

SCHOOL PLANS/SITE COUNCILS

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

The Governing Board believes that comprehensive planning at each district school is necessary in order to focus school improvement efforts on student academic achievement and facilitate the effective use of district resources. The Superintendent or designee shall ensure that school plans provide clear direction and identify cohesive strategies aligned with school and district goals.

(cf. 0000 - Vision)

(cf. 0200 - Goals for the School District)

(cf. 0400 - Comprehensive Plans)

Note: School site councils or other schoolwide advisory committees are required to develop a single plan for student achievement (SPSA) to consolidate the school plans required for the state and federal categorical programs included in the state's consolidated application (Education Code 64000-64001) and the Quality Education Investment Act (Education Code 52055.700-52055.770). School plans formerly required for the Pupil Retention Block Grant (Education Code 41505-41508) and School and Library Improvement Block Grant (Education Code 41571-41573) may no longer be applicable since the funding for those programs is now included in the Local Control Funding Formula pursuant to AB 97 (Ch. 47, Statutes of 2013). For additional information regarding the development and content of the SPSA, see the accompanying administrative regulation and the California Department of Education's (CDE) publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#), available on its web site.

For any school that participates in specified state and/or federal categorical programs, the school site council or other schoolwide advisory committee shall consolidate the plans required for those categorical programs into a single plan for student achievement (SPSA). (Education Code 52055.755, 64001)

(cf. 0420.1 - School-Based Program Coordination)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0520.2 - Title I Program Improvement Schools)

(cf. 0520.4 - Quality Education Investment Schools)

(cf. 1220 - Citizen Advisory Committees)

(cf. 1431 - Waivers)

(cf. 3513.3 - Tobacco-Free Schools)

(cf. 4131 - Staff Development)

(cf. 5147 - Dropout Prevention)

(cf. 6020 - Parent Involvement)

(cf. 6142.91 - Reading/Language Arts Instruction)

(cf. 6151 - Class Size)

(cf. 6164.2 - Counseling/Guidance Services)

(cf. 6171 - Title I Programs)

(cf. 6174 - Education for English Language Learners)

(cf. 6190 - Evaluation of the Instructional Program)

SCHOOL PLANS/SITE COUNCILS (continued)

As appropriate, a school may incorporate any other school plan into the SPSA. (Education Code 64001)

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

The Superintendent or designee shall review each school's SPSA to ensure that it meets the content requirements for all programs included, is based on an analysis of current practices and student academic performance, and reasonably links improvement strategies to identified needs of the school and students. He/she shall submit to the Board his/her recommendations for plan approval or revision.

The Board shall review and approve each school's SPSA and any subsequent material revisions affecting the academic programs for students participating in the categorical programs addressed in the SPSA. The Board shall certify that, to the extent allowable under federal law, the SPSA is consistent with district local improvement plans required as a condition of receiving federal funding. Any such review and approval shall be at a regularly scheduled Board meeting. (Education Code 64001)

Note: The CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) indicates that, as with plans required for School-Based Program Coordination pursuant to Education Code 52855, the Board must communicate its reasons any time it does not approve the SPSA.

Whenever the Board does not approve a school's SPSA, it shall communicate its specific reasons for disapproval of the plan to the school site council or committee. The school site council or committee shall then revise and resubmit the SPSA to the Board for its approval.

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

The Superintendent or designee shall ensure that school administrators and school site council members receive training on the roles and responsibilities of the site council.

Legal Reference: (see next page)

SCHOOL PLANS/SITE COUNCILS (continued)

Legal Reference:

EDUCATION CODE

52-53 *Designation of schools*
33133 *Information guide for school site councils*
35147 *Open meeting laws exceptions*
41500-41573 *Categorical education block grants*
52055.700-52055.770 *Quality Education Investment Act*
52176 *Advisory committees*
52500-52617 *Adult education*
52800-52887 *School-Based Program Coordination Act*
52890 *Qualifications and duties of outreach consultants*
54000-54028 *Educationally Disadvantaged Youth Programs*
54100-54145 *Miller-Unruh Basic Reading Act*
54425 *Advisory committees (compensatory education)*
54650-54659 *Education Improvement Incentive Program*
56000-56867 *Special education*
64000 *Categorical programs included in consolidated application*
64001 *Single school plan for student achievement, consolidated application programs*

HEALTH AND SAFETY CODE

104420 *Tobacco use prevention*

CODE OF REGULATIONS, TITLE 5

3930-3937 *Compliance plans*

UNITED STATES CODE, TITLE 20

6311 *Accountability, adequate yearly progress*
6312-6319 *Title I programs; plans*
6421-6472 *Programs for neglected, delinquent, and at-risk children and youth*
6601-6651 *Teacher and Principal Training and Recruitment program*
6801-7014 *Limited English proficient and immigrant students*
7101-7165 *Safe and Drug-Free Schools and Communities*
7341-7355c *Rural Education Initiative*

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council, February 2013

WEST ED PUBLICATIONS

California Healthy Kids Survey
California School Climate Survey

WEB SITES

California Department of Education, Single Plan for Student Achievement:
<http://www.cde.ca.gov/nclb/sr/le/singleplan.asp>
U.S. Department of Education: <http://www.ed.gov>
WestEd: <http://www.wested.org>

SCHOOL PLANS/SITE COUNCILS

School Site Councils

Note: Education Code 52852 requires the establishment of a school site council at each school that participates in School-Based Program Coordination. In addition, Education Code 64001 requires that each school have a school site council, or other advisory committee that meets the requirements of Education Code 52852, to develop and review the school's single plan for student achievement (SPSA) for any categorical programs included in the state's consolidated application; see section "Single Plan for Student Achievement" below.

For information about the organization of the school site council, including sample school site council bylaws that address duties, membership, officers, subcommittees, and meetings, see the California Department of Education's (CDE) publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#), available on the CDE's web site.

School site councils shall be established when required for participation in a categorical program. (Education Code 52852, 64001)

(cf. 0420.1 - School-Based Program Coordination)

The school site council shall be composed of the following: (Education Code 52852)

1. The principal
2. Teachers selected by the school's teachers
3. Other school personnel selected by the school's other personnel
4. Parent/guardian representatives, who may include parents/guardians of students attending the school and/or community members, selected by parents/guardians of students attending the school

Note: Education Code 52852 requires that secondary schools include students on their school site council. Pursuant to Education Code 52 and 53, secondary schools include high schools and junior high schools. The CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) advises that middle schools may include student representation on the school site council at the district's discretion. If the district does determine that middle schools should include students on their school site council, then such councils must meet the composition required of secondary schools as noted in the paragraph below item #5.

5. In secondary schools, students attending the school selected by other such students

Half of the school site council membership shall consist of school staff, the majority of whom shall be classroom teachers. For elementary school site councils, the remaining half shall be parent/guardian representatives. For secondary school site councils, the remaining half shall be equal numbers of parent/guardian representatives and students. (Education Code 52852)

SCHOOL PLANS/SITE COUNCILS (continued)

A district employee may serve as a parent/guardian representative on the school site council of the school his/her child attends, provided the employee does not work at that school. (Education Code 52852)

Note: The method of selecting members of school site councils is not specified in law, except that members must be chosen by peers as noted above. No additional membership qualifications may be required. The CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) suggests that the selection process may be addressed in Board policy or in bylaws of the school site council. The following **optional** paragraph may be revised to reflect district practice.

The bylaws of each school site council shall include the method of selecting members and officers, terms of office, responsibilities of council members, time commitment, and a policy of nondiscrimination.

School site councils may function on behalf of other committees in accordance with law. (Education Code 52176, 52870, 54425; 5 CCR 3932)

Note: Pursuant to Education Code 35147, school site councils and some advisory committees are exempt from open meeting law requirements (the Brown Act), but must comply with other, less complex procedural requirements as specified; see AR 1220 - Citizen Advisory Committees.

School site councils shall operate in accordance with procedural meeting requirements established in Education Code 35147.

(cf. 1220 - Citizen Advisory Committees)

Single Plan for Student Achievement

Note: The following section reflects requirements pertaining to the development of the SPSA required for the state and federal categorical programs included in the consolidated application (Education Code 64000-64001) and the Quality Education Investment Act (Education Code 52055.700-52055.770). The CDE has developed a template for the SPSA, available on its web site, to help schools meet plan requirements.

In order for a school to participate in any state or federal categorical program specified in Education Code 52055.700 or 64000 on an ongoing basis, the school site council shall approve and annually review and update a single plan for student achievement (SPSA). If the school does not have a school site council, these responsibilities shall be fulfilled by a schoolwide advisory group or school support group conforming to the composition requirements of the school site council listed in the section "School Site Councils" above. (Education Code 52055.755, 64001)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0520.4 - Quality Education Investment Schools)

(cf. 1431 - Waivers)

SCHOOL PLANS/SITE COUNCILS (continued)

(cf. 3513.3 - Tobacco-Free Schools)
(cf. 4131 - Staff Development)
(cf. 5147 - Dropout Prevention)
(cf. 6020 - Parent Involvement)
(cf. 6142.91 - Reading/Language Arts Instruction)
(cf. 6151 - Class Size)
(cf. 6164.2 - Counseling/Guidance Services)
(cf. 6171 - Title I Programs)
(cf. 6174 - Education for English Language Learners)
(cf. 6184 - Continuation Education)

The SPSA shall be developed with the review, advice, and certification of any applicable school advisory committees. (Education Code 64001)

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| Note: The following optional paragraph may be revised to reflect district practice. |
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Such groups may include, but are not limited to, advisory committees established for categorical programs such as English learner, special education, gifted and talented education, and Economic Impact Aid programs; Western Association of Schools and Colleges leadership teams; district or school liaison teams for schools identified for program improvement; and other committees established by the school or district.

(cf. 0520.2 - Title I Program Improvement Schools)
(cf. 6172 - Gifted and Talented Student Program)
(cf. 6190 - Evaluation of the Instructional Program)

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| Note: Pursuant to Education Code 64001, the SPSA must be based upon an analysis of verifiable state data, including the Academic Performance Index and the California English Language Development Test, and may include other district data on student achievement. The CDE's publication <u>A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council</u> recommends that such data could include results of other state assessments, "adequate yearly progress" as measured pursuant to 20 USC 6311, and local benchmark and curriculum-embedded assessments. The following paragraph may be revised to include any additional measures required by the district. |
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The SPSA shall be aligned with school goals for improving student achievement. School goals shall be based on an analysis of verifiable state data, including the Academic Performance Index (API) and the California English Language Development Test, and may consider any other data developed by the district to measure student achievement. (Education Code 64001)

(cf. 0500 - Accountability)
(cf. 6162.5 - Student Assessment)
(cf. 6162.51 - Standardized Testing and Reporting Program)
(cf. 6162.52 - High School Exit Examination)

SCHOOL PLANS/SITE COUNCILS (continued)

The SPSA shall, at a minimum: (Education Code 64001)

1. Address how funds provided to the school through specified categorical programs will be used to improve the academic performance of all students to the level of the performance goals established by the API
2. Identify the means of evaluating the school's progress toward accomplishing those goals
3. Identify how state and federal law governing the categorical programs will be implemented

Note: The CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) clarifies that the SPSA must address all plan components required for individual categorical programs covered by the SPSA. For example, the SPSA for a school that participates in School-Based Program Coordination must include the plan requirements for that program as specified in AR 0420.1 - School-Based Program Coordination.

In addition to meeting the requirements common to all applicable school plans, the SPSA shall address any content required by law for each individual categorical program in which the school participates.

Note: The remainder of this section reflects steps recommended in the CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) and may be revised to reflect district practice.

In developing or revising the SPSA, the school site council or other schoolwide advisory group or school support group shall:

1. Analyze student achievement data. Using measures of student academic performance, the school shall identify significant patterns of low performance in particular content areas, student groups, and/or individual students and determine which data summaries to include in the plan as most informative and relevant to school goals.

(cf. 6011 - Academic Standards)

Note: To measure the effectiveness of the school's current instructional program, as provided in item #2 below, the CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) recommends a number of state tools available on the CDE web site, including, but not limited to, the Academic Program Survey, District Assistance Survey, Inventory for School Services, and English Learner Subgroup Self-Assessment. In addition, the California School Climate Survey and California Healthy Kids Survey, available on WestEd's web site, are recommended to help assess the need for support services.

SCHOOL PLANS/SITE COUNCILS (continued)

2. Assess the effectiveness of the school's instructional program in relation to the analysis of student data.
3. Identify a limited number of achievement goals and key improvement strategies to achieve the goals. School goals shall reflect the needs identified at the school site while aligning with goals identified in federally required district plans. The school shall specify the student group(s) on which each goal is focused, the methods or practices that will be used to reach the goal, and the criteria that will be used to determine if the goal is achieved.

Note: The CDE has developed a budget planning tool to assist schools with projecting the estimated expenditures of their SPSA goals against the school's allocations from the consolidated application. The budget planning tool is available on the CDE's web site and is included in the publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#).

4. Define timelines, personnel responsible, proposed expenditures, and funding sources to implement the SPSA.

The school site council or other schoolwide group shall approve the proposed SPSA at a meeting for which public notice has been posted and then submit the SPSA to the Governing Board for approval. (Education Code 35147, 64001)

Note: The CDE's publication [A Guide for Developing the Single Plan for Student Achievement: A Resource for the School Site Council](#) states that it is the responsibility of the school site council to monitor the effectiveness of the SPSA and modify activities when needed. The guide contains an annual evaluation tool to assist school site councils in assessing the effectiveness of the plan.

The school site council or other schoolwide group shall regularly monitor the implementation and effectiveness of the SPSA and modify any activities that prove ineffective. At least once per year, the school shall evaluate results of improvement efforts and report to the Board, advisory committees, and other interested parties regarding progress toward school goals.

The school site council or other schoolwide group may amend the SPSA at any time. Any revisions that would substantively change the academic programs funded through the consolidated application shall be submitted to the Board for approval.

TITLE I PROGRAM IMPROVEMENT SCHOOLS

Note: The following **optional** administrative regulation reflects the requirements of federal and state law for Title I schools identified for program improvement (PI) for failing to make "adequate yearly progress" (AYP) for two or more consecutive school years.

Definitions

Note: 20 USC 6311 requires each state to identify measurable objectives to be included in its definition of AYP, based primarily on academic assessments but also graduation rate and, at the state's discretion, other valid and reliable indicators. Specific indicators used by the State Board of Education (SBE) to define AYP are described in the state's federally approved Accountability Workbook and are subject to change. The SBE has also defined the minimum number of students required for a report of subgroup results as either 100 students with valid test results or 50 students in those cases where the subgroup constitutes at least 15 percent of the students at the school with valid test scores.

Adequate yearly progress (AYP) refers to a series of annual academic performance goals, as defined by the State Board of Education, that incorporate student participation levels on state assessments, minimum required percentages of students scoring at the proficient level or above on English language arts and mathematics state assessments, high school graduation rates, and growth on the state's Academic Performance Index (API). AYP includes measurable annual objectives for continuous and substantial improvement for the achievement of all students at the school and for any subgroup of students, including economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency, when the number of students in the subgroup is sufficient to yield statistically reliable results. (20 USC 6311)

(cf. 0500 - Accountability)

(cf. 6162.51 - Standardized Testing and Reporting Program)

(cf. 6162.52 - High School Exit Examination)

Program improvement (PI) school refers to a school that is receiving federal Title I funds and has failed to make AYP for each of two consecutive school years. (20 USC 6316)

Note: The following paragraph reflects state criteria for identifying schools that have failed to make AYP for two or more consecutive years. If the district does not have any schools that are too small to generate a school-level report, the district may revise the paragraph to delete language regarding the aggregation of the results of small schools into a district accountability measure. For further information about the identification of PI schools, see the California Department of Education's (CDE) Adequate Yearly Progress Report Information Guide.

A school shall be identified for PI by the California Department of Education (CDE) whenever, for each of two consecutive years, it either does not make AYP in the same content area (English language arts or mathematics) schoolwide or for any numerically significant student subgroup or does not make AYP on the same indicator (Academic

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

Performance Index or high school graduation rate) schoolwide. If a small school has too few students to generate a school-level report, its results shall be aggregated into a district accountability measure.

Year 1 Program Improvement

When any Title I school is initially identified for PI: (20 USC 6316)

Note: 20 USC 6316 allows students to transfer out of a PI school into another school, which may include a charter school, served by the district. See the section "Student Transfers" below for requirements related to such transfers. If all district schools are identified for PI, the district is required, when practicable, to develop an interdistrict transfer agreement to allow for the transfer of such students to a school outside the district. Districts whose schools are all identified for PI may revise item #1 below accordingly.

1. The Superintendent or designee shall provide students enrolled in the school the option of transferring, as described below in the section "Student Transfers," to another school, which may include a charter school, served by the district that has not been identified for PI.

(cf. 0420.4 - Charter School Authorization)
(cf. 5116.1 - Intradistrict Open Enrollment)

2. Not later than three months of being identified for PI, the school shall develop or revise a school plan, in consultation with parents/guardians, school staff, the district, and outside experts, for approval by the Governing Board. The plan shall cover a two-year period and address the components specified in 20 USC 6316.

(cf. 6020 - Parent Involvement)

Note: The following paragraph is **optional**. Information on the CDE's web site indicates that a school could fulfill the requirement for a two-year school improvement plan by revising its Single Plan for Student Achievement, developed pursuant to Education Code 64000-64001, to reflect the requirements of 20 USC 6316.

To fulfill this requirement, the school may revise its Single Plan for Student Achievement to reflect the requirements of 20 USC 6316.

(cf. 0420 - School Plans/Site Councils)
(cf. 6171 - Title I Programs)

3. Within 45 days of receiving the plan, the Board shall establish a peer review process to assist with its review of the plan, work with the school as necessary, and approve the plan if it meets the requirements of law.

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

4. The school shall implement the plan no later than the beginning of the next full school year following the school's identification for PI, or, if the plan has not been approved prior to beginning the school year, immediately upon approval of the plan.
5. As the school develops and implements the school plan, the Superintendent or designee shall ensure that the school receives technical assistance from the district, CDE, an institution of higher education, a private organization, an educational service agency, or another entity with experience in helping schools improve academic achievement, including assistance in:
 - a. Analyzing data from state assessments and other examples of student work to identify and address problems in instruction and/or problems in implementing Title I requirements pertaining to parent involvement, professional development, or school and district responsibilities identified in the school plan
 - b. Identifying and implementing professional development, instructional strategies, and methods of instruction that are derived from scientifically based research and that have proven effective in addressing the specific instructional issues that caused the school to be identified for PI
 - c. Analyzing and revising the school's budget so that the school's resources are more effectively allocated to the activities most likely to increase student achievement and remove the school from PI status

(cf. 3100 - Budget)

Year 2 Program Improvement

For any Title I school that fails to make AYP by the end of the first full school year after being identified for PI, the Superintendent or designee shall take all of the following actions: (20 USC 6316)

1. Continue to provide all students enrolled in the school the option of transferring, as described below in the section "Student Transfers"
2. Arrange for the provision of supplemental educational services (SES) to eligible students from low-income families by a provider with a demonstrated record of effectiveness, as described below in the section "Supplemental Educational Services"
3. Continue to provide for technical assistance in accordance with item #5 in the section "Year 1 Program Improvement" above

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)**Year 3 Program Improvement: Corrective Action**

When a school continues to fail to make AYP by the end of the second full school year after identification for PI (four consecutive years of failure to make AYP), the Superintendent or designee shall continue to provide all elements of Year 1 and Year 2 PI specified above. In addition, the Board shall take one or more of the following corrective actions: (20 USC 6316)

1. Replace school staff relevant to the failure

(cf. 4113 - Assignment)

(cf. 4114 - Transfers)

(cf. 4314 - Transfers)

2. Implement a new curriculum and related professional development

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

3. Significantly decrease management authority at the school level

4. Appoint an outside expert to advise the school

5. Extend the school year or school day for the school

(cf. 6111 - School Calendar)

(cf. 6112 - School Day)

6. Restructure the internal organization of the school

Note: The following paragraph is **optional**. Pursuant to Education Code 53300-53303 (the Parent Empowerment Act) and 5 CCR 4800-4808, when a school is identified for Year 3 PI (corrective action) and meets other specified criteria, the parents/guardians of that school may petition the district to implement one of four intervention models (i.e., turnaround model, restart model, school closure, or transformation model) or an alternative governance arrangement, as these models are described in 5 CCR 4803-4807. The district must notify the Superintendent of Public Instruction and the SBE when it receives such a petition and when it takes action on the petition. This option is limited to 75 schools statewide.

Whenever a school is identified for Year 3 PI, continues to fail to make AYP, has an API of less than 800, and is not identified as a "persistently lowest achieving school" pursuant to Education Code 53201, the parents/guardians of students attending that school may petition the district to implement an intervention for the purpose of improving academic achievement or student safety, provided that the state limit on the number of such schools has not yet been

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

reached. To be considered by the Board, the petition shall contain all required content and signatures and specify one of four intervention models (i.e., turnaround model, restart model, school closure, or transformation model) or an alternative governance arrangement, as described in 5 CCR 4803-4807. The district shall implement the option requested by the parents/guardians unless, at a regularly scheduled public hearing, the Board makes a finding in writing stating the reason it cannot implement the recommended option and instead designates one of the other options to be implemented. (Education Code 53300-53303; 5 CCR 4800-4808)

Year 4 Program Improvement and Beyond: Restructuring

For any school that continues to fail to make AYP after one full year of corrective action, the Superintendent or designee shall continue to provide all students enrolled in the school with the option to transfer to another school within the district and continue to make SES available to eligible students who remain in the school. In addition, the Board shall develop a plan and make necessary arrangements to implement one of the following options for alternative governance and restructuring, consistent with state law: (20 USC 6316)

1. Reopen the school as a charter school
2. Replace all or most of the school staff relevant to the failure
3. Enter into a contract with an entity with a demonstrated record of effectiveness to operate the school
4. Turn the operation of the school over to the CDE
5. Institute any other major restructuring of the school's governance arrangements that makes fundamental reforms

Notifications

Note: 20 USC 6316 and 34 CFR 200.37 require the following notification to parents/guardians. Templates that can be used by the district to develop the notification for any year of PI, as well as translations in many languages, are available on the CDE's web site.

Whenever a school is identified for PI, corrective action, or restructuring, the Superintendent or designee shall promptly notify parents/guardians of students enrolled in that school. The notification shall include: (20 USC 6316; 34 CFR 200.37)

1. An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary or secondary schools in the district and state

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

2. The reasons for the identification
3. An explanation of what the school is doing to address the problem of low achievement
4. An explanation of what the district or state is doing to help the school address the achievement problem
5. An explanation of how parents/guardians can become involved in addressing the academic issues that caused the school to be identified for PI

Note: Specific requirements for the notifications described in items #6 and 7 are addressed below in the sections "Student Transfers" and "Supplemental Educational Services," respectively. If all the district's schools are PI schools, the district may revise item #6 below to reflect interdistrict attendance agreements, if any, that the district has established with other district(s) pursuant to 20 USC 6316.

6. An explanation of the option to transfer to another school within the district, as described below in the section "Student Transfers"
7. If the school is in Year 2 of PI or beyond, an explanation of how parents/guardians can obtain SES for their child as described below in the section "Supplemental Educational Services"

(cf. 5145.6 - Parental Notifications)

The Superintendent or designee shall disseminate information about corrective actions taken at any district school to the parents/guardians of each student in that school and to the public through such means as the Internet, the media, and public agencies. (20 USC 6316)

The Superintendent or designee shall promptly notify teachers and parents/guardians whenever a school is identified for restructuring and shall provide them adequate opportunities to comment before taking action and to participate in developing any plan for restructuring school governance. (20 USC 6316)

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

All notifications pertaining to PI shall be written in an understandable and uniform format and, to the extent practicable, in a language the parents/guardians can understand. (20 USC 6316; 34 CFR 200.36)

Note: 20 USC 6316 and 34 CFR 200.48 require districts to spend at least 20 percent of district Title I funds for costs related to SES, transportation for student transfers, and related outreach and assistance to parents/guardians; see the accompanying Board policy. 34 CFR 200.48 authorizes districts to spend less than 20 percent if they provide timely, accurate notifications as described above and partner with outside groups to inform students and families, as provided below. The following paragraph is **optional**.

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

To the extent practicable, the district shall partner with outside groups, such as faith-based organizations, community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive SES. (34 CFR 200.48)

Student Transfers

Note: As noted above, 20 USC 6316 requires any school in Year 1 of PI or beyond to provide all students in that school with an opportunity to transfer to another school, which may include a charter school, served by the district.

34 CFR 200.44 provides that a district subject to a desegregation plan, whether voluntary, court-ordered, or required by a federal or state administrative agency, is not exempt from the requirement to allow such transfers. However, the district may take into account the requirements of the desegregation plan in determining how to provide students with the option to transfer to another school.

Because the district is required to offer intradistrict transfers to all students in PI schools, it is recommended that the district give priority to such students in its intradistrict open enrollment policy; see BP 5116.1 - Intradistrict Open Enrollment.

Pursuant to 20 USC 6316, if all district schools are identified for PI, the district is required to develop an interdistrict transfer agreement when practicable. Such districts may revise the following section accordingly.

All students enrolled in a school in Year 1 of PI or beyond shall be provided an option to transfer to another school, which may include a charter school, served by the district provided that the school: (20 USC 6316; 34 CFR 200.44)

1. Has not been identified for PI, corrective action, or restructuring

In the event that all district schools are identified for PI, the district shall, to the extent practicable, establish a cooperative agreement with other local educational agencies in the area for interdistrict transfers.

(cf. 5117 - Interdistrict Attendance)

Note: Districts must offer students attending a school identified as "persistently dangerous" by the CDE the opportunity to transfer to another district school. See BP/AR 5116.1 - Intradistrict Open Enrollment for a definition of "persistently dangerous" and other conditions regarding this type of transfer.

2. Has not been identified by the CDE as a "persistently dangerous" school pursuant to 20 USC 7912 and 5 CCR 11992-11994

(cf. 0450 - Comprehensive Safety Plan)

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

Note: U.S. Department of Education (USDOE) nonregulatory guidance (Public School Choice) clarifies that, although all students in PI schools must be given an option to transfer, 20 USC 6316 and 34 CFR 200.44 give priority to the lowest achieving students from low-income families. This could mean giving those students their first choice of schools and/or first priority for transportation services if funds are limited. For these purposes, the district must determine family income on the same basis that the district uses to make Title I allocations to schools.

Among the students offered an option to transfer out of a PI school, priority shall be given to the lowest achieving students from low-income families, as defined by the district for purposes of allocating Title I funds. (20 USC 6316; 34 CFR 200.44)

If two or more district schools are eligible to accept transfers based on criteria listed in items #1-2 above, the district shall provide a choice of more than one such school and shall take into account parent/guardian preferences among the choices offered. (34 CFR 200.44)

Note: 34 CFR 200.44 indicates that lack of capacity is not a permissible reason to deny transfer opportunities to students. The USDOE guidance reiterates that districts must either create additional capacity or provide choices of other schools. Thus, districts must ensure that nothing in their parental notification letter or transfer application implies that choice may be limited due to a lack of capacity. When capacity is an issue, the district might consider portable classrooms, reassignment of teachers, distance learning programs, the establishment of new charter schools, or other options.

The Superintendent or designee may consider school capacity in selecting schools that will be offered as alternatives for school choice, but shall not use the lack of school capacity to deny transfer opportunities to students. The district may increase capacity in eligible district schools to accommodate all students who wish to transfer.

Note: 34 CFR 200.37 and 200.44 require that districts notify parents/guardians of their transfer option no later than 14 calendar days before the start of the school year. However, it is sometimes difficult for districts to meet this deadline because of the timing of California's assessment results and of the identification of PI schools. When necessary, the CDE will notify PI schools of an alternate date by which they must send this notification. Pursuant to 34 CFR 200.32, under no circumstances may a district wait an additional school year (until the second school year following the one in which assessments that led to the failure to make AYP were administered) before offering the transfer option to eligible students.

The transfer option shall be offered so that students may transfer in the school year following the school year in which the district administered the assessments that resulted in the identification of the school for PI, corrective action, or restructuring. In order to provide adequate time for parents/guardians to exercise their transfer option before the school year begins, the Superintendent or designee shall notify parents/guardians of the available school choices sufficiently in advance of, but no later than 14 calendar days before, the start of the school year or on a date otherwise determined necessary by the CDE. (34 CFR 200.37, 200.44)

Note: 34 CFR 200.37 contains requirements for the content of the notice that must be provided to

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

parents/guardians whenever a school is identified for PI, corrective action, or restructuring, which include the content described in items #5-6 below related to school choice. The USDOE guidance describes additional requirements that the notice should contain (items #1-4 below). These requirements are incorporated into the sample parental notification available on the CDE's web site.

Notice of the transfer option shall:

1. Inform parents/guardians that, due to the identification of the current school as in need of improvement, their child is eligible to attend another school, including a charter school, served by the district
2. Identify each school that the parent/guardian may select
3. Explain why the choices made available to the parents/guardians may have been limited

Note: According to the USDOE guidance, parents/guardians do not necessarily need to be guaranteed their first choice of schools. Item #4 reflects language in the guidance that authorizes, but does not require, districts to develop a system of rank-ordering preferences. See E(1) 0520.2 for a sample form that may be used for parent/guardian requests for student transfers.

4. Describe the timelines and procedures that parents/guardians must follow in selecting a school for their child, including a requirement that parents/guardians rank-order their preferences of eligible schools as appropriate
5. Provide information on the academic achievement of the school(s) to which the student may transfer (34 CFR 200.37)

Note: 34 CFR 200.37 requires that the notice explain the provision of transportation, as provided in item #6 below. According to the USDOE guidance, the notice should include a discussion of how transportation will be provided or paid for and, if the district anticipates that it will not have sufficient funds to provide transportation to all eligible students requesting a transfer, information on how the district will set priorities to determine which students will receive transportation.

6. Explain the provision of transportation to the new school (34 CFR 200.37)

Note: 34 CFR 200.37 describes additional content that may be included in the notice at the district's discretion. The following **optional** paragraph may be revised as desired.

The notice may include other information about the school(s) to which the student may transfer, such as a description of any special academic programs or facilities, the availability of before- and after-school programs, the professional qualifications of teachers in the core academic subjects, and a description of parent involvement opportunities. (34 CFR 200.37)

(cf. 4112.24 - *Teacher Qualifications Under the No Child Left Behind Act*)

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

(cf. 5148.2 - Before/After School Programs)

In addition to mailing notices directly to parents/guardians, the Superintendent or designee shall provide information about transfer options through broader means, such as the Internet, the media, and public agencies serving students and their families. (34 CFR 200.36)

(cf. 1100 - Communication with the Public)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

Note: 34 CFR 200.39 includes the following requirement for districts that have their own web sites. If the district does not have a web site, the CDE is required to provide this information on its web site. The USDOE guidance clarifies that this provision requires the posting of historical data from 2007-08 and all subsequent years, not just the current year.

The district shall prominently display on its web site, in a timely manner each school year, a list of available schools to which eligible students may transfer in the current school year. The district shall also display data on the number of students who were eligible for and who participated in the student transfer option, beginning with data from the 2007-08 school year and each subsequent year thereafter. (34 CFR 200.39)

Note: The following **optional** paragraph may be revised to reflect district practice. According to the USDOE guidance, the district may set a reasonable deadline by which parents/guardians must respond to the offered school assignment, as long as parents/guardians have sufficient time and information to make an informed decision.

In accordance with timelines established for the transfer request process, the Superintendent or designee shall notify parents/guardians of their child's school assignment and shall establish a reasonable deadline by which parents/guardians must either accept the assignment or decline the assignment and remain in the school of origin.

Note: If a student exercises the option to transfer to another school within the district, 20 USC 6316 and 34 CFR 200.44 require the district to provide or pay for the student's transportation to that school. The USDOE guidance clarifies that, if the district does not offer transportation services to its students, it will be required to reimburse parents/guardians for the costs of providing transportation or for using public transportation. This requirement is an exception to state and federal law for other types of intradistrict transfers for which the district is not obligated to provide or pay for transportation; see BP 5116.1 - Intradistrict Open Enrollment.

In cases where all district schools are identified for PI and the district has developed an interdistrict transfer agreement pursuant to 20 USC 6316, the provision of transportation to transfer students must be determined by an agreement between the cooperating districts. Such districts may revise the remainder of this section accordingly.

The district shall provide, or shall pay for the provision of, transportation to the district school which the student chooses to attend. (20 USC 6316; 34 CFR 200.44)

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

(cf. 3540 - Transportation)

Note: The USDOE guidance states that districts have flexibility to establish transportation zones based on geographic location. The following **optional** paragraph is based on the authority in the USDOE guidance and may be revised to reflect district practice.

To ensure that transportation may be reasonably provided, the Superintendent or designee may establish transportation zones based on geographic location within the district. Transportation to schools within a zone shall be fully provided, while transportation outside the zone may be partially provided.

(cf. 3541 - Transportation Routes and Services)

Any student who transfers to another district school may remain in that school until he/she has completed the highest grade in that school. However, the district shall not be obligated to provide, or pay for the provision of, transportation for the student after the end of the school year that the school of origin is no longer identified for PI, corrective action, or restructuring. (20 USC 6316; 34 CFR 200.44)

Supplemental Educational Services

Note: As described above, 20 USC 6316 and 34 CFR 200.45 require the district to make SES available to students from low-income families whenever a school is in Year 2 of PI or beyond. For these purposes, the district must determine family income on the same basis that it uses to make Title I allocations to schools. Parents/guardians are allowed to select SES within the district or in neighboring local educational agencies from a list of entities approved by the SBE. USDOE nonregulatory guidance (Supplemental Educational Services) indicates that parents/guardians also may select a provider that is accessible through technology, such as e-learning, online, or distance learning technology.

When required by law, SES shall be provided outside the regular school day and shall be specifically designed to increase achievement of eligible students from low-income families on state academic assessments and to assist them in attaining state academic standards. (20 USC 6316)

(cf. 6011 - Academic Standards)

(cf. 6179 - Supplemental Instruction)

Note: 20 USC 6316 and 34 CFR 200.37 address the content of the notification that must be issued when a school is required to provide SES. These requirements are incorporated into the sample parental notification letters available on the CDE's web site.

When a school is required to provide SES, the Superintendent or designee shall provide annual notice to parents/guardians that includes: (20 USC 6316; 34 CFR 200.37)

1. The availability of SES

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

2. The identity of approved providers that are within the district or are reasonably available in neighboring local educational agencies
3. The identity of approved providers of technology-based or distance learning services
4. The services, qualifications, and demonstrated effectiveness of each provider, including an indication of those providers who are able to serve students with disabilities or limited English proficiency
5. The benefits of receiving SES

Note: The USDOE guidance suggests that the notification also include procedures and timelines for selecting a provider. The following paragraph is **optional**.

In addition, the notification shall describe procedures and timelines that parents/guardians must follow to select a provider.

This notification shall be clearly distinguishable from other information sent to parents/guardians regarding identification of the school for PI, corrective action, or restructuring. (34 CFR 200.37)

Note: 34 CFR 200.39 includes the following requirement for districts that have their own web sites. If the district does not have a web site, the CDE is required to provide this information on its web site. The USDOE guidance clarifies that this provision requires the posting of historical data from 2007-08 and all subsequent years, not just the current year.

The district shall prominently display on its web site, in a timely manner each school year, a list of state-approved providers serving the district in the current year and the location where services are provided. The district shall also display the number of students who were eligible for and who participated in SES, beginning with data from the 2007-08 school year and each subsequent year thereafter. (34 CFR 200.39)

Note: 20 USC 6316 requires the district to spend 20 percent of its Title I funds on costs related to SES, transportation for transfers, and related outreach and assistance to parents/guardians; see the accompanying Board policy. 34 CFR 200.48 specifies that, in order to spend less than 20 percent, a district must distribute sign-up forms for SES, establish at least two enrollment windows, and make school facilities available to eligible providers, as provided below. The following three paragraphs are **optional**.

See E(2) for a sample service request form.

The Superintendent or designee shall distribute sign-up forms for SES directly to all eligible students and their parents/guardians and make them available and accessible through broad means of dissemination such as the Internet, other media, and communications through public agencies serving eligible students and their families. (34 CFR 200.48)

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

The district shall provide a minimum of two enrollment windows, at separate points in the school year, that are of sufficient length to enable the parents/guardians of eligible students to make informed decisions about requesting SES and selecting a provider. (34 CFR 200.48)

Note: The USDOE guidance advises that the district may establish a reasonable deadline by which parents/guardians must request services, as long they are given sufficient time and information to make an informed decision. The following paragraph may be revised to include any such deadline established by the district.

Within a reasonable period of time established by the Superintendent or designee, parents/guardians shall select a SES provider from among those approved by the SBE. Upon request, the Superintendent or designee shall assist parents/guardians in choosing a provider. (20 USC 6316; 34 CFR 200.46)

The district shall not prohibit or limit an approved provider from promoting its program or the general availability of SES to members of the community. (5 CCR 13075.9)

Note: A district may apply to become a SES provider as long as it meets the qualifications specified in 5 CCR 13075.1 and is approved by the SBE in accordance with the procedure described in 5 CCR 13075.2. 5 CCR 13075.5 lists conditions under which a provider's status may be terminated by the SBE. The following **optional** paragraph is for use by districts that have been approved as service providers.

When the district is an approved SES provider, the Superintendent or designee shall be careful to provide parents/guardians with a balanced presentation of the options available to them and shall ensure that they understand their right to select the district or any other service provider.

No district employee who administers or provides SES, either solely or in collaboration with a SES provider, or who has a financial interest of any kind in a SES provider, shall use his/her position as a district employee to encourage district students or their parents/guardians to use the services of that provider. (5 CCR 13075.7)

(cf. 9270 - Conflict of Interest)

The Superintendent or designee shall ensure that eligible students with disabilities, students covered under Section 504 of the federal Rehabilitation Act, and students with limited English proficiency receive appropriate SES with any necessary accommodations or language assistance. (34 CFR 200.46)

(cf. 6159 - Individualized Education Program)

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

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

(cf. 6174 - Education for English Language Learners)

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

Note: The USDOE guidance clarifies that, if SES providers are unable to provide necessary accommodations or language assistance to students with disabilities, students covered under Section 504, or students who are English learners, districts are obligated to provide or contract for such services with accommodations or language assistance, as provided below.

If no provider is able to make the services available to such students, the district shall provide the services with necessary accommodations or language assistance, either directly or through a contract. Services shall be consistent with a student's individualized education program (IEP) or Section 504 services plan, as applicable.

If available funds are insufficient to provide SES to each eligible student whose parents/guardians request those services, priority shall be given to the lowest achieving eligible students. (20 USC 6316)

Note: The USDOE guidance notes that districts should establish fair and equitable procedures for selecting students to receive services if a particular provider does not have the capacity to serve all students who have selected that provider. The guidance encourages districts to consider allocating available spaces consistent with the priority to serve the lowest achieving eligible students. The following paragraph is **optional**.

If the number of parents/guardians selecting a particular provider exceeds the capacity of that provider, priority shall be given to the lowest achieving eligible students.

Once a SES provider has been selected by a parent/guardian, the Superintendent or designee shall enter into an agreement with the provider. The agreement shall: (20 USC 6316)

1. Require the district to develop, in consultation with the parents/guardians and the provider, a student learning plan which includes specific achievement goals for the student, a description of how the student's progress will be measured, and a timetable for improving achievement. In the case of a student with disabilities, the student learning plan shall be consistent with the student's IEP.
2. Describe how the student's parents/guardians and teacher(s) will be regularly informed of the student's progress.
3. Provide for the termination of the agreement if the provider is unable to meet such goals and timetables.
4. Contain provisions with respect to the district making payments to the provider.

Note: USDOE correspondence dated August 10, 2007, clarifies that, although providers are prohibited from disclosing student information to third parties without consent, the Family Educational Rights and Privacy Act (20 USC 1232g; 34 CFR 99.1-99.8) does not prohibit providers from using contact information they obtain from the district to notify parents/guardians regarding their services.

TITLE I PROGRAM IMPROVEMENT SCHOOLS (continued)

5. Prohibit the provider, without written parent/guardian permission, from disclosing to the public the identity of any student eligible for or receiving SES.

(cf. 5125.1 - Release of Directory Information)

In developing the student learning plan as required by item #1 above, the Superintendent or designee shall consult with the parent/guardian of each student to, at a minimum, provide the parent/guardian an opportunity to express his/her views and have them considered. Consultation may include, but is not limited to, communication by telephone, email, home visits, parent/guardian meetings, and/or parent/guardian signature(s). Evidence of this consultation shall be included in the student learning plan. In the event that a consultation does not take place but the parent/guardian has selected an approved SES provider, the Superintendent or designee, or the provider acting on the district's behalf, shall show evidence of at least three separate attempts to contact the parent/guardian using at least two different means of communication. If the parent/guardian elects not to participate in the consultation, the Superintendent or designee, or approved provider acting on the district's behalf, must develop a student learning plan for the student. (5 CCR 13075.7)

The Superintendent or designee may request, but not require, that the SES provider develop the student learning plan on behalf of the district for each student served by the provider as indicated in the agreement. In such cases, the Superintendent or designee shall make available to the provider pertinent student academic achievement data with parent/guardian permission and other technical assistance that will facilitate the development of the plan. The Superintendent or designee shall maintain responsibility to review and approve the student learning plan to ensure that it is developed in consultation with the parent/guardian and contains all required information. (5 CCR 13075.7)

Eligible SES providers shall be given access to school facilities, using a fair, open, and objective process, on the same basis as other groups that seek access to school facilities. (34 CFR 200.48)

(cf. 1330 - Use of School Facilities)

WAIVERS

Note: The following **optional** policy covers waiver requests which the State Board of Education (SBE) generally has legal authority to grant (general waivers). In order to provide districts with flexibility without undermining the basic intent of the law, Education Code 33050-33053 permit districts to request that the SBE waive sections of the Education Code, Title 5 of the California Code of Regulations, or any applicable federal law, including portions of the No Child Left Behind Act. Education Code 33050 exempts certain sections of the Education Code from the authority of the SBE to grant waivers.

However, this policy does not address waivers expressly authorized by law for specific programs and situations (specific waivers) such as the waiver of Education Code 56101 for students with disabilities and waivers that may be granted by the Commission on Teacher Credentialing or the Superintendent of Public Instruction, such as waivers for alternative schools. See BP 6181 - Alternative Schools/Programs of Choice. For any such waiver, the process for obtaining the waiver would be as specified in the provision of law governing the program. In addition, this policy does not cover waiver requests that a district's governing board is authorized to grant, such as (1) parent/guardian requests for waivers regarding the sheltered English language immersion program for English learners offered pursuant to Education Code 305, or (2) the requirement for a student with disabilities to successfully pass the high school exit examination. See BP/AR 6174 - Education for English Language Learners and AR 6162.52 - High School Exit Examination for the procedures for these waiver requests.

The Governing Board recognizes that strict compliance with the law may sometimes hinder the district's ability to provide its students with an effective, well-rounded educational program. When it is in the interest of district students, the Board may request that the State Board of Education (SBE) waive any provision of state or federal law or regulation which it has authority to waive pursuant to Education Code 33050.

Note: The California Department of Education (CDE) has instituted an online waiver request system which it encourages districts to use. In addition, CDE has updated guidance and Frequently Asked Questions on its web site to help expedite the waiver submission process. Prior to submitting a waiver request, the district should confirm that it has gathered all the data required and complied with all the legal requirements for the request. The district should also review Education Code 33051 which specifies the reasons for which the SBE may deny the request. For example, a request to waive a provision of law regarding a program that requires the existence of a site council must be approved by that site council; otherwise the request will be denied by the SBE.

Any waiver request to be submitted to the SBE shall first be approved by the Board. The Superintendent or designee shall ensure that each proposed waiver request includes all information necessary for the Board to analyze the need for the waiver and make an informed decision.

Prior to presenting the proposed request for Board approval, the Superintendent or designee shall consult with and obtain the approval of any advisory committee or site council when required by law.

(cf. 0420 - School Plans/Site Councils)
(cf. 0420.1 - School-Based Program Coordination)
(cf. 1220 - Citizen Advisory Committees)

WAIVERS (continued)

Note: The following **optional** paragraph is for districts with an employee organization certified to represent the district's employees in negotiations with the district.

In addition, the Superintendent or designee shall involve the exclusive representative of district employees in the development of the waiver request, and shall include in the request the exclusive representative's position regarding the waiver. (Education Code 33050)

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

To receive public testimony on each waiver request proposal, the Board shall hold a properly noticed public hearing during a Board meeting. (Education Code 33050)

Note: Education Code 33050 does not specify the length of the advanced notice required for the public hearing described above. However, CSBA believes that the notice must allow sufficient time to enable members of the public adequate opportunity to participate in the waiver request process. The following **optional** paragraph may be revised to specify the length of the notice, in accordance with district practice.

The notice, which shall state the time, date, location, and subject of the public hearing, may be printed in a newspaper of general circulation or posted at each school and three public places in the district.

(cf. 9320 - Meetings and Notices)

Note: The following **optional** paragraph addresses renewal of general waivers which have been granted by the SBE. According to CDE's State Board of Education - CalEd Facts issued in January 2013, pursuant to Education Code 33051, any general waiver which has been granted for two consecutive years, or which is initially granted for two years, may be regarded as "permanent" for as long as the information on the waiver request remains current. However, the SBE may require updated information for a general waiver whenever it determines that information to be necessary. The SBE may also rescind a waiver if additional information supporting a recession is made available to the SBE. Additionally, a district is required to apply annually for the renewal of any waiver regarding teacher credentialing.

When the district has requested and received the same general waiver from the SBE for two consecutive years, the Board is not required to reapply annually if the information contained on the request remains current. However, the district shall apply annually for the renewal of any waiver regarding teacher credentialing. (Education Code 33051)

Legal Reference: (see next page)

WAIVERS (continued)*Legal Reference:*EDUCATION CODE*305-311 Structured English immersion program; parental exception waivers**5000-5033 Governing board elections**8750-8754 Grants for conservation education**10400-10407 Cooperative improvement programs**17047.5 Facilities used by special education students**17291 Portable school buildings**33050-33053 General waiver authority**37202 Equity length of time**41000-41360 School finance**41381 Minimum school day**41600-41854 Computation of allowances**41920-42842 Budget requirements; local taxation by school districts**44520-44534 New Careers Program**44666-44669 School-Based Management and Advanced Career Opportunities**44681-44689 Administrator Training and Evaluation**45108.7 Maximum number of senior management positions**48660-48666 Community day schools**48800 Attendance at community college**49550-49560 Meals for needy students**51224.5 Algebra instruction**51745.6 Charter school independent study ratio**51870-51874 Educational technology**52080-52090 Class size reduction grade 9**52122.6-52122.8 Class size reduction, impacted school sites**52160-52178 Bilingual-Bicultural Education Act of 1976**52180-52186 Bilingual teacher waiver**52200-52212 Gifted and Talented Pupils Program**52340-52346 Career Guidance Centers**52522 Plans for adult education**52850-52863 School-Based Program Coordination**54000-54028 Disadvantaged Youth Program**54100-54145 Miller-Unruh Basic Reading Program**54407 Waiver for compensatory education programs**56000-56867 Special education programs**58407 Waiver related to individualized instruction program**58900-58928 Restructuring demonstration programs**60119 Public hearing on sufficiency of instructional materials**60851 High school exit examination, waiver for student with disabilities*CODE OF REGULATIONS, TITLE 5*1032 Academic Performance Index**3100 Resource specialist caseload waivers**3945 Cooperative programs**9531 Instructional materials funding**11960 Charter school attendance**11963.4 Charter school percentage funding**13017 Waivers, compensatory education New Careers in Education Program**13044 Waivers, compensatory education Professional Development and Program Improvement Programs**Legal Reference continued: (see next page)*

WAIVERS (continued)

Legal Reference: (continued)

UNITED STATES CODE, TITLE 20

1400-1482 Individuals with Disabilities Education Act

7115 Safe and Drug Free Schools, authorized activities

Management Resources:

WEB SITES

California Department of Education, Waiver Office: <http://www.cde.ca.gov/re/lr/wr>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

BIDS

Note: The following **optional** policy and accompanying mandated administrative regulation are for districts that have not adopted the Uniform Public Construction Cost Accounting Act (Public Contract Code 22030-22045). California law requires competitive bidding for most public contracts. Pursuant to Public Contract Code 20111 and 22002, public contracts for the lease or purchase of equipment, materials, supplies, or services or for "public projects," as defined, are required to be competitively bid when they involve expenditure of specified amounts.

The Governing Board is committed to promoting public accountability and ensuring prudent use of public funds. In leasing or purchasing equipment, materials, supplies, or services for the district and when contracting for public projects involving district facilities, the Board shall explore lawful opportunities to obtain the greatest possible value for its expenditure of public funds. When required by law, or if the Board determines that it is in the best interest of the district, such leases and purchases shall be made using competitive bidding.

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

(cf. 3000 - Concepts and Roles)

(cf. 3300 - Expenditures and Purchases)

Note: Requirements for competitive bidding, including notice and advertising, are specified in Public Contract Code 20111-20118.4. See the accompanying administrative regulation.

The Superintendent or designee shall establish comprehensive bidding procedures for the district in accordance with law. The procedures shall include a process for advertising bids, instructions and timelines for submitting and opening bids, and other relevant requirements.

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4. (Public Contract Code 20116)

Note: Districts should be careful in crafting bid specifications as a misleading specification that results in a lower bid than might have been made may make the district liable for the extra work done or expenses incurred by the contractor. In Los Angeles Unified School District v. Great American Insurance Co., the California Supreme Court held in favor of a contractor who was misled by the district's nondisclosure of material information that would have affected the contractor's bid.

When calling for bids, the Superintendent or designee shall ensure that the bid specification clearly describes in appropriate detail the quality, delivery, and service required and includes all information which the district knows, or has in its possession, that is relevant to the work to be performed or that may impact the cost of performing the work.

Note: Pursuant to Public Contract Code 20111.5, the district is permitted, but not required, to establish prequalification procedures for any contract for which bids are legally required; see the accompanying administrative regulation. However, pursuant to Public Contract Code 20111.6, as added by AB 1565 (Ch. 808, Statutes of 2012), a district with average daily attendance of 2,500 or greater is required to prequalify all general contractors and electrical, mechanical, and plumbing subcontractors for public projects of \$1 million or more awarded on or after January 1, 2014, if School Facilities Program funds (Education Code

BIDS (continued)

17070.10-17079.30) or other future state school bonds are used. In addition, the Governing Board is required to adopt a uniform system of rating bidders based on completed questionnaires and financial statements which must address, at a minimum, the issues covered by the standardized questionnaire and model guidelines developed by the Department of Industrial Relations for such purpose.

The Superintendent or designee shall develop the procedures to be used for rating bidders for award of contracts which, by law or Board policy, require prequalification. The procedures shall identify a uniform system for rating bidders and shall address the issues covered by the standardized questionnaire and model guidelines developed by the Department of Industrial Relations pursuant to Public Contract Code 20101.

(cf. 9270 - Conflict of Interest)

Note: Pursuant to Public Contract Code 20111, a contract required to be put out to bid must be awarded to the lowest responsible bidder. A "responsible bidder" is one who possesses the quality, fitness, and capacity to satisfactorily perform the proposed work. (City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court)

However, a bid may be awarded to other than the "lowest responsible bidder" when conditions specified in law exist. For example, a district is permitted to give preference to minorities, women, veterans, and small businesses in accordance with Public Contract Code 2000-2002. Also see "Award of Contract" section in the accompanying administrative regulation.

Except as authorized by law and specified in the administrative regulation, contracts shall be let to the lowest responsible bidder who shall give such security as the Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

Note: Pursuant to Public Contract Code 20118, districts may be exempt from the bidding requirements and may "piggyback" onto the bid of any public corporation or agency for specific items when the Board determines it is in the best interest of the district. See the accompanying administrative regulation for a list of those items that may be leased or purchased using this procedure.

When the Board has determined that it is in the best interest of the district, the district may piggyback onto the contract of another public agency or corporation to lease or purchase equipment or supplies to the extent authorized by law. (Public Contract Code 20118)

Legal Reference: (see next page)

BIDS (continued)

Legal Reference:

EDUCATION CODE

17070.10-17079.30 *Leroy F. Greene School Facilities Act*
17406 *Lease-leaseback contract*
17595 *Purchase of supplies through Department of General Services*
17602 *Purchase of surplus property from federal agencies*
38083 *Purchase of perishable foodstuffs and seasonable commodities*
38110-38120 *Apparatus and supplies*
39802 *Transportation services*

GOVERNMENT CODE

4217.10-4217.18 *Energy conservation contracts*
4330-4334 *Preference for California-made materials*
6252 *Definition of public record*
53060 *Special services and advice*
54201-54205 *Purchase of supplies and equipment by local agencies*

PUBLIC CONTRACT CODE

1102 *Emergencies*
2000-2002 *Responsive bidders*
3000-3010 *Roofing projects*
3400 *Bids, specifications by brand or trade name not permitted*
3410 *United States produce and processed foods*
6610 *Bid visits*
12200 *Definitions, recycled goods, materials and supplies*
20101-20103.7 *Public construction projects, requirements for bidding*
20103.8 *Award of contracts*
20107 *Bidder's security*
20111-20118.4 *Contracting by school districts*
20189 *Bidder's security, earthquake relief*
22002 *Definition of public project*
22030-22045 *Alternative procedures for public projects (UPCCAA)*
22050 *Alternative emergency procedures*
22152 *Recycled product procurement*

COURT DECISIONS

Los Angeles Unified School District v. Great American Insurance Co., (2010) 49 Cal.4th 739
Great West Contractors Inc. v. Irvine Unified School District, (2010) 187 Cal.App.4th 1425
Marshall v. Pasadena Unified School District, (2004) 119 Cal.App.4th 1241
Konica Business Machines v. Regents of the University of California, (1988) 206 Cal.App.3d 449
City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, (1972) 7 Cal.3d 861

ATTORNEY GENERAL OPINIONS

89 *Ops.Cal.Atty.Gen. 1* (2006)

Management Resources:

WEB SITES

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

BIDS

Note: Pursuant to Government Code 54202, districts are **mandated** to adopt bidding procedures governing the purchase of equipment and supplies.

The following administrative regulation is for use by districts that have not adopted the provisions of the Uniform Public Construction Cost Accounting Act (UPCCAA). Procedures and bid limits under the UPCCAA are specified in Public Contract Code 22030-22045.

Advertised/Competitive Bids

The district shall advertise for competitive bids to let any public project contract involving an expenditure of \$15,000 or more. *Public project* means construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition, and repair work involving a district owned, leased, or operated facility. (Public Contract Code 20111, 22002)

Note: For items #1-3 below, Public Contract Code 20111 requires the Superintendent of Public Instruction (SPI) to annually establish a bid limit that reflects U.S. Department of Commerce data. The following **optional** paragraph allows the amount to escalate automatically once the SPI has made the annual determination. For 2013, the bid limit is \$83,400.

The district shall also seek competitive bids through advertisement for contracts exceeding the amount specified in law, as annually adjusted by the Superintendent of Public Instruction, for any of the following: (Public Contract Code 20111)

1. The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district
2. Services, not including construction services or special services and advice in accounting, financial, legal, or administrative matters
3. Repairs that are not a public project, including maintenance

Maintenance means routine, recurring, and usual work for preserving, protecting, and keeping a district facility operating in a safe, efficient, and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered, or repaired. *Maintenance* includes, but is not limited to, carpentry, electrical, plumbing, glazing, and other craft work designed to preserve the facility, as well as repairs, cleaning, and other operations on machinery and other permanently attached equipment, but does not include painting, repainting, or decorating other than touchup, or among other types of work, janitorial or custodial services and protection provided by security forces. (Public Contract Code 20115)

BIDS (continued)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by placing a notice at least once a week for two weeks in a local newspaper of general circulation published in the district, or if no such newspaper exists, then in some newspaper of general circulation circulated in the county. The Superintendent or designee also may post the notice on the district's web site or through an electronic portal. The notice shall state the work to be done or materials or supplies to be furnished and the time and place and web site where bids will be opened. The district may accept a bid that has been submitted electronically or on paper. (Public Contract Code 20112)

(cf. 1113 - District and School Web Sites)

The notice shall contain the time, date, and location of any mandatory prebid conference, site visit, or meeting. The notice shall also detail when and where project documents, including the final plan and specifications, are available. Any such mandatory visit or meeting shall occur not less than five calendar days after the publication of the initial notice. (Public Contract Code 6610)

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| <p>Note: For a bid to be successful, it must conform to specifications (i.e., it must be "responsive") and the bidder must be determined to be able to perform the work (i.e., he/she must be "responsible"). A district must be careful in making a determination on the responsiveness of a bid based on investigation or information outside of the submitted bid. When relying on such outside investigation or information to disqualify a bidder, the district must follow the hearing procedures applicable for a finding of "nonresponsibility." (<u>Great West Contractors Inc. v. Irvine Unified School District</u>) To avoid any confusion, the district should provide clear and comprehensive specifications to bidders.</p> |
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Bid instructions and specifications shall include the following requirements and information:

1. All bidders shall certify the minimum, if not exact, percentage of post-consumer materials in products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)

(cf. 3510 - Green School Operations)

2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)
 - a. Cash
 - b. A cashier's check made payable to the district
 - c. A certified check made payable to the district

BIDS (continued)

- d. A bidder's bond executed by an admitted surety insurer and made payable to the district

The security of unsuccessful bidders shall be returned in a reasonable period of time, but in no event later than 60 days after the bid is awarded. (Public Contract Code 20111)

3. When a standardized proposal form is provided by the district, bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)
4. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
5. When two or more identical lowest or highest bids are received, the Governing Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

Note: Public Contract Code 20103.8 specifies that, in those cases when the bid includes items that may be added to or deducted from the scope of the work in the contract, the bid solicitation must specify the method to be used to determine the lowest bid, as detailed below. Districts should consult with legal counsel, as appropriate, as to the applicability of this law to school districts and other unclear provisions of this law.

6. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a below shall be used. (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest total of the bid prices on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
 - c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to or subtracted from the base contract, are less than or equal to a funding amount publicly disclosed by the district before the first bid is opened.

BIDS (continued)

The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the district before the ranking of all bidders from lowest to highest has been determined. (Public Contract Code 20103.8)

7. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.
8. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for public review pursuant to law, Board policy, and administrative regulation.

(cf. 1340 - Access to District Records)

9. When a bid is disqualified as nonresponsive based on district investigation or other information not obtained from the submitted bid, the Superintendent or designee shall notify the bidder and give him/her an opportunity to respond to the information.

Prequalification Procedure

Note: The following section is **optional**. Pursuant to Public Contract Code 20111.5, a district is permitted, but not required, to establish prequalification procedures for any contract for which bids are legally required. However, pursuant to Public Contract Code 20111.6, as added by AB 1565 (Ch. 808, Statutes of 2012), a district with average daily attendance (ADA) of 2,500 or greater is required to prequalify all general contractors and electrical, mechanical, and plumbing subcontractors for any public project of \$1 million or more awarded on or after January 1, 2014, if School Facilities Program funds (Education Code 17070.10-17079.30) or other future state school bonds are used.

When required by law or the Board, each prospective bidder shall complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall provide a standardized proposal form which requires a complete statement of the bidder's financial ability and experience in performing public works. The bidder's information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5, 20111.6)

Prospective bidders shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids. (Public Contract Code 20111.5)

The Superintendent or designee shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. Bidders must be prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

BIDS (continued)

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

Award of Contract

Note: Pursuant to Public Contract Code 20111, the district is required to award a contract to the lowest responsible bidder except in the circumstances specified in the following **optional** section.

The district shall award each contract to the lowest responsible bidder except in the following circumstances:

1. When the contract is for the procurement and/or maintenance of electronic data processing systems and supporting software, in which case the Board may contract with any one of the three lowest responsible bidders (Public Contract Code 20118.1)
2. For any transportation service contract involving an expenditure of more than \$10,000, which the Board contemplates may be made with a person or corporation other than a common carrier, municipally owned transit system, or a parent/guardian of students who are to be transported, in which case the Board may contract with other than the lowest bidder (Education Code 39802)

Note: Pursuant to Public Contract Code 2000-2002, a district is permitted to establish bidding requirements that facilitate the participation of minority, women, disabled veteran business enterprises and small businesses in contracts.

3. When the contract is one for which the Board has established goals and requirements relating to participation of minority, women, disabled veteran, or small business enterprises in accordance with Public Contract Code 2000-2002, in which case the Board may contract with the lowest responsible bidder who complies or makes a good faith effort to comply with the goals and requirements (Public Contract Code 2000-2002)

Protests by Bidders

Note: The law does not specify a procedure for handling protests by bidders. The following **optional** section provides one such procedure and should be modified to reflect district practice.

A bidder may protest a bid award if he/she believes that the award is not in compliance with law, Board policy, or the bid specification. A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award and shall include all documents supporting or justifying the protest. A

BIDS (continued)

bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.

The bidder may appeal the Superintendent or designee's decision to the Board. The Superintendent or designee shall provide reasonable notice to the bidder of the date and time for Board consideration of the protest. The Board's decision shall be final.

Alternative Bid Procedures for Technological Supplies and Equipment

Rather than seek competitive bids, the Board may use competitive negotiation when it makes a finding that a district procurement is for computers, software, telecommunications equipment, microwave equipment, or other related electronic equipment and apparatus. Competitive negotiation shall not be used to contract for construction or for the procurement of any product that is available in substantial quantities to the general public. (Public Contract Code 20118.2)

The competitive negotiation process shall include, but not be limited to, the following requirements: (Public Contract Code 20118.2)

1. The Superintendent or designee shall prepare a request for proposals (RFP) that shall be submitted to an adequate number of qualified sources, as determined by the district, to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the RFP shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
3. The Superintendent or designee shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the RFP is received.
4. The RFP shall identify all significant evaluation factors, including price, and their relative importance.
5. The Superintendent or designee shall provide reasonable procedures for the technical evaluation of the RFPs received, the identification of qualified sources, and the selection for the award of the contract.

BIDS (continued)

6. The Board shall award the contract to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the district with price and all other factors considered.
7. If the Board does not award the contract to the bidder whose proposal contains the lowest price, then the Board shall make a finding setting forth the basis for the award.
8. The Board, at its discretion, may reject all proposals and request new RFPs.
9. Provisions in any contract concerning utilization of small business enterprises that are in accordance with the RFP shall not be subject to negotiation with the successful proposer.

Sole Sourcing

Note: "Sole sourcing" is the practice by which one brand name product is specified, although comparable, competitive products are available. Public Contract Code 3400 allows sole sourcing in limited circumstances and requires that the specification of the designated product be followed by the words "or equal," so that bidders for such a contract are able to base their bids on the use of other products of equal functionality that may result in cost savings for the district. The following section is **optional**.

In any contract for the construction, alteration, or repair of school facilities, the Superintendent or designee shall not draft the bid specification in a manner that: (Public Contract Code 3400)

1. Directly or indirectly limits bidding to any one specific concern
2. Calls for a designated material, product, thing, or service by a specific brand or trade name, unless the specification is followed by the words "or equal," so that bidders may furnish any equal material, product, thing, or service

In any such case, the bid specification shall provide a time period, before and/or after the award of the contract, for the contractor to submit data substantiating the request for substituting the designated material, product, thing, or service. If no such time period is specified, the contractor may submit the data within 35 days after the award of the contract.

Note: The following **optional** paragraph is for districts with ADA of more than 2,500. For the repair or replacement of the roof of a public facility, a material must meet the requirements specified below to be considered "equal" pursuant to Public Contract Code 3000-3010.

When the bid is for a roof project, a material, product, thing, or service is considered "equal" to that designated if it is equal in quality, durability, design, and appearance;

BIDS (continued)

will perform the intended function equally well; and conforms substantially to the detailed requirements in the bid specification. (Public Contract Code 3002)

However, the Superintendent or designee may designate a specific material, product, thing, or service by brand or trade name (sole sourcing), if the Board has made a finding, described in the invitation for bids or RFP, that a particular material, product, thing, or service is designated for any of the following purposes: (Public Contract Code 3400)

1. To conduct a field test or experiment to determine its suitability for future use
2. To match others in use on a particular public improvement that has been completed or is in the course of completion
3. To obtain a necessary item that is only available from one source
4. To respond to the Board's declaration of an emergency, as long as the declaration has been approved by four-fifths of the Board when issuing the invitation for bid or RFP

(cf. 9323.2 - Actions by the Board)

Bids Not Required

Note: The following paragraph lists those items that may be purchased through a "piggybacked" bid; see the accompanying Board policy. Many districts have used the piggyback procedure to purchase portable and relocatable buildings. The Attorney General has opined (89 Ops.Cal.Atty.Gen. 1 2006) that a district may not rely on the piggyback exception to contract for the acquisition and installation of factory-built modular building components (i.e., roofs and walls) for installation on a permanent foundation. However, this opinion does not apply to typical portable or relocatable single-classroom buildings, because they lack a permanent foundation and building mobility. Districts considering using the piggyback process for relocatables, portables, modulars, and the like should consult district legal counsel. While Attorney General opinions are not binding, they are often given deference by the court and may also be considered by the State Allocation Board when making funding decisions.

Without advertising for bids and upon a determination that it is in the best interest of the district, the Board may authorize another public corporation or agency, by contract, lease, requisition, or purchase order, to lease data-processing equipment or to purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner that the other public corporation or agency is authorized to make the leases or purchases from a vendor ("piggyback"). Alternatively, if the public corporation or agency has an existing contract with a vendor for the lease or purchase of personal property, the district may authorize the lease or purchase of personal property directly from the vendor and make payments under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

(cf. 3300 - Expenditures and Purchases)

BIDS (continued)

Note: The following **optional** paragraph is commonly described as the “lease-leaseback” contract. This method should only be used in coordination with competent technical consultants and legal counsel to ensure all legal requirements are met.

In addition, upon a determination that it is in the best interest of the district and without advertising for bids, the Board may lease currently owned district property to any person, firm, or corporation for a minimum of \$1 per year, as long the lease requires the person, firm, or corporation to construct a building or buildings on the property for the district's use during the lease and the property and building(s) will vest in the district at the expiration of the lease ("lease-leaseback"). (Education Code 17406)

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

Note: The following **optional** paragraph reflects the authority granted to public agencies pursuant to Government Code 4217.10-4217.18 to enter into energy service contracts without competitive bidding when the agency's governing body determines that the contract is in the best interest of the agency based on the "costs-benefits" analysis specified in Government Code 4217.12.

Without advertising for bids, the Board may enter into an energy service contract and any related facility ground lease, when it determines that the terms of the contract and lease are in the best interest of the district. The Board's determination shall be made at a regularly scheduled public hearing of which notice is given to the public at least two weeks in advance and shall be based on cost comparison findings specified in Government Code 4217.12. (Government Code 4217.12)

(cf. 3510 - Green School Operations)
(cf. 3511 - Energy and Water Management)
(cf. 9320 - Meetings and Notices)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6161.11 - Supplementary Instructional Materials)
(cf. 6163.1 - Library Media Centers)

Perishable foodstuffs and seasonal commodities needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code 38083)

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

Note: Pursuant to Public Contract Code 20113, a district may award contracts without competitive bidding

BIDS (continued)

in emergency situations, as specified below. In Marshall v. Pasadena Unified School District, a court held that the definition of "emergency" in Public Contract Code 1102 is applicable. Public Contract Code 1102 defines "emergency" as a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

In an emergency when any repairs, alterations, work, or improvement to any school facility is necessary to permit the continuance of existing school classes or to avoid danger to life or property, the Board may, by unanimous vote and with the approval of the County Superintendent of Schools, contract for labor and materials or supplies without advertising for or inviting bids or may authorize the use of day labor or force account for the emergency purpose. (Public Contract Code 20113)

(cf. 3517 - Facilities Inspection)

Bids shall not be required for day labor under circumstances specified in Public Contract Code 20114. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

The district may purchase any surplus property from the federal government or any of its agencies in any quantity needed for the operation of its schools without taking estimates or advertising for bids. (Education Code 17602)

TRAVEL EXPENSES

Note: The following **optional** policy may be revised to reflect district practice. Pursuant to Education Code 44032-44033, the Governing Board is authorized to pay for employees' actual and necessary expenses, including travel expenses and automobile use, incurred in the course of performing services for the district.

For language addressing the reimbursement of expenses for Board members, see BB 9250 - Remuneration, Reimbursement and Other Benefits.

The Governing Board recognizes that district employees may incur expenses in the course of performing their assigned duties and responsibilities. To ensure the prudent use of public funds, the Superintendent or designee shall establish rules to keep such expenses to a minimum while affording employees a reasonable level of safety and convenience.

(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

The Board shall authorize payment for actual and necessary travel expenses incurred by any employee performing authorized services for the district, whether within or outside district boundaries. (Education Code 44032)

The Superintendent or designee shall establish procedures for the approval of travel requests and the submission and verification of expense claims. He/she also shall establish reimbursement rates in accordance with law and Board policy.

An employee shall obtain approval from the Superintendent or designee prior to traveling. The Superintendent or designee may approve travel requests in accordance with the adopted budget and upon determining that the travel is authorized or assigned by the employee's supervisor, is necessary to attend a conference or other staff development opportunity that will enhance employee performance, and/or is otherwise necessary to the performance of the employee's duties. Travel expenses not previously budgeted may be approved on a case-by-case basis by the Superintendent or designee if he/she determines that the travel is essential and that resources may be obtained or redirected for this purpose.

(cf. 3100 - Budget)

(cf. 3110 - Transfer of Funds)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

All out-of-state travel for which reimbursement will be claimed shall be approved in advance by the Board.

Reimbursable travel expenses may include, but are not limited to, costs of transportation, parking fees, bridge or road tolls, lodging when district business reasonably requires an overnight stay, registration fees for seminars and conferences, telephone and other communication expenses incurred on district business, and other necessary incidental expenses.

TRAVEL EXPENSES (continued)

The district shall not reimburse personal travel expenses including, but not limited to, tips or gratuities, alcohol, entertainment, laundry, expenses of any family member who is accompanying the employee on district-related business, personal use of an automobile, and personal losses or traffic violation fees incurred while on district business.

Except as otherwise provided, reimbursement of travel expenses shall be based on actual expenses as documented by receipts.

Note: The following **optional** paragraph may be revised to reflect district practice. Pursuant to Education Code 44033, the Board may provide for reimbursement of the use of an employee's private automobile on the basis of a monthly allowance and/or a mileage rate. These allowances are used in lieu of the payment of actual expenses (e.g., gas, oil, and wear and tear on the vehicle) and thus an employee receiving such an allowance should not receive additional reimbursement for any other automobile expenses.

Authorized employees shall be reimbursed for the use of their own private vehicles in the performance of assigned duties, on either a mileage or monthly basis as determined by the Superintendent or designee. (Education Code 44033)

Note: The following **optional** paragraph provides that the mileage allowance provided by the district will be equal to the rate established by the Internal Revenue Service (IRS). Any reimbursement above the IRS rate may be considered taxable income for the employee. The IRS rate is periodically updated based on the overall cost of automobile transportation and is posted on the IRS web site.

The mileage allowance provided by the district for employees' use of their private vehicles shall be equal to the rate established by the Internal Revenue Service.

Vehicles should be shared whenever possible to minimize travel costs. No employee shall be entitled to reimbursement for automobile travel when he/she is transported free of charge or by another employee who is entitled to the expense reimbursement.

Note: The district may choose whether to reimburse meal expenses on the basis of actual receipts (Option 1 below) or a per diem rate (Option 2). See IRS Publication 1542 Per Diem Rates (For Travel Within the Continental United States) for per diem rate tables established by the U.S. General Services Administration for federal employees; these federal rates may serve as a guideline for district rates. According to the IRS, specified "high-cost localities" may be reimbursed at a higher rate.

OPTION 1: Meal costs shall be reimbursed based on documented actual expenses within the maximum amounts established by the Superintendent or designee and based on the time of day that travel for district business begins and ends.

OPTION 2: The Superintendent or designee shall establish a per diem allowance for meal costs incurred while traveling on district business based on the location and hours of travel. The per diem allowance shall not exceed the standard meal allowance for business-related travel prescribed for federal income tax purposes.

TRAVEL EXPENSES (continued)

Note: The remainder of this policy is for use by all districts.

Any expense that exceeds the maximum rate of reimbursement established by the district shall be reimbursed only with the approval of the Superintendent or designee.

All expense reimbursement claims shall be submitted on a district form, within 10 working days following return from travel when possible. The form shall be accompanied by receipts and any explanation necessary to document that the expenses meet district criteria for reimbursement.

The Superintendent or designee shall approve expense claims only upon verifying that all necessary documentation is provided and that all expenses are appropriate and related to district business. If an expense claim is disallowed due to lack of documentation or inappropriate expenses, the employee may be personally responsible for any improper costs incurred.

Note: The following **optional** paragraph should be deleted if the district does not issue credit cards to any employees.

When approved by the Superintendent or designee, an employee may be issued a district credit card for use while on authorized district business. Receipts documenting the expenses incurred on a district credit card shall be submitted promptly following return from travel. Under no circumstances shall personal expenses be charged on a district credit card, even if the employee intends to subsequently reimburse the district for the personal charges.

When necessary, the Superintendent or designee may approve a cash advance, not to exceed the estimated out-of-pocket reimbursable expenses, to an employee authorized to travel on district business. Within 10 working days following return from travel, the employee shall submit a final accounting with all necessary supporting documentation. He/she shall refund to the district any amount of cash advance exceeding the actual approved reimbursable expenses.

Legal Reference: (see next page)

TRAVEL EXPENSES (continued)

Legal Reference:

EDUCATION CODE

42634 *Itemization of expenses*

44016 *Travel expense to employment interview*

44032 *Travel expenses*

44033 *Automobile allowance*

44802 *Student teacher's travel expense*

Management Resources:

INTERNAL REVENUE SERVICE PUBLICATIONS

Per Diem Rates (For Travel Within the Continental United States), Publication 1542

WEB SITES

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

U.S. General Services Administration, Per Diem Rates: <http://www.gsa.gov/perdiem>

ENVIRONMENTAL SAFETY

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

The following paragraph may be revised to reflect the job position(s) designated to coordinate the district's environmental safety programs.

The Superintendent may designate and train one or more employees to oversee and coordinate the district's environmental safety program(s). The responsibilities of the coordinator(s) shall include, but are not limited to, overseeing assessments of district facilities, recommending strategies for the prevention and mitigation of environmental health risks, ensuring effective implementation of environmental safety strategies, and reporting to the Superintendent regarding the district's progress in addressing environmental safety concerns.

- (cf. 3510 - Green School Operations)*
- (cf. 3511 - Energy and Water Management)*
- (cf. 3517 - Facilities Inspection)*
- (cf. 4157/4257/4357 - Employee Safety)*
- (cf. 5030 - Student Wellness)*
- (cf. 5142 - Safety)*
- (cf. 7111 - Evaluating Existing Buildings)*
- (cf. 7150 - Site Selection and Development)*

Indoor Air Quality

Note: The following **optional** section addresses strategies for maintaining healthy indoor air quality and may be revised to reflect district practice. For further information, see the U.S. Environmental Protection Agency's (EPA) [Indoor Air Quality Tools for Schools](#) and CSBA's policy briefs on [Indoor Air Quality: Governing Board Actions for Creating Healthy School Environments](#) and [Asthma Management in the Schools](#).

In order to provide proper ventilation, humidity, and temperature in school facilities and to reduce indoor air contaminants, the Superintendent or designee shall ensure that the following strategies are implemented:

1. Mechanically driven heating, ventilation, and air conditioning systems shall be operated continuously during working hours except under the circumstances specified in 8 CCR 5142. The systems shall be inspected at least annually and problems corrected within a reasonable time. Where the air supply is filtered, the filters shall be replaced or cleaned regularly to prevent significant reductions in airflow. Documentation of inspections, tests of ventilation rates, and maintenance shall be retained for at least five years. (8 CCR 5142-5143)

- (cf. 3580 - District Records)*

ENVIRONMENTAL SAFETY (continued)

Staff shall ensure that airflow is not obstructed by the blocking of ventilators with posters, furniture, books, or other obstacles.

2. School facilities shall be regularly inspected for water damage, spills, leaks in plumbing and roofs, poor drainage, and improper ventilation so as to preclude the buildup of mold and mildew. Wet building materials and furnishings shall be dried within 48 hours if possible to prevent mold growth. When evidence of mold or mildew is found, maintenance staff shall locate and repair the source of water intrusion and remove or clean moldy materials.
3. Exterior wall and foundation cracks and openings shall be sealed as soon as possible to minimize seepage of radon into buildings from surrounding soils.
4. Least toxic pest management practices shall be used to control and manage pests at school sites.

(cf. 3514.2 - Integrated Pest Management)

5. In any new school construction, and in all existing schools when feasible, the Superintendent or designee shall install a carbon monoxide detector in each school building that contains a fossil fuel burning furnace. The device shall be placed in close proximity to the furnace in order to accurately detect any leakage of carbon monoxide.
6. Schedules and practices for routine housekeeping and maintenance shall be designed to effectively reduce levels of dust, dirt, and debris. Plain water, soap and water, or low-emission cleaning products shall be used whenever possible. Aerosols, including air fresheners and other products containing ozone, shall be avoided to the extent possible.

(cf. 5141.23 - Asthma Management)

7. Painting of school facilities and maintenance or repair duties that require the use of potentially harmful substances shall be limited to those times when school is not in session. Following any such activity, the facility shall be properly ventilated with adequate time allowed prior to reopening for use by any person.
8. Paints, adhesives, and solvents shall be used and stored in well-ventilated areas. These items shall be purchased in small quantities to avoid storage exposure.

(cf. 3514.1 - Hazardous Substances)

(cf. 6161.3 - Toxic Art Supplies)

ENVIRONMENTAL SAFETY (continued)

9. To the extent possible, printing and duplicating equipment that may generate indoor air pollutants, such as methyl alcohol or ammonia, shall be placed in locations that are well ventilated and not frequented by students and staff.
10. The district's tobacco-free schools policy shall be consistently enforced in order to reduce the health risks caused by second-hand smoke.

(cf. 3513.3 - Tobacco-Free Schools)

11. Staff and students shall be asked to refrain from bringing common irritants such as furred or feathered animals, stuffed toys that may collect dust mites, scented candles, incense, or air fresheners and from using perfume or cologne, scented lotion or hair spray, nail polish or nail polish remover, or other personal care products that are not fragrance-free in classrooms or other enclosed areas or buildings.

(cf. 6163.2 - Animals at School)

Outdoor Air Quality

Note: The following **optional** section may be revised to reflect district practice. Forecasts of ozone levels and particle pollution are available through the federal AirNow web site and may be printed in local newspapers. The district may monitor ultraviolet radiation levels through the EPA's UV Index web site; see BP 5141.7 - Sun Safety and CSBA's policy brief on [Sun Safety in Schools](#).

The Superintendent or designee may monitor local health advisories and outdoor air quality alerts, including forecasts of ozone levels, particle pollution, and/or ultraviolet radiation levels.

Whenever these measures indicate a significant health risk, the Superintendent or designee shall communicate with each principal so that outdoor activities, especially those requiring prolonged or heavy exertion, may be avoided, limited in duration, or modified as necessary for all persons or for persons who may be particularly susceptible to the health risk involved.

(cf. 5141.7 - Sun Safety)

(cf. 6142.7 - Physical Education and Activity)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

Vehicle Emissions

Note: 13 CCR 2480 prohibits idling of school buses, student activity buses, and other commercial motor vehicles within 100 feet of a school except under specified conditions; see AR 3542 - School Bus Drivers for additional language reflecting these requirements.

ENVIRONMENTAL SAFETY (continued)

In order to reduce public exposure to toxic air contaminants, school bus drivers and other drivers of commercial motor vehicles shall limit unnecessary idling of vehicles at or near schools in accordance with 13 CCR 2480.

(cf. 3540 - Transportation)

(cf. 3541.1 - Transportation for School-Related Trips)

(cf. 3542 - School Bus Drivers)

Note: Pursuant to 13 CCR 2025, any district that owns, operates, leases, or rents a diesel-fueled school bus with a gross vehicle weight rating over 14,000 pounds that was manufactured on or after April 1, 1977 is required to install a particulate filter in the bus that reduces diesel particulate matter emissions by 85 percent. The district must ensure that 100 percent of its fleet complies with this requirement by January 1, 2014. An exception exists for any school bus that operates fewer than 1,000 miles per year. In the event that the filter cannot be installed (i.e., if doing so would void the engine warranty, if no appropriate filter is commercially available, or if the manufacturer or installer does not deem the filter to be technologically feasible for the school bus), the district may receive an extension until January 1, 2018 by providing specified information to the Air Resources Board each year. Any school bus manufactured before April 1, 1977 must be retired.

Any diesel-fueled school bus with a gross vehicle weight rating over 14,000 pounds manufactured on or after April 1, 1977 shall be equipped with a particulate filter designed to reduce particulate matter emissions, oxides of nitrogen emissions, and other pollutants. (13 CCR 2025)

Drinking Water

Note: The following **optional** section addresses the quality of tap water available in schools. See AR 3550 - Food Service/Child Nutrition Program for information about requirements to make fresh drinking water available during mealtimes.

The quality and safety of the district's drinking water sources shall be regularly assessed.

Note: State and federal law require public water systems, including any schools and child care facilities that are nontransient noncommunity water systems as defined in 40 CFR 141.2, to regularly test water samples for lead. Pursuant to the standards established in 40 CFR 141.80 and 22 CCR 64678, the district may need to take action whenever notified by the public water system, or by its own testing, that lead concentrations exceed .015 milligrams per liter.

Whenever testing of drinking water finds concentrations of lead that exceed federal and state standards in 40 CFR 141.80 and 22 CCR 64678, water outlets shall be flushed thoroughly each day before use or made inoperable until a plan for remediation can be implemented.

Whenever levels of arsenic, bacteria, or other contaminants in the drinking water are determined to be a concern, the Superintendent or designee may recommend basic filtration or pipe flushing when feasible.

ENVIRONMENTAL SAFETY (continued)

Until drinking water is assured to be safe, the Superintendent or designee may explore alternatives, such as bottled water, to ensure that students have access to fresh drinking water at mealtimes and at other times throughout the day. As needed, he/she also may encourage appropriate governmental agencies to conduct regular testing of the water quality in district schools and to implement strategies to improve water quality in the community.

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

Drinking fountains in district schools shall be regularly cleaned and maintained to avoid the presence of dirt, mold, or other impurities or health concerns.

Lead Exposure

Note: The following **optional** section reflects recommendations of the EPA. For further information, the district may contact its city or county lead poisoning prevention program.

In addition to keeping school facilities as dust-free and clean as possible, the following steps shall be taken to minimize potential exposure to lead in school facilities:

1. Lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall not be used in the construction of any new school facility or the modernization or renovation of any existing school facility. (Education Code 32244)
2. Lead exposure hazards shall be evaluated before any renovation or remodeling is begun, and children shall not be allowed in or near buildings in which these activities may create lead dust. Contractors and workers shall comply with state and federal standards related to the handling and disposal of lead debris and the clean-up and containment of dust within the construction area.

Note: 17 CCR 35001-36100 contain state standards for lead abatement services. In addition, 40 CFR 745.61-745.339 extend federal standards for renovations involving lead-based paint to child-occupied facilities, which include preschools and elementary schools.

3. Lead-based painted surfaces that are in good condition shall be kept intact. If lead-based paint is peeling, flaking, or chalking, contractors or workers shall follow state and federal standards for safe work practices to minimize contamination when removing the paint.
4. Soil with high lead content may be covered with grass, other plantings, concrete, or asphalt.
5. Drinking water shall be regularly tested for lead and remediated as provided in the section "Drinking Water" above.

ENVIRONMENTAL SAFETY (continued)

Any action to abate existing lead hazards, excluding containment or cleaning, shall be taken only by contractors, inspectors, and workers certified by the California Department of Public Health in accordance with 17 CCR 35001-35099. (Education Code 32243)

Mercury Exposure

Note: The following **optional** section may be revised to reflect district practice. Mercury may exist in schools in thermometers, barometers, switches, thermostats, flowmeters, lamps, and other sources. Although devices containing mercury are considered safe as long as the mercury is sealed, if a device is broken and mercury spills, the health of students and staff may be endangered.

The Superintendent or designee shall identify any products containing mercury that are present in district facilities and, to the extent possible, shall replace them with mercury-free alternatives.

Note: The EPA's web site contains detailed procedures for cleaning up a small mercury spill, actions that should never be taken in the event of a spill, and items that should be assembled in a mercury spill kit.

Staff shall receive information about proper procedures to follow in the event of a mercury spill. Clean-up instructions, a clearly labeled kit with necessary clean-up supplies, and a list of local resources shall be readily accessible.

In the event of a spill, staff shall evacuate all students from the immediate area of the spill, ensure that any clothing or other items with mercury on them remain in the room, open windows to the outside, and close doors to other parts of the school. Staff who are trained in proper clean-up procedures may carefully clean a small spill. As needed for larger or difficult-to-clean spills, the Superintendent or designee shall use an experienced professional referred by the local health department or environmental agency.

Any products containing mercury shall be properly disposed at an appropriate hazardous waste collection facility.

Asbestos Management

Note: The following section is **optional**. Education Code 49410-49410.7 and the federal Asbestos Hazard Emergency Response Act (AHERA) (15 USC 2641-2656; 40 CFR 763.80-763.99) contain requirements for asbestos inspection and abatement which are applicable to school districts. For further information, consult the local air quality management district or air pollution control district.

40 CFR 763.84 requires the district to designate a person who will be responsible for ensuring that federal and state requirements are properly implemented. According to the EPA, this designated person is not required to be a licensed asbestos consultant, but the district must verify that he/she has received proper training. The specific knowledge that the designated person must have is described in the EPA's publication [How to Manage Asbestos in School Buildings: AHERA Designated Person's Self-Study Guide](#). The

ENVIRONMENTAL SAFETY (continued)

following section may be revised to reflect the position designated to fulfill this responsibility, who may be the same person designated above to coordinate all of the district's environmental safety programs.

The Superintendent shall designate an employee who shall ensure that the district's responsibilities related to asbestos inspection and abatement are implemented in accordance with federal and state regulations. This employee shall receive adequate training to perform these duties, including, as necessary, training on the health effects of asbestos; detection, identification, and assessment of asbestos-containing materials; options for controlling asbestos-containing building materials; and relevant federal and state regulations. (40 CFR 763.84)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

The designated employee shall ensure that the district complies with the following requirements:

1. School facilities shall be inspected for asbestos-containing materials as necessary in accordance with the following:
 - a. Any school building that is leased or acquired by the district shall be inspected for asbestos-containing materials prior to its use as a school building, unless exempted by federal regulations. (40 CFR 763.85, 763.99)
 - b. At least once every six months, the district shall conduct a periodic surveillance consisting of a visual inspection of each school building that contains or is assumed to contain asbestos-containing building materials. (40 CFR 763.92)
 - c. At least once every three years, the district shall conduct a re-inspection of all known or assumed asbestos-containing building materials in each school building. (40 CFR 763.85)
2. Based on the results of the inspection, an appropriate response which is sufficient to protect human health and the environment shall be determined from among the options specified in 40 CFR 763.90. The district may select the least burdensome response, taking into consideration local circumstances, including occupancy and use patterns within the school building and economic concerns such as short-term and long-term costs. (40 CFR 763.90)
3. An asbestos management plan for each school site shall be maintained and regularly updated to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, re-inspection, and response action activities. (15 USC 2643; 40 CFR 763.93)

ENVIRONMENTAL SAFETY (continued)

The asbestos management plan shall be available for inspection in district and school offices during normal business hours. Parent/guardian, teacher, and employee organizations shall be annually informed of the availability of these plans. (40 CFR 763.84)

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

4. Staff, students, and parents/guardians shall be informed at least once each school year about any inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities, that are planned or in progress. (40 CFR 763.84)
5. Inspections, re-inspections, periodic surveillance, and response actions, including operations and maintenance, shall be conducted in compliance with state and federal regulations for the protection and safety of workers and all other individuals. (Education Code 49410.5; 40 CFR 763.84)

Asbestos inspection and abatement work and any maintenance activities that may disturb asbestos-containing building materials, except for emergency repairs or small-scale, short-duration maintenance activities, shall be completed by state-certified asbestos inspectors or contractors. (15 USC 2646; 40 CFR 763.84, 763.85, 763.91)

6. All custodial and maintenance employees shall be properly trained in accordance with applicable federal and/or state regulations. (40 CFR 763.84)

All district maintenance and custodial staff who may work in a building that contains asbestos-containing materials, regardless of whether they are required to work with such materials, shall receive at least two hours of related asbestos awareness training. New maintenance and custodial staff shall receive such training within 60 days after beginning employment. Any maintenance or custodial staff who conduct activities that will disturb asbestos-containing materials shall receive 14 hours of additional training. The trainings shall address the topics specified in 40 CFR 763.92. (15 USC 2655; 40 CFR 763.84, 763.92)

7. Short-term workers, such as telephone repair workers, utility workers, or exterminators, who may come in contact with asbestos in a school shall be provided information regarding the locations of known or suspected asbestos-containing building materials. (40 CFR 763.84)
8. Warning labels shall be posted immediately adjacent to any known or suspected asbestos-containing building material located in routine maintenance areas in accordance with 40 CFR 763.95. (40 CFR 763.84)

ENVIRONMENTAL SAFETY (continued)

The district shall maintain, in both the district and school offices and for a period of three years, records pertaining to each preventive measure and response action taken; staff training; periodic surveillances conducted; cleaning, operations, and maintenance activities; and any fiber release episode. (40 CFR 763.94)

SCHOOL BUS DRIVERS

Note: The following administrative regulation is **mandated** pursuant to 5 CCR 14103 (see the sections "Training" and "Authority" below) and is for use by districts that employ their own school bus drivers or student activity bus drivers. Districts that contract out for all transportation services may revise this regulation as appropriate to ensure that the contracting firm meets all legal requirements regarding qualifications and responsibilities.

Qualifications

Note: Pursuant to Vehicle Code 12517, school bus drivers are required to possess a commercial driver's license issued by the California Department of Motor Vehicles (DMV), with a special endorsement authorizing school bus operation (indicated by the letter S on the driver's license). District employees who operate 15-passenger vans must possess a commercial driver's license with a passenger transport vehicle (PV) endorsement.

In addition, any driver employed to operate a school bus or student activity bus must possess a special certificate from the California Highway Patrol (CHP) permitting such service. Issuance of the certificate is based on successful completion of prescribed examinations conducted by the CHP and compliance with all applicable provisions of the Vehicle Code.

All drivers employed to operate school buses or student activity buses shall possess, and shall retain in their immediate possession while operating the bus, the following documents: (Vehicle Code 12517, 12517.4)

1. A valid driver's license issued by the California Department of Motor Vehicles (DMV) for the appropriate class of vehicle to be driven and endorsed for school bus and/or passenger transportation
2. A certificate issued by the California Highway Patrol (CHP) which permits the operation of school buses or student activity buses, as applicable

(cf. 3540 - Transportation)

(cf. 3541.1 - Transportation for School-Related Trips)

(cf. 4200 - Classified Personnel)

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

Note: Pursuant to Vehicle Code 12517.3, applicants for the certificate to drive a school bus or student activity bus must be fingerprinted by the CHP for submission to the Department of Justice (DOJ), or the fingerprinting may be conducted by the district, county office of education, or a public law enforcement agency using an electronic fingerprinting system (LiveScan) with terminals managed by the DOJ. The following **optional** paragraph is for use by districts that choose to use this method to conduct the fingerprinting themselves.

The Superintendent or designee may use an electronic fingerprinting system, managed by the California Department of Justice, to fingerprint an applicant for an initial certificate to drive a school bus or student activity bus. (Vehicle Code 12517.3)

(cf. 4212.5 - Criminal Record Check)

SCHOOL BUS DRIVERS (continued)

Note: Pursuant to Vehicle Code 12517.2, a driver who is initially applying for or seeking renewal of a commercial driver's license or a certificate authorizing him/her to drive a school bus or student activity bus must provide evidence of having obtained a medical examination by a qualified health professional. The report must be on a form approved by the DMV, which is available on its web site.

When initially applying for or renewing a license or certificate to drive a school bus or student activity bus, and annually upon reaching age 65 years, the driver shall submit to the DMV and to the Superintendent or designee a report of a medical examination conducted in accordance with the timelines and procedures specified in Vehicle Code 12517.2. (Vehicle Code 12517.2; 13 CCR 1234)

The Superintendent or designee shall notify each driver of the expiration date of his/her driver's license, certificate, and medical certificate and shall ensure each document is renewed prior to expiration. (13 CCR 1234)

(4112.9/4212.9/4312.9 - Employee Notifications)

School bus and student activity bus drivers shall be subject to drug and alcohol testing in accordance with Board policy and the requirements of federal law.

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

The Superintendent or designee shall notify the DMV within five days whenever any driver refuses, fails to comply, or receives a positive test result on a drug or alcohol test; is dismissed for a cause related to student transportation safety; or is reinstated after being dismissed for a cause related to student transportation safety. (Vehicle Code 1808.8, 13376)

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

Training

Note: Education Code 40082, 40083, and 40085 specify training and experience required for initial and renewed certification as a driver of a school bus or student activity bus. The following section lists additional required and optional training and may be revised to reflect district practice.

In addition to any other training required to obtain or renew the certificate authorizing operation of a school bus or student activity bus, drivers shall receive training which includes, but is not limited to:

Note: Pursuant to Vehicle Code 12522, as part of the application process for a bus driver certificate, each driver must pass a DMV examination on first aid practices deemed necessary for school bus operators. Toward this end, the district is required to provide instruction for bus drivers on necessary first aid practices.

SCHOOL BUS DRIVERS (continued)

1. First aid practices deemed necessary for school bus drivers, through a course of instruction that prepares drivers to pass the related DMV examination (Vehicle Code 12522)

Note: Education Code 56195.8 **mandates** that each entity providing special education adopt policy ensuring that school bus drivers have received the training described in item #2 below.

2. The proper installation of mobile seating devices in the bus securement systems (Education Code 56195.8)

(cf. 3541.2 - Transportation for Students with Disabilities)

3. The proper actions to be taken in the event that a school bus is hijacked (Education Code 39831)

Note: To determine additional topics for professional development, the district might review district data as provided in the **optional** paragraph below. Training courses and guides are also available through governmental agencies and professional associations. For instance, the National Highway Traffic Safety Administration provides an inservice training program for experienced school bus drivers, available on its web site, which addresses driver attitude, student management, highway-rail grade crossing safety, vehicle training, routes, loading and unloading students, driving under adverse weather conditions, emergency evacuation, and transporting students with special needs.

To determine any other needs for professional development, the Superintendent or designee shall periodically review accident reports involving district drivers and may seek input from drivers, district and school administrators, students, and/or other stakeholders on desired topics for professional development.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Authority

Note: 5 CCR 14103 **mandates** that the Governing Board adopt rules related to bus driver authority, including, but not limited to, specific administrative regulations related to suspension of riding privileges, and to make them available to parents/guardians, students, teachers, and other interested parties. For language related to suspension of riding privileges, see BP/AR 5131.1 - Bus Conduct.

Students transported in a school bus or student activity bus shall be under the authority of, and responsible directly to, the driver of the bus. The driver shall be held responsible for the orderly conduct of the students while they are on the bus or being escorted across a street, highway, or road. (5 CCR 14103)

(cf. 5131.1 - Bus Conduct)

SCHOOL BUS DRIVERS (continued)

The driver shall have the authority to discontinue the operation of a school bus or student activity bus whenever he/she determines that it is unsafe to continue.

(cf. 3516.5 - Emergency Schedules)
(cf. 3543 - Transportation Safety and Emergencies)

This regulation and AR 5131.1 - Bus Conduct shall be made available to parents/guardians, students, teachers, and other interested parties. (5 CCR 14103)

Responsibilities

The driver's primary responsibility is to safely transport students to and from school and school activities. He/she shall follow procedures contained in district plans and regulations pertaining to transportation safety.

The driver shall stop to load or unload students only at school bus stops designated by the Superintendent or designee, or authorized by the Superintendent or designee for school activity trips. (Vehicle Code 22112)

(cf. 3541 - Transportation Routes and Services)

The driver shall activate the amber warning light system, flashing red signal lights, and stop arm signal and shall escort students in accordance with Vehicle Code 22112.

The driver shall not require any student to leave the bus en route between home and school or other destinations. (5 CCR 14103)

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| <p>Note: Vehicle Code 23125 prohibits a school bus driver from using a wireless telephone while driving the bus, except for work-related or emergency purposes. In addition, Vehicle Code 23123.5 prohibits the driver of any motor vehicle from using a wireless communications device for text-based communication, except when the device is specifically designed and configured to allow voice and hands-free operation. Requirements for "motor vehicles" are applicable to school buses and student activity buses pursuant to the definitions in Vehicle Code 415 and 545. At its discretion, the district may establish conditions that are more restrictive than law. See AR 3543 - Transportation Safety and Emergencies for language detailing these requirements.</p> |
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The driver shall not drive a school bus or student activity bus while using a wireless telephone or using a wireless communications device for text-based communication, except when otherwise authorized by law and AR 3543 - Transportation Safety and Emergencies.

SCHOOL BUS DRIVERS (continued)

The driver shall report the following to the Superintendent or designee:

Note: Pursuant to 13 CCR 1215, school bus drivers must prepare and sign a written report at the completion of each day's work regarding the condition of the equipment listed in 13 CCR 1215, as provided in item #1 below. For further information about this report, see AR 3543 - Transportation Safety and Emergencies.

1. The condition of the bus at the completion of each work day (13 CCR 1215)
2. His/her duty status for each 24-hour period, including, but not limited to, the number of hours on and off duty (13 CCR 1213)
3. Any traffic accident involving the bus (13 CCR 1219)

In addition to notifying the Superintendent or designee, the driver shall immediately notify the CHP of any traffic accident and, if the bus is operated under contract, his/her employer. (13 CCR 1219)

Note: Items #4-8 below are **optional** and may be revised to reflect district practice.

4. Traffic violations
5. Consistently late school dismissals which cause transportation delays
6. Overload runs
7. Recurring and serious student misbehavior
8. Parent/guardian and student complaints

Vehicle Idling

Note: 13 CCR 2480 prohibits idling of school buses, student activity buses, and other commercial motor vehicles within 100 feet of a school except under specified conditions. Failure to comply with the requirements specified in items #1-2 below may result in specified civil and/or criminal penalties to the driver or the Superintendent or designee who directs school bus operations.

The driver of a school bus or student activity bus shall: (13 CCR 2480)

1. Turn off the bus engine upon stopping at a school or within 100 feet of a school and not restart the engine more than 30 seconds before beginning to depart
2. Not cause or allow the bus to idle at any location greater than 100 feet from a school for more than five consecutive minutes or for an aggregated period of more than five minutes in any one hour

SCHOOL BUS DRIVERS (continued)

(cf. 3514 - Environmental Safety)

However, vehicle idling may be allowed under limited conditions, including, but not limited to, occasions when idling is necessary to: (13 CCR 2480)

1. Stop for an official traffic control signal or device, for traffic conditions under which the driver has no control, or at the direction of law enforcement
2. Ascertain that the bus is in safe operating condition and properly equipped
3. Operate equipment designed to safely load, unload, or transport students with disabilities
4. Operate a heater, air conditioner, defroster, or other equipment as necessary to ensure the safety or health of passengers
5. Cool down a turbo-charged diesel engine before turning off the engine
6. Recharge a battery or other energy storage unit of a hybrid electric bus or vehicle

The Superintendent or designee shall notify all drivers, upon employment and at least once per year thereafter, of the requirements specified above and the potential legal and employment consequences of failure to comply. All complaints of noncompliance shall be reviewed and remedial action taken as necessary. The Superintendent or designee shall retain records of the training and of any complaints and enforcement actions for at least three years. (13 CCR 2480)

Reports

The Superintendent or designee shall retain records of: (13 CCR 1234)

1. Each driver's duty status and supporting documents provided pursuant to 13 CCR 1201 and 1213. Such records shall be retained for six months and made available to the CHP upon request.
2. The different types of vehicles and vehicle combinations each driver has demonstrated capability to operate.
3. Records of each driver's license, certificate, medical certificate, first aid certificate, and training as specified in 13 CCR 1234.
4. Daily vehicle inspection reports prepared by drivers pursuant to 13 CCR 1215.

SCHOOL BUS DRIVERS (continued)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

39800.5 *Qualifications of driver of 15-passenger van*

39830-39842 *School buses*

40080-40090.5 *Training required to obtain or renew bus driver certificate*

45125.1 *Criminal background checks for contractors*

56195.8 *Training in installation of mobile seating devices*

HEALTH AND SAFETY CODE

39640-39642 *Vehicle idling, penalties*

PENAL CODE

241.3 *Assault against school bus driver*

243.3 *Battery against school bus driver*

VEHICLE CODE

415 *Definition of motor vehicle*

545 *Definition of school bus*

546 *Definition of student activity bus*

1808.8 *Dismissal for safety-related cause*

2570-2574 *Contracts with private school bus contractors*

12516-12517.4 *Certification requirements*

12522 *First aid training for school bus drivers*

13370-13371 *Suspension or revocation of bus driver certificate*

13376 *Driver certificates; revocation or suspension; sex offense prosecution*

22112 *School bus signals; roadway crossings*

23123-23125 *Prohibitions against use of wireless telephone and text communications while driving; exceptions*

25257-25257.7 *School bus equipment*

34501.6 *School buses; reduced visibility*

CODE OF REGULATIONS, TITLE 5

14103 *Authority of the driver*

14104 *School bus driver instructor*

CODE OF REGULATIONS, TITLE 13

1200-1202.2 *Motor carrier safety*

1212-1228 *School bus driver requirements*

1234 *Reports regarding school buses and bus drivers*

2480 *Vehicle idling*

CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 *Transportation drug and alcohol testing programs*

382.101-382.605 *Controlled substance and alcohol use and testing*

571.222 *Federal motor vehicle safety standard #222*

Management Resources:

DEPARTMENT OF MOTOR VEHICLES PUBLICATIONS

California Commercial Driver Handbook

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PUBLICATIONS

School Bus Driver In-Service Safety Series, October 2011

Management Resources continued: (see next page)

SCHOOL BUS DRIVERS (continued)

Management Resources: (continued)

WEB SITES

California Air Resources Board: <http://www.arb.ca.gov>

California Department of Education, Office of School Transportation: <http://www.cde.ca.gov/ls/tm>

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

California Department of Motor Vehicles: <http://www.dmv.ca.gov>

California Department of Justice: <http://oag.ca.gov>

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

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

All Personnel

BP 4112.42(a)

4212.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

4312.42

Note: State and federal law (Vehicle Code 34520; 49 CFR 382.101-382.605) require that any district employing school bus drivers establish a drug and alcohol testing program, with specified components, applicable to bus drivers and any other drivers of a commercial motor vehicle weighing over 26,000 pounds or designed to transport 16 or more passengers including the driver. All testing must be conducted in accordance with 49 CFR 40.1-40.413. For further information, see the web sites of the U.S. Department of Transportation (DOT) and the California Highway Patrol (CHP).

In addition, Vehicle Code 34520.3 requires drivers of school transportation vehicles (i.e., vehicles that are not school buses, student activity buses, or youth buses and are used by the district for the primary purpose of transporting children), such as a van, to participate in the testing program to the same extent as required by law for school bus drivers. The Legislative Counsel has issued an opinion that Vehicle Code 34520.3 applies only to employees whose primary job is transportation. The district should consult legal counsel as necessary to determine applicability of this law to district employees.

The district's drug and alcohol testing program is subject to compliance inspections conducted by the CHP. It is recommended that the district review the CHP's Controlled Substances and Alcohol Testing Compliance Checklist to assess whether its program fulfills legal requirements.

The Governing Board desires to ensure that district-provided transportation is safe for students, staff, and the public. To that end, the Superintendent or designee shall establish a drug and alcohol testing program designed to prevent the operation of buses or the performance of other safety-sensitive functions by a driver who is under the influence of drugs or alcohol, including a driver of a school bus, student activity bus, or other school transportation vehicle or any other employee who holds a commercial driver's license which is necessary to perform duties related to district employment.

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

A driver shall not report for duty or remain on duty when he/she has used any drug listed in 21 CFR 1308.11. A driver is also prohibited from reporting for duty or remaining on duty when he/she has used any drug listed in 21 CFR 1308.12-1308.15, unless he/she is using the drug under the direction of a physician who has advised him/her that the substance will not adversely affect the driver's ability to safely operate a bus. In addition, a driver shall not consume alcohol while on duty or for four hours prior to on-duty time. (49 CFR 382.201-382.209, 382.213)

Note: 49 USC 31306 and 49 CFR 382.301-382.311 require that certain types of tests be part of the district's drug and alcohol testing program. See the accompanying administrative regulation for requirements applicable to each test.

Pursuant to 49 CFR 382.301, the district may, but is not required to, conduct pre-employment alcohol testing. The following paragraph should be revised by districts that choose to conduct such testing.

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

The district's testing program for drivers shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306; 49 CFR 382.301-382.311)

Note: Pursuant to 49 CFR 40.11, districts are responsible for implementing the drug and alcohol testing program. They may do this using their own employees, contracting for services, or joining together in a consortium with other employers. The following **optional** paragraph provides that the district will contract for such services and may be revised by districts that use alternative methods.

The Board shall contract for testing services upon verifying that the personnel are appropriately qualified and/or certified and that testing procedures conform to federal regulations.

Except as otherwise provided by law, the Superintendent or designee shall not release individual test results or medical information about a driver to a third party without the driver's specific written consent. (49 CFR 40.321)

Consequences Based on Test Results

Any driver who refuses to take a required drug or alcohol test, tests positive for drugs, or is found to have a blood alcohol concentration level that exceeds the levels specified in law shall be removed from performing safety-sensitive functions in accordance with 49 CFR 40.23 and 382.211.

Note: Pursuant to 49 CFR 40.21 and 382.119, before temporarily removing a driver from safety-sensitive functions, the district must receive verification of the test results from a licensed physician certified as a medical review officer, unless a waiver of this requirement has been obtained from the Federal Motor Carrier Safety Administration.

No driver shall be temporarily removed from the performance of safety-sensitive functions based only on a laboratory report of a confirmed positive test before the certified medical review officer has completed verification of the test results, unless the district has obtained a waiver. (49 CFR 40.21, 382.107, 382.119)

Not later than five days after receiving notification of the test result or refusal to comply, the Superintendent or designee shall report any refusal, failure to comply, or positive test result to the California Department of Motor Vehicles (DMV) using a form approved by the DMV. (Vehicle Code 13376)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Note: Pursuant to Vehicle Code 13376, upon receiving a report of a driver's refusal, failure to comply, or positive test result, the California Department of Motor Vehicles will revoke the driver certificate or refuse to approve an initial application for a certificate. An exception exists for a driver who complies with a rehabilitation or return-to-duty program that meets the requirements of federal regulations. For purposes of retaining his/her certificate, the driver may participate in such a program only once within a three-year period.

The following paragraph is **optional**. Pursuant to 49 CFR 40.289, the district is not required to provide education and treatment services to any driver. However, if the district offers the driver an opportunity to return to work following a violation, then it must ensure that the driver receives an evaluation by a qualified substance abuse professional and successfully complies with the evaluation recommendations. Responsibility for payment for evaluation and services is to be determined by the district and driver and may be governed by a collective bargaining agreement and health care benefits.

Any driver who refuses, fails to comply, or has a positive test result may be referred to an education and treatment program that meets the requirements of 49 CFR 40.281-40.313. If the substance abuse professional recommends that ongoing services are needed to assist the driver to maintain sobriety or abstinence from drug use, the Superintendent or designee shall require the driver to participate in the recommended services as part of a return-to-duty agreement and shall monitor his/her compliance. Any drop from a rehabilitation or return-to-duty program or a subsequent positive test result shall be reported to the DMV. (Vehicle Code 13376; 49 CFR 40.285, 40.287, 40.303, 382.605)

(cf. 4159/4259/4359 - Employee Assistance Programs)

(cf. 4161/4261 - Leaves)

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

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

(cf. 4261.1 - Personal Illness/Injury Leave)

A driver who has violated federal drug and alcohol regulations may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Voluntary Self-Identification

Note: The following section is for use by districts that choose to establish a voluntary self-identification policy or program, pursuant to 49 CFR 382.121, which relieves drivers who admit alcohol or drug misuse from the federal requirements for referral, evaluation, and treatment contained in 49 CFR 40.281-40.313. If the district chooses to establish such a program, it is **mandated** to adopt a written policy containing the provisions specified in items #1-3 below. Pursuant to 49 CFR 382.121, the district's program may also

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

include employee monitoring and non-DOT follow-up testing. If the district chooses to incorporate these elements, it should add them to this list.

Whenever a driver admits to alcohol or drug misuse under the district's voluntary self-identification program, the Superintendent or designee shall ensure all of the following: (49 CFR 382.121)

1. No adverse action shall be taken against the driver by the district.
2. The driver shall be allowed sufficient opportunity to seek evaluation, education, or treatment to establish control over his/her drug or alcohol problem.
3. The driver shall be permitted to participate in safety-sensitive functions only after:
 - a. Successfully completing an education or treatment program, as determined by a drug and alcohol abuse evaluation expert, such as an employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor
 - b. Undergoing a return-to-duty test with a result indicating an alcohol concentration of less than 0.02 and/or a verified negative result for drug use

A driver who admits to alcohol or drug misuse shall not be subject to federal requirements related to referral, evaluation, and treatment, provided that he/she does not self-identify in order to avoid drug or alcohol testing, makes the admission prior to performing a safety-sensitive function, and does not perform a safety-sensitive function until he/she has been evaluated and has successfully completed education or treatment requirements in accordance with program guidelines. (49 CFR 382.121)

Legal Reference: (see next page)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

GOVERNMENT CODE

8355 Drug-free workplace; employee notification

VEHICLE CODE

13376 Driver certificates; revocation or suspension

34500-34520.5 Safety regulations

CODE OF REGULATIONS, TITLE 13

1200-1293 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

UNITED STATES CODE, TITLE 49

31306 Alcohol and drug testing

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.11-1308.15 Controlled substances

CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605 Drug and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

Management Resources:

CALIFORNIA HIGHWAY PATROL PUBLICATIONS

Controlled Substances and Alcohol Testing Compliance Checklist, 2007

What is CSAT? Controlled Substances and Alcohol Testing, 2005

WEB SITES

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

Federal Motor Carrier Safety Administration: <http://www.fmcsa.dot.gov>

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance:

<http://www.dot.gov/ost/dapc>

All Personnel

AR 4112.42(a)
4212.42
4312.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

Note: The following administrative regulation reflects state and federal requirements (Vehicle Code 34520; 49 CFR 40.1-40.413, 382.101-382.605) for drug and alcohol testing of school bus drivers, including pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. Pursuant to 49 CFR 40.27, the district must not require a driver to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process.

Definitions

For purposes of drug testing required by the U.S. Department of Transportation (DOT), drugs included in the tests are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. (49 CFR 40.3, 40.85, 382.107)

Alcohol concentration or level means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath. For purposes of the DOT alcohol testing program, an alcohol level between 0.02 and 0.04 requires removal of the bus driver for a 24-hour period following the test. An alcohol level of 0.04 or higher requires immediate removal of the driver from performing safety-sensitive functions until the driver has successfully completed the return-to-duty process. (49 CFR 382.107, 382.201, 382.505)

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to, all time driving or otherwise in the bus; waiting at a district facility to be dispatched; inspecting, servicing, or conditioning the bus or bus equipment; loading or unloading the bus; supervising or assisting in the loading or unloading of the bus; and repairing, obtaining assistance, or remaining in attendance upon a disabled bus. (49 CFR 382.107)

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)

Designated Employer Representative

Note: 49 CFR 40.35 and 40.215 require the district to identify a "designated employer representative" to perform the duties specified in 49 CFR 40.3. The following paragraph may be revised to reflect the title of the employee so designated.

The Superintendent or designee shall identify a designated employer representative and shall provide his/her name and telephone number to the testing contractor to contact about any problems or issues that may arise during the testing process. (49 CFR 40.35, 40.215)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

The designated employer representative shall be responsible for receiving test results and other communications, taking immediate action(s) to remove drivers from safety-sensitive functions, and making other required decisions in the testing and evaluation processes. (49 CFR 40.3)

Pre-employment Testing

When hiring a new driver, the Superintendent or designee shall, with the driver's written consent, request the driver's past drug and alcohol testing record, as specified in 49 CFR 40.25, from any employer who has employed the driver at any time during the previous two years. In addition, the Superintendent or designee shall ask the driver if he/she tested positive, or refused to test, on any pre-employment drug or alcohol test that was administered during the past two years in the course of applying for another safety-sensitive transportation position that he/she did not obtain. The driver shall not be permitted to perform safety-sensitive functions if he/she refuses to provide consent to obtain the information from previous employers, the information from previous employers is not received within 30 days of the date on which the driver first performed safety-sensitive functions for the district, or the driver or a previous employer reports a violation of a drug or alcohol regulation without subsequent completion of the return-to-duty process. (49 CFR 40.25, 382.413)

Upon making a contingent offer of employment to a driver and prior to the first time the driver performs safety-sensitive functions for the district, the Superintendent or designee shall require the driver to undergo testing for drugs and to receive a verified negative test result. This testing requirement may be waived if all of the following conditions exist: (49 CFR 382.301)

1. The driver has participated in a qualified drug testing program within the previous 30 days.
2. While participating in the program, the driver either was tested within the past six months or participated in a random drug testing program for the previous 12 months.
3. The Superintendent or designee has contacted the testing program(s) in which the driver has participated and has obtained information about the program and the driver's participation as specified in 49 CFR 382.301.
4. No prior employer of the driver of whom the district has knowledge has records of the driver's violation of federal drug testing regulations within the previous six months.

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Note: The following **optional** paragraph is for use by districts that choose to conduct pre-employment alcohol testing; see the accompanying Board policy. Pursuant to 49 CFR 382.301, pre-employment alcohol testing is not required but, if the district chooses to conduct such testing, it must comply with the following requirements.

In addition, the Superintendent or designee shall require the driver to undergo pre-employment alcohol testing in accordance with the procedures in 49 CFR 40.1-40.605 and to receive a test result indicating an alcohol concentration level of less than 0.04. (49 CFR 382.301)

Post-Accident Testing

As soon as practicable following an accident involving a school bus or student activity bus, the Superintendent or designee shall ensure that the driver involved is tested for alcohol and/or drugs under either of the following conditions: (49 CFR 382.303)

1. The accident involved loss of human life.
2. The driver receives a citation for alcohol use within eight hours of the accident, or for drug use within 32 hours of the accident, and the accident involved bodily injury to a person who required immediate medical treatment away from the scene of the accident and/or disabling damage to one or more vehicles requiring towing.

The Superintendent or designee shall attempt to administer a required alcohol test up to eight hours following the accident and/or a drug test up to 32 hours following the accident. The results of an alcohol or drug test conducted by federal, state, or local officials having independent authority for the test shall be considered to meet this requirement. If the alcohol test is not administered within two hours following the accident, or the test for drugs is not administered within 32 hours following the accident, the Superintendent or designee shall make a record stating the reasons the test was not promptly administered. (49 CFR 382.303)

Random Testing

Note: The district may revise the following paragraph to specify the method by which it will select drivers for random drug and alcohol testing. Pursuant to 49 CFR 382.305, the district must randomly select drivers for testing using a scientifically valid method such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Pursuant to 49 CFR 40.347, the district may contract with a third-party administrator or join a consortium of employers to operate the random selection process.

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

The Superintendent or designee shall ensure that random, unannounced drug and alcohol tests of bus drivers are conducted on testing dates reasonably spread throughout the year. Such tests shall be conducted during, immediately before, or immediately after the performance of safety-sensitive functions. (49 CFR 382.305)

Note: The district must annually test at least 10 percent of district drivers for alcohol and at least 50 percent for drugs, in accordance with the calculations and procedures described in 49 CFR 382.305. The minimum required percentage is subject to change as determined necessary by the Federal Motor Carrier Safety Administration (FMCSA). Any such change will be published in the Federal Register and on the FMCSA's web site and will be effective starting January 1 following such publication.

The Superintendent or designee shall ensure that the percentage of district drivers randomly tested for drugs and alcohol meets or exceeds the minimum annual percentage rates specified in 49 CFR 382.305 or subsequently published in the Federal Register.

Each driver selected for random testing shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

Each driver who is selected for testing shall proceed to the test site immediately or, if performing a safety-sensitive function other than driving a bus, then as soon as possible after ceasing that function. (49 CFR 382.305)

Reasonable Suspicion Testing

Note: The following section may be revised to reflect the position (e.g., driver's supervisor or other district employee) authorized and trained to make observations for reasonable suspicion drug or alcohol testing.

A driver shall be required to submit to a drug or alcohol test whenever the Superintendent or designee has reasonable suspicion that the driver has violated the prohibitions against the use of drugs or alcohol. Such reasonable suspicion shall be based on specific, contemporaneous, articulable observations, conducted during, immediately before, or immediately after the performance of safety-sensitive functions, concerning the driver's appearance, behavior, speech, and/or body odors. Reasonable suspicion of drug use may also include indications of the chronic and withdrawal effects of drugs. (49 CFR 382.307)

The person who makes the required observations for reasonable suspicion testing for drugs or alcohol shall be trained in accordance with 49 CFR 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not be the same person who conducts the alcohol test. (49 CFR 382.307)

Within 24 hours of the observed behavior or before the results of the drug or alcohol test are released, whichever is earlier, the Superintendent or designee shall prepare and sign a written record of the observations leading to a reasonable suspicion test. (49 CFR 382.307)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

An alcohol test required as a result of reasonable suspicion shall be administered within eight hours following the determination of reasonable suspicion. If the test is not administered within two hours, the Superintendent or designee shall prepare and maintain on file a record stating the reasons the test was not promptly administered. (49 CFR 382.307)

In the absence of a reasonable suspicion alcohol test, the district shall take no action against a driver based solely on the driver's behavior and appearance, except that the driver shall not be allowed to report for or remain on safety-sensitive functions until an alcohol test is administered and the results show a concentration less than 0.02 or 24 hours have elapsed following the determination of reasonable suspicion. (49 CFR 382.307)

Return-to-Duty Testing

Note: Pursuant to 49 CFR 40.305, the district may return a driver to safety-sensitive functions after he/she completes required education and treatment services as described in the accompanying Board policy and a return-to-duty drug or alcohol test. Such personnel decisions may be subject to collective bargaining or other legal requirements.

The Superintendent or designee may permit a driver who has violated federal drug or alcohol regulations to return to safety-sensitive functions after the driver has successfully complied with the education and treatment services prescribed by a substance abuse professional and has taken a return-to-duty drug or alcohol test. The driver shall not resume performance of safety-sensitive functions unless the drug test shows a negative result and/or the alcohol test shows a concentration of less than 0.02. (49 CFR 40.305, 382.309)

Follow-Up Testing

Note: Pursuant to 49 CFR 40.307, after a driver successfully complies with education and treatment services, the substance abuse professional will prescribe a follow-up testing plan and will present that plan to the designated employer representative. The plan must direct that the driver be subject to at least six unannounced follow-up tests in the first 12 months following the driver's return to safety-sensitive functions.

Upon receiving a written follow-up testing plan from a substance abuse professional, the Superintendent or designee shall determine the actual dates for follow-up testing consistent with those recommendations and shall ensure that such tests are unannounced and follow no discernable pattern as to their timing. No additional tests beyond those included in the plan shall be imposed by the district. (49 CFR 40.307-40.309, 382.111)

Notifications

Note: Pursuant to 49 CFR 382.601, the district is **mandated** to adopt policy and procedures pertaining to

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

misuse of drugs and alcohol and to provide these materials to each driver. When conducting compliance inspections, the CHP reviews whether district policy or regulations contain all of items #1-11 below.

The Superintendent or designee shall provide each driver with materials explaining the federal regulations and the district's policy and procedure related to drug and alcohol testing and shall notify representatives of employee organizations of the availability of this information. This information shall include a detailed discussion of at least the following: (49 CFR 382.303, 382.113, 382.601)

1. The identity of the person designated by the district to answer driver questions about the materials
2. The categories of drivers who are subject to drug and alcohol testing
3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance
4. Specific information concerning prohibited driver conduct
5. The circumstances under which a driver will be tested for drugs and/or alcohol, including post-accident testing
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver
7. The requirement that a driver submit to drug and alcohol tests
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences
9. The consequences for drivers found to have violated the prohibitions against drug or alcohol use, including the circumstances under which drivers will be removed immediately from safety-sensitive functions and the requirements for education, treatment, and return-to-duty testing
10. The consequences for drivers found to have a blood alcohol concentration between 0.02 and 0.04

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

11. Information concerning the effects of drug and alcohol use on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management

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

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. The Superintendent or designee shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver. (49 CFR 382.601)

In addition, prior to administering each alcohol or drug test, the driver shall be notified that the test is required pursuant to Title 49, Part 382, of the Code of Federal Regulations. (49 CFR 382.113)

The driver shall be notified of the results of drug and alcohol tests in accordance with 49 CFR 382.411.

Records

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| Note: 49 CFR 40. 333 and 382.401 specify the records that must be retained by the district and how long each record must be retained (i.e., one year, two years, three years, five years, or indefinitely). Upon receiving a request from the FMCSA to inspect any such record, the district must make the record(s) available for inspection at the district office within two business days. |
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The Superintendent or designee shall maintain records of the district's drug and alcohol testing program in accordance with 49 CFR 40.333 and 382.401. Such records shall be maintained in a secure location with controlled access and shall be disclosed only in accordance with 49 CFR 382.405.

(cf. 3580 - District Records)

All Personnel

AR 4161.11(a)
4261.11
4361.11

INDUSTRIAL ACCIDENT/ILLNESS LEAVE

Note: Education Code 44984 and 45192 **mandate** that the Governing Board adopt rules and regulations providing industrial accident and illness leave for certificated and classified employees. The following regulation is subject to collective bargaining agreements.

For information about employees' rights related to workers' compensation benefits for industrial accidents or illnesses, see BP 4157.1/4257.1/4357.1 - Work-Related Injuries.

An eligible employee shall be entitled to a leave of absence for an industrial accident or illness arising in the course of his/her assigned duties. (Education Code 44984, 45192)

- (cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)*
- (cf. 4157/4257/4357 - Employee Safety)*
- (cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)*
- (cf. 4157.2/4257.2/4357.2 - Ergonomics)*
- (cf. 4161/4261/4361 - Leaves)*

Note: Education Code 44984 and 45192 **mandate** that district rules and regulations specify the amount of allowable leave as provided in the following paragraph. **The district should fill in the blank in the following paragraph to specify the maximum amount of leave allowed by the district which, pursuant to Education Code 44984 and 45192, must not be less than 60 working days in any one fiscal year for the same industrial accident or illness.** In the absence of district rules and regulations, employees shall be entitled to industrial accident or illness leave, but without limitation as to the number of days of such leave.

For such leave, the employee shall be granted no more than _____ working days in any one fiscal year for the same industrial accident or illness.

Note: Pursuant to Education Code 45192, the Board may require that classified employees serve a specified period of time, not to exceed three years, before being eligible for industrial accident or illness leave. In addition, Education Code 45192 allows the Board, at its discretion, to require that the time be served continuously. The following **optional** paragraph should be revised to reflect district practice.

To be eligible for industrial accident or illness leave, a classified employee shall have served in the district continuously for at least three years.

Note: Education Code 44984 and 45192 **mandate** that district rules and regulations include the provisions in the following paragraph and items #1-4.

Allowable industrial accident or illness leave shall not be accumulated from year to year. (Education Code 44984, 45192)

When an employee is absent from his/her duties because of an industrial accident or illness: (Education Code 44043, 44044, 44984, 45192)

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

1. The leave shall start on the first day of absence.
2. During the period of absence, the employee shall be paid such portion of his/her wage or salary that, when added to the award granted under state workers' compensation laws, will not exceed his/her normal wage or salary.
3. The leave shall be reduced by one day for each day of authorized absence, regardless of an award granted under workers' compensation laws.
4. When the leave overlaps into the next fiscal year, the employee is entitled to only the amount of unused leave due the employee for the same illness or injury.

Note: Pursuant to Education Code 44043, a certificated or classified employee who uses a paid leave of absence while receiving temporary disability benefits under state workers' compensation laws must endorse his/her workers' compensation check payable to the district, and the district shall then issue a salary warrant to the employee after deducting retirement contributions and other appropriate deductions (see Option 1 below). However, Education Code 44044 authorizes the district to waive this requirement, thereby allowing an employee to retain the workers' compensation check and receive a salary payment from the district with the equivalent amount of the workers' compensation check deducted (see Option 2 below).

OPTION 1: During any paid leave of absence, the employee shall endorse to the district any workers' compensation checks received on account of an industrial accident or illness. The Superintendent or designee shall then issue payment of the employee's normal wage or salary less any appropriate deductions, including, but not limited to, employee retirement contributions. (Education Code 44043)

OPTION 2: During any paid leave of absence, the employee shall retain any workers' compensation check received on account of an industrial accident or illness. The employee shall notify the Superintendent or designee that he/she has received such check. The Superintendent or designee shall then issue payment of the employee's normal wage or salary less an amount equivalent to the face amount of the workers' compensation check and other appropriate deductions, including, but not limited to, employee retirement contributions. Employee benefits shall be computed on the basis of the employee's regular wage or salary prior to the deduction of any amounts for temporary disability payments. (Education Code 44044)

Note: The remainder of this regulation applies to all districts.

Any employee receiving benefits under this leave shall, during periods of injury or illness, remain within California unless the Governing Board authorizes travel outside the state. (Education Code 44984, 45192)

AR 4161.11(c)
4261.11
4361.11

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

Note: Education Code 45192 specifies that classified employees may return to their position during the leave of absence without suffering any loss of status or benefits and that the absence will not be considered a break in service. The law does not expressly provide this benefit to certificated employees. The following paragraph extends these provisions to all employees and should be revised by districts that choose to limit these provisions to classified employees. If the district chooses to limit these provisions to classified employees, it is recommended that the district consult legal counsel regarding potential legal risks.

Absence for industrial accident or illness shall not be considered a break in service of the employee. An employee using such leave shall retain all status and benefits to which he/she would otherwise be entitled.

(cf. 4116 - Probationary/Permanent Status)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4216 - Probationary/Permanent Status)

Note: Education Code 45192 requires the district to notify classified employees in writing when their industrial accident or illness leave has been exhausted and to offer them an opportunity to request additional leave. Education Code 44984 authorizes certificated employees to use personal illness and injury leave upon expiration of the industrial accident or illness leave, but does not specifically require notification of the employee. The following paragraph extends this notification to all employees and should be revised by districts that choose to limit such notification to classified employees. If the district chooses to limit these provisions to classified employees, it is recommended that the district consult legal counsel regarding potential legal risks.

When available industrial accident or illness leave has been exhausted, the employee shall be so notified in writing and shall be offered an opportunity to request any additional paid or unpaid leave available to the employee. (Education Code 45192)

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

Upon expiration of allowable leave for an industrial accident or illness, the employee may use personal illness and injury leave provided pursuant to Education Code 44977, 44978, 44983, or 45191, as applicable, provided that such leave, when added to any continuing workers' compensation award, does not result in a payment to the employee of more than his/her full wage or salary. (Education Code 44984, 45192)

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

If a certificated employee is unable to resume the duties of his/her position after exhausting all accumulated sick leave, including the consecutive five-month period provided by Education Code 44977, he/she shall, if not placed in another position, be placed on a reemployment list for a period of 24 months if he/she is a probationary employee or 39

AR 4161.11(d)
4261.11
4361.11

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

months if he/she is a permanent employee. If the employee becomes medically able to resume duties during the period of reemployment eligibility, he/she shall be returned to employment in a position for which he/she is credentialed and qualified. (Education Code 44978.1)

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| <p>Note: While the Education Code allows probationary certificated employees to be placed on a 24-month reemployment list, there is no equivalent 24-month reemployment list for probationary classified employees. Pursuant to Education Code 45192, all classified employees, whether permanent or probationary, are placed on a 39-month reemployment list.</p> |
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If a classified employee has exhausted all available leaves of absence, paid or unpaid, and is not medically able to resume the duties of his/her position, he/she shall, if not placed in another position, be placed on a reemployment list for a period of 39 months. If he/she becomes medically able to resume duties during the period of reemployment eligibility, he/she shall be employed in a vacant position in the class of his/her previous assignment over all other candidates except those on a reemployment list established because of lack of work or lack of funds, in which case the employee shall be listed in accordance with seniority regulations. If the employee is medically released to return to duty but fails to accept an appropriate assignment, he/she shall be dismissed. (Education Code 45192)

(cf. 4217.3 - Layoff/Rehire)

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

Legal Reference: (see next page)

AR 4161.11(e)
4261.11
4361.11

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

Legal Reference:

EDUCATION CODE

44043 Temporary disability

44044 Temporary disability checks; waiver of endorsement to district

44977 Salary deductions during absence from duties

44978 Provisions for certificated employee sick leave

44978.1 Inability of certificated employee to return to duty; placement in another position or on reemployment list

44983 Exception to sick leave

44984 Industrial accident and illness leave, certificated employees

45191 Personal illness and injury leave, classified employees

45192 Industrial accident and illness leave, classified employees

LABOR CODE

3200-6002 Workers' compensation

Management Resources:

WEB SITES

Department of Industrial Relations: <http://www.dir.ca.gov>

All Personnel

AR 4161.8(a)

4261.8

FAMILY CARE AND MEDICAL LEAVE

4361.8

Note: The following **optional** administrative regulation is subject to collective bargaining agreements. Any subject covered by this administrative regulation should be deleted if already addressed in the district's collective bargaining agreements.

Both federal and state law provide for family care and medical leave (29 USC 2601-2654, the Family and Medical Leave Act of 1993 (FMLA), and Government Code 12945.1-12945.2, the California Family Rights Act (CFRA)). However, these laws do not provide identical rights. In some situations the laws overlap, but in others they conflict. For example, pregnancy as a "serious health condition" is covered under FMLA but not under CFRA. Instead, under California law, a female employee who is disabled due to pregnancy, childbirth, or a related medical condition is entitled to pregnancy disability leave (PDL) pursuant to Government Code 12945. Where there is a conflict between state and federal law, the law that grants the greatest benefits generally controls. In those situations, legal counsel should be consulted as needed.

The district shall not interfere with, restrain, or deny the exercise or attempted exercise by any eligible employee of his/her right to any family care and medical leave or pregnancy disability leave (PDL) provided through the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA), nor shall it discharge or discriminate or retaliate against any employee for his/her involvement in any inquiry or proceeding related to any leave under any of these laws or his/her opposition to or challenge of any unlawful district practice in relation to any rights granted by any of these laws. (Government Code 12945, 12945.2; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4033 - Lactation Accommodation)

Definitions

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

Child (son or daughter) means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (Government Code 12945.2; 29 USC 2611)

Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the district for at least 12 months and who has at least 1,250 hours of service with the district during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 29 USC 2611; 29 CFR 825.110)

Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is unable because of pregnancy to perform any one or more of the essential

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functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or other persons; or who is suffering from severe "morning sickness" or needs to take time off for any pregnancy-related condition including, but not limited to, prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, childbirth, loss or end of pregnancy, or recovery from childbirth or loss or end of pregnancy. (2 CCR 7291.2)

Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2611; 29 CFR 825.122)

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either of the following: (Government Code 12945.2; 29 USC 2611; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility
2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
 - a. A period of incapacity of more than three consecutive full days
 - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
 - c. Any period of incapacity due to pregnancy or for prenatal care under FMLA
 - d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
 - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Note: Pursuant to state law (Family Code 297.5), registered domestic partners have the same rights, protections, and benefits as spouses. In re Marriage Cases, the California Supreme Court ruled that the provision in Family Code 300 which limits the official designation of marriage to a union between a man and a woman violates the equal protection clause of the state constitution.

FAMILY CARE AND MEDICAL LEAVE (continued)

In addition, in United States v. Windsor, the U.S. Supreme Court held that the federal Defense of Marriage Act (1 USC 7) which defines marriage, for purposes of benefits under federal law, as a "union between a man and a woman," constituted a deprivation of the equal liberty of persons in violation of the Fifth Amendment to the U.S. Constitution. Districts with questions about the status of benefits for registered domestic partners or spouses of same-sex marriages should consult legal counsel as appropriate.

Spouse means a partner in marriage as defined in Family Code 300. In addition, for purposes of CFRA, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (Family Code 297.5, 300; 2 CCR 7297.0; 29 CFR 825.122)

Eligibility

Note: Pursuant to Government Code 12945.2 and 29 USC 2611, a district is required to grant family care and medical leave to an eligible employee for any of the reasons stated below, except where the district employs fewer than 50 employees within 75 miles of the worksite where the employee requesting the leave is employed.

The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Family Code 297.5; Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child
2. To care for the employee's child, parent, or spouse with a serious health condition
3. The employee's own serious health condition that makes him/her unable to perform one or more essential functions of his/her position

Note: Pursuant to 29 CFR 825.126, as amended by 78 Fed. Reg. 25, FMLA military family leave is available to any eligible employee for a qualifying exigency while the employee's spouse, son, daughter, or parent who is a military member is on covered active duty during deployment to a foreign country. For requirements related to qualifying exigency leave, see the section "Military Family Leave Resulting from Qualifying Exigencies" below.

4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)

Note: 29 CFR 825.127, as amended by 78 Fed. Reg. 25, has extended the military caregiver leave to family members of a covered veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date that the eligible employee takes FMLA leave to

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care for the veteran. For requirements related to military caregiver leave, see the section on "Military Caregiver Leave" below.

5. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin, as defined, of the servicemember

Note: Under federal law, pregnancy as a "serious health condition" is covered as part of FMLA leave. Pursuant to 2 CCR 7297.6, however, entitlements under PDL and CFRA are separate and distinct. An employee is entitled to up to four months of PDL prior to the birth of a child and up to 12 weeks of CFRA leave following the birth of the child. Additionally, pursuant to 2 CCR 7291.4, PDL is not subject to eligibility requirements for other FMLA and CFRA leaves, such as minimum hours worked or length of service.

In addition, the district shall grant any pregnant female employee PDL during pregnancy, when she is disabled by pregnancy, childbirth, or any related medical condition. (Government Code 12945; 2 CCR 7291.4)

Terms of Leave

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. (Government Code 12945.2; 29 USC 2612)

Note: To determine the 12-month period in which the leave entitlement occurs, the district may use any of the methods specified in Options #1-4 below which are examples listed in 29 CFR 825.200. However, a district may choose not to use any of these options and may instead choose some other fixed 12-month period. **Whichever option is selected must be applied uniformly to all employees.**

OPTION 1: This 12-month period shall coincide with the calendar year. (29 CFR 825.200)

OPTION 2: This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

OPTION 3: This 12-month period shall be measured forward from the date the employee's first family care and medical leave begins. (29 CFR 825.200)

OPTION 4: This 12-month period shall be a rolling period measured backward from the date an employee uses any family care and medical leave, as defined in 29 CFR 825.200. (29 CFR 825.200)

Note: 2 CCR 7291.9, as amended by Register 2012, No. 48, clarifies that the four months of PDL to which an employee is entitled means the number of days or hours that the employee would normally work within the four calendar months. For a part-time employee, four months shall be calculated on a proportional basis.

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In addition, for each pregnancy, a female employee shall be entitled to PDL for the period of the disability not to exceed four months. (Government Code 12945; 2 CCR 7291.9)

Note: Leaves under CFRA and FMLA sometimes overlap and run concurrently so that total leave to which an employee is entitled would not be cumulative. For example, pursuant to Government Code 12945.2, CFRA leave for the birth of an employee's child would run concurrently with the employee's FMLA leave entitlement, thereby limiting it to 12 work weeks. However, PDL is separate and distinct from CFRA leave. Consequently, pursuant to 2 CCR 7291.13, an employee may be entitled to up to four months of PDL, followed by 12 work weeks of CFRA leave for the birth of the child (baby bonding). Determining which leaves run concurrently is a complex endeavor and districts should consult legal counsel as needed.

PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks for the reason of the birth of her child, if the child has been born by this date (e.g., baby bonding), whether or not she or the child has a serious health condition or disability. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945, 12945.2; 2 CCR 7291.13, 7297.6)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. The basic minimum duration of leave for the birth or placement of a child shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (2 CCR 7297.3; 29 USC 2612)

Note: The following **optional** paragraph is for use by districts that limit family care and medical leave related to the birth or placement of a child to a total of 12 work weeks when both parents work for the district. However, pursuant to 2 CCR 7297.1, such limit on employees' entitlement to family care and medical leave for any other qualifying purpose is prohibited.

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 weeks. This restriction shall apply whether the parents are married, not married, or registered domestic partners. (Government Code 12945.2; 2 CCR 7297.1; 29 USC 2612)

Use/Substitution of Paid Leave

Note: The district may require employees (Option 1) or give employees discretion (Option 2) to substitute paid leave or other negotiated unpaid time off for the family care and medical leave, so that the paid leave or unpaid time off and the family care and medical leave would run concurrently. Paid leave may be substituted only to the extent that the employee would otherwise be eligible to take the leave. However, for

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| leave taken under the CFRA for the employee's own serious health condition, the district can only require him/her to use accrued sick leave and cannot require the employee to use accrued vacation or personal time off. |
|---|

OPTION 1: An employee shall substitute his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district for any FMLA or CFRA leave not involving his/her own serious health condition or pregnancy disability. For the employee's PDL or FMLA or CFRA leave due to his/her own serious health condition, the employee shall use accrued sick leave pursuant to the collective bargaining agreement and/or Board policy and may use accrued vacation leave and other paid or unpaid time off at his/her option. (Government Code 12945, 12945.2; 2 CCR 7291.11; 29 USC 2612)

OPTION 2: During the period of PDL or any FMLA or CFRA leave, the employee may elect to use his/her accrued vacation leave, accrued sick leave, other accrued time off, or any other paid or unpaid time off negotiated with the district. (Government Code 12945, 12945.2; 2 CCR 7291.11; 29 USC 2612)

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4261.1 - Personal Illness/Injury Leave)

Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or his/her child, parent, or spouse may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district may limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave, not to be greater than one hour. (2 CCR 7291.9, 7297.3; 29 USC 2612)

The district may require an employee to transfer temporarily to an available alternative position if the employee is pregnant and provides medical certification from her health care provider of the medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on his/her planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 7291.8, 7297.3; 29 USC 2612)

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FAMILY CARE AND MEDICAL LEAVE (continued)

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

Request for Leave

Note: Pursuant to 2 CCR 7291.17 and 7297.4, an employee is required to notify the district of the need to take PDL or family care and medical leave. However, for family care and medical leave, the employee need not specifically mention CFRA or FMLA. (Faust v. California Portland Cement Company)

An employee shall provide at least verbal notice sufficient to make the district aware of the need to take PDL or family care and medical leave and the anticipated timing and duration of the leave. (2 CCR 7291.17, 7297.4)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement; however, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 7297.4)

Note: Both 29 CFR 825.300 and 2 CCR 7297.4 require the district to provide an employee with notice of the designation of leave as either qualifying for CFRA or FMLA protection. See section entitled "Notifications" below for further requirements of this "designation notice" as well as other required notifications.

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. (2 CCR 7297.4)

Note: Pursuant to 2 CCR 7297.4, the district may require an employee to provide at least 30 days advance notice of the need for family care and medical leave, if the need is foreseeable. If a district requires such advance notice from employees, then the district's notification of FMLA/CFRA rights must so specify; see section below entitled "Notifications."

Pursuant to 2 CCR 7291.17, an employee requesting PDL is required to provide the district at least 30 days advance notice if the need for PDL is foreseeable. Districts that do not require 30 days advance notice should modify the following paragraph accordingly.

When the need for the PDL or family care and medical leave is foreseeable, the employee shall provide the district with at least 30 days advance notice before the leave. The employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 7291.17, 7297.4)

FAMILY CARE AND MEDICAL LEAVE (continued)

When the 30 days notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. (2 CCR 7291.17, 7297.4)

Certification of Health Condition

Note: The following **optional** section is for use by districts that require an employee to submit a medical certification of the need for leave along with the request for PDL or family care and medical leave for his/her own serious health condition or to care for a child, parent, or spouse with a serious health condition. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this section should request a medical certification from all employees.

Within five business days of an employee's request for family care and medical leave for his/her own or his/her child's, parent's, or spouse's serious health condition, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 7297.4; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2613)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, parent, or spouse with a serious health condition, both of the following:
 - a. Statement that the serious health condition warrants the participation of the employee to provide care during a period of the treatment or supervision of the child, parent, or spouse
 - b. Estimated amount of time the health care provider believes the employee needs to care for the child, parent, or spouse

Note: 2 CCR 7297.0 provides that the health care provider's certification need not identify the serious health condition involved, if the leave is for the care of the employee's child, parent, or spouse.

FAMILY CARE AND MEDICAL LEAVE (continued)

4. If the employee is requesting leave because of his/her own serious health condition, a statement that due to the serious health condition, he/she is unable to work at all or is unable to perform one or more essential functions of his/her job
5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

In addition, at the employee's option, the certification may include a diagnosis identifying the serious health condition. (2 CCR 7297.0)

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA as long as there is no harm to the employee. (29 CFR 825.301)

If the Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, he/she may require the employee to obtain a second opinion from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the district, again at district expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 29 USC 2613)

For PDL, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if he/she has reason to question the appropriateness of the leave or its duration. (2 CCR 7291.17)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 7291.17)

FAMILY CARE AND MEDICAL LEAVE (continued)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 7291.17)

The Superintendent or designee shall not request any genetic information, as defined in 42 USC 2000ff, from any employee or his/her family member except as necessary to comply with a certification requirement for PDL or FMLA/CFRA leave purposes or with the prior written authorization of the employee. Any such genetic information received by the district shall be kept confidential in accordance with law. (42 USC 2000ff-1, 2000ff-5)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 7291.17; 29 USC 2613)

Fitness for Duty Certification/Release to Return to Work

Note: The following **optional** section is for use by districts that choose to require a fitness-for-duty certification and may be modified to list the specific positions for which certification is required. Pursuant to Government Code 12945.2 and 29 CFR 825.312, the district may require an employee to submit a fitness-for-duty certification upon returning to work when the following two conditions are met: (1) the leave was a result of the employee's own serious health condition, and (2) the district has adopted a policy that is applied uniformly to all similarly situated employees (i.e., same occupation, same serious health condition). In addition, 2 CCR 7291.17 has similar requirements when an employee is returning to work after a PDL. However, if the district's collective bargaining agreement governs the employee's return to work, the collective bargaining agreement shall supersede any policy requirements.

Upon expiration of an employee's PDL or family care and medical leave taken for his/her own serious health condition, the employee shall present certification from the health care provider that he/she is able to resume work.

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

Note: Pursuant to 29 CFR 825.312, when the health care provider certifies that the employee is able to resume work, the district may also require the health care provider to address the employee's ability to perform the essential functions of the job. If such a requirement is imposed, then the district must provide the employee with a list of the essential functions of his/her job with the "designation notice"; see section entitled "Notifications" below.

The following paragraph is **optional** and should be deleted by districts that do not require certification of an employee's ability to perform the essential functions of the job.

FAMILY CARE AND MEDICAL LEAVE (continued)

The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.

Rights to Reinstatement

Note: Pursuant to Government Code 12945.2, 2 CCR 7291.10, and 29 USC 2614, an employee on PDL or family care and medical leave has the right to be reinstated to the same or a comparable position when he/she returns from such leave. However, such an employee has no greater right to reinstatement or other benefits than he/she would have if he/she had been continuously employed. In addition, in certain situations described below, the district may be relieved of the obligation to reinstate an employee.

Upon granting an employee's request for PDL or family care and medical leave, the Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 7291.10; 29 USC 2614)

However, the district may refuse to reinstate an employee returning from family care and medical leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 29 USC 2614)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.
2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 7291.10)

Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, he/she

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shall maintain his/her status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 29 USC 2614)

For up to a maximum of four months for PDL or 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before he/she took the leave. The employee shall reimburse the district for premiums paid during the leave if he/she fails to return to district employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond his/her control. (Government Code 12945.2; 2 CCR 7291.11; 29 USC 2614; 29 CFR 825.213)

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

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall not be required to make plan payments for an employee during the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 7291.11)

Military Family Leave Resulting from Qualifying Exigencies

Note: 29 USC 2611 and 2612 authorize an eligible employee to take up to 12 work weeks of unpaid leave to attend to an "exigency" arising out of the fact that a spouse, child, or parent of the employee is on active duty or on call to active duty status in the National Guard or Reserves, or is a servicemember of the regular Armed Forces on deployment to a foreign country. 29 CFR 825.100-825.800, as amended by 78 Fed. Reg. 25, made changes to the implementation of this FMLA leave as specified in the following **optional** section, including in the definition of "covered military member" which, pursuant to 29 CFR 825.126, is now "military member." 29 CFR 825.126 also clarifies the meaning of "covered active duty" as it relates to servicemembers in the National Guard or Reserves.

Pursuant to 29 CFR 825.200, an employee is entitled to 12 work weeks of qualifying exigency leave during each 12-month period established by the district; see section entitled "Terms of Leave" above. According to the U.S. Department of Labor's (DOL) Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, an employee may take all 12 weeks of his/her FMLA leave entitlement as a qualifying exigency leave or take a combination of the 12 weeks of leave for both qualifying exigency leave and other FMLA leave, such as leave for a serious health condition.

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An eligible employee may take up to 12 work weeks of unpaid leave during the 12-month period established by the district while a military member is on covered active duty or call to covered active duty status for one or more qualifying exigencies. (29 USC 2612; 29 CFR 825.126)

Military member means an employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status. (29 CFR 825.126)

Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or order to active duty in support of a contingency operation pursuant to law. (29 USC 2611; 29 CFR 825.126)

Note: 29 CFR 825.126, as amended by 78 Fed. Reg. 25, has added parental care to the seven existing categories of "qualifying exigencies." In addition, a "qualifying exigency" includes "any other event" as agreed to by the district and the employee. As an example of such other event, the DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers lists leave to spend time with the military member either prior to or post deployment or to attend to household emergencies that would normally have been handled by the covered military member.

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

1. Address issues arising from short notice deployment (up to seven calendar days from the date of receipt of call or order of short notice deployment)
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status
3. Arrange childcare or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. Make or update financial and legal arrangements to address a military member's absence
5. Attend counseling provided by someone other than a health care provider

Note: 29 CFR 825.126, as amended by 78 Fed. Reg. 25, has increased the allowable qualifying exigency leave for reason of "rest and recuperation" from five to 15 days.

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6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. Address any other event that the employee and district agree is a qualifying exigency

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

Note: 29 CFR 825.309, as amended by 78 Fed. Reg. 25, has expanded the list of information which a district may require an employee to provide, to include a copy of the military member's Rest and Recuperation leave order or other military-issued documentation that specifies the military member's leave. In addition, the district may require the employee to provide certification of the qualifying exigency containing the information specified in 29 CFR 825.309. A form has been developed by DOL for this purpose and is available on its web site.

The following paragraph is **optional** and should be deleted by those districts that do not require such documentation. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request certification from all employees requesting such leave.

An employee who is requesting such leave for the first time shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

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

Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to substitute paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in the section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regards to FMLA/CFRA leave is also applicable to qualified exigency leave.

FAMILY CARE AND MEDICAL LEAVE (continued)

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

Military Caregiver Leave

Note: 29 USC 2612 and 29 CFR 825.127 authorize an eligible employee to take up to 26 work weeks of unpaid military caregiver leave, as defined below, during a "single 12-month period." As is the case with other FMLA leaves, this law applies to districts that employ at least 50 employees within 75 miles of the worksite where the employee requesting the leave is employed; see the section entitled "Eligibility" above.

According to the DOL's [Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers](#), if an employee does not use the entire 26-week entitlement in a single 12-month period, unused weeks cannot be carried over into another 12-month period. However, the employee may qualify for nonmilitary FMLA leave.

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

Covered servicemember may be: (29 CFR 825.127)

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

Note: Unlike the provisions for other FMLA/CFRA leave, 29 CFR 825.127 places no age limit on the definition of "son or daughter," as detailed below. In addition, 29 CFR 825.127 defines "next of kin" of a covered servicemember in relation to military caregiver leave.

Son or daughter of a covered servicemember means the biological, adopted, or foster child, stepchild, legal ward, or a child of any age for whom the covered servicemember stood in loco parentis. (29 CFR 825.127)

FAMILY CARE AND MEDICAL LEAVE (continued)

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

Next of kin means the nearest blood relative to the covered servicemember, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)

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

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| Note: 29 USC 2611 defines "serious injury or illness" for active members of the Armed Forces and for veterans, as provided below. Pursuant to 29 CFR 825.127, as amended by 78 Fed. Reg. 25, one of the four conditions listed in item #2 below must be present for a veteran's injury or illness to qualify as a "serious injury or illness" for the purpose of this leave. |
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Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

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

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FAMILY CARE AND MEDICAL LEAVE (continued)

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

Note: As is the case for other types of FMLA/CFRA leave, 29 CFR 825.302 and 825.303 require the employee, when the need for the leave is foreseeable, to provide 30 days advance notice to the district before the leave is to begin.

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

Note: 29 CFR 825.310 authorizes the district to require the employee to provide certification of the need for the leave, which is to be completed by an authorized health care provider of the covered servicemember. 29 CFR 825.310, as amended by 78 Fed. Reg. 25, has expanded the definition of "authorized health care provider" for this purpose to include health care providers listed in 29 CFR 825.125 who are not affiliated with the Department of Defense or Department of Veterans Affairs and authorizes a district to require second and third opinions from such health care providers.

The following paragraph is **optional**. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request a medical certification from all employees requesting such leave.

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

Note: Pursuant to 29 CFR 825.127, an employee may take up to a total of 26 work weeks of leave for both regular FMLA and military caregiver leave during the 12-month leave entitlement period. However, the employee may not take more than 12 weeks for regular FMLA leave. For example, according to the DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of military caregiver leave, but could not take 16 weeks to care for a newborn and 10 weeks of military caregiver leave. If the leave qualifies as both military caregiver leave and leave to care for a family member with a serious health condition, 29 CFR 825.127 specifies that the district must first designate the leave as military caregiver leave.

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

FAMILY CARE AND MEDICAL LEAVE (continued)

Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to substitute paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regards to FMLA/CFRA leave is also applicable to military caregiver leave.

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

Notifications

Note: Both 29 CFR 825.300 and 2 CCR 7297.9 require employers to provide general notification to employees of their rights under the FMLA/CFRA as well as specific notifications when an employee has requested leave, as detailed below. 2 CCR 7291.16 contains similar notice requirements for PDL purposes. Samples of notices which describe an employee's rights are available on the web sites of the California Department of Fair Employment and Housing and the DOL.

2 CCR 7297.9 further requires that if the workforce at any facility contains 10 percent or more of persons with a primary language other than English, the posted notice of state law must be translated into the language(s) these employees speak.

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

1. **General Notice:** Information explaining the provisions of the FEHA and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks. (2 CCR 7291.16, 7297.9; 29 USC 2619)

Note: Pursuant to 2 CCR 7291.17 and 7297.4, a district may require an employee, when the need for the leave is foreseeable, to provide at least 30 days advance notice before the leave is to begin; see the section entitled "Request for Leave" above. 2 CCR 7291.16 and 7297.4 specify that districts requiring such notice from employees must give them "reasonable advance notice" of their obligation and that incorporation of the requirement into the general notice satisfies the "advance notice" requirement.

The following **optional** paragraph is for use by districts that require employees to provide advance notice.

The general notice shall also explain an employee's obligation to provide the Superintendent or designee with at least 30 days notice of the need for the leave, when the need for the leave is reasonably foreseeable. (2 CCR 7291.17, 7297.4)

FAMILY CARE AND MEDICAL LEAVE (continued)

2. **Eligibility Notice:** When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of his/her eligibility to take such leave. (2 CCR 7291.16; 29 CFR 825.300)
3. **Rights and Responsibilities Notice:** Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as appropriate: (29 CFR 825.300)
 - a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

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| Note: Item #b below is for use by districts that require medical certification to the effect that the employee is able to resume work. See the section entitled "Fitness for Duty Certification/Release to Return to Work" above. |
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- b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
- c. The employee's right to substitute paid leave, whether the district will require substitution of paid leave, conditions related to any substitution, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
- d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
- e. If applicable, the employee's status as a "key employee," potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial
- f. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave

FAMILY CARE AND MEDICAL LEAVE (continued)

- g. The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave

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

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

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

Note: 29 CFR 825.300 requires the designation notice to specify whether the district requires paid leave to be substituted for unpaid family care and medical leave, whether the district requires an employee to present a fitness-for-duty certification, and whether that certification must address the employee's ability to perform the essential functions of the job. See the sections entitled "Use/Substitution of Paid Leave" and "Fitness for Duty Certification/Release to Return to Work" above. The following paragraph should be revised to reflect district practice.

If the district requires paid leave to be substituted for unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a fitness-for-duty certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (29 CFR 825.300)

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

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FAMILY CARE AND MEDICAL LEAVE (continued)

Records

Note: Government Code 12946, 29 USC 2616, and 29 CFR 825.500 require districts to maintain records of, among other things, applications, dates, and personnel and employment action related to family care and medical leave. Pursuant to 42 USC 2000ff-1, any individually identifiable genetic information possessed by the district must be treated as a confidential medical record of the employee involved.

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

Legal Reference: (see next page)

FAMILY CARE AND MEDICAL LEAVE (continued)

Legal Reference:

EDUCATION CODE

44965 *Granting of leaves of absence for pregnancy and childbirth*

FAMILY CODE

297-297.5 *Rights, protections, and benefits under law; registered domestic partners*

300 *Validity of marriage*

GOVERNMENT CODE

12940 *Unlawful employment practices*

12945 *Pregnancy; childbirth or related medical condition; unlawful practice*

12945.1-12945.2 *California Family Rights Act*

12946 *Fair Employment and Housing Act: discrimination prohibited*

CODE OF REGULATIONS, TITLE 2

7291.2-7291.17 *Sex discrimination: pregnancy and related medical conditions*

7297.0-7297.11 *Family care leave*

UNITED STATES CODE, TITLE 1

7 *Definition of marriage*

UNITED STATES CODE, TITLE 29

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

UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 *Family and Medical Leave Act of 1993*

COURT DECISIONS

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

Re Marriage Cases, (2008) 43 Cal.4th 757

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

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

Management Resources:

FEDERAL REGISTER

The Family and Medical Leave Act; Final Rule; February 6, 2013. Vol. 78, No. 25, pages 8903-8947

U.S. DEPARTMENT OF LABOR PUBLICATIONS

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

WEB SITES

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

U.S. Department of Labor, FMLA: <http://www.dol.gov/whd/fmla>

NONRESIDENT FOREIGN STUDENTS

Note: The following **optional** administrative regulation is for use by any district that maintains grades 9-12 and which may wish to enroll a nonimmigrant foreign student who is in the United States on an F-1 visa. Pursuant to 8 USC 1184, an F-1 visa may be granted to enable a nonimmigrant student to attend public school in grades 9-12 for a maximum of one year. Pursuant to 8 CFR 214.3, any district that desires to enroll such students is required to file a petition for certification with the U.S. Department of Homeland Security's Student and Exchange Visitor Program (SEVP), using the Student Exchange Visitor Information System (SEVIS). The certification is renewable every two years. A web-based training course, "SEVIS Training for School Officials," is available on the U.S. Immigration and Customs Enforcement's web site.

This program is different from the international exchange program in which high school students from other countries are allowed into the United States to study at a sister or partner California school under the sponsorship of a government-approved agency. For information on the international exchange program, see BP/AR 6145.6 - International Exchange.

The Superintendent or designee shall, on behalf of the district, seek and obtain from the U.S. Department of Homeland Security's (DHS) Student and Exchange Visitor Program (SEVP) certification of eligibility to enroll nonimmigrant foreign students in district schools and recertification for the continuing eligibility of the district every two years. (8 CFR 214.3)

(cf. 6145.6 - International Exchange)

Note: Nonimmigrant students who are in the United States with an F-1 visa are, by definition, nonresidents. Pursuant to 8 USC 1184, such individuals are required to pay tuition in an amount equal to the unsubsidized per-student cost of providing education at the school for the period of the student's attendance. This requirement for payment of tuition may not be waived by the district and, according to the U.S. Department of State's publication, Foreign Students (F-1) in Public Schools, is applicable notwithstanding the fact that the student resides with a relative who is a U.S. citizen. Districts should make a reasonable estimate of the per-student cost of education when determining the tuition since no specific guidance has been provided for calculating the cost of attendance.

On a case-by-case basis, the Superintendent or designee may accept for admission into any of grades 9-12 any nonimmigrant foreign student with or seeking an F-1 visa. Any such student shall be admitted for a maximum of one year and shall pay the district the full, unsubsidized per-student cost of attendance at the school. (8 USC 1184)

(cf. 5111.1 - District Residency)

In determining whether to admit a student, the Superintendent or designee shall consider whether the following conditions exist: (8 CFR 214.3; 22 CFR 41.61)

1. A suitable program exists at the school the student has selected.
2. The student's English proficiency is sufficient for successful study at that school.

NONRESIDENT FOREIGN STUDENTS (continued)

3. Space is available at the school.
4. The student has provided proof of financial responsibility.

In addition to fulfilling all other requirements for school entry, the student shall submit evidence that he/she has been fully immunized in accordance with California law.

(cf. 5141.31 - Immunizations)

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| Note: Pursuant to 8 CFR 214.3, districts are required to comply with special recordkeeping requirements regarding nonimmigrant foreign students. |
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In accordance with law, the Superintendent or designee shall retain and, when required, report to DHS any records for nonimmigrant foreign students required for the operation of the SEVP. Upon request, he/she also shall furnish to DHS representatives other records maintained by the district for nonimmigrant foreign students. (8 CFR 214.3)

(cf. 5125 - Student Records)

The Superintendent or designee shall ensure that any individual dealing with enrollment of nonimmigrant foreign students is trained on the use of the Student Exchange Visitor Information System.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Legal Reference: (see next page)

NONRESIDENT FOREIGN STUDENTS (continued)

Legal Reference:

EDUCATION CODE

48050-48054 Nonresidents

UNITED STATES CODE, TITLE 8

1184 Foreign students

1372 Reporting requirements, nonimmigrant foreign students

CODE OF FEDERAL REGULATIONS, TITLE 8

214.3 Petition for school approval

214.4 Withdrawal of school approval

CODE OF FEDERAL REGULATIONS, TITLE 22

41.61 Students; academic and nonacademic

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES

0319.97 Amendments to F-1 Student Visa Requirements, LO: 1-97

U.S. DEPARTMENT OF STATE PUBLICATIONS

Foreign Students (F-1) in Public Schools

WEB SITES

U.S. Department of Homeland Security, Student and Exchange Visitor Program:

<http://www.ice.gov/sevis>

U.S. Department of State: http://travel.state.gov/visa/temp/types/types_1269.html#1

U.S. Immigration and Customs Enforcement: <http://www.ice.gov>

DRUG TESTING

Note: The following policy is **optional** and should be revised to reflect district practice. This policy is for use by districts that wish to establish a voluntary drug testing program for the entire student population and/or a random, suspicionless drug testing program for students participating in athletics. **Districts interested in establishing a suspicionless drug testing program for use in other contexts (for example, for participation in extracurricular activities) should consult legal counsel, as more extensive legal analysis of the right to privacy may be needed pursuant to California law.** In Brown v. Shasta Union High School District (an unpublished opinion authored by the current Chief Justice of California), the California Court of Appeal upheld a preliminary injunction against a district's drug testing program which required students that participated in certain competitive, non-athletic extracurricular activities to be subjected to random, suspicionless drug tests. The Court found that the plaintiffs in the case were likely to prevail on their claim that the program violated the express right to privacy granted by Article 1, Section 1 of the California Constitution. Because of the complex constitutional issues involved in determining whether and how a drug testing program should be implemented, it is strongly recommended that, prior to adoption by the Governing Board, the district's proposed drug testing policy and procedures be reviewed by legal counsel.

The following paragraph provides that the program will be established at the high school level, but may be revised to specify other grade levels.

The Governing Board is committed to providing a safe, drug-free school environment to maximize the health and safety of district students and to protect them from dangers associated with illegal drug use and drug abuse. To support the district's drug abuse prevention efforts, the Board desires to establish a drug testing program in the district's high schools that will discourage illegal drug use among students and timely identify and refer drug users to appropriate counseling and rehabilitative services.

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.63 - Steroids)

Any drug testing program to be implemented by the district shall be developed in consultation with drug treatment and prevention professionals, the laboratory contracted to conduct the tests, and district legal counsel. In addition, the Superintendent or designee may invite input from students, staff, parents/guardians, community members, and representatives of local health care agencies, community service agencies, and businesses.

(cf. 1020 - Youth Services)

Note: It is important that the entire student body and parents/guardians receive full information about the drug testing program so they would be able to give informed consent before students participate.

Participation in the district's drug testing program shall require the written consent of students' parents/guardians. The Superintendent or designee shall provide information about

DRUG TESTING (continued)

the program, including the district's policy and procedures, to all high school students and their parents/guardians at the beginning of each school year. All informational materials provided for this purpose shall contain clear statements about how the program will be implemented, including, but not limited to, a list of every substance that to be tested for and how students may be withdrawn from participation in the program.

(cf. 5145.6 - Parental Notifications)

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| Note: The district should ensure that its procedures for collecting specimens from students for testing are minimally intrusive to the students' privacy and that they recognize that students are apt to be very self-conscious about their bodies at that stage of their development. |
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Drug testing procedures shall ensure appropriate student privacy while maintaining the viability of the process. If urinalysis testing is used, the supervisor collecting the specimen shall be the same gender as the student and the specimen shall be collected in a private facility behind a closed stall.

Parents/guardians shall be notified after any positive test results are confirmed. Test results shall be kept separate from the student's other educational records and shall be disclosed only to school staff designated by the Superintendent or designee as responsible for program implementation. The district shall not release test results to law enforcement authorities except in compliance with a court order.

(cf. 5125 - Student Records)

The Superintendent or designee shall provide training to principals, coaches, and other district staff involved in implementing the district's drug testing program.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Students who test positive in any voluntary drug testing program shall be encouraged to participate in an assistance program and may be required to take subsequent drug tests. No disciplinary or punitive action shall be taken against any student who tests positive in the voluntary drug testing program.

(cf. 5141.6 - School Health Services)

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| Note: Though the following section is applicable only to random, suspicionless drug testing for athletics, districts that wish to have more comprehensive rules for the voluntary drug testing program may adapt items #1-3 and the last paragraph in the section below. |
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DRUG TESTING (continued)

Random Drug Testing for Athletics

Note: Under this program, students would be required to submit to random drug tests as a condition of their participation in athletics.

In Vernonia School District v. Acton, the U.S. Supreme Court found a random testing program for student athletes constitutional. In upholding this "suspicionless" program (i.e., probable cause or reasonable suspicion need not be established prior to the test), the court held that the district's custodial responsibility for the children entrusted to its care outweighs a student's privacy rights. Even then, districts should be aware that the California Constitution is more protective of the right to privacy than the federal constitution, and a drug testing program allowed under federal law may nevertheless violate state law.

Districts should consult legal counsel as necessary.

The Superintendent or designee may establish a nonvoluntary, random drug testing program for students participating in athletics.

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

(cf. 6145.2 - *Athletic Competition*)

Note: The following paragraph is **optional**. The California Constitution prohibits districts from collecting fees for educational activities. In Hartzell v. Connell, the California Supreme Court held that fees could not be charged for "educational activities" like extracurricular activities and that such a fee would not be constitutional, even if the district policy allows the fee to be waived. Districts should consult legal counsel prior to the implementation of any fee requirement.

No fee shall be charged for student participation in the district's drug testing program.

(cf. 3260 - *Fees and Charges*)

Note: The remainder of this section is based on factors considered by the U.S. Supreme Court in upholding the district's drug testing program in Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls and may be modified to reflect the district's program. In addition, the following list may be adapted for use under any voluntary drug testing program.

The Superintendent or designee shall develop:

1. Informational materials to be provided to participating students and their parents/guardians about the drug testing program

The informational materials shall require parents/guardians to notify the school when their child is taking any medication by presenting either a copy of the prescription or a physician's written verification of this fact.

2. A drug testing consent form to be signed by the student and his/her parent/guardian prior to allowing the student to participate in athletics

DRUG TESTING (continued)

The consent form shall specify the substances to be tested for and shall clearly indicate that the consent can be withdrawn and that the only consequence for such withdrawal will be that the student will no longer be able to participate in athletics

3. Procedures addressing how students will be selected, how often tests will be conducted, how samples will be collected and transported, and how results will be confirmed

Any student participating in athletics who fails a required drug test shall be disqualified from participating in the athletic activity in accordance with district policy and shall be referred to an assistance program.

Note: The following **optional** paragraph may be adapted for use under any voluntary drug testing program.

At the beginning of each school year, the Superintendent or designee shall conduct an orientation session for students participating in athletics and their parents/guardians, to explain the district's policy and outline the procedures for drug testing and the consequences if a positive result is obtained.

Legal Reference: (see next page)

DRUG TESTING (continued)

Legal Reference:

EDUCATION CODE

35160.5 *District policy rules and regulations; requirements; matters subject to regulation*

44049 *Known or suspected alcohol or controlled substance abuse by student*

51262 *Use of anabolic steroids; legislative finding and declaration*

CALIFORNIA CONSTITUTION

Article 9, Section 5 *Common school system*

CODE OF REGULATIONS, TITLE 5

350 *Fees not permitted*

COURT DECISIONS

Brown v. Shasta Union High School District, No. C061972, 2010 WL 3442147 (Cal. App. 3d Sept. 2, 2010)

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, (2002) 122 S.Ct. 2559

Vernonia School District v. Acton, (1995) 115 S.Ct. 2385

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

Management Resources:

OFFICE OF NATIONAL DRUG CONTROL POLICY PUBLICATIONS

What You Need To Know About Drug Testing in Schools, August 2002

WEB SITES

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

National Institute on Drug Abuse: <http://www.nida.nih.gov>

Office of National Drug Control Policy: <http://www.whitehousedrugpolicy.gov>

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

FOOD ALLERGIES/SPECIAL DIETARY NEEDS

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

The Governing Board desires to prevent students' exposure to foods to which they are allergic or intolerant and to provide for prompt and appropriate treatment in the event that a severe allergic reaction occurs at school.

The Superintendent or designee shall develop guidelines for the care of food-allergic students. Such guidelines shall include, but are not limited to, strategies for identifying students at risk for allergic reactions, avoidance measures, education of staff regarding typical symptoms, and actions to be taken in the event of a severe allergic reaction.

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

(cf. 3552 - Summer Meal Program)

(cf. 3554 - Other Food Sales)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

(cf. 5030 - Student Wellness)

(cf. 5141 - Health Care and Emergencies)

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

Parents/guardians shall be responsible for notifying the Superintendent or designee, in writing, regarding any food allergies or other special dietary needs of their child in accordance with administrative regulation.

(cf. 5125 - Student Records)

Note: If a student's food allergy or food intolerance substantially limits one or more major life activities, the student may be considered "disabled" in accordance with Section 504 of the federal Rehabilitation Act (29 USC 794), even if he/she does not require services pursuant to the Individuals with Disabilities Education Act (20 USC 1400-1482). For Section 504 purposes, the definitions of "disability" and "substantially limits" contained in 42 USC 12102, as amended by the Americans with Disabilities Amendments Act of 2008, require that a determination of disability be made without regard to the ameliorative effects of mitigating measures. For example, if a student has a severe allergy that is managed through allergy shots, frequent hand washing, bringing a lunch from home, or other measures, he/she may still be considered disabled under Section 504 if the allergy would substantially limit a major life activity without those mitigating measures. The district would need to evaluate the student to determine if he/she has a disability and to develop an accommodation plan if necessary. See BP/AR 6164.6 - Identification and Education Under Section 504.

The U.S. Department of Education's Office for Civil Rights (OCR), in its January 2012 Dear Colleague Letter and accompanying Questions and Answers on ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools, clarifies that under the new rules, many students with allergies would be considered to have a disability because their allergies are likely to

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

substantially limit the major life activities of breathing and respiratory function without mitigating measures. Furthermore, an existing individualized health care plan may be insufficient if it does not comply with current Section 504 requirements for evaluation, placement, and procedural safeguards. Some regional offices of OCR have taken the position that a Section 504 plan is required because of the inherent danger that can result from an allergic reaction.

The types of accommodations that may be considered reasonable vary depending on the individual needs of the student and the severity of the allergy. The National School Boards Association's Legal and Practical Issues Relating to Accommodating Students with Peanut Allergies cites cases in which the accommodations imposed by administrative hearing officers ranged from providing an allergy-free table in the cafeteria to banning peanuts in a classroom.

When a student's food allergy or food intolerance substantially limits one or more major life activities, his/her parents/guardians shall be informed of the district's obligation to evaluate the student to determine if he/she requires accommodations pursuant to Section 504 of the federal Rehabilitation Act. The student shall be evaluated in accordance with law and the procedures specified in AR 6164.6 - Identification and Education Under Section 504. If that process results in the development of a Section 504 plan, the district shall provide the accommodations and/or aids and services identified in the plan.

(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6164.6 - Identification and Education Under Section 504)

If a student's diet restrictions and needed services are addressed in an individualized education program (IEP), the Superintendent or designee shall ensure compliance with the IEP including any necessary food substitutions.

(cf. 6159 - Individualized Education Program)

Note: Section 504 and other federal and state laws prohibit discrimination on the basis of disability. If an allergic student is determined to be "disabled" as discussed above, he/she is entitled to protection under the nondiscrimination provisions of Section 504, even if he/she does not need any special education or related services as a result of the allergy. In addition, Education Code 234.1 requires districts to adopt a process for receiving and investigating student complaints involving discrimination, harassment, intimidation, and bullying based on specified characteristics, including disability; see AR 1312.3 - Uniform Complaint Procedures.

Students shall not be excluded from school activities nor otherwise discriminated against, harassed, intimidated, or bullied because of their food allergy.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 5131.2 - Bullying)
(cf. 5145.3 - Nondiscrimination/Harassment)

Any complaint of alleged noncompliance with this policy shall be addressed through appropriate district complaint procedures.

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 3555 - Nutrition Program Compliance)

The district's food services program may, but is not required to, accommodate individual student preferences or diets that are not supported by a statement from the student's health care provider.

Legal Reference: (see next page)

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

Legal Reference:

EDUCATION CODE

234.1 Prohibition against discrimination, harassment, intimidation, and bullying

49407 Liability for treatment

49408 Emergency information

49414 Emergency epinephrine auto-injectors

49423 Administration of prescribed medication for student

CODE OF REGULATIONS, TITLE 5

600-611 Administering medication to students

15562 Reimbursement for meals, substitutions

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1400-1482 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

701-795a Rehabilitation Act, including:

794 Rehabilitation Act of 1973, Section 504

UNITED STATES CODE, TITLE 42

1751-1769h National School Lunch Program

1771-1791 Child nutrition, especially:

1773 School Breakfast Program

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 7

210.1-210.31 National School Lunch Program

220.1-220.21 National School Breakfast Program

225.16 Meal programs, individual substitutions

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Training Standards for the Administration of Epinephrine Auto-Injectors, December 2004

FOOD ALLERGY RESEARCH AND EDUCATION PUBLICATIONS

School Guidelines for Managing Students with Food Allergies

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Legal and Practical Issues Relating to Accommodating Students with Peanut Allergies, Inquiry and Analysis, April 2009

U.S. DEPARTMENT OF AGRICULTURE PUBLICATIONS

Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff, 2001

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

Dear Colleague Letter and Questions and Answers on ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools, January 2012

WEB SITES

California Department of Education, Health Services: <http://www.cde.ca.gov/ls/he/hn>

Food Allergy Research and Education: <http://www.foodallergy.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Agriculture: <http://www.fns.usda.gov>

U.S. Department of Education, Office for Civil Rights: <http://www2.ed.gov/about/offices/list/ocr>

FOOD ALLERGIES/SPECIAL DIETARY NEEDS

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

Definitions

Note: The following definitions are based on Education Code 49414, resources from Food Allergy Research and Education, and guidance from the U.S. Department of Agriculture, Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff.

Special dietary needs include food intolerances, allergies, and other medical needs that may require avoidance of specific foods.

Food allergies are abnormal responses of the body's immune system to certain foods or ingredients.

Anaphylaxis is a potentially life-threatening hypersensitivity to a substance and may be caused by a food allergy. Symptoms may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma. (Education Code 49414)

Epinephrine auto-injector is a disposable drug delivery system with a spring-activated concealed needle that is designed for emergency administration of epinephrine to persons suffering a potentially fatal reaction to anaphylaxis. (Education Code 49414)

Notification by Parent/Guardian

The parents/guardians of any student who has a known food allergy or other special dietary need shall notify the Superintendent or designee, in writing, and provide written medical documentation, signed by the student's health care provider, that describes the nature of the student's condition, instructions, and necessary medications. If the student's condition requires food substitutions or modifications in school meals, the written statement shall also describe the specific foods to be restricted and the foods that should be substituted.

Health Plan

Upon receiving notice of a student's food allergy or other special dietary need, the Superintendent or designee shall ensure that a written health plan is developed, in consultation with the student's parents/guardians and health provider, to manage the student's needs while at school or at a school-sponsored activity. The plan shall seek to minimize the student's risk of exposure to the allergen and address actions to be taken if exposure occurs. As appropriate, the plan may include specific food prohibitions and substitutions, an identification of common school rooms where the student may be exposed, staff

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

responsibilities, information and training to be provided to staff, accommodations and services to facilitate the student's participation in the educational program, and medical/emergency protocols.

Note: Pursuant to Section 504 of the federal Rehabilitation Act (29 USC 794) and the Americans with Disabilities Amendments Act of 2008 (42 USC 12102), a student with a food allergy or food intolerance that substantially limits one or more major life activities may be considered "disabled" and require accommodations, even if his/her allergy is being managed by mitigating measures; see the accompanying Board policy. Thus, in such circumstances the district is obligated to conduct a Section 504 evaluation in accordance with AR 6164.6 - Identification and Evaluation Under Section 504. The U.S. Department of Education's Office for Civil Rights (OCR), in its January 2012 [Dear Colleague Letter](#) and accompanying [Questions and Answers on ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools](#), states that an existing individualized health care plan may be insufficient if it does not comply with current Section 504 requirements for evaluation, placement, and procedural safeguards.

When a student with a food allergy or other special dietary need has been identified as disabled pursuant to Section 504 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act, necessary accommodations and services shall be identified as part of the student's Section 504 services plan or individualized education program, as appropriate.

(cf. 5141.24 - Specialized Health Care Services)

(cf. 6159 - Individualized Education Program)

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

Prevention Strategies

To minimize students' exposure to foods to which they are allergic, the Superintendent or designee shall, at a minimum, implement the following preventive measures:

1. Notification to District Staff

When notified by the parent/guardian that a student has a food allergy, the Superintendent or designee shall inform the student's principal, teacher(s), bus driver, school nurse, coach, and/or any other personnel responsible for supervising the student.

The principal or designee shall notify substitute staff of the identity of any students with known food allergies and the school's response plan.

(cf. 5125 - Student Records)

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

Note: Item #2 below is for use by districts that participate in the federal National School Lunch and/or School Breakfast Program (42 USC 1751-1769h, 1771-1791; 7 CFR 210.1-210.31, 220.1-220.21, 225.16) and may be adapted by other districts. 5 CCR 15562 provides that federal and state meal reimbursements may be claimed for substitutions made due to medical reasons provided that such substitutions are authorized in writing by a health care provider and the authorization is on file at the school.

2. Food Services

The district's food services program shall make food substitutions in breakfasts, lunches, and after-school snacks when students are considered to have a disability under Section 504 that restricts their diet and when a health care provider has signed a statement of need that includes recommended alternate foods. (7 CFR 210.10, 220.8)

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

(cf. 3552 - Summer Meal Program)

(cf. 3554 - Other Food Sales)

(cf. 5030 - Student Wellness)

(cf. 5148.2 - Before/After School Programs)

Substitutions may be made on a case-by-case basis for students who do not have a disability under Section 504 but who cannot consume the regular breakfast, lunch, or after-school snack because of medical or other special dietary needs, when supported by a statement of need signed by a health care provider. (7 CFR 210.10, 220.8, 225.16)

Note: The remainder of item #2 reflects guidance from the U.S. Department of Agriculture, [Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff](#). The guidance clarifies that schools have a responsibility to provide a safe meal to a student when it has been determined that the student's food allergy is disabling, which may require checking food labels or specifications or seeking additional information when the label is insufficient.

The district's food services staff shall check food labels or specifications to ensure that foods do not contain traces of substances to which the student is allergic.

Under no circumstances shall food services staff prescribe nutritional requirements or revise a diet order prescribed by a health care provider.

Food substitutions shall not result in any additional cost to the student.

3. Class Parties/School Activities

Without identifying the student, the principal or teacher may notify parents/guardians of other students in the class that a student is allergic to a specific food and may request that certain foods not be provided at class parties or other school events.

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

Whenever the ingredients in any food served at class parties or other school activities are unknown, the student shall be encouraged to avoid the food.

4. Sanitation and Cleaning

To avoid spreading allergens, cafeteria tables and classroom surfaces shall be cleaned with fresh cloth or disposable paper towels utilizing cleaning products known to effectively remove food proteins, excluding waterless cleaners or instant hand sanitizers that do not involve a wet-wash step. Cross-contact from a sponge or cloth used to clean allergen-containing tabletops shall be avoided.

Staff shall use and promote hand-washing using soap and water before and after food handling.

Students shall be notified that exchanging meals or utensils is prohibited.

5. Professional Development

Schoolwide professional development shall be provided to appropriate staff on the identification and management of food allergies, including avoidance measures, typical symptoms, the proper use of epinephrine auto-injectors, documentation and storage of medication, and emergency drills.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

6. Supervision of Students

When available, staff who are trained and knowledgeable about symptoms of anaphylaxis and actions to take in an emergency shall provide supervision in the classroom and cafeteria, on the playground, and on field trips or other school activities whenever students known to have a food allergy are present.

(cf. 6153 - School-Sponsored Trips)

7. Health Education

The district's health education curriculum may include instruction on food allergies in order to assist food-allergic students in taking responsibility for monitoring their diet and to teach other students about the dangers of sharing foods or utensils with others.

(cf. 6142.8 - Comprehensive Health Education)

FOOD ALLERGIES/SPECIAL DIETARY NEEDS (continued)

Emergency Response

Note: For language regarding a student's ability to carry and self-administer medication, including epinephrine auto-injectors, see BP/AR 5141.21 - Administering Medication and Monitoring Health Conditions.

Pursuant to Education Code 49407, no district, Board member, school principal, health care provider, or hospital treating any child shall be held liable for the reasonable treatment of a child without the consent of a parent/guardian when the child is ill or injured during regular school hours, requires reasonable medical treatment, and the parent/guardian cannot be reached, unless the parent/guardian has previously filed with the school district a written objection to any medical treatment other than first aid.

Epinephrine auto-injectors or other medicine provided for use in the event of an anaphylactic shock reaction shall be stored and used in accordance with law and BP/AR 5141.21 - Administering Medication and Monitoring Health Conditions.

(cf. 4119.43 - Universal Precautions)

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

In addition, staff shall call 911 and seek immediate medical attention for a student experiencing an anaphylactic shock reaction.

(cf. 5141 - Health Care and Emergencies)

As soon as possible, school staff shall contact the student's parents/guardians or other person identified as an emergency contact.

When a student with a known allergy will be off school grounds, such as on a field trip, he/she shall be accompanied by a kit containing at least two doses of epinephrine, other medications as noted by the student's health care provider, and, as appropriate, the student's individualized food allergy plan.

YEAR-ROUND SCHEDULES

Note: The following **optional** policy is for use by districts that operate or are considering the establishment of a year-round calendar in one or more schools, as authorized by Education Code 37610. Like schools on traditional calendar, year-round schools can have 180 days of instruction. However, they maintain a different pattern of instruction and vacations than schools on traditional calendar. While traditional calendar schools have nine months of instruction and three months of vacation during the summer, year-round schools operate on shorter blocks of time for instruction and vacation, such as 60 days of instruction followed by 20 days of vacation. Some year-round schools operate a "multitrack" plan as defined in Education Code 17017.7. Such a program is designed to increase the enrollment capacity of the school by dividing the student body and staff into groups or tracks (usually three to five groups) and rotating attendance so that, at any time during the school year, at least one group or track is on vacation while the other groups are attending school.

Pursuant to Education Code 37693, the multitrack year-round program whereby a school operates on a three-track year-round calendar, with each track offering as few as 163 days of instruction per school year (Concept 6 program), has been eliminated.

The Governing Board believes that a year-round school schedule could benefit the district and its students by providing continuous instruction and reducing learning loss in students over extended vacations, allowing timely interventions to improve academic achievement, and alleviating overcrowding in schools through efficient use of school facilities. The Board shall consider the feasibility of establishing year-round schedules based on current and projected enrollments, facilities needs, and instructional needs.

(cf. 6111 - School Calendar)
(cf. 7110 - Facilities Master Plan)

Before approving a year-round program in any district school, the Board shall consult in good faith, in an effort to reach agreement with certificated and classified employees of the school, parents/guardians of students who would be affected by the change, and the community at large. Such consultation shall include at least one public hearing. (Education Code 37616)

(cf. 0420 - School Plans/Site Councils)
(cf. 4143/4243 - Negotiations/Consultation)
(cf. 9320 - Meetings and Notices)

When the Board is considering a year-round schedule for any school, the Superintendent or designee shall submit to the Board a comprehensive proposal that, at a minimum, shall address the schedule to be operated, the number of tracks the school will have, any needed facilities modifications, a communications system for notifying off-track families of school activities and developments, and how the ethnic and socioeconomic composition of the school will be maintained within each track.

If the Board determines to operate a year-round program in a manner that would require any student to enroll, the Superintendent or designee shall publish, not later than November 1 of

YEAR-ROUND SCHEDULES (continued)

the school year preceding the commencement of the program, notice of the district's intention to operate the program. Such notice shall be published in a newspaper of general circulation within the district, or if there is no such newspaper, then in any newspaper of general circulation that is regularly circulated in the district. The notice shall be published once each week for three successive weeks or, if the newspaper is regularly published once a week or more often, at least three times with at least five days intervening between the respective publication dates not counting the publication dates. (Education Code 37611)

(cf. 5116.1 - Intradistrict Open Enrollment)

Note: Pursuant to Education Code 37612, after the district has published the above notice, residents may request that the school not establish such a schedule by presenting a petition to the County Superintendent of Schools. This petition must be signed by at least 25 percent of the registered voters of the district and be submitted no later than December 10 of the year in which the notice is given. If the County Superintendent finds the petition to be sufficient as required by law, he/she will order a proposition to be placed upon the ballot of the appropriate election as provided in Education Code 37613. Irrespective of whether or not a petition is presented, the Board may request that an election be called and conducted.

On the Board's order, or upon a sufficient petition by the public to the County Superintendent of Schools after the above notice of intention is given by the district, an election shall be called to determine whether to permit a year-round program to be operated. (Education Code 37612)

Note: Education Code 37620 and 41420 establish 175 days of instruction as the minimum requirement to receive full average daily attendance reimbursement. Districts have the ability to increase to 180 days of instruction with longer day or year incentives pursuant to Education Code 46200-46206. The following paragraph provides for 180 days of instruction. Districts that provide fewer than 180 days should modify the following paragraph accordingly.

Each year-round school shall offer 180 days of instruction per school year, except for any school year in which the district and employee organization(s) agree to have fewer days of instruction pursuant to the authorization in Education Code 46201.2. (Education Code 37620)

(cf. 1431 - Waivers)

(cf. 6112 - School Day)

Each school operating on a year-round schedule shall be closed for all students and employees on regular school holidays. (Education Code 37619)

(cf. 6115 - Ceremonies and Observances)

YEAR-ROUND SCHEDULES (continued)

The Superintendent or designee shall annually submit a report to the Board regarding each district school operating a year-round schedule. The report shall include results of the school's academic assessments and how they compare with those of other schools, necessary facilities maintenance or repairs, and costs incurred or saved on account of operating a year-round schedule at the school.

(cf. 0500 - Accountability)

(cf. 0510 - School Accountability Report Card)

(cf. 3460 - Financial Reports and Accountability)

(cf. 3517 - Facilities Inspection)

Assignment to Year-Round Tracks

The Superintendent or designee shall establish an unbiased process for determining assignment of students to tracks based on the following criteria:

1. Students of the same family shall be placed in the same group or track unless one or more of such students are enrolled in a special education class or unless the parent/guardian requests that the students be placed in different groups. (Education Code 37617)

Note: Item #2 below lists **optional** criteria for assigning students to tracks and may be revised to reflect district practice.

2. Assignment based on ability level shall be minimized except when necessary to accommodate special education needs or other specialized programs.

(cf. 6159 - Individualized Education Program)

(cf. 6172 - Gifted and Talented Student Program)

After assignment based on the above priorities, remaining students shall be chosen on a lottery basis when the number of students requesting a particular track exceeds spaces available. Second preferences shall be accommodated to the extent possible.

The Superintendent or designee shall give parents/guardians adequate notice regarding their child's schedule.

Note: The following paragraph is **optional** and may be modified to reflect district practice. In its Year-Round Education Program Guide, the California Department of Education lists an appeal process among track assignment considerations for implementing a year-round educational program.

Any parent/guardian who is dissatisfied with the track assignment of his/her child may appeal the assignment to the Superintendent or designee within five business days, stating

YEAR-ROUND SCHEDULES (continued)

why a different track is more appropriate for his/her child. The Superintendent or designee shall respond to the parent/guardian within five business days. The Superintendent's decision shall be final.

Once students are assigned to a track, priority shall be placed on keeping students on the same track each year unless the parent/guardian requests a change.

Legal Reference:

EDUCATION CODE

17017.5 Approval of applications; year-round education program

17017.6 Substantial enrollment, high school districts

17017.7 Priority for funding new construction

17071.40 Exemption from increase in school building capacity

17088.3 Qualifications for lease; submission of year-round multitrack educational program study

37202 Equity length of term, exceptions

37220-37223 Saturdays and holidays

37600-37644 Continuous school programs

37670-37672 Multi-track year round scheduling

41420 Minimum number of instructional days per year

42250.1 Funding for air conditioning

46200-46206 Incentives for longer instructional day and year

CODE OF REGULATIONS, TITLE 5

855 Testing period

884 Primary language testing period

14030 School housing standards for multitrack programs

Management Resources:

WEB SITES

California Department of Education, Multitrack Year-Round Education:

<http://www.cde.ca.gov/ls/fa/yr>

National Association for Year-Round Education: <http://www.nayre.org>

CONTROVERSIAL ISSUES

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

The Governing Board recognizes that the district's educational program may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. Instruction concerning such topics shall be relevant to the adopted course of study and curricular goals and should be designed to develop students' critical thinking skills, ability to discriminate between fact and opinion, respect for others, and understanding and tolerance of diverse points of view.

(cf. 6141.2 - Recognition of Religious Beliefs and Customs)
(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)
(cf. 6142.3 - Civic Education)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6142.94 - History-Social Science Instruction)
(cf. 6143 - Courses of Study)

Note: District criteria for determining the appropriateness of supplementary instructional materials and/or circumstances under which materials should be submitted to the principal or other designee for review prior to their use (e.g., when materials relate to controversial issues or are presented in a controversial manner or context, such as when materials contain nudity, sexual content, graphic violence, or extensive profanity) are addressed in BP 6161.11 - Supplementary Instructional Materials.

The Board expects administrators and teachers to exercise professional judgment when deciding whether or not a particular issue is suitable for study or discussion. They shall consult with the Superintendent or designee as necessary to determine the appropriateness of the subject matter, guest speakers, and/or related instructional materials or resources.

(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6161.11 - Supplementary Instructional Materials)

When providing instruction related to a controversial issue, the following guidelines shall apply:

1. The topic shall be suitable to the age and maturity of the students.
2. Instruction shall be presented in a balanced manner, addressing all sides of the issue without bias or prejudice and without promoting any particular point of view.
3. The teacher may express a personal opinion provided he/she identifies it as a personal opinion and clarifies that he/she is not speaking on behalf of the school or district. The teacher shall not express an opinion for the purpose of persuading students to his/her point of view.

CONTROVERSIAL ISSUES (continued)

4. No student's viewpoint shall be suppressed, provided such expression is not malicious or abusive toward others. Students shall be assured of their right to form and express an opinion without jeopardizing their relationship with the teacher or school.

(cf. 5022 - Student and Family Privacy Rights)
(cf. 5145.2 - Freedom of Speech/Expression)
(cf. 6145.5 - Student Organizations and Equal Access)

5. Students shall be informed of conduct expected during such instruction and the importance of being courteous and respectful of the opinions of others.

(cf. 5131 - Conduct)
(cf. 5131.2 - Bullying)
(cf. 5137 - Positive School Climate)

6. Adequate factual information shall be provided to help students objectively analyze and evaluate the issue and draw their own conclusions.

7. The instruction shall not reflect adversely upon persons because of their race, ethnicity, national origin, sex, sexual orientation, gender identity or expression, disability, religion, or any other basis prohibited by law.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.9 - Hate-Motivated Behavior)

8. The subject matter of the instruction shall not otherwise be prohibited by state or federal law.

When a guest speaker is invited to make a presentation related to a controversial issue, the Board requires that he/she be notified of this policy and the expectations and goals regarding the instruction. If the guest speaker is presenting only one point of view on an issue, the teacher shall be responsible for ensuring that students also receive information on opposing viewpoints.

(cf. 6145.8 - Assemblies and Special Events)

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| <p>Note: Pursuant to Education Code 51938, districts must notify parents/guardians of any sexual health and HIV/AIDS prevention instruction and of the opportunity to request that their child not receive the instruction; see BP/AR 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction. The following</p> |
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CONTROVERSIAL ISSUES (continued)

optional paragraph provides that, at the discretion of the teacher or other designated staff, parents/guardians may be notified and asked to give consent for their child's participation in instruction related to other controversial issues.

When required by law or otherwise deemed appropriate by the teacher or administrator, parents/guardians shall be notified prior to instruction related to any controversial issue and parent/guardian consent shall be obtained for student participation. Students whose parents/guardians decline such instruction may be offered the option to participate in an alternative activity of similar value.

A student or parent/guardian with concerns regarding instruction about controversial issues shall be directed to appropriate district complaint procedures.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.2 - Complaints Concerning Instructional Materials)

Legal Reference:

EDUCATION CODE

220 Prohibition of discrimination

51500 Prohibited instruction or activity

51510 Prohibited study or supplemental materials

51511 Religious matters properly included in courses of study

51530 Prohibition and definition regarding advocating or teaching communism with intent to indoctrinate

51933 Sex education courses

51938 Right of parent/guardian to excuse child from sexual health instruction

60040 Portrayal of cultural and racial diversity

60044 Prohibited instructional materials

60045 Criteria for instructional materials

USE OF COPYRIGHTED MATERIALS

Note: 17 USC 106 grants a copyright owner the exclusive rights to reproduce, distribute, make derivative works of, publicly perform, or publicly display the copyrighted work or to authorize others to do so. The district should be aware that materials subject to copyright protection need not be registered with the U.S. Copyright Office to be subject to federal intellectual property protection.

However, pursuant to 17 USC 107, "fair use" (i.e., the reproduction of limited portions of copyrighted materials without the copyright owner's permission) is allowed for such purposes as criticism, comment, news reporting, teaching, scholarship, or research. Factors to be included in determining whether a particular use constitutes "fair use" include: (1) the purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. In Campbell v. Acuff-Rose Music, Inc. and Cambridge University Press et al. v. Becker et al., the courts reaffirmed that the four factors must be weighed together, not in isolation, on a case-by-case basis and that 17 USC 107 does not exclude consideration of other factors.

Other exceptions exist for schools, including library reproduction and archiving (17 USC 108); first sale (17 USC 109); and classroom performance, display, and distance education (17 USC 110). In addition, materials that are in the "public domain" (i.e., materials that are ineligible for copyright or have an expired copyright) may be freely used. Determination of whether a material is in the public domain depends on the date of the original copyright and other factors; see the U.S. Copyright Office web site and University of California Copyright Education web site.

Because of the complexity of these laws, the district should consult with legal counsel as necessary.

The Governing Board recognizes that district staff and students may use a variety of copyrighted materials in the educational program and other district operations. When such materials have not been purchased by the district for the intended use, the Board expects staff and students to respect the protections afforded by federal law to the copyright owners of those materials and respect any limitations by the copyright holder to the license of such materials.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 4040 - Employee Use of Technology)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4132/4232/4332 - Publication or Creation of Materials)
(cf. 5131.9 - Academic Honesty)
(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6161.11 - Supplementary Instructional Materials)
(cf. 6163.1 - Library Media Centers)

Note: Pursuant to 17 USC 102, copyright protection exists for works in the categories listed below and applies to works in "any tangible medium of expression, now known or later developed." Thus, most works available on the Internet or distributed electronically are protected by copyright, including images, text, logos, software, sounds, movie clips, email, and postings to newsgroups. Like other works, material found on the Internet may not be copied unless permission is given by the copyright holder or the use conforms to a recognized exception, such as "fair use" as described above.

USE OF COPYRIGHTED MATERIALS (continued)

Any literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual or motion picture, sound, architectural, or other original work shall be assumed to be a copyrighted work, regardless of whether the work appears in print, audio, video, electronic, or other fixed and tangible form.

Before reproducing a copyrighted material for instructional or other district purposes, a staff member shall determine if the material is in the public domain or if the intended use of the material meets the criteria for fair use or another exception pursuant to 17 USC 107-122. If the material is not in the public domain or no recognized exception applies, the staff member shall seek permission of the copyright holder before using the material.

The Superintendent or designee shall inform staff that inclusion of an attribution citing the author and source of a copyrighted material does not absolve the staff member from the responsibility to either obtain permission or satisfy criteria for fair use or another exception.

If a staff member is uncertain as to whether the intended use of the material meets the criteria for fair use or another exception, he/she shall take the safest course and seek permission from the copyright holder to use the material or, if it is impracticable to obtain permission, shall contact the Superintendent or designee for clarification and assistance.

Students shall not copy or distribute copyrighted works to others. Staff members shall take reasonable precautions to prevent copying or the use of unauthorized copies on school equipment.

(cf. 3300 - Expenditures and Purchases)

(cf. 3312 - Contracts)

(cf. 6163.4 - Student Use of Technology)

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| <p>Note: The following optional paragraph may be revised to reflect district practice. Among the factors considered by the court in <u>Cambridge University Press et al. v. Becker et al.</u> was the extent to which faculty had been trained in implementation of the university's copyright policy. Although the university had offered a one-hour training, it was perceived as voluntary and some faculty who were later accused of copyright infringement had not attended the session.</p> |
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The Superintendent or designee shall ensure that staff and students receive information and training about copyright laws and the penalties for violating such laws.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Legal Reference: (see next page)

USE OF COPYRIGHTED MATERIALS (continued)

Legal Reference:

EDUCATION CODE

35182 *Computer software*

UNITED STATES CODE, TITLE 17

101-122 *Subject matter and scope of copyright, especially:*

102 *Definitions*

106 *Copyright protection*

107 *Fair use of copyrighted works*

110 *Limitations on exclusive rights: Exemption of certain performances and displays*

504 *Penalties for copyright infringement*

COURT DECISIONS

Cambridge University Press et al. v. Becker et al. (N.D. Ga. 2012) 863 F.Supp.2d 1190

Campbell v. Acuff-Rose Music, Inc., (1994) 510 U.S. 569

Marcus v. Rowley, (9th Cir., 1982) 695 F.2d 1171

Management Resources:

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Copyright Law: Do Schools Need a License to Show a Movie?, *School Law Review*, July 2010

U.S. COPYRIGHT OFFICE PUBLICATIONS

Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, rev. 2009

Circular 22: How to Investigate the Copyright Status of a Work, rev. 2013

Circular 23: The Copyright Card Catalog and the Online Files of the Copyright Office, rev. 2012

WEB SITES

Copyright Society of the USA: <http://www.csusa.org>

National School Boards Association: <http://www.nsba.org>

University of California, Copyright Education:

<http://copyright.universityofcalifornia.edu/usingcopyrightedworks.html>

U.S. Copyright Office: <http://www.copyright.gov>

USE OF COPYRIGHTED MATERIALS

Note: Pursuant to 17 USC 101-122, district staff must seek permission from the copyright owner to reproduce and distribute a copyrighted work, except when the material is in the public domain or the use meets the criteria for an exception specified in 17 USC 107-122. Exceptions applicable to schools include "fair use" (17 USC 107); library reproduction and archiving (17 USC 108); first sale (17 USC 109); and classroom performance, display, and distance education (17 USC 110).

Prior to reproducing, distributing, displaying, posting, performing, or otherwise using a copyrighted material for an instructional purpose or in the course of other district business, district staff shall determine whether it is necessary to request permission of the copyright holder. Unless the staff member is reasonably certain that the material is in the public domain or the intended use meets the criteria for an exception specified in 17 USC 107-122 and this administrative regulation, he/she shall either obtain permission from the copyright holder or avoid use of the material. In addition, permission of the copyright holder shall be requested whenever district staff intend to publicly disseminate a copyrighted work, such as by posting on the district or school web site or using another method of communications accessible to the public.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 4040 - Employee Use of Technology)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4132/4232/4332 - Publication or Creation of Materials)
(cf. 5131.9 - Academic Honesty)
(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6161.11 - Supplementary Instructional Materials)
(cf. 6163.1 - Library Media Centers)

Any reproduction or other use of a copyrighted work shall include the copyright notice.

District staff shall not reproduce and distribute copyrighted works of any type in any of the following circumstances:

1. When the copyrighted work is a "consumable" work such as a workbook, standardized test, answer sheet, or similar material
2. To substitute for the purchase of the work
3. To create, replace, or substitute for anthologies or collective works

Request for Permission to Use Copyrighted Material

Note: Determining the owner of a copyright can sometimes be difficult because the author or creator of a work is not required to register a copyright or affix a copyright notice to the work. Once a work is created and fixed in a tangible form, it is protected by federal copyright law. To find the holder of a copyright, it may be necessary to conduct a search through the U.S. Copyright Office or request information from the author or publisher of the work. For information about copyright searches, see U.S. Copyright Office publications [Circular 22: How to Investigate and Copyright Status of a Work](#) and [Circular 23: The Copyright Card Catalog and the Online Files of the Copyright Office](#).

USE OF COPYRIGHTED MATERIALS (continued)

As necessary, district staff desiring to use a copyrighted material shall identify and contact the copyright holder to request permission to use the material. The request shall include the following information:

1. Title, author(s), editor(s) or publisher, producer(s) or distributor
2. Edition, copyright, and/or production year
3. Exact amount of material to be used, such as the number of lines, pages, or chapters or percentage of the work
4. Nature of the use, such as the course in which it will be used, the grade level of the students, the number of students, and the frequency of use
5. How the material will be reproduced and distributed

If the copyright holder requires a fee to grant permission, district staff shall seek approval from the Superintendent or designee prior to incurring the cost.

Criteria for Fair Use

Note: Pursuant to 17 USC 107, limited portions of copyrighted materials may be reproduced without the copyright owner's permission when the intended use meets the criteria of "fair use." In determining whether the use of a copyrighted material is fair use, the courts have weighed together all four factors specified in 17 USC 107, as described in the following section. Courts have concluded that no individual factor is sufficient by itself; rather, the determination of fair use requires a complex analysis of the interaction of all four factors. District legal counsel should be consulted as needed.

In considering whether a copyrighted work may be used without the copyright holder's permission on the grounds that the intended use is "fair use" pursuant to 17 USC 107, including reproduction in copies, phonorecords, or any other reproductive form for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, district staff shall consider all of the following factors: (17 USC 107)

Note: Although nonprofit educational purposes are granted consideration in determining fair use pursuant to 17 USC 107 (item #1 below), the U.S. Supreme Court in Campbell v. Acuff-Rose Music, Inc., emphasized that a nonprofit educational purpose alone does not automatically ensure fair use.

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes

USE OF COPYRIGHTED MATERIALS (continued)

Note: In weighing the impact of the nature of the copyrighted work (item #2 below), the court in Campbell v. Acuff-Rose Music, Inc. noted that the more creative a work (e.g., fiction), the more protection from copying it should be accorded, whereas more informational or functional works should, as a general rule, receive less protection.

2. The nature of the copyrighted work

Note: The third factor specified in 17 USC 107, as provided in item #3 below, requires consideration of both the amount copied in relation to the overall work and whether the excerpt is a "critical part" of the work. The court in Cambridge University Press et al. v. Becker et al. concluded that copying of no more than 10 percent of the pages in the book, when almost none of those pages bore a close relationship to the book as a whole, was permissible under the third factor of fair use.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Note: Pursuant to 17 USC 107, any fair use of the copyrighted work based on items #1-3 above must be balanced with the financial harm that the use would have on the potential market or value of the work. In Cambridge University Press et al. v. Becker et al., the court held that an identical copy of the work, especially a larger excerpt, is more likely to substitute for the work and reduce its value, whereas a 10 percent excerpt would not substitute for the original no matter how many copies were made. In this case, it was found that materials were used under carefully monitored circumstances, with a password required for digital access and access being terminated at the end of the semester, thereby reducing the risk of the materials being exposed to persons other than the students in the class.

4. The effect of the use upon the potential market for or value of the copyrighted work

Note: Although fair use cannot be determined solely on the basis of the number of words, pages, or chapters reproduced or the percentage of the excerpt in relation to the whole (item #3 above), stakeholder groups have agreed upon some nonbinding minimum guidelines which are included in the U.S. Copyright Office's Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, available on its web site. The remainder of this administrative regulation reflects these guidelines; however, district staff must consider all four factors specified in 17 USC 107 prior to using a copyrighted material without permission.

Any determination of fair use shall weigh together all the factors specified in items #1-4 above in addition to any applicable guidelines presented in this administrative regulation for specific types of copyrighted works.

Guidelines for Copying Text

Note: The following section reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: Reproduction of Copyrighted Works by Educators and Librarians. Although the guidelines do not address the use of copyrighted works available on the Internet or through other technological resources, it is generally accepted that the use of such copyrighted works would follow the same guidelines established for other fixed and tangible works. Thus, the following section applies to any copyrighted text regardless of its source or format. The district should consult legal counsel as necessary.

USE OF COPYRIGHTED MATERIALS (continued)

Staff may reproduce text from a copyrighted work from a printed resource, the Internet, or other source, without permission from the copyright holder, under the following conditions:

1. A single copy of a chapter of a book, article from a periodical or newspaper, short story, short essay, short poem, chart, graph, diagram, drawing, cartoon, or picture may be made by or for a teacher for his/her scholarly research or use in teaching or preparation to teach a class.
2. Multiple copies, not to exceed one copy per student in a course, may be made by or for a teacher for classroom use or discussion, provided that:
 - a. The amount to be copied does not exceed:
 - (1) 250 words for a complete poem or excerpt from a poem
 - (2) 2,500 words for a complete article, story, or essay
 - (3) 1,000 words or 10 percent of the whole (with a minimum of 500 words), whichever is less, for an excerpt from a larger prose work
 - (4) One illustration (e.g., chart, graph, diagram, cartoon, or picture) per book or periodical issue
 - b. The copying is for only one course in the school.
 - c. With the exception of newspapers and other news periodicals, not more than one work is copied from the same author per term, not more than three works are copied from the same collective work or periodical volume per term, and there are no more than nine instances of multiple copying per course per term.
 - d. A delay to request permission from the copyright holder would preclude the most effective instructional use of the material.

Guidelines for Reproducing Sheet and Recorded Music

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| Note: The following section reflects nonbinding guidelines included in the U.S. Copyright Office's <u>Circular 21: Reproduction of Copyrighted Works by Educators and Librarians</u> . |
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District staff may reproduce sheet music and recorded music without permission from the copyright holder under the following conditions:

USE OF COPYRIGHTED MATERIALS (continued)

1. Emergency copies may be made when purchased copies needed for an imminent performance are not available, provided that replacement copies shall be purchased in due course.
2. Single or multiple copies of excerpts of works may be made for academic purposes other than performances, provided that the excerpt does not constitute an entire performable unit (e.g., a section, movement, or aria), no more than 10 percent of the total work is used, and the number of copies made does not exceed one per student.
3. Printed copies that have been purchased may be edited or simplified provided that the character of the work is not distorted and lyrics are not added or altered.
4. A single copy of a recorded performance by students may be made for evaluation or rehearsal purposes.
5. A single copy of recordings of copyrighted music owned by the district or individual teacher may be made for the purpose of constructing exercises or examinations.

Guidelines for Performing or Displaying Copyrighted Works

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| <p>Note: Pursuant to 17 USC 101, the holder of a copyright for a motion picture or other audiovisual work retains exclusive rights for public performances of the work (i.e., exhibitions outside of one's home to a normal circle of family and social acquaintances), except that 17 USC 110 provides an exception for performance or display of the work in face-to-face instruction. In such circumstances, it is not necessary to conduct an analysis of fair use nor obtain permission of the copyright holder. Pursuant to 17 USC 110, this exception only applies if the district (1) institutes a policy regarding copyright; (2) provides informational materials on federal copyright laws to students, teachers, and other relevant staff; and (3) provides notice to students that materials used in connection with the course may be subject to copyright protection.</p> |
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In the course of face-to-face instruction in a classroom or similar place devoted to instruction, teachers or students may recite, render, play, dance, act, or show a copyrighted work either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, show its images in any sequence or to make the sounds accompanying it audible, provided that: (17 USC 101, 110)

1. The performance or display is given by means of a lawfully obtained copy of the work.
2. The performance or display is made by, at the direction of, or under the actual supervision of a teacher as an integral part of a class session.
3. The performance or display is directly related and of material assistance to the teaching content of the transmission.

USE OF COPYRIGHTED MATERIALS (continued)

4. The transmission is limited to students enrolled in the course or to Governing Board members or employees as part of their official duties or employment.
5. If the work is to be digitally transmitted, the district has applied technological protections that reasonably prevent retention of the work in accessible form for longer than the class session and the unauthorized further dissemination of the work.

Note: 17 USC 110 addresses reasonable pedagogical purposes for showing films or other audiovisual works. According to the National School Boards Association's publication Copyright Law: Do Schools Need a License to Show a Movie?, any use of a motion picture outside the curriculum (e.g., to reward students for good behavior or to host a movie night to encourage parent and community engagement) does not meet the above criteria and therefore would require the school to obtain a special viewing license. The publication also presents information about how to obtain a one-time license or a blanket license for showing an unlimited number of movies.

Any use of a motion picture or other audiovisual work outside the curriculum, such as for entertainment, a school or class reward, or a fundraiser, shall require permission from the copyright holder or a special viewing license.

Guidelines for Recording Broadcast Programming

Note: The following section reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: Reproduction of Copyrighted Works by Educators and Librarians for fair use of off-air recording of free television programming. Although the guidelines do not address radio broadcasts, it may be assumed that similar guidelines would apply. Legal counsel should be consulted as necessary.

Teachers may make recordings of television programs for use in a classroom for educational purposes under the following conditions:

1. Only programs provided to the public free of charge may be recorded and shown. Any use of programming from paid television services shall require permission of the copyright holder.
2. The recording may be shown only during the first 10 consecutive school days after it is made. It may be used once by an individual teacher in the course of relevant teaching activities and may be repeated once only when instructional reinforcement is necessary.
3. A limited number of copies may be reproduced from each recording to meet the legitimate needs of the teacher. Each copy shall be subject to all the provisions governing the original recording.

USE OF COPYRIGHTED MATERIALS (continued)

4. The recording may be retained for 45 calendar days after it is made and then shall be erased or destroyed. However, after the first 10 consecutive school days, the recording may only be used for purposes of determining whether or not to include the broadcast program in the teaching curriculum. If the teacher decides to keep the program for use in the curriculum, he/she shall request permission from the copyright owner.
5. Off-air recordings need not be used in their entirety, but the content of recorded programs may not be altered.

Guidelines for Copying Computer Programs or Software

District staff shall observe all licensing agreements between vendors and the district, including monitoring the number of users permitted by an agreement. Unless the applicable licensing agreement authorizes multiple users of a single computer program or software, the district shall not make multiple copies.

Copies of district-owned software may be made under either of the following conditions: (17 USC 117)

1. The copy is needed as an essential step in using the computer program with a particular machine.
2. The copy is used for archival or "backup" purposes only. This copy may be held only as a file copy and must be destroyed in the event that continued possession of the program ceases to be rightful, unless the copyright owner authorizes its sale, lease, or transfer as part of the sale, lease, or transfer of the original program.

PUBLIC STATEMENTS

Note: Pursuant to Government Code 54960, the district attorney or any interested person can sue the Governing Board in order to stop or prevent violations of the Brown Act or to determine whether any Board rule or action which penalizes or otherwise discourages the expression of one or more of its members is valid or invalid under law. The following **optional** bylaw may be modified as appropriate.

The Governing Board recognizes the responsibility of Board members in their role as community leaders to participate in public discourse on matters of civic or community interest, including those involving the district, and their right to freely express their personal views. However, to ensure communication of a consistent, unified message regarding district issues, Board members are expected to respect the authority of the Board to choose its representatives to communicate its positions and to abide by established protocols.

Note: Many districts designate the Board president and/or Superintendent to communicate with the public on behalf of the district. Any district that has designated another position for this responsibility may revise the following paragraph to reflect district practice.

All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.

(cf. 2110 - Superintendent Responsibilities and Duties)
(cf. 9121 - President)
(cf. 9200 - Limits of Board Member Authority)

When speaking for the district, the Board encourages its spokespersons to exercise restraint and tact and to communicate the message in a manner that promotes public confidence in the Board's leadership.

Board spokespersons shall not disclose confidential information or information received in closed session except when authorized by a majority of the Board. (Government Code 54963)

(cf. 9005 - Governance Standards)
(cf. 9011 - Disclosure of Confidential/Privileged Information)

When speaking to community groups, members of the public, or the media, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.

(cf. 1100 - Communication with the Public)
(cf. 1112 - Media Relations)

In addition, the Board encourages members who participate on social networking sites, blogs, or other discussion or informational sites to conduct themselves in a respectful, courteous,

PUBLIC STATEMENTS

and professional manner and to model good behavior for district students and the community. Such electronic communications are subject to the same standards and protocols established for other forms of communication, and the disclosure requirements of the California Public Records Act may likewise apply to them.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 1340 - Access to District Records)
(cf. 9012 - Board Member Electronic Communications)

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

GOVERNMENT CODE

6250-6270 California Public Records Act

54960 Actions to stop or prevent violation of meeting provisions

54963 Confidential information in closed session

Management Resources:

WEB SITES

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

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS

Compensation

Note: Education Code 35120 authorizes Governing Board members to receive compensation for their services, with a maximum amount prescribed based on the district's average daily attendance (ADA) for the prior school year.

The district should select the appropriate option below. If the Board selects Option 1, it may, at its discretion, revise the paragraph to reflect the maximum amount applicable to its ADA. If the Board elects to receive less than the maximum amount provided in law, it should select Option 2 and specify the amount.

OPTION 1: Each member of the Governing Board may receive the maximum monthly compensation as provided for in Education Code 35120.

OPTION 2: Each member of the Governing Board may receive a monthly compensation of \$ _____. (Education Code 35120)

OPTION 3: The members of the Governing Board view their Board service as a voluntary contribution to the community and elect not to receive the compensation to which they are entitled pursuant to Education Code 35120.

Note: The remainder of this section is for use by districts that selected Option 1 or 2 above.

On an annual basis, the Board may increase the compensation of Board members beyond the limit delineated in Education Code 35120 in an amount not to exceed five percent based on the present monthly rate of compensation. (Education Code 35120)

Board members are not required to accept payment for meetings attended.

Any member who does not attend all Board meetings during the month is eligible to receive only a percentage of the monthly compensation equal to the percentage of meetings he/she attended, unless otherwise authorized by the Board in accordance with law. (Education Code 35120)

Note: Pursuant to Education Code 35120, the Board may adopt a resolution authorizing a Board member to be compensated for meetings he/she missed under specified circumstances. See the accompanying exhibit for a sample resolution.

A member may be compensated for meetings he/she missed when the Board, by resolution, finds that he/she was performing designated services for the district at the time of the meeting or that he/she was absent because of illness, jury duty, or a hardship deemed acceptable by the Board. (Education Code 35120)

Student Board members shall receive no compensation for meetings attended. (Education Code 35012)

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

(cf. 9150 - Student Board Members)

Note: The following **optional** paragraph is for use by any board whose quorum also serves as another legislative body that receives additional compensation. Pursuant to Government Code 54952.3, the disclosure requirements described below are not applicable if the compensation of the legislative body is set by statute.

Whenever a quorum of Board members serves as another legislative body which will meet simultaneously or in serial order to a Board meeting, the Board clerk or a member of the Board shall verbally announce the amount of any additional compensation or stipend that each member will be entitled to receive as a result of convening the simultaneous or serial meeting. (Government Code 54952.3)

Reimbursement of Expenses

Note: The district is allowed to reimburse Board members for expenses incurred when performing district business. Pursuant to Government Code 8314, it is unlawful for any elected official to use or permit others to use public resources for personal purposes which are not authorized by law. As defined, "personal purposes" include activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to agency business, but do not include the incidental and minimal use of public resources (e.g., equipment or office space) for personal purposes, including an occasional telephone call.

Board members shall be reimbursed for actual and necessary expenses incurred when performing authorized services for the district. Expenses for travel, telephone, business meals, or other authorized purposes shall be in accordance with policies established for district personnel and at the same rate of reimbursement.

(cf. 1160 - Political Processes)

(cf. 3100 - Budget)

(cf. 3350 - Travel Expenses)

(cf. 3513.1 - Cellular Phone Reimbursement)

Note: Education Code 35044 authorizes reimbursement for Board members for travel expenses incurred when performing services directed by the Board. If the district wishes to require prior Board approval for travel and/or for certain kinds of trips (e.g., out-of-state travel), it should modify the following paragraph accordingly.

Board members shall be reimbursed for travel expenses incurred when performing services directed by the Board. (Education Code 35044)

(cf. 9240 - Board Development)

Note: The remainder of this section is **optional** and may be revised to reflect district practice.

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

Authorized purposes may include, but are not limited to, attendance at educational seminars or conferences designed to improve Board members' skills and knowledge; participation in regional, state, or national organizations whose activities affect the district's interests; attendance at district or community events; and meetings with state or federal officials on issues of community concern.

Personal expenses shall be the responsibility of individual Board members. Personal expenses include, but are not limited to, the personal portion of any trip, tips or gratuities, alcohol, entertainment, laundry, expenses of any family member who is accompanying the Board member on district-related business, personal use of an automobile, and personal losses and traffic violation fees incurred while on district business.

Any questions regarding the propriety of a particular type of expense should be resolved by the Superintendent or designee before the expense is incurred.

Note: The following **optional** paragraph should be deleted if the district does not issue credit cards to Board members. A policy statement issued by the Institute for Local Government, although primarily applicable to city and county governments, indicates that many local agencies have decided not to issue credit cards to local officials because of the potential for confusing an agency credit card with a personal card and the negative consequences of personal use of an agency card.

Board members may use district-issued credit cards while on official district business and consistent with the limits established for district personnel. Personal expenses shall not be charged on a district-issued credit card, even if the Board member intends to subsequently reimburse the district for the personal charges.

Health and Welfare Benefits for Current Board Members

Note: The following section is **optional**. The district has the option of providing health and welfare benefits to Board members pursuant to Government Code 53201 and 53205 and has flexibility in selecting the types of coverage and the methods of payment for such coverage. Pursuant to Government Code 53200, health and welfare benefits may include, but are not limited to, hospital, medical, surgical, dental, disability, group life, legal expense, and income protection insurance or benefits. However, Internal Revenue Service Publication 571 indicates that, as elected officials, Board members are not eligible to participate in district programs for the purchase of tax sheltered annuities pursuant to 26 USC 403 and 26 CFR 1.403(b)-2.

Pursuant to Government Code 53208.5, the health and welfare benefits of a Board member can be no greater than that received by nonsafety employees of the district or, if the district has different benefit structures, no greater than the most generous schedule of benefits being received by any category of nonsafety employees. Nonsafety employees are those employees not otherwise included in Government Code 20420-20445 defining "safety members" for purposes of membership in the Public Employees' Retirement System. Government Code 53208.5 also provides that Board members shall not be eligible to accrue multiple health and welfare benefits from two or more public agencies for concurrent service, unless the Board member serves as a regular full-time employee in a separate public agency.

Government Code 53202 authorizes the district to contract with one or more insurers, health service

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

organizations, or legal service organizations for health and welfare benefits. Alternatively, the district may approve an existing health care arrangement between a Board member and an insurer or health care provider. In 83 Ops.Cal.Atty.Gen. 124 (2000), the Attorney General opined that, if the district chooses to approve such an arrangement, the district may pay for this benefit by way of reimbursement to the Board member who has paid for the benefit instead of direct district payment to the insurer. However, according to the Attorney General, a district may not make cash payments to Board members in lieu of providing them with health insurance benefits.

Board members may participate in the health and welfare benefits program provided for district employees.

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

Health and welfare benefits for Board members shall be no greater than that received by the district's nonsafety employees with the most generous schedule of benefits. (Government Code 53208.5)

Note: The district may choose and/or revise any of the following options to reflect district practice.

OPTION 1: The district shall pay the premiums required for Board members electing to participate in the district health and welfare benefits program to the same extent that it pays for district employees.

OPTION 2: Board members who elect to participate shall pay the full cost of premiums.

OPTION 3: The district shall pay \$_____ as a reimbursement for costs of approved health plans that have been paid by Board members.

Note: The following **optional** paragraph is for use by districts that choose to pay all or a portion of premiums, dues, or other charges for health and welfare benefits for a Board member's spouse or dependent children, as authorized by Government Code 53205.1. The district may revise the paragraph to specify a different portion of payment.

Pursuant to Family Code 297.5, registered domestic partners have the same rights, protections, and benefits as spouses under California law. Therefore, to the extent that the district provides health benefits under state law to spouses of Board members, the same coverage must be provided to registered domestic partners.

Pursuant to Health and Safety Code 1373 and Insurance Code 10277, the age at which a person ceases to be a dependent child is age 26 years or higher as specified in the health plan, unless otherwise provided under a plan that qualifies as a grandfathered plan pursuant to 42 USC 18011. In addition, a health services plan or insurer is required to continue coverage for a dependent child who attains the age specified in the plan if he/she is incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition and is chiefly dependent on the subscriber or insured for support. Health and Safety Code 1373 and Insurance Code 10277 also require that, if the plan provides coverage for a dependent child who is over age 26 and enrolled at a secondary or postsecondary educational institution, continued coverage must be provided during any break in the school calendar and during a medical leave of absence as specified.

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

Health and welfare benefits provided to Board members shall be extended at the same level to their spouse/registered domestic partner and to their eligible dependent children as specified in law and the health plan.

Health and Welfare Benefits for Former Board Members

Note: The following section is **optional**. Government Code 53201 authorizes the district to pay premiums for health and welfare benefits for former Board members under the limited circumstances described below. Any district that does not offer benefits to former Board members should delete this entire section.

Former Board members may participate in the health and welfare benefits program provided for district employees under the conditions specified below.

Note: Government Code 53208.5 provides that Board members may not receive benefits greater than those provided to district employees, as provided below. Thus, if a district's collective bargaining agreement specifies that employee eligibility for benefits terminates at age 65, then Board member benefits will also terminate at that time. Districts with such circumstances may expand the following paragraph to indicate the limits of the benefits.

Health and welfare benefits for former Board members shall be no greater than those received by district nonsafety employees with the most generous schedule of benefits. (Government Code 53208.5)

Note: Pursuant to Government Code 53201, a district may pay premiums for health and welfare benefits for former Board members only if all of the following conditions are satisfied: (1) the district paid for benefits for former Board members before January 1, 1994; (2) the former Board member served in office after January 1, 1981; (3) the former Board member's term began before January 1, 1995; and (4) the former Board member served for 12 or more years. If the district did not pay benefits for former Board members before January 1, 1994, benefits may be provided to former Board members **only** on a self-pay basis, even if a former member has served in office for the requisite amount of time.

In Thorning v. Hollister School District, the court of appeal ruled that a board policy adopted during the board member's term of office has the effect of vesting him/her with those benefits and that the board cannot subsequently unilaterally withdraw those benefits from those board members.

Option 1 below is for use only by districts that paid health and welfare benefits for former board members before January 1, 1994 and choose to continue to do so. Option 2 is for use by districts that are either ineligible to pay for such benefits because they did not pay for former board member benefits before January 1, 1994, have no qualified board members, or choose not to pay for such benefits.

Because this is a complex area of law, it is strongly recommended that the district consult with legal counsel before offering paid health benefits to former Board members.

OPTION 1: (Benefits paid by district)

The district shall pay the premiums for health and welfare benefits of any former Board member who served in office after January 1, 1981, began his/her term before January 1, 1995, and has served for 12 or more years. (Government Code 53201)

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

Note: The following paragraph is **optional**. If the district allows Board members elected on or after January 1, 1995 to continue benefits at their own expense after leaving service, as authorized by Government Code 53201, it may revise the following paragraph to require more than one term of service at its discretion.

Any other former Board member who served at least one term may participate in the health and welfare benefits program at his/her own expense if coverage is in effect at the time he/she leaves office. (Government Code 53201)

OPTION 2: (Benefits paid by former Board member)

Note: At its discretion, the Board may revise the following paragraph to require more than one term of office.

Any former Board member leaving the Board after at least one term of office may participate in the health and welfare benefits program at his/her own expense if coverage is in effect at the time of retirement. (Government Code 53201)

Note: The following **optional** paragraph is for use by all districts. Government Code 53205.1 authorizes the district to fund health and welfare benefits for spouses and dependent children of former Board members.

Health and welfare benefits provided to a former Board member shall be extended, at his/her expense and at the same level, to his/her spouse/registered domestic partner and eligible dependent children as specified in law and the health plan.

Legal Reference:

EDUCATION CODE

33050-33053 *General waiver authority*

33362-33363 *Reimbursement of expenses for attendance at workshops*

35012 *Board members; number, election and term*

35044 *Payment of traveling expenses of representatives of board*

35120 *Compensation for services as member of governing board*

35172 *Promotional activities*

44038 *Cash deposits for transportation purchased on credit*

FAMILY CODE

297-297.5 *Rights, protections and benefits under law; registered domestic partners*

GOVERNMENT CODE

8314 *Use of public resources*

20322 *Elective officers; election to become member*

Legal Reference continued: (see next page)

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS (continued)

Legal Reference continued:

GOVERNMENT CODE (continued)

20420-20445 *Membership in Public Employees' Retirement System; definition of safety employees*

53200-53209 *Group insurance*

54952.3 *Simultaneous or serial meetings; announcement of compensation*

HEALTH AND SAFETY CODE

1373 *Health services plan, coverage for dependent children*

INSURANCE CODE

10277-10278 *Group and individual health insurance, coverage for dependent children*

UNITED STATES CODE, TITLE 26

403 *Tax-sheltered annuities*

UNITED STATES CODE, TITLE 42

18011 *Right to maintain existing health coverage*

CODE OF FEDERAL REGULATIONS, TITLE 26

1.403(b)-2 *Tax-sheltered annuities, definition of employee*

COURT DECISIONS

Thorning v. Hollister School District, (1992) 11 Cal.App.4th 1598

Board of Education of the Palo Alto Unified School District v. Superior Court of Santa Clara County,

(1979) 93 Cal.App.3d 578

ATTORNEY GENERAL OPINIONS

91 *Ops.Cal.Atty.Gen.* 37 (2008)

83 *Ops.Cal.Atty.Gen.* 124 (2000)

Management Resources:

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Sample Expense and Use of Public Resources Policy Statement, January 2006

INTERNAL REVENUE SERVICE PUBLICATIONS

Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations, Publication 571, rev. February 2013

WEB SITES

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

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

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

Public Employees' Retirement System: <http://www.calpers.ca.gov>

REMUNERATION, REIMBURSEMENT AND OTHER BENEFITS

RESOLUTION ON BOARD COMPENSATION FOR MISSED MEETINGS

Note: The following optional exhibit is for use by districts that offer compensation to members of the Governing Board for their service; see Options #1 and 2 in the accompanying board bylaw. Pursuant to Education Code 35120, a Board member may receive compensation for Board meetings that he/she missed if the Board makes a finding, by resolution, that one or more specified circumstances exist.

WHEREAS, the Governing Board of the _____ School District appreciates the services provided by members of the Board and provides compensation for meeting attendance in accordance with Education Code 35120 and Board Bylaw 9250; and

WHEREAS, Education Code 35120 provides that the monthly compensation provided to Board members shall be commensurate with the percentage of meetings attended during the month unless otherwise authorized by Board resolution; and

WHEREAS, Education Code 35120 specifies limited circumstances under which the Board is authorized to compensate a Board member for meetings he/she missed; and

WHEREAS, the Board finds that (name of Board member) did not attend the Board meeting(s) on (dates) for the following reason(s): (check applicable reasons)

- [] Performance of other designated duties for the district during the time of the meeting
[] Illness or jury duty
[] Hardship deemed acceptable by the Board

NOW THEREFORE BE IT RESOLVED that the Board of the _____ School District approves full compensation of the Board member for the month of _____.

PASSED AND ADOPTED THIS _____ day of _____, _____ at a regular meeting, by the following vote:

AYES:_____ NOES:_____ ABSENT:_____

Attest:

Secretary _____ President _____

version:

August 2013