assess the student (i.e., speaking, reading, listening, writing).

Pursuant to Education Code 56305, CDE has developed a manual, California Practitioners' Guide for Educating English Learners with Disabilities, which provides guidance on identifying, assessing, supporting, and reclassifying English learners with disabilities.

Administration of the ELPAC, including the use of variations and accommodations in test administration when authorized, shall be conducted in accordance with test publisher instructions and 5 CCR 11518.5-11518.35.

(cf. 6159 - Individualized Education Program)

(cf. 6162.51 - State Academic Achievement Tests)

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

EDUCATION FOR ENGLISH LEARNERS (continued)

Note: The remainder of this section specifies notifications that must be sent to parents/guardians regarding assessment results and available programs for English learners. CDE has developed sample notification letters, available on its web site in multiple translations, to notify parents/guardians of the initial identification of a student as an English learner or as initially fluent English proficient and to notify them of the results of an annual assessment.

Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to their parents/guardians must be written in English and in the primary language and may be answered by the parent/guardian in either language.

Based on the initial assessment, the student shall be classified either as initially fluent in English proficient or as an English learner. The Superintendent or designee shall notify the student's parent/guardian, in writing, of the results of the ELPAC initial assessment within 30 calendar days after the student's date of initial enrollment, or, if administered prior to the student's initial date of enrollment, up to 60 calendar days prior to such enrollment, but not before July 1 of the school year of the student's initial enrollment. The notice shall indicate whether the student met the ELPAC initial assessment criterion for proficiency and include the district's contact information for use if the parent/guardian has questions or concerns regarding the student's classification. (5 CCR 11518.5)

Each year after a student is identified as an English learner and until the student is redesignated as English proficient, the summative assessment of the ELPAC shall be administered to the student during a four-month period after January 1 as determined by the California Department of Education. (Education Code 313)

The Superintendent or designee shall notify parents/guardians of their child's results on the **summative assessment of the** ELPAC within 30 calendar days following receipt of the results from the test contractor or, if the results are received from the test contractor after the last day of instruction for the school year, within 15 working days of the start of the next school year. (Education Code 52164.1; 5 CCR 11518.15)

(cf. 5145.6 - Parental Notifications)

Note: The following paragraph is for use by districts that receive federal funds under either Title I or Title III for services to English learners, and may be adapted for use by other districts. Pursuant to Education Code 440 and 20 USC 6312, districts receiving Title I or Title III funds are required to provide parents/guardians with notification of their child's identification as an English learner and placement in a language acquisition program.

The parent/guardian of a student participating in, or identified for participation in, a language instruction program supported by federal Title I or Title III funds shall receive notification of the assessment of the student's English proficiency. Such notice shall be provided not later than 30 calendar days after the beginning of the school year or, if the student is identified for

EDUCATION FOR ENGLISH LEARNERS (continued)

program participation during the school year, within two weeks of the student's placement in the program. The notice shall include all of the following: (Education Code 313.2, 440; 20 USC 6312)

1. The reason for the identification of the student as an English learner and the need for placement in a language acquisition program
2. The level of English proficiency, how the level was assessed, and the status of the student's academic achievement
3. A description of the language acquisition program in which the student is, or will be, participating, including a description of all of the following:
 - a. The methods of instruction used in the program and in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction
 - b. The manner in which the program will meet the educational strengths and needs of the student
 - c. The manner in which the program will help the student develop English proficiency and meet age-appropriate academic standards for grade promotion and graduation
 - d. The specific exit requirements for the program, the expected rate of transition from the program into classes not tailored for English learners, and the expected rate of graduation from secondary school if applicable
 - e. **Where When** the student has been identified for special education, the manner in which the program meets the requirements of the student's IEP

Note: Education Code 313.2 requires that the notice contain information in regard to (1) whether the student is a long-term English learner, or English learner at risk of becoming a long-term English learner, and (2) the manner in which the program for English language development instruction will meet the educational strengths and needs of such students and help them develop English proficiency and achieve academic standards. Districts may send an alternate notice if the definitions of long-term English learners and those at risk of becoming long-term English learners used by the district are broader than those defined in Education Code 313.1, the notice states that the definitions utilized by the district are broader, and the notice contains the information specified in item #4 below.

4. As applicable, the identification of a student as a long-term English learner or at risk of becoming a long-term English learner, as defined in Education Code 313.1, and the

EDUCATION FOR ENGLISH LEARNERS (continued)

- manner in which the program for English language development instruction will meet the educational strengths and needs of such students and help such students develop English proficiency and meet age-appropriate academic standards
5. Information about the parent/guardian's right to have the student immediately removed from a program upon the parent/guardian's request
 6. Information regarding a parent/guardian's option to decline to enroll the student in the program or to choose another program or method of instruction, if available
 7. Information designed to assist a parent/guardian in selecting among available programs, if more than one program or method is offered

Language Acquisition Programs

Note: Pursuant to 5 CCR 11311, districts are required to establish a process for schools to receive and respond to requests from parents/guardians of enrolled students, and those enrolled for attendance in the next school year, to establish a language acquisition program other than, or in addition to, those already available at the school. Each school is required to follow the process even when the district provides the language acquisition program at another school site. The following section includes the components of the process required by 5 CCR 11311 and may be expanded to reflect district practice.

Whenever parents/guardians of enrolled students, and those enrolled for attendance in the next school year, request that the district establish a specific language acquisition program in accordance with Education Code 310, such requests shall be addressed through the following process: (5 CCR 11311)

1. The school shall make a written record of each request, including any request submitted verbally, that includes the date of the request, the names of the parent/guardian and student making the request, a general description of the request, and the student's grade level on the date of the request. As needed, the school shall assist the parent/guardian in clarifying the request. All requests shall be maintained for at least three years from the date of the request.
2. The school shall monitor requests on a regular basis and notify the Superintendent or designee when the parents/guardians of at least 30 students enrolled in the school, or at least 20 students in the same grade level, request the same or a substantially similar type of language acquisition program. If the requests are for a multilingual program model, the district shall consider requests from parents/guardians of students enrolled in the school who are native English speakers in determining whether this threshold is reached.

EDUCATION FOR ENGLISH LEARNERS (continued)

3. If the number of parents/guardians described in item #2 is attained, the Superintendent or designee shall:
 - a. Within 10 days of reaching the threshold, notify the parents/guardians of students attending the school, the school's teachers, administrators, and the district's English learner parent advisory committee and parent advisory committee, in writing, of the requests for a language acquisition program
 - b. Identify costs and resources necessary to implement any new language acquisition program, including, but not limited to, certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent/guardian and community engagement to support the proposed program goals
 - c. Within 60 calendar days of reaching the threshold number of parents/guardians described in item #2 above, determine whether it is possible to implement the requested language acquisition program and provide written notice of the determination to parents/guardians of students attending the school, the school's teachers, and administrators
 - d. If a determination is made to implement the language acquisition program, create and publish a reasonable timeline of actions necessary to implement the program. If a determination is made that it is not possible to implement the program, provide a written explanation of the reason(s) the program cannot be provided.

The district shall notify parents/guardians at the beginning of each school year or upon the student's enrollment regarding the process to request a language acquisition program, including a dual-language immersion program, for their child. The notice shall also include the following: (5 CCR 11309, 11310)

1. A description of the programs provided, including structured English immersion
2. Identification of any language to be taught in addition to English when the program includes instruction in a language other than English
3. The manner in which the program is designed using evidence-based research and includes both designated and integrated English language development
4. The manner in which the district has allocated sufficient resources to effectively implement the program, including, but not limited to, certificated teachers with the

EDUCATION FOR ENGLISH LEARNERS (continued)

- appropriate authorizations, necessary instructional materials, pertinent professional development, and opportunities for parent/guardian and community engagement to support the program goals
5. The manner in which the program will, within a reasonable period of time, lead to language proficiency and achievement of the state-adopted content standards in English and, when the program includes instruction in another language, in that other language
 6. The process to request establishment of a language acquisition program not offered at the school
 7. For any dual-language immersion program offered, the specific languages to be taught. The notice also may include the program goals, methodology used, and evidence of the proposed program's effectiveness.

Reclassification/Redesignation

The district shall ~~continue to~~ provide additional and appropriate educational services to English learners for the purposes of overcoming language barriers and academic deficits in other areas of the core curriculum. ~~until they:~~ (5 CCR 11302)

1. ~~Demonstrate English language proficiency comparable to that of the district's average native English language speakers~~
2. ~~Recoup any academic deficits which may have been incurred in other areas of the core curriculum as a result of language barriers~~

Reclassification/Redesignation

English learners shall be reclassified as fluent English proficient when they are able to comprehend, speak, read, and write English well enough to receive instruction in an English language mainstream classroom and make academic progress at a level substantially equivalent to that of students of the same age or grade whose primary language is English and who are in the regular course of study. (Education Code 52164.6)

Note: Education Code 313 and 52164.6 and 5 CCR 11303 require that the district's reclassification process include, at a minimum, the criteria specified in items #1-4 below. Additional guidance is available on CDE's web site. The district may expand the following list to reflect any additional criteria it has established.

The procedures used to determine whether an English learner shall be reclassified as fluent English proficient shall include, but not be limited to: (Education Code 313, 52164.6; 5 CCR 11303)

EDUCATION FOR ENGLISH LEARNERS (continued)

1. Assessment of English language proficiency using an objective assessment instrument, including, but not limited to, the ELPAC

Note: Pursuant to Education Code 313.3, ~~as added by AB 1808 (Ch. 32, Statutes of 2018)~~, CDE is required to develop, by June 30, 2020, a standardized teacher observation protocol for use in evaluating a student's English language proficiency, as required by item #2 below, as well as professional development tools to train teachers on the use of the protocol.

2. Participation of the student's classroom teacher and any other certificated staff with direct responsibility for teaching or placement decisions related to the student
3. Parent/guardian involvement, including:
 - a. Notice to parents/guardians of language reclassification and placement, including a description of the reclassification process and the parent/guardian's opportunity to participate
 - b. Encouragement of parent/guardian participation in the district's reclassification procedure, including seeking parent/guardian opinion and consultation during the reclassification process

Note: Pursuant to Education Code 313, the fourth criterion requires comparison of student performance on an objective assessment of basic skills that provides an empirically established range of performance of English proficient students of the same age. A letter from CDE to district superintendents (Reclassification Guidance for 2017-18) dated April 28, 2017 clarifies that the Smarter Balanced Summative Assessment may be used as a local measure of the fourth criterion, or districts may select another local assessment. CDE correspondence, which is available on its web site, provides examples of appropriate measures ~~and is available on CDE's web site.~~

4. Student performance on an objective assessment of basic skills in English that shows whether the student is performing at or near grade level

The student's language proficiency assessments, the participants in the reclassification process, and any decisions regarding reclassification shall be retained in the student's permanent record. (5 CCR 11305)

(cf. 5125 - Student Records)

The Superintendent or designee shall monitor the progress of reclassified students to ensure their correct classification and placement. (5 CCR 11304)

Note: ~~The following optional paragraph may be revised to reflect district practice. Pursuant to 20 USC 6841, districts receiving federal Title III funding are required to report to CDE the number and percentage of English learners, including English learners with a disability, meeting state academic~~

EDUCATION FOR ENGLISH LEARNERS (continued)

standards for each of four years after they are no longer receiving services under Title III. In the Federal Program Monitoring process, CDE reviews whether the district monitors the progress of reclassified students for a minimum of four years to ensure correct classification and placement of reclassified students and the provision of additional academic support as needed. Districts that do not receive Title III funding may revise the following paragraph to reflect district practice.

The Superintendent or designee shall monitor students for at least ~~two~~ **four** years following their reclassification to **ensure correct classification and placement and to** determine whether any additional academic support is needed.

Advisory Committees

Note: The following section should be revised to reflect district practice. Pursuant to 5 CCR 11308, ~~a~~ **parent/guardian** ~~an~~ advisory committee **on programs and services for English learners** is required for any district with over 50 English learners and for each school with over 20 English learners. Duties of the advisory committees are specified in **Education Code 52176 and** 5 CCR 11308.

~~A parent/guardian advisory committee shall be established at the district level when there are more than 50 English learners in the district and at the school level~~ **school-level English Learner Advisory Committee (ELAC) shall be established** when there are more than 20 English learners at the school. Parents/guardians of English learners, **elected by parents/guardians of English learners at the school,** shall constitute committee membership in at least the same percentage as English learners represent of the total number of students in the school. **The school may designate for this purpose an existing school-level advisory committee provided that it meets these criteria for committee membership.** (Education Code 52176; 5 CCR 11308)

The ELAC shall be responsible for assisting in the development of a schoolwide needs assessment, recommending ways to make parents/guardians aware of the importance of school attendance, and advising the principal and school staff in the development of a detailed master plan for English learners for the individual school and submitting the plan to the Governing Board for consideration for inclusion in the district master plan. (Education Code 52176)

Note: Pursuant to 5 CCR 11308, each school-level English Learning Advisory Committee (ELAC) is entitled to elect at least one member to the District English Learner Advisory Committee (DELAC). If there are more than 30 ELACs in the district, the district may use a system of proportional or regional representation. The following paragraph may be revised to reflect district practice.

When the district has more than 50 English learners, the Superintendent or designee shall establish a District English Learner Advisory Committee (DELAC), the majority of whose membership shall be composed of parents/guardians of English learners who are not employed by the district. Alternatively, the district may use a subcommittee of

EDUCATION FOR ENGLISH LEARNERS (continued)

an existing districtwide advisory committee on which parents/guardians of English learners have membership in at least the same percentage as English learners represent of the total number of students in the district. (Education Code 52176)

Note: 5 CCR 11308 delineates the duties of the DELAC, as provided below. The list of DELAC duties on the CDE's web site omits item #5, administration of the annual language census.

The ~~district's English language advisory committee~~**DELAC** shall advise the **Governing Board** on at least the following tasks: (5 CCR 11308)

1. ~~The development of a~~**Developing a district master** plan for education programs and services for English learners, taking into consideration the school site plans for English learners
2. ~~The~~**Conducting a** districtwide needs assessment on a school-by-school basis
3. ~~Establishment of~~**Establishing** a district program, goals, and objectives for programs and services for English learners
4. ~~Development of~~**Developing** a plan to ensure compliance with applicable teacher or **instructional** aide requirements
5. ~~Administration of~~**Administering** the annual language census
6. ~~Review of~~**Reviewing** and **commenting** on the district's reclassification procedures
- 7. Reviewing and commenting on the required written parental notifications**

(cf. 0420 - School Plans/Site Councils)
(cf. 1220 - Citizen Advisory Committees)
(cf. 5020 - Parent Rights and Responsibilities)
(cf. 6020 - Parent Involvement)

In order to assist the advisory committee in carrying out its responsibilities, the Superintendent or designee shall ensure that committee members receive appropriate training and materials. This training shall be planned in full consultation with the members. (5 CCR 11308)

LCAP Advisory Committee

Note: The following section is applicable if the district's student enrollment includes at least 15 percent English learners, with at least 50 students who are English learners. Education Code 52063 requires that such districts establish an English learner parent advisory committee to review and comment on the district's

EDUCATION FOR ENGLISH LEARNERS (continued)

local control and accountability plan; see BP 0460 - Local Control and Accountability Plan. 5 CCR 15495 requires this committee to include a majority of parents/guardians of English learners.

When there are at least 15 percent English learners in the district, with at least 50 students who are English learners, a district-level English learner parent advisory committee shall be established to review and comment on the district's local control and accountability plan (LCAP) in accordance with BP 0460 - Local Control and Accountability Plan. The committee shall be composed of a majority of parents/guardians of English learners. (Education Code 52063; 5 CCR 11301, 15495)

(cf. 0460 - Local Control and Accountability Plan)

The ~~advisory committee established pursuant to 5 CCR 11308, as described in the section "Advisory Committee" above, could~~ **DELAC may also** serve as the LCAP English learner advisory committee ~~if its composition includes a majority of parents/guardians of English learners.~~

(7/18 7/19) 12/19

CSBA Sample

Administrative Regulation

Instruction

AR 6175(a)

MIGRANT EDUCATION PROGRAM

Note: The following **optional** administrative regulation reflects requirements of the migrant education program established pursuant to federal Title I, Part C (20 USC 6391-6399) and Education Code 54440-54445 and should be revised to reflect the district's agreement with the regional service center.

Eligibility

Note: Student eligibility for migrant education services is based on criteria delineated in 20 USC 6399, ~~as amended by the Every Student Succeeds Act (P.L. 114-95)~~, and 34 CFR 200.81. Eligibility is established through an interview conducted by a migrant education recruiter, who is employed by either the regional service center or district and has received specialized training and authorization to identify and recruit families for the migrant education program. Recruitment and identification procedures are detailed in the California Department of Education's (CDE) 2017 State Service Delivery Plan.

Pursuant to 34 CFR 200.89, regional service centers are required to annually validate eligibility through the re-interview of parents/guardians of a randomly selected sample of students previously identified as migrant.

Students age 3 to 21 years shall be eligible for the district's migrant education program if they, their parents/guardians, or their spouses are migratory agricultural workers or fishers who, in the preceding 36 months, moved into the district due to economic necessity and engaged in new temporary or seasonal employment or personal subsistence in agriculture or fishing. If such employment was not secured soon after the move, students may be considered migrant students if they, their parents/guardians, or their spouses actively sought such new employment and have a recent history of moves for temporary or seasonal agricultural or fishing employment. (20 USC 6399; 34 CFR 200.81)

Note: The last sentence of the following paragraph should be deleted by districts that do not offer classes at the secondary level.

A student who ceases to be a migrant student during a school term shall be eligible for services until the end of the term. If comparable services are not available through other programs, a student who is no longer migratory may continue to receive services for one additional school year. Students who were eligible for services in secondary school may continue to be served through credit accrual programs until graduation. (20 USC 6394)

Enrollment

Note: The following section reflects enrollment rights granted to migrant students pursuant to Education Code 48204.7, as added by AB 1319 (Ch. 458, Statutes of 2019).

A migrant student shall be immediately enrolled in the district even if the student: (Education Code 48204.7)

MIGRANT EDUCATION PROGRAM (continued)

- 1. Has outstanding fees, fines, textbooks, or other items or monies due to the school last attended**

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

- 2. Does not have clothing normally required by the school, such as school uniforms**

(cf. 5132 - Dress and Grooming)

- 3. Is unable to produce records normally required for enrollment, such as previous academic records, proof of residency, medical records, including, but not limited to, records or other proof of immunization history, or other documentation**

(cf. 5111.1 - District Residency)

(cf. 5141.26 - Tuberculosis Testing)

(cf. 5141.31 - Immunizations)

(cf. 5141.32 - Health Screening for School Entry)

If a migrant student experiences a change in residence, the student may remain enrolled in the school of origin for the duration of the student's status as a migrant student. (Education Code 48204.7)

If a student's status as a migrant student changes during a school year, the Superintendent or designee shall allow the student to continue at the school of origin through the duration of that school year or, if the student is enrolled in a high school, through graduation. (Education Code 48204.7)

A migrant student who is transitioning between school grade levels shall be allowed to continue in the district of origin in the same attendance area to provide the student the benefit of matriculating with peers in accordance with the established feeder patterns of school districts. A migrant student who is transitioning to a middle school or high school designated for matriculation in another school district shall be allowed to enroll in that school. (Education Code 48204.7)

The Superintendent or designee shall inform a migrant student and the student's parent/guardian of the impact of remaining in the school of origin on the student's eligibility to receive migrant education services pursuant to Education Code 54440-54445. (Education Code 48204.7)

The Superintendent or designee may, but is not required to, provide transportation to enable a migrant student to attend the school of origin, unless otherwise required by federal law. (Education Code 48204.7)

MIGRANT EDUCATION PROGRAM (continued)

Student Records

Note: Pursuant to 34 CFR 200.89, CDE and agencies operating migrant education programs must maintain a Certificate of Eligibility form and any additional documentation needed to confirm each student's eligibility.

Education Code 234.7 prohibits the collection of information or documents regarding the citizenship or immigration status of students or their family members, except as required by law or to administer a state or federally supported educational program. If the district becomes aware of the citizenship or immigration status of any student, it is prohibited from disclosing that information to U.S. Immigration and Customs Enforcement. See BP/AR 5145.13 - Response to Immigration Enforcement.

The Superintendent or designee shall maintain records documenting the eligibility of students enrolled in the district's migrant education program. However, the district shall not collect information or documents regarding the citizenship or immigration status of students or their family members for the purpose of determining eligibility for migrant education services.

(cf. 5125 - Student Records)

(cf. 5145.13 - Response to Immigration Enforcement)

Note: 20 USC 6398 requires districts receiving migrant education funds to make student records available at no cost to another district that requests the records, if the request is made to meet the needs of a migrant student. State law requiring the transfer of records for all students is reflected in BP/AR 5125 - Student Records. In California, the Migrant Student Information Network, developed and maintained by WestEd, assists CDE and each regional center with migrant student data collection and reporting.

The Superintendent or designee shall acquire education and health records from migrant students' previous school districts, as appropriate.

When a migrant student transfers to another district, the student's records shall be provided to the receiving district upon request at no cost in order to assist that district in meeting the needs of the student. (20 USC 6398)

Program Components

Note: The following section may be revised to reflect the district's service agreement with the regional service center.

The migrant education program shall include all of the following components: (Education Code 54443.1)

1. A general needs assessment summarizing the needs of the population to be served
2. A comprehensive program to meet the educational, health, and related needs of participating students which supplements the district program and includes, but is not limited to:

MIGRANT EDUCATION PROGRAM (continued)

- a. Instructional services, including academic, remedial and compensatory, bilingual-crosscultural, and career technical instruction

(cf. 6174 - Education for English Learners)

(cf. 6177 - Summer Learning Programs)

(cf. 6178 - Career Technical Education)

- b. Counseling and career education services

(cf. 6164.2 - Guidance/Counseling Services)

- c. Preschool services in accordance with Education Code 54443

(cf. 5148.3 - Preschool/Early Childhood Education)

- d. Other educational services that are not otherwise available in sufficient quantity or quality to eligible migrant students
- e. The acquisition of instructional materials and equipment necessary to adequately provide the appropriate services
- f. Other related services to meet the special needs of eligible migrant students to enable them to participate effectively in instructional services
- g. The coordination and teaming of existing resources serving migrant students, such as bilingual-crosscultural education, health screening, and compensatory education

(cf. 5141.6 - School Health Services)

(cf. 5147 - Dropout Prevention)

(cf. 6171 - Title I Programs)

- 3. Individual assessment of the educational and relevant health needs of each participating student, within 30 days of enrollment, including assessments concurrently provided pursuant to compensatory education, bilingual-crosscultural education, school improvement programs, and other programs serving the student
- 4. A brief individual learning plan listing the services to be provided to each student, which shall be given to the parent/guardian in writing or at a parent/guardian conference, annually and when the student moves to a new district
- 5. Staffing and staff development plans and practices to meet the needs of students and implement the program

(cf. 4131 - Staff Development)

MIGRANT EDUCATION PROGRAM (continued)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

6. Parent/guardian and community involvement as specified in Education Code 54444.2, including, but not necessarily limited to, the establishment of a parent/guardian advisory council to actively involve parents/guardians in planning, operating, and evaluating the district's migrant education program

(cf. 1220 - Citizen Advisory Committees)

(cf. 6020 - Parent Involvement)

Note: 20 USC 6394 requires "the same" parent involvement in migrant education programs as is required for Title I programs for disadvantaged students (see BP/AR 6020 - Parent Involvement), unless extraordinary circumstances make such provision impractical.

The migrant education program shall provide for the same opportunities for parent/guardian involvement that are provided to parents/guardians for federal Title I programs. (20 USC 6394)

7. Evaluations which include annual student progress and overall program effectiveness and quality control reports

Note: The following **optional** paragraph is for use by districts that offer a Migrant Education Even Start family literacy program pursuant to 20 USC 6381-6381k and 34 CFR 200.80 and may be revised to reflect district practice.

Contingent upon funding, the district shall provide home-based and/or school-based family literacy services to migrant families to enhance literacy levels, parenting skills, and English language skills of parents/guardians.

Summer School

Note: Pursuant to Education Code 54444.3, each district receiving federal migrant education funding is required to conduct summer school programs for eligible migrant students. Before establishing the program, the district must submit an application for approval to the Superintendent of Public Instruction. The following section may be revised to reflect the grade levels offered by the district.

The district shall conduct summer school program(s) for eligible migrant students. The summer school program shall respond to the individual needs of participating students and shall build on and be consistent with the instructional programs offered to these students during the regular school year. Coursework shall be of the same level of difficulty in each subject as that provided to students enrolled in regular classes of instruction within the district in the preceding year. (Education Code 54444.3)

MIGRANT EDUCATION PROGRAM (continued)

Teachers in the summer school program shall have cultural training or background and understanding of the special needs of migrant students and possess the proper credential for the subjects and grade levels to which they are assigned. (Education Code 54444.3)

The program shall comply with the following requirements for instructional time: (Education Code 54444.3)

1. For kindergarten class, a minimum of 180 minutes per day, including recesses, for not less than 20 instructional days
2. For grades 1-8, a minimum of 200 minutes per day, including recesses and passing time but excluding noon intermissions, for not less than 20 instructional days
3. For grades 7-12, a minimum of 240 minutes per day, including passing time but excluding noon intermissions, for not less than 30 instructional days

When district facilities that are suitable for the summer climate are available, the district shall make facilities available at cost to other agencies that request facilities for the operation of migrant summer school programs. When approved by the Superintendent of Public Instruction, the district may jointly offer facilities with a neighboring district to meet the needs of the migrant summer school program for the entire area. (Education Code 54444.3)

Applicability of Graduation Requirements

Note: The following section is for use by districts maintaining high schools.

To obtain a high school diploma, migrant students shall complete all courses required by Education Code 51225.3 and shall generally fulfill any additional **local** graduation requirements prescribed by the Board.

(cf. 6146.1 - High School Graduation Requirements)

Note: Whenever a migrant student transfers between districts or schools in grades 11-12, Education Code 51225.1, as amended by AB 2121 (Ch. 581, Statutes of 2018) , exempts such students from the requirement to complete district-established graduation requirements that are in addition to the state requirements, under the conditions described below. Also see BP 6146.1 - High School Graduation Requirements.

However, when a migrant student who has completed the second year of high school transfers into the district or transfers between high schools within the district, the student shall be exempted from all district-adopted coursework and other district-established graduation requirements, unless the district makes a finding that the student is reasonably able to complete the additional requirements in time to graduate from high school by the end of the fourth year of high school. Within 30 calendar days of the transfer, the Superintendent

MIGRANT EDUCATION PROGRAM (continued)

or designee shall notify the student and the student's parent/guardian of the availability of the exemption and whether the student qualifies for it. If the Superintendent or designee fails to provide this notification, the student shall be eligible for the exemption once notified, even if the notification occurs after the student no longer meets the definition of a migrant student. (Education Code 51225.1)

(cf. 5145.6 - Parental Notifications)

To determine whether a migrant student is in the third or fourth year of high school, the district shall use either the number of credits the student has earned as of the date of the transfer or the length of school enrollment, whichever qualifies the student for the exemption. (Education Code 51225.1)

The Superintendent or designee shall notify any migrant student who is granted an exemption and the student's parent/guardian how any requirements that are waived will affect the student's ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges. (Education Code 51225.1)

The district shall not require or request a migrant student to transfer schools in order to qualify for an exemption, and no request for a transfer solely to qualify for an exemption shall be made by a migrant student or parent/guardian. (Education Code 51225.1)

If a migrant student is exempted from local graduation requirements, the exemption shall continue to apply after the student no longer meets the definition of a migrant student if the student is still enrolled in school or transfers to another school or district. (Education Code 51225.1)

Upon making a finding that a migrant student is reasonably able to complete district graduation requirements within a fifth year of high school, the Superintendent or designee shall: (Education Code 51225.1)

1. Inform the student and parent/guardian of the student's option to remain in school for a fifth year to complete the district's graduation requirements and how that will affect the student's ability to gain admission to a postsecondary educational institution
2. Provide information to the student about transfer opportunities available through the California Community Colleges
3. Upon agreement with the student or parent/guardian, permit the student to stay in school for a fifth year to complete the district's graduation requirements

MIGRANT EDUCATION PROGRAM (continued)

Parent Advisory Council

The parent advisory council shall be comprised of members who are knowledgeable of the needs of migrant students and shall be elected by the parents/guardians of students enrolled in the district's migrant education program. The composition of the council shall be determined by the parents/guardians at a general meeting to which all parents/guardians of participating students shall be invited. The parents/guardians shall be informed, in a language they understand, that they have the sole authority to decide on the composition of the council. (Education Code 54444.2)

At least two-thirds of the advisory council shall consist of parents/guardians of migrant students. (Education Code 54444.2)

All parent/guardian candidates for the council shall be nominated by parents/guardians. Nonparent candidates, such as teachers, administrators, other school personnel, or students, shall be nominated by the groups they represent. All other community candidates shall be nominated by the parents/guardians. (Education Code 54444.2)

The parent/guardian advisory council shall meet at least six times during the year and shall: (Education Code 54444.4)

1. Establish program goals, objectives, and priorities
2. Review annual needs assessments, program activities for each school, and individual learning plans
3. Advise on the selection, development, and reassignment of migrant education program staff
4. Participate actively in planning and negotiating program applications and service agreements
5. Perform all other responsibilities required under state and federal laws or regulations

The Superintendent or designee shall establish and implement a training program for advisory council members to enable them to carry out their responsibilities. The training program shall be developed in consultation with the council and shall include appropriate training materials in a language understandable to each member. (Education Code 54444.2)

The Superintendent or designee shall provide the council, without charge, a copy of all applicable state and federal migrant education statutes, rules, regulations, guidelines, audits, monitoring reports, and evaluations. Upon request, these materials also shall be provided without charge to each member of the council. (Education Code 54444.2)

MIGRANT EDUCATION PROGRAM (continued)

Notification and Complaints

Note: Education Code 51225.1 and 51225.2, ~~as amended by AB 2121~~, provide that complaints of noncompliance with specified requirements related to the educational rights of migrant students may be filed in accordance with the uniform complaint procedures specified in 5 CCR 4600-4670. As with other complaints covered under the uniform complaint procedures, a complainant may appeal the district's decision to CDE and, if the district or CDE finds any merit in the complaint, the district must provide a remedy to the affected student. See BP/AR 1312.3 - Uniform Complaint Procedures.

Information regarding the educational rights of migrant students, as specified in Education Code 51225.1 and 51225.2, shall be included in the annual uniform complaint procedures notification distributed to students, parents/guardians, employees, and other interested parties pursuant to 5 CCR 4622. (Education Code 51225.1, 51225.2)

Any complaint that the district has not complied with requirements regarding the education of migrant students, as specified in Education Code 51225.1 or 51225.2, may be filed in accordance with the district's procedures in AR 1312.3 - Uniform Complaint Procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

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CSBA Sample

Board Bylaw

Board Bylaws

BB 9150(a)

STUDENT BOARD MEMBERS

Note: The following **optional** Board bylaw is for use by any district maintaining one or more high schools. Pursuant to Education Code 35160, the Governing Board may, on its own authority, elect to include one or more student members on the Board. In districts that do not have a student Board member, the district's high school students may petition the Board, pursuant to Education Code 35012, to include at least one student on the Board. See section on "Petition" below for additional information regarding student petitions.

In order to enhance communication and collaboration between the Governing Board and the student body and to teach students the importance of civic involvement, the Board supports the participation of high school students in district governance.

Note: Education Code 35012 and 35120, as amended by AB 709 (Ch. 437, Statutes of 2019), authorize the Board to award elective course credit for service as a student Board member, as specified below.

Student Board members may, at the Board's discretion, receive elective course credit for service as a student Board member based on the number of equivalent daily instructional minutes for the student Board member's services provided. (Education Code 35012, 35120)

Note: Pursuant to Education Code 35012, student Board members are entitled to reimbursement for mileage expenses to the same extent as other members of the Board. This law does not address other travel expenses that may be incurred by student Board members related to training or to the performance of authorized services. As such, other travel expenses are not necessarily reimbursable for student Board members, except with prior Board approval.

Student Board member(s) shall be entitled to be reimbursed for mileage to the same extent as other members of the Board, but shall not receive monetary compensation for attendance at Board meetings. (Education Code 35012)

(cf. 3350 - Travel Expenses)

(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

A student Board member shall not be liable for any acts of the Board. (Education Code 35012)

(cf. 9323.2 - Actions by the Board)

Petition

Note: If petitioned by the district's high school students pursuant to Education Code 35012, the Board is required to include at least one student on the Board and, at its discretion, may include more than one student Board member. Districts that have already established student Board member position(s) should delete the following section.

STUDENT BOARD MEMBERS (continued)

Education Code 35012, as amended AB 261 (Ch. 257, Statutes of 2017) and SB 468 (Ch. 283, Statutes of 2017), grants preferential voting rights to student Board members without requiring students to submit a petition to the Board for such rights. See "Role and Responsibilities of Student Board Members" below for additional information regarding preferential voting.

High school students may submit a petition to the Board requesting the appointment of at least one student Board member. (Education Code 35012)

To qualify for Board consideration, the petition for student representation shall contain the signatures of no less than 500 regularly enrolled high school students or no less than 10 percent of the number of regularly enrolled high school students, whichever is less. (Education Code 35012)

Within 60 days of receiving a student petition, or at the next regularly scheduled Board meeting if no meeting is held within those 60 days, the Board shall order the inclusion of at least one student member on the Board. (Education Code 35012)

Election of Student Board Member

Note: The following section may be revised to reflect district practice. Pursuant to Education Code 35012, when student representation is established in response to a student petition, student Board members must be ~~elected~~ **chosen** by the students enrolled in **district** high school(s). It is recommended that the district apply the same process when a student Board member position is established at the Board's discretion. The following paragraph may be revised accordingly.

Student Board member positions shall be filled by a vote of students enrolled in the high school(s) in accordance with procedures prescribed by the Board. (Education Code 35012)

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

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

(cf. 6145 - Extracurricular and Cocurricular Activities)

The term of student Board member(s) shall be one year, commencing on July 1. (Education Code 35012)

Role and Responsibilities of Student Board Members

Student Board member(s) shall have the right to attend all Board meetings except closed (executive) sessions. (Education Code 35012)

*(cf. 9321 - Closed Session **Purposes and Agendas**)*

STUDENT BOARD MEMBERS (continued)

Note: Education Code 35012, ~~as amended by SB 468 (Ch. 283, Statutes of 2017)~~, requires that student Board members receive meeting materials and staff briefings at the same time as other Board members. Any briefings presented to the Board need to comply with Brown Act requirements.

Education Code 35012, as amended by AB 709, requires that student Board members also receive all non-closed session materials given to other Board members by the district between open meetings.

All materials presented to Board members, except those related to closed sessions, shall be presented to student Board members at the same time they are presented to ~~voting other~~ Board members. Student Board member(s) shall also be invited to attend staff briefings or be provided with a separate staff briefing within the same timeframe as the briefing of other Board members. **In addition, all materials given to Board members by the district between meetings, except for materials that pertain to closed session items, shall be distributed to student Board members.** (Education Code 35012)

(cf. 9322 - Agenda/Meeting Materials)

Student Board member(s) shall be recognized at Board meetings as full member(s), shall be seated with other members of the Board, and shall be allowed to participate in questioning witnesses and discussing issues. (Education Code 35012)

Note: Education Code 35012, as amended by AB 261 (Ch. 257, Statutes of 2017) and SB 468 (Ch. 283, Statutes of 2017), ~~grants preferential voting rights to student Board members.~~

Student Board member(s) shall be allowed to cast preferential votes on all matters except those subject to closed session discussion. *Preferential voting* means a formal expression of opinion that is recorded in the minutes and cast before the official vote of the Board. Preferential votes shall not affect the final numerical outcome of a vote. (Education Code 35012)

(cf. 9324 - Minutes and Recordings)

Note: Pursuant to Education Code 35012, the Board may adopt a resolution authorizing its student Board member(s) to make motions that may be acted upon by the Board, except on matters dealing with employer-employee relations pursuant to Government Code 3540-3549.3. The following **optional** paragraph is for use by districts that have adopted a resolution granting such authority.

Student Board member(s) may make motions that may be acted upon by the Board, except on matters dealing with employer-employee relations pursuant to Government Code 3540-3549.3. (Education Code 35012)

Note: Education Code 35012, as amended by AB 709, requires student Board members to be appointed to subcommittees of the Board in the same manner as other Board members, and as specified below.

STUDENT BOARD MEMBERS (continued)

Student Board members shall be appointed to subcommittees of the Board in the same manner as other Board members, be made aware of the time commitment required to participate in subcommittee meetings and work, and have the right to decline an appointment. The availability of all subcommittee members, including the availability of student Board members, may be considered when scheduling subcommittee meetings. (Education Code 35012)

(cf. 9130 - Board Committees)

Note: Education Code 35012, as amended by AB 709, requires that student Board members be invited to attend functions of the Board, as provided below.

Student Board members shall be invited to attend functions of the Board, such as forums, meetings with students and parents/guardians, and other general assemblies. (Education Code 35012)

Student Board members shall not be considered members of a legislative body for purposes of the Brown Act. (Education Code 35012)

A student Board member shall not be counted in determining whether a quorum of the Board is in attendance.

~~A student Board member shall not be liable for any acts of the Board. (Education Code 35012)~~

~~*(cf. 9323.2 - Actions by the Board)*~~

~~Student Board member(s) shall be entitled to be reimbursed for mileage to the same extent as other members of the Board but shall not receive compensation for attendance at Board meetings. (Education Code 35012)~~

~~*(cf. 3350 - Travel Expenses)*~~

~~*(cf. 9250 - Remuneration, Reimbursement and Other Benefits)*~~

Student Board Member ~~Development~~ Training

Note: The following section is optional. Trainings for student Board members are available through CSBA's Annual Education Conference and statewide associations such as the California Association of Student Councils and California Association of Student Leaders.

The Superintendent or designee may, at district expense, provide learning opportunities to student Board members through trainings, workshops, and conferences, such as those offered by the California School Boards Association and other organizations, to enhance their

STUDENT BOARD MEMBERS (continued)

knowledge, understanding, and performance of **leadership skills and** their Board responsibilities.

(cf. 9240 - Board Training)

The Superintendent or designee may periodically provide ~~an orientation for~~ **information to** student Board member candidates to give them an understanding of the ~~responsibilities and expectations of Board service~~ **position. Once elected or appointed, incoming student Board members shall be provided an orientation designed to build knowledge of the district and an understanding of the responsibilities and expectations of the position.**

(cf. 9230 - Orientation)

Alternate Student Board Member

Note: Education Code 35012, as amended by AB 709, authorizes the Board to appoint a student to serve as an alternate student Board member if the Board determines that the student Board member's duties are not being fulfilled.

If the Board determines that the student Board member's duties are not being fulfilled, the Board may appoint another student to serve as an alternate student Board member. If an alternate student Board member is appointed, the Board shall suspend the prior student Board member's rights and privileges related to service on the Board. (Education Code 35012)

Elimination of Position

Note: Education Code 35012 requires a majority vote of all voting members of the Board in order to eliminate a student Board member position that was established in response to a student petition. It is recommended that the district apply the same requirement when the position is established at the Board's discretion. The following paragraph may be revised accordingly.

Once established, the student Board member position shall continue to exist until the Board, by majority vote of all voting Board members, approves a motion to eliminate the position. Such a motion shall be listed as a public agenda item for a Board meeting prior to the motion being voted upon. (Education Code 35012)

Legal Reference: (see next page)

STUDENT BOARD MEMBERS (continued)

Legal Reference:

EDUCATION CODE

33000.5 Appointment of student member to State Board of Education

35012 Board members; number, election and terms; student members

35120 Course credit for student board members

35160 Authority of governing boards

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

54950-54964 Ralph M. Brown Act

Management Resources:

WEB SITES

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

California Association of Student Councils: <http://www.casc.net>

California Association of Student Leaders: <http://www.caslboard.com>

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

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