

# CSBA Sample Board Policy

Community Relations

BP 1112(a)

## MEDIA RELATIONS

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

**As part of building positive media relations, the district may consider presenting awards to media representatives who have helped support district goals and programs. See BP 1150 - Commendations and Awards. The district may also nominate journalists for CSBA's Golden Quill Award, which recognizes fair, insightful, and accurate reporting of the objectives, operations, accomplishments, challenges, and opportunities related to public schools.**

The Governing Board respects the public's **desire for and** right to information and recognizes that the media significantly influence the community's understanding of school programs, **student achievement, and school safety**. In order to develop and maintain positive media relations, the Board and ~~the Superintendent~~ **desire to shall** reasonably accommodate media requests for information and ~~to~~ provide accurate, reliable, and timely information.

**In conjunction with the Superintendent or designee, the Board shall periodically establish priorities and key messages for proactively communicating with the media regarding current district issues, activities, or needs.**

*(cf. 0400 - Comprehensive Plans)*

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 0460 - Local Control and Accountability Plan)*

*(cf. 0510 - School Accountability Report Card)*

*(cf. 1100 - Communication with the Public)*

*(cf. 1160 - Political Processes)*

Media representatives are welcome at all **public** Board meetings and shall receive meeting agendas upon request in accordance with Board policy.

*(cf. 9321 - Closed Session)*

*(cf. 9322 - Agenda/Meeting Materials)*

Note: Penal Code 627.2 requires all "outsiders" to register upon entering school grounds during school hours. Pursuant to Penal Code 627.1, media representatives are not defined as "outsiders." However, **an the Attorney General has opined opinion (95 79 Ops.Cal.Atty.Gen. 509 58 (1996)) has opined that, pursuant to Education Code 32212, and 35160 direct school authorities to prevent interference with the orderly educational activities of the school and authorize them to districts are authorized to prevent interference with the orderly educational activities of the school, which may include** restricting media representatives in the same manner that access by the general public may be limited (e.g., registration or accompaniment by a staff member when on school grounds). **Therefore, if According to the Attorney General opinion,** a district **that** has developed a policy requiring all members of the general public, both visitors and outsiders, to register upon entering school grounds, ~~only then~~ may **similarly require** media representatives ~~also be~~

**MEDIA RELATIONS** (continued)

~~required to register before coming on campus. Although Attorney General opinions are not binding on the courts, they are generally afforded deference when there is no specific statutory or case law to the contrary. See BP/AR 1250 - Visitors/Outsiders for options regarding registration.~~

~~Although Attorney General opinions are not binding on the courts, they are generally afforded deference in the court when there is no specific statutory or case law to the contrary. The following optional paragraph is only for use only by districts that require all visitors to register upon entering school grounds, and does not apply to districts that only require outsiders to register. Districts should ensure consistency with this paragraph and see BP 1250 - Visitors/Outsiders.~~

Media representatives, like all other visitors, shall register immediately upon entering any school building or grounds when school is in session.

*(cf. 1250 - Visitors/Outsiders)*

*(cf. 3515.2 - Disruptions)*

Staff may provide the media with student directory information, ~~including, but not limited to, the name of a student, school of attendance, grade level, honors, and activities, as identified in AR 5125.1 - Release of Directory Information,~~ unless the student's parent/guardian has submitted a written request that such information not be disclosed. The district shall not release **other student records or personally identifiable student** information that is private or confidential as required by law, Board policy, or administrative regulation. ~~No other access to student records or personally identifiable student information may be provided without written parent/guardian permission.~~

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

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*(cf. 5125 - Student Records)*

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

*(cf. 9010 - Public Statements)*

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

*(cf. 9324 - Minutes and Recordings)*

**Interviewing and Photographing Students**

Note: In ~~95~~ **79** Ops.Cal.Atty.Gen. ~~509~~ **58** (1996), the Attorney General stated that, because students have a constitutional right to free speech, school administrators may not require prior written parental permission before allowing media representatives to interview particular students on campus. However, **Education Code 48907 and 48950 and case law has held that clarify that the district may adopt reasonable provisions for the time, place, and manner in which free expression may occur within the district's jurisdiction. students may exercise that right unless the "conduct by the student, in class or out of it, which for any reason — whether it stems from time, place or type of behavior — materially disrupts school or involves substantial disorder or invasion of the rights of others."** Therefore, in some circumstances (e.g., interviews during class time or interviews that identify other students by name), it may be appropriate to limit the student's ability to talk with the media on campus. Because this is a complex area of law, districts should consult with legal counsel before adopting a policy or practice that may limit students' constitutional rights.

**MEDIA RELATIONS** (continued)

Neither the Attorney General opinion nor case law considers the rights of media to photograph students on school grounds. However, the same concerns raised with regard to student interviews, such as a **substantial material disruption to the orderly operation of school or a substantial disorder-invasion of the rights of others, including privacy rights**, may exist with regard to photos. Furthermore, it's clear that, in some cases, the publishing of a photo may affect student safety, or **privacy rights (e.g., such as when a student's whose attendance is concealed from a parent due to a domestic violence restraining order)**. Districts should consult with legal counsel before adopting a policy or practice that may limit the photographing of students by the media.

The following **optional** paragraph should be revised to reflect district practice.

The district shall not impose restraints on students' right to speak freely with media representatives **at those times which do not disrupt a student's educational program**. However, interviews **and photographing** of students **may shall** not create substantial **disorder disruption to the orderly operation of the school** or impinge on the rights of **others or safety of students**. Therefore, **in order to minimize possible disruption, the district shall encourage** media representatives who wish to interview **or photograph** students at school **are strongly encouraged** to make prior arrangements with the principal. **At their discretion, parents/guardians may instruct their children not to communicate with media representatives.**

(cf. 5145.2 - Freedom of Speech/Expression)

Note: Neither the Attorney General opinion nor case law considers the rights of media to photograph students on school grounds. However, the same concerns raised with regard to student interviews, such as a material disruption of school or a substantial disorder, may exist with regard to photos. Furthermore, it's clear that, in some cases, the publishing of a photo may affect student safety or **privacy rights (e.g., a student whose attendance is concealed from a parent due to a domestic violence restraining order)**. Districts should consult with legal counsel before adopting a policy or practice that may limit the photographing of students by the media.

The following **optional** paragraph should be modified to reflect district practice.

**In order to protect the privacy and safety of students, a media representative who wishes to photograph students on school grounds should make arrangements with the principal or designee.**

**When interviewing or photographing a special education student, he/she shall not be identified as a special education student without prior, written parent/guardian permission.**

**Media Communication Plan Contacts/Spokespersons**

Note: The following section should be revised to reflect district practice.

**In order to help develop strong relations with the media, the Superintendent or designee shall develop a proactive media communications plan. This plan may include, but not be limited**

## MEDIA RELATIONS (continued)

~~to, information related to district programs and needs, student awards, school accomplishments and events of special interest.~~

~~(cf. 0510 - School Accountability Report Card)  
(cf. 1100 - Communication with the Public)  
(cf. 1160 - Political Processes)~~

The ~~plan shall specify~~ **Superintendent or designee shall identify** the district's and/or site's primary media contact to whom all media inquiries shall be routed. Spokespersons designated to speak to the media on behalf of the district include the Board president, Superintendent, ~~and~~ public information officer, **or district communications director**. Other Board members and ~~or~~ staff may be asked by the Superintendent or designee to speak to the media on a case-by-case basis, depending on their expertise on an issue **or appropriateness given a particular situation**.

The Superintendent or designee shall provide training on effective media relations to all designated spokespersons.

~~(cf. 9240 - Board Training)~~

## Crisis Communications Plan

Note: The following **optional** section may be revised to reflect district practice. CSBA recommends that districts develop a crisis communications plan to help ensure that accurate and timely information is provided to **students**, parents/guardians, the community, and the media during a crisis **or natural disaster**. This crisis plan may be a separate document or may be incorporated into other safety plans such as the district's comprehensive safety plan (see AR 0450 - Comprehensive Safety Plan) and/or emergency and disaster preparedness plan (see AR 3516 - Emergencies and Disaster Preparedness Plan).

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

~~During a disturbance or crisis situation, the first priority of school staff is to assure the safety of students and staff. However, the Board recognizes the need. **The Superintendent or designee shall develop strategies for working with the media** to provide timely and accurate information to **students**, parents/guardians, and the community during a crisis **or natural disaster**. The Board also recognizes that the media have an important role to play in relaying this information to the public. In order to help ensure that the media and district work together effectively, the Superintendent or designee shall develop a crisis communications plan to identify communication strategies to be taken in the event of a crisis. The crisis communications plan may include, but not be limited to, identification of a media center location, **strategies for press conference logistics, and development and integration** of both internal and external notification systems, **including public address systems, social media, web site postings, and text alerts.** ~~and strategies for press conference logistics.~~~~

**MEDIA RELATIONS** (continued)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

The crisis communications plan may include but not be limited to identification of a media center location, development of both internal and external notification systems, and strategies for press conference logistics.

The Superintendent or designee shall include local law enforcement, and media representatives, and district technology personnel in the crisis planning process.

*Legal Reference:*

EDUCATION CODE

32210-32212 Willful disturbance of public school or meeting

35144 Special meetings

35145 Public meetings

35160 Authority of governing boards

35172 Promotional activities

48907 Freedom of speech and press

48950 Prohibition against disciplinary action for first amendment speech

49061 Definition of directory information

49073 Directory information

EVIDENCE CODE

1070 Refusal to disclose news source

PENAL CODE

627-627.10 Access to school premises

UNITED STATES CODE, TITLE 20

1232g Family educational and privacy rights

CODE OF FEDERAL REGULATIONS, TITLE 34

99.3 Definition of directory information

COURT DECISIONS

*Lopez v. Tulare Joint Union High School District*, (1995) 34 Cal.App.4th 1302

ATTORNEY GENERAL OPINIONS

95 79 Ops.Cal.Atty.Gen. 509 58 (1996)

*Management Resources:*

WEB SITES

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

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**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3320(a)

## CLAIMS AND ACTIONS AGAINST THE DISTRICT

Note: The Government Claims Act (Government Code 810-996.6) sets forth prelitigation requirements and deadlines for claims against public entities, including school districts. In City of Stockton v. Superior Court, the California Supreme Court held that the claim requirements in Government Code 900-915.4 also apply to claims for breach of contract.

Because a district's insurance carrier or joint powers authority (JPA) may require the district to comply with certain claims management conditions as part of the district's contractual coverage obligation, it is strongly recommended that this administrative regulation be reviewed for consistency with any applicable conditions of coverage. A district's failure to follow those contractual conditions may result in a loss of coverage benefits. The district's risk manager and legal counsel should also be consulted, as appropriate.

**Pursuant to Government Code 935, district claims procedures may include a requirement that a claim be presented and acted upon in accordance with those procedures as a prerequisite to a lawsuit. Failure to include such a requirement may subject the district to increased liability.**

**Unless otherwise provided by law, prior to filing a lawsuit against the district for money or damages, a written claim shall be filed in accordance with the following administrative regulation.**

### Time Limitations

Note: Items #1-4 below list timelines for claims pursuant to the Government Claims Act and other applicable statutes. ~~As amended by SB 1053 (Ch. 153, Statutes of 2018), Pursuant to Government Code 935, the district's authority clarifies that the authority of a district to adopt local claims presentation procedures for causes of action which are excepted from the Government Claims Act by Government Code 905 and are not governed is not applicable to those excepted causes of action which have their claims presentation procedures specified in by other statutes or regulations, such as does not apply to childhood sexual abuse.~~ Rather, claims for childhood sexual abuse are governed by the timelines and procedures specified in Code of Civil Procedure 340.1.

The following time limitations apply to claims against the district:

1. Claims for money or damages relating to **childhood sexual abuse or any other** cause of action ~~which is~~ specifically excepted from the Government Claims Act by Government Code 905 **and for which** ~~governed by~~ a statute or regulation **provides a claims presentation procedure**, ~~including childhood sexual abuse, and other causes of action specifically excepted from the Government Claims Act by Government Code 905~~ shall be filed in accordance with the **applicable** governing statute or regulation. (Government Code 905, 935)

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

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

**CLAIMS AND ACTIONS AGAINST THE DISTRICT** (continued)

Note: Pursuant to Government Code 935, a district may establish its own procedure for the presentation of those claims which are excluded from the Government Claims Act as specified in Government Code 905 **and which are not governed by any other applicable statutes or regulations**. **Optional** item #2 below is for use by any district whose board has chosen to exercise the authority to establish district procedures for filing such claims; see the accompanying Board policy. Item #2 provides six months as the time limitation for filing such claims, which is consistent with the requirement in Government Code 935 that the district's procedure not require a shorter time for presentation of a claim than the time specified in Government Code 911.2. However, the Governing Board has the discretion to adopt a more flexible time limitation and may increase the amount of time allowed for filing such claims. If the Board adopts a more flexible time limitation, item #2 should be revised accordingly.

If a claimant misses a deadline for a claim required to be submitted in accordance with item #2 or #3 below, **he/she the claimant** may present an application to present a late claim pursuant to Government Code 911.4; see section below entitled "Late Claims."

2. In accordance with the **Governing** Board's authority pursuant to Government Code 935, claims for money or damages which relate to any cause of action specifically excepted from the Government Claims Act by Government Code 905 **but and** which are not governed by any other claims presentation statute or regulation shall be filed not later than six months after the accrual of the cause of action. (Government Code 905, 935)
3. Claims for money or damages relating to a cause of action for death or for injury to person, personal property, or growing crops shall be presented to the **Governing** Board not later than six months after the accrual of the cause of action. (Government Code 911.2)
4. Claims for money or damages relating to any other cause of action shall be filed not later than one year after the accrual of the cause of action. (Government Code 911.2)

**Receipt of Claims**

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

Note: In most circumstances, a district's insurance provider or JPA is responsible for claims management, including investigating, defending, and managing a district's response to a claim presented under the Government Claims Act. The following paragraph requires the Superintendent or designee to immediately forward any claims received to the district's JPA or insurance provider in order to help ensure compliance with any conditions of coverage.

**CLAIMS AND ACTIONS AGAINST THE DISTRICT** (continued)

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

**Review of Contents of the Claim**

Note: Most JPAs and insurance carriers provide a claim form. The person submitting the claim need not use the claim form provided by the district but, pursuant to Government Code 910 and 910.2, the claim must contain a signature and all the information listed below.

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

1. The name and post office address of the claimant
2. The post office address to which the person presenting the claim desires notices to be sent
3. The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted
4. A general description of the indebtedness, obligation, injury, damage, or loss incurred insofar as it may be known at the time of presentation of the claim
5. The name(s) of the district employee(s) causing the injury, damage, or loss, if known
6. The amount claimed if it totals less than \$10,000, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, the dollar amount shall not be included in the claim and the claimant shall indicate whether the claim is a limited civil case **of \$25,000 or less.**
7. The signature of the claimant or the person acting on **his/her the claimant's** behalf

**Notice of Claim Insufficiency**

Note: Pursuant to Government Code 911, if the district, or the JPA or insurance carrier acting on the district's behalf, fails to give notice that the claim is insufficient, as specified below, then the district may not later raise that issue as a defense to the claim.

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

**CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)**

Note: Districts should be cautious before rejecting a claim because of insufficiency of information and consult legal counsel and/or the district's JPA or insurance provider, as appropriate. Courts have held that a claim is sufficient as long as enough information is disclosed to allow the district to adequately conduct an investigation of the claim's merits.

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

**Amendment to Claims**

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

**Late Claims**

Note: The reference to item #2 in the following paragraph should be deleted if the district has not established district procedures pursuant to Government Code 935 for claims that are specifically exempted in Government Code 905 or adopted a time limitation that is not less than one year (see the accompanying Board policy and item #2 in the section "Time Limitations" above).

For claims under items #2 and #3 in the section "Time Limitations" above, any person who presents a claim later than six months after the accrual of the cause of action shall present, along with the claim, an application to present a late claim. Such claim and the application to present a late claim shall be presented not later than one year after the accrual of the cause of action. (Government Code 905, 911.4)

Note: If the claim is presented late and is not accompanied by an application to present a late claim, the Board or its agent should notify the claimant that "no action" was taken because the claim was presented late. If the Board were to state that the claim was "rejected," this would indicate that the Board had accepted the filing of the late claim and taken action to reject it.

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

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

**CLAIMS AND ACTIONS AGAINST THE DISTRICT** (continued)

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

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

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

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

**Action on Claims**

Note: **Pursuant to Government Code 945.6, if** ~~if~~ the Board formally acts to reject a claim and provides notice of such rejection, the claimant has only six months from the rejection to initiate a lawsuit. If the Board takes no action **or fails to provide written notice rejecting the claim, the claim is considered to be rejected, but** the claimant then has two years to initiate a suit against the district. The notice of rejection must comply with the notification requirements of Government Code 913 unless the claim has no address on it.

Although the Board takes final action on claims as specified below, such action is based on the evaluation of the claim by the district's insurance provider or JPA.

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

**CLAIMS AND ACTIONS AGAINST THE DISTRICT** (continued)

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

1. If the Board finds that the claim is not a proper charge against the district, the claim shall be rejected.
2. If the Board finds that the claim is a proper charge against the district and is for an amount justly due, the claim shall be allowed.
3. If the Board finds that the claim is a proper charge against the district but is for an amount greater than is justly due, the Board shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
4. If legal liability of the district or the amount justly due is disputed, the Board may reject or compromise the claim.
5. If the Board takes no action on the claim, the claim shall be deemed rejected.

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

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

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# CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3551(a)

## FOOD SERVICE OPERATIONS/CAFETERIA FUND

Note: The following policy may be revised to reflect district practice. Pursuant to U.S. Department of Agriculture (USDA) Memorandum SP 46-2016, districts participating in the National School Lunch and/or Breakfast Program (42 USC 1751-1769j, 1773) are **mandated** to adopt policy addressing delinquent meal charges; see the section "Meal Sales" below and the accompanying administrative regulation.

Pursuant to 7 CFR 210.9, 210.14, and 220.7, districts participating in the National School Lunch and/or Breakfast program must maintain a nonprofit school food service program. Revenues received through the program may be used for the operation or improvement of the food service program, but not to construct buildings. Revenues also may not be used to purchase land or buildings, unless otherwise approved by the USDA. Authorized expenditures are **specified in Education Code 38101 and** defined in the California Department of Education's (CDE) **California School Accounting Manual**.

The Governing Board intends that school food services shall be a self-supporting, nonprofit program. To ensure program quality and increase cost effectiveness, the Superintendent or designee shall centralize and direct the purchasing of foods and supplies, the planning of menus, and the auditing of all food service accounts for the district.

*(cf. 3100 - Budget)*

*(cf. 3300 - Expenditures and Purchases)*

*(cf. 3311 - Bids)*

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

*(cf. 3552 - Summer Meal Program)*

*(cf. 5030 - Student Wellness)*

Note: **The following paragraph is for use by districts that participate in the National School Lunch and/or Breakfast Program and may be adapted for use by other districts.** Pursuant to 42 USC 1776 and 7 CFR 210.30, as amended by 84 Fed. Reg. 8247, the USDA has established minimum professional standards for food service ~~personnel~~ **directors and granted CDE the authority to adopt more flexible standards for districts with average daily attendance of less than 2,500.** ~~With approval from the CDE, more flexible standards may be used in districts with average daily attendance of less than 500 or in districts of any size when hiring a new acting food services director. For more information about professional standards for food service directors, see CDE's Nutrition Services Division Management Bulletin SNP 17-2016. See CDE's Nutrition Services Division Management Bulletin 10-2019 for information about state hiring standards.~~

The Superintendent or designee shall ensure that ~~all~~ **food service personnel director(s)** possess the ~~required~~ **qualifications required by 7 CFR 210.30 and California Department of Education (CDE) standards.** ~~and receive ongoing professional development related to the effective management and implementation of the district's food service program in accordance with law.~~

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

## FOOD SERVICE OPERATIONS/CAFETERIA FUND (continued)

Note: The following paragraph is for use by districts participating in the National School Lunch and/or Breakfast Program. Pursuant to 42 USC 1776, such districts must ensure that food service personnel and other appropriate personnel who conduct or oversee administrative procedures receive training on administrative practices (i.e., training in application, certification, verification, meal counting, and meal claiming procedures) at least once each year. In addition, all food service personnel are required to receive annual training that (1) is designed to improve the accuracy of approvals for free and reduced-price meals and the identification of reimbursable meals at the point of service and (2) includes modules on nutrition, health and food safety standards and methodologies, and any other appropriate topics as determined by the U.S. Secretary of Agriculture. The CDE provides online training that meets these requirements; see [the CDE's web site](#).

At least once each year, food service administrators, other appropriate personnel who conduct or oversee administrative procedures, and other food service personnel shall receive training provided by the [California Department of Education \(CDE\)](#), (42 USC 1776)

### Meal Sales

Note: The following section may be revised by districts that have one or more high-poverty schools that operate under the federal universal meal service provision (42 USC 1759a), which provides breakfast and/or lunch free of charge to all students at the school. For further information, see [BP/AR-3553 - Free and Reduced Price Meals](#).

Meals may be sold to students, district employees, Board members, and employees or members of the fund or association maintaining the cafeteria. (Education Code 38082)

Note: Pursuant to Education Code 38082, the Governing Board may adopt a resolution to authorize serving meals to additional persons other than those listed above. CDE's Nutrition Services Division Management Bulletin [No. 00-111](#) states that the Board's policy or resolution must specify the means for serving those persons and indicates that using funds from the National School Lunch or Breakfast Program to serve any nonstudent would be contrary to program goals. The following **optional** paragraph is for districts that have adopted such a resolution and should be revised to reflect district practice.

In addition, meals may be sold to nonstudents, including parents/guardians, volunteers, students' siblings, or other individuals, who are on campus for a legitimate purpose. Any meals served to nonstudents shall not be subsidized by federal or state reimbursements, food service revenues, or U.S. Department of Agriculture (USDA) foods.

Note: Pursuant to Education Code 38084, the district may determine meal prices consistent with the goal of paying the costs of maintaining the cafeterias (exclusive of the costs of housing and equipping cafeterias or other costs determined by Board resolution, **which are paid from district funds other than the cafeteria fund**, pursuant to Education Code 38100).

Students who meet federal eligibility criteria for the reduced-price meal program cannot be charged more than the amounts listed in 42 USC 1758 and 1773; see [AR 3553 - Free and Reduced Price Meals](#). For information about setting prices for full-price meals, see 42 USC 1760 and CDE's Nutrition Services Division Management Bulletin [USDA-SNP-16-2012 12-2018](#).

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

Meal prices, as recommended by the Superintendent or designee and approved by the Board, shall be based on the costs of providing food services and consistent with Education Code 38084 and 42 USC 1760. Students who are enrolled in the free or reduced-price meal program shall receive meals free of charge or at a reduced price in accordance with law, Board policy, and administrative regulation.

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

Note: Pursuant to USDA Memorandum SP 46-2016, districts participating in the National School Lunch and/or Breakfast Program are **mandated** to have a written and clearly communicated meal charge policy which includes, but is not limited to, policy on the collection of delinquent meal charge debt. See the accompanying administrative regulation for additional language fulfilling this mandate. Pursuant to Education Code 49557.5, as added by SB 250 (Ch. 726, Statutes of 2017), districts must make the meal charge policy public.

The Superintendent or designee shall establish strategies and procedures for the collection of meal payments, including delinquent meal payments. Such procedures shall conform with **BP/AR 3553 - Free and Reduced Price Meals**, 2 CFR 200.426, and any applicable CDE guidance. The Superintendent or designee shall clearly communicate these procedures to students and parents/guardians, and shall make this policy and the accompanying administrative regulation available to the public **pursuant to Education Code 49557.5**.

Note: **Education Code 49557.5 requires any district that participates in the National School Lunch and/or Breakfast Program to ensure that students with unpaid meal fees are not shamed or treated differently than other students. For further information, see** Pursuant to CDE's Nutrition Services Division Management Bulletin SNP-03-2017, the district's unpaid meals policy must ensure that students with unrecovered or delinquent debt are not overtly identified. In addition, Education Code 49557.5, as added by SB 250 (Ch. 726, Statutes of 2017), requires any district that participates in the National School Lunch and/or Breakfast Program to ensure that students with unpaid meal fees are not shamed or treated differently than other students.

**In addition**, Education Code 49557 requires the Board to approve a plan that ensures students eligible to receive free or reduced-price meals are not treated differently from other students, including, but not limited to, assurance that eligible students will not be overtly identified by the use of special tokens, tickets, or any other means. For additional language addressing this requirement, see BP/AR 3553 - Free and Reduced Price Meals.

The Superintendent or designee shall ensure that a student whose parent/guardian has unpaid school meal fees **or a student who is enrolled in the free or reduced-price meal program is not overtly identified, by the use of special tokens, tickets, or other means and is not** shamed, treated differently, or served a meal that differs from the meal served to other students. (Education Code **49557**, 49557.5)

Note: Education Code 49557 requires the Board to approve a plan that ensures students eligible to receive free or reduced-price meals are not treated differently from other students, including, but not limited to, assurance that eligible students will not be overtly identified by the use of special tokens, tickets, or any other means. For additional language addressing this requirement, see BP/AR 3553 - Free and Reduced Price Meals.

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

~~Students who are enrolled in the free or reduced-price meal program shall receive meals free of charge or at a reduced price in accordance with law, Board policy, and administrative regulation. Such students shall not be overtly identified or treated differently from other students.~~

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

*(cf. 0415 - Equity)*

**Cafeteria Fund**

Note: Pursuant to Education Code 38090, money received for the sale of food or for any services performed by the cafeterias may be paid into the county treasury to the credit of a "cafeteria fund" for the district.

The Superintendent or designee shall establish a cafeteria fund independent of the district's general fund.

Note: Education Code 38103 allows the Board, at its discretion and with the approval of the County Superintendent of Schools who is responsible for a countywide payroll/retirement system under Education Code 42646, to have wages, salaries, and benefits of food service employees paid either from the district's general fund (Option 1 below) or from the district's cafeteria fund (Option 2).

**OPTION 1:** The wages, salaries, and benefits of food service employees shall be paid from the district's general fund. At any time, the Board may order reimbursement from the district's cafeteria fund for these payments in amounts prescribed by the Board and not exceeding the costs actually incurred. (Education Code 38103)

**OPTION 2:** The wages, salaries, and benefits of food service employees shall be paid from the cafeteria fund. (Education Code 38103)

Note: The following **optional** paragraph may be revised to reflect district practice. 2 CFR Part 200, Appendix VII and USDA guidance, Indirect Costs: Guidance for State Agencies and School Food Authorities, provide information regarding allowable indirect costs that may be charged to the nonprofit school food service account. Also see the accompanying administrative regulation.

The Superintendent or designee shall ensure that state and federal funds provided through school meal programs are allocated only for purposes related to the operation or improvement of food services and reasonable and necessary indirect program costs as allowed by law.

*(cf. 3230 - Federal Grant Funds)*

*(cf. 3400 - Management of District Assets/Accounts)*

*(cf. 3460 - Financial Reports and Accountability)*

## FOOD SERVICE OPERATIONS/CAFETERIA FUND (continued)

### Contracts with Outside Services

Note: The following section is **optional**. Pursuant to Education Code 45103.5, the district is authorized to contract for consulting services related to food service management. 42 USC 1758, 7 CFR 210.16, and Education Code 45103.5 authorize a district, under specified conditions and with approval of the CDE, to contract with a food service management company to manage its food service operation in one or more of its schools. See the accompanying administrative regulation for related requirements.

With Board approval, the district may enter into a contract for food service consulting services or management services in one or more district schools. (Education Code 45103.5; 42 USC 1758; 7 CFR 210.16)

(cf. 3312 - Contracts)

(cf. 3600 - Consultants)

### Procurement of Foods, Equipment and Supplies

Note: The following two paragraphs reflect requirements for districts participating in the National School Lunch and/or Breakfast Program. Pursuant to 7 CFR 210.21, districts are required to comply with all requirements for purchasing commercial food products served in the school meal programs, including those outlined in the Buy American provision. ~~This provision indicates~~ **USDA Memorandum SP 38-2017 clarifies** that a district participating in the National School Lunch and/or Breakfast Program or any entity purchasing food on its behalf must, to the maximum extent practicable, purchase domestically grown and processed foods, as defined. According to **USDA the** Memorandum **SP 24-2016**, a domestic commodity or product is deemed to be "substantially using" domestic agricultural commodities when over 51 percent of the final processed product consists of agricultural commodities produced in the United States.

Limited exceptions to the Buy American requirement are described in USDA Memorandum SP 38-2017. If the district is using one of these exceptions, it must maintain documentation justifying the exception(s).

Pursuant to Education Code 49563, ~~as added by SB 730 (Ch. 571, Statutes of 2017)~~, the CDE is required to make resources, requirements, and best practices related to the Buy American provision available on its web site and to provide districts with related USDA guidance or regulations as updates are issued.

To the maximum extent practicable, foods purchased for use in school meals by the district or by any entity purchasing food on its behalf shall be domestic commodities or products. *Domestic commodity or product* means an agricultural commodity that is produced in the United States and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. (42 USC 1760; 7 CFR 210.21)

A nondomestic food product may be purchased for use in the district's food service program only as a last resort when the product is not produced or manufactured in the United States in sufficient and reasonable quantities of a satisfactory quality, or when competitive bids reveal

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

the costs of a United States product are significantly higher than the nondomestic product. In such cases, the Superintendent or designee shall retain documentation justifying the use of the exception.

Note: Pursuant to Food and Agriculture Code 58595, as added by AB 822 (Ch. 785, Statutes of 2017), a district that solicits bids for the purchase of an agricultural product must give preference for California-grown agricultural products, with certain conditions, as provided below.

Furthermore, the district shall accept a bid or price for an agricultural product grown in California before accepting a bid or price for an agricultural product grown outside the state, if the quality of the California-grown product is comparable and the bid or price does not exceed the lowest bid or price of a product produced outside the state. (Food and Agriculture Code 58595)

Note: Pursuant to Public Contract Code 20111, as amended by SB 544 (Ch. 395, Statutes of 2017), districts participating in a federally funded child nutrition program, such as the National School Lunch and/or Breakfast Program, must comply with the federal procurement standards of 2 CFR 200.318-200.326 in regard to bid solicitations and awards. Also see BP/AR 3230 - Federal Grant Funds. Districts that do not participate in such a program may revise the following paragraph.

Bid solicitations and awards for purchases of equipment, materials, or supplies in support of the district's child nutrition program, or for contracts awarded pursuant to Public Contract Code 2000, shall be consistent with the federal procurement standards in 2 CFR 200.318-200.326. Awards shall be let to the most responsive and responsible party. Price shall be the primary consideration, but not the only determining factor, in making such an award. (Public Contract Code 20111)

**Program Monitoring and Evaluation**

The Superintendent or designee shall present to the Board, at least annually, financial reports regarding revenues and expenditures related to the food service program.

Note: The following paragraph is for use by districts that have one or more schools participating in the National School Lunch Program, School Breakfast Program, Seamless Summer Feeding Option, and/or other federal meal program. The state monitoring process (the Administrative Review) includes a review of district compliance with requirements for federal meal programs, including a review of resource management in the food service program as provided in the following paragraph. Each district is reviewed at least once every three years. See ~~the~~ CDE's nutrition services web site for a current list of documents that may be requested for the review.

During the Administrative Review, CDE will review district policies on charge accounts, alternate meals, unpaid meal charges, and guidelines for continually notifying parents/guardians of these policies.

The Superintendent or designee shall provide all necessary documentation required for the Administrative Review conducted by the CDE to ensure compliance of the district's food

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

service program with federal requirements related to maintenance of the nonprofit school food service account, meal charges, paid lunch equity, revenue from nonprogram goods, indirect costs, and USDA foods.

(cf. 3555 - Nutrition Program Compliance)

*Legal Reference:*

EDUCATION CODE

38080-38086.1 Cafeteria, establishment and use

38090-38095 Cafeterias, funds and accounts

38100-38103 Cafeterias, allocation of charges

42646 Alternate payroll procedure

45103.5 Contracts for management consulting services; restrictions

49490-49493 School breakfast and lunch programs

49500-49505 School meals

~~49554 Contract for services~~

49550-49564.5 Meals for needy students, especially:

**49550.5 Universal breakfast**

~~49554 Contract for services~~

49580-49581 Food recovery program

FOOD AND AGRICULTURE CODE

58595 Preference for California-grown agricultural products

HEALTH AND SAFETY CODE

113700-114437 California Retail Food Code

PUBLIC CONTRACT CODE

2000-2002 Responsive bidders

20111 Contracts

CODE OF REGULATIONS, TITLE 5

15550-15565 School lunch and breakfast programs

UNITED STATES CODE, TITLE 42

1751-1769j School lunch programs

1771-1791 Child nutrition, including:

1773 School breakfast program

CODE OF FEDERAL REGULATIONS, TITLE 2

200.56 Indirect costs, definition

200.~~348317~~-200.326 Procurement standards

200.400-200.475 Cost principles

200 Appendix VII Indirect cost proposals

CODE OF FEDERAL REGULATIONS, TITLE 7

210.1-210.31 National School Lunch Program

220.1-220.21 National School Breakfast Program

250.1-250.70 USDA foods

*Management Resources: (see next page)*

**FOOD SERVICE OPERATIONS/CAFETERIA FUND (continued)**

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California School Accounting Manual

Food Distribution Program Administrative Manual

Professional Standards in the SNP and New Hiring Flexibility, NSD Management Bulletin, SNP-10-2019, April 2019

Paid Lunch Equity Requirement and Calculation Tool, NSD Management Bulletin, SNP-12-2018, May 2018

Clarification for the Use of Alternate Meals in the National School Lunch and School Breakfast Programs, and Additional Guidance on the Handling of Unpaid Meal Charges, NSD Management Bulletin, SNP-03-2018, February 2018

Storage and Inventory Management of U.S. Department of Agriculture Foods, NSD Management Bulletin, FDP-01-2018, January 2018

Unpaid Meal Charges: Local Meal Charge Policies, Clarification on Collection of Delinquent Meal Payments, and Excess Student Account Balances, NSD Management Bulletin, SNP-03-2017, April 2017

Procuring and Monitoring of Food Service Management Contracts, NSD Management Bulletin, SNP-13-2015

Clarification for the Use of Alternate Meals in the National School Lunch and School Breakfast Programs, Bad Debt Policies, and the Handling of Unpaid Meal Charges, NSD Management Bulletin, USDA-SNP-06-2015, May 2015

Cafeteria Funds--Allowable Uses, NSD Management Bulletin, NSD-SNP-07-2013, May 2013

Paid Lunch Equity Requirement, NSD Management Bulletin, USDA-SNP-16-2012, October 2012

Adult and Sibling Meals in the National School Lunch and School Breakfast Programs, NSD Management Bulletin, 00-111, July 2000

U.S. DEPARTMENT OF AGRICULTURE PUBLICATIONS

FAQs About School Meals

Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, SP 38-2017, June 2017

Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools, September 2016

Unpaid Meal Charges: Guidance and Q&A, SP 23-2017, March 2017

Indirect Costs: Guidance for State Agencies and School Food Authorities SP 60-2016, September 2016

Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools, September 2016

Unpaid Meal Charges: Local Meal Charge Policies, SP 46-2016, July 2016

Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, SP 24-2016, February 2016

Discretionary Elimination of Reduced Price Charges in the School Meal Programs, SP 17-2014, January 2014

WEB SITES

California Department of Education, Nutrition Services Division: <http://www.cde.ca.gov/ls/nu>

California School Nutrition Association: <http://www.calsna.org>

U.S. Department of Agriculture, Food and Nutrition Service: <http://www.fns.usda.gov/cnd>

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**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

Business and Noninstructional Operations

AR 3551(a)

## FOOD SERVICE OPERATIONS/CAFETERIA FUND

Note: Districts that have one or more high poverty schools operating under the federal universal meal service provision (42 USC 1759a), which provides breakfast and/or lunch free of charge to all students at the school (i.e., "universal meal service") at one or more schools pursuant to 42 USC 1759a or Education Code 49550.5 should revise the following administrative regulation accordingly. Also see BP/AR 3553 - Free and Reduced Price Meals.

### Payments for Meals

Note: State and federal law (Education Code 49550; 42 USC 1758, 1773) require that all students eligible for free and reduced-price meals receive a reimbursable meal during each school day, which must be the same meal choice offered to noneligible students; see BP/AR 3553 - Free and Reduced Price Meals. California Department of Education (CDE) Nutrition Services Division Management Bulletin SNP-06-201503-2018 clarifies that districts therefore cannot serve an alternate meal (i.e., a meal that is different than the day's advertised meal) to a student eligible for reduced-price meals who does not have the ability to pay or who fails to provide a meal ticket or other medium of exchange on a given day.

In addition to providing meals at no cost to students who are eligible, the district may offer meals at no cost to students who qualify for reduced-price benefits. Districts that choose to eliminate reduced-price meal charges may still claim the meals at the reduced-price rate, but the cost difference between the reduced-price meal and the no-cost meal must be covered by the district's cafeteria fund. ~~Districts that choose to do so may modify the following paragraph accordingly.~~ For more information, see the U.S. Department of Agriculture's (USDA) Memorandum SP 17-2014.

The following section includes recommendations of the CDE's Nutrition Services Division Management Bulletin and the USDA's "FAQs About School Meals" on the USDA's web site and may be revised to reflect district practice.

With the exception of students who are eligible to receive meals at no cost, students may pay on a per-meal basis or may submit payments in advance. The Superintendent or designee shall maintain a system for accurately recording payments received and tracking meals provided to each student.

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

*(cf. 3552 - Summer Meal Program)*

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

*(cf. 3555 - Nutrition Program Compliance)*

Note: CDE's program monitoring process (the Administrative Review) requires districts to continually notify parents/guardians of district policies regarding meal payments, including charge accounts and alternate meals if applicable. Districts should, at a minimum, inform parents/guardians at the beginning of the school year and on an ongoing basis of district practices for students who have lost or forgotten their meal payment. In addition, districts should set up a system for notifying parents/guardians when a student's meal payment account has a low or negative balance.

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

According to USDA's Memorandum SP-23-2017, the district's policy on delinquent meal payments must be communicated in writing to all households at the start of each school year and to households transferring to the school during the school year. CDE's Nutrition Services Division Management Bulletin SNP-03-2017 states that, at a minimum, districts should use the methods specified below to communicate the district's meal policy.

At the beginning of the school year, and whenever a student enrolls during the school year, parents/guardians shall be notified of the district's meal payment policies and be encouraged to prepay for meals whenever possible. The Superintendent or designee shall communicate the district's meal payment policies through multiple methods, including, but not limited to:

1. Explaining the meal charge policy within registration materials provided to parents/guardians at the start of the school year
2. Including the policy in print versions of student handbooks, if provided to parents/guardians annually
3. Providing the policy whenever parents/guardians are notified regarding the application process for free and reduced-price meals, such as in the distribution of applications at the start of the school year
4. Posting the policy on the district's web site
5. Establishing a system to notify parents/guardians when a student's meal payment account has a low or negative balance

*(cf. 1113 - District and School Web Sites)*

*(cf. 5145.6 - Parental Notifications)*

Note: The following **optional** paragraph may be revised to reflect district practice. According to the USDA's "FAQs About School Meals," any district that participates in the National School Lunch and/or Breakfast Program and has one or more schools which use a system of meal tickets (or tokens, cards, or other similar medium of exchange) may limit the number of lost or stolen tickets it will replace for students each school year, as long as the limit is set at three or more. However, such a limit may only be established if the school (1) advises students and parents/guardians of the district's rules regarding replacement tickets at the beginning of the school year and/or when applications for free and reduced-price meals are distributed or approved; **(2) maintains a list of students who have reported lost and stolen tickets and the number of occurrences for each student;** ~~(2)~~ **(3)** issues at least one advance warning to the student or ~~his/her~~ **the student's** parent/guardian prior to refusing to issue a replacement ticket; and ~~(3)~~ **(4)** does not deny meals to prekindergarten or younger primary students or students with disabilities who may be unable to take full responsibility for their meal tickets. Although these requirements apply only to students who qualify for free or reduced-price meals, the USDA recommends that districts apply the same limits for students who pay full price for their meals in order to ensure that needy students are not overtly identified because of a disparate ticket replacement policy.

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

In any school that uses a system of meal tickets or other similar medium of exchange rather than an electronic point-of-sale system, the Superintendent or designee shall develop a process for providing replacement tickets to any student who reports ~~his/her a~~ tickets, as lost or stolen. However, whenever any student reports an excessive number of lost or stolen tickets, the Superintendent or designee shall notify the parent/guardian and may provide an alternative method of tracking meal usage for that student.

In order to avoid potential misuse of a student's food service account by someone other than the student in whose name the account has been established, the Superintendent or designee shall verify a student's identity when setting up the account and when charging any meal to the account. The Superintendent or designee shall investigate any claim that a bill does not belong to a student or is inaccurate, ~~shall not require a student to pay a bill that appears to be the result of identity theft,~~ and shall open a new account ~~as appropriate with a new account number~~ for a student whose ~~account~~ appears to ~~have been misused be the subject of identity theft.~~

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Note: Pursuant to CDE's Nutrition Services Division Management Bulletin SNP-03-2017, districts must ensure that students who are approved for reduced-price meals receive all meals that are paid for. Any excess payments must be either carried over or refunded to the parents/guardians. The following paragraph extends this provision to also apply to students paying for full-price meals.

Any payments made to a student's food service account shall, if not used within the school year, be carried over into the next school year or be refunded to the student's parents/guardians.

**Unpaid and Delinquent Meal Charges**

Note: The following section reflects requirements applicable to districts participating in the National School Lunch and/or Breakfast Program and may also be used by districts that do not participate in the program. Pursuant to USDA Memorandum SP 46-2016, districts participating in the National School Lunch and/or Breakfast Program are **mandated** to have a written and clearly communicated meal charge policy which includes, but is not limited to, policy on the collection of delinquent meal charge debt. Such policy may be consistent for all students or vary by grade level. The following section may be revised to reflect district practice.

~~Pursuant to Education Code 49557.5, as added by SB 250 (Ch. 726, Statutes of 2017), the district must notify parents/guardians within 10 days of a negative balance in their child's school meal account. Prior to sending the notification to the parent/guardian, the district must exhaust all options and methods to certify the student for free or reduced price meals. The district is required to reimburse meal fees paid by the parent/guardian during any time that the student would have been eligible for free or reduced price meals, to the extent that the expense is reimbursable under the National School Lunch Program.~~

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

At its discretion, the district may choose to also notify parents/guardians before the student's meal account reaches a negative balance. The following paragraph may be modified to reflect district practice.

No later than 10 days after a student's school meal account has reached a negative balance, the Superintendent or designee shall so notify the student's parent/guardian. Before sending this notification, the district shall exhaust all options and methods to directly certify the student for free or reduced-price meals. If the district is not able to directly certify the student, the notice to the parent/guardian shall include a paper copy of, or an electronic link to, an application for free or reduced-price meals and the Superintendent or designee shall contact the parent/guardian to encourage submission of the application. (Education Code 49557.5)

Note: Education Code 49557.5, as added by SB 250 (Ch. 726, Statutes of 2017), prohibits the use of a debt collector to collect unpaid school meal fees.

The district may attempt to collect unpaid school meal fees from a parent/guardian, but shall not use a debt collector. (Education Code 49557.5)

Note: The following **optional** paragraph reflects CDE guidance in its Nutrition Services Division Management Bulletin SNP-03-2017.

The Superintendent or designee may enter into an agreement with a student's parent/guardian for payment of the student's unpaid meal charge balance over a period of time. As necessary, the repayment plan may allow the unrecovered or delinquent debt to carry over into the next fiscal year.

The district shall not direct any action toward a student to collect unpaid school meal fees. (Education Code 49557.5)

Note: CDE's Nutrition Services Division Management Bulletin SNP-03-2017 requires that the district's unpaid meal policy conform with the cost principles set forth in 2 CFR 200.426, as provided below.

The district's efforts to collect debt shall be consistent with district policies and procedures, California Department of Education (CDE) guidance, and 2 CFR 200.426. The district shall not spend more than the actual debt owed in efforts to recover unpaid meal charges.

Note: Pursuant to CDE's Nutrition Services Division Management Bulletin ~~SNP 06 2015 and~~ SNP-03-2017, delinquent debt must be reclassified as bad debt and written off as an operating loss if it is not paid by the end of the fiscal year in which the debt was incurred, unless the district enters into a repayment plan with the parent/guardian prior to the end of the fiscal year or the debt occurs fewer than 90 days prior to the end of the fiscal year. Federal funds are not available to reimburse the district for bad debt. Districts are required to maintain related records in accordance with 7 CFR 210.9 and 210.15.

## FOOD SERVICE OPERATIONS/CAFETERIA FUND (continued)

The Superintendent or designee shall maintain records of the efforts made to collect unpaid meal charges and, if applicable, financial documentation showing when the unpaid meal balance has become an operating loss.

### Reimbursement Claims

Note: To streamline administration of state and federal meal programs, CDE has developed an online Child Nutrition Information and Payment System which must be used to submit reimbursement claims and to submit and track the status of applications and USDA food requests.

The Superintendent or designee shall maintain records of the number of meals served each day by school site and by category of free, reduced-price, and full-price meals. The Superintendent or designee shall submit reimbursement claims for school meals to CDE using the online Child Nutrition Information and Payment System.

### Donation of Leftover Food

Note: The following section is **optional** and may be revised to reflect district practice. Health and Safety Code 114079, as amended by SB 557 (Ch. 285, Statutes of 2017), authorizes districts to provide "sharing tables" where food service staff, students, and faculty may return appropriate food items which may then be shared with other students or donated to a food bank or any other nonprofit charitable organization.

To minimize waste and reduce food insecurity, the district may provide sharing tables where students and staff may return appropriate unused cafeteria food items to be made available to students during the course of a regular school meal time. If food on the sharing tables is not taken by a student, the school cafeteria may donate the food to a food bank or any other nonprofit charitable organization. (Health and Safety Code 114079)

#### *(cf. 3510 - Green School Operations)*

Food that may be donated includes prepackaged, nonpotentially hazardous food with the packaging still intact and in good condition, whole uncut produce, unopened bags of sliced fruit, unopened containers of milk that are immediately stored in a cooling bin maintained at 41 degrees Fahrenheit or below, and perishable prepackaged food if it is placed in a proper temperature-controlled environment. The preparation, safety, and donation of food shall be consistent with Health and Safety Code 113980. (Health and Safety Code 114079)

### Cafeteria Fund

Note: Education Code ~~38091~~ **38093** authorizes the Governing Board to establish one or more cafeteria revolving accounts to be treated as revolving cash accounts of the cafeteria fund.

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

All proceeds from food sales and other services offered by the cafeteria shall be deposited in the cafeteria fund as provided by law. The income and expenditures of any cafeteria revolving account established by the Governing Board shall be recorded as income and expenditures of the cafeteria fund. (Education Code 38090, ~~38091~~ **38093**)

*(cf. 3100 - Budget)*

*(cf. 3300 - Expenditures and Purchases)*

**Note: Education Code 38101, as amended by AB 3043 (Ch. 593, Statutes of 2018), permits a district, with approval from CDE, to utilize cafeteria funds to pay for the purchase of a mobile food facility. However, if the district uses federal reimbursements from any of the federal child nutrition programs for such purchase, the mobile food facility shall only be used to support the administration of those federal programs. Mobile food facilities used for any purposes other than to support the administration of federal child nutrition programs shall not be purchased with cafeteria funds.**

The cafeteria fund shall be used only for those expenditures authorized by the Board as necessary for the operation of school cafeterias in accordance with Education Code 38100-38103, 2 CFR Part 200 Appendix VII, and the California School Accounting Manual.

**Note: The following optional paragraph is for use by districts that choose to provide universal breakfast (free of charge to all students) at one or more schools. Pursuant to Education Code 49550.5, as added by AB 3043, districts may use cafeteria funds to supplement the cost of providing universal breakfast provided they submit the required certification to CDE. The requirement to submit certification does not apply to any district that provides universal breakfast pursuant to a federally authorized provision (e.g., Provision 1, 2, or 3 or the Community Eligibility Provision of the National School Lunch Act).**

**With CDE approval, the district may use cafeteria funds to supplement the provision of universal breakfast. On or before July 1 of each year, the district shall submit to CDE a Board-signed application certifying that breakfast will be provided to all students at no charge and that any cost above the amount provided in federal reimbursement will be covered by the district with nonfederal funds. (Education Code 49550.5)**

Any charges to, or transfers from, a food service program shall be dated and accompanied by a written explanation of the expenditure's purpose and basis. (Education Code 38101)

*(cf. 3110 - Transfer of Funds)*

**Note: The following optional paragraph may be revised to reflect district practice. 2 CFR Part 200 Appendix VII and USDA guidance **SP 60-2016**, Indirect Costs: Guidance for State Agencies and School Food Authorities, provide information regarding allowable indirect costs that may be charged to the nonprofit school food service account. Indirect costs are those that are incurred for the benefit of multiple programs or objectives and typically support administrative overhead functions (e.g., accounting, payroll, purchasing, utilities, janitorial services). Each program or objective that benefits from the indirect cost bears a commensurate portion of the cost. Costs may be charged to the nonprofit food service account only if properly documented.**

**FOOD SERVICE OPERATIONS/CAFETERIA FUND (continued)**

Indirect costs charged to the food service program shall be based on either the district's prior year indirect cost rate **as approved by CDE** or the statewide average approved indirect cost rate for the second prior fiscal year, whichever is less. (Education Code 38101)

Note: Pursuant to 7 CFR ~~210.7~~ **210.14** and ~~220.14~~ **220.7**, net cash resources (i.e., all monies that have accrued to the nonprofit school food service at any given time, less cash payable) should not exceed three months average expenditures. If there is a surplus, then according to USDA guidance, Indirect Costs: Guidance for State Agencies and School Food Authorities, the district must lower the price of paid lunches, improve food quality, or make other improvements to school meal operations. **CDE's Nutrition Services Division Management Bulletin NSD-SNP-07-2013 provides that the** ~~The~~ spending plan developed by the district under such circumstances must be approved by the CDE.

Net cash resources in the nonprofit school food service shall not exceed three months average expenditures. ~~(2 CFR 220.14)~~ **(7 CFR 210.14, 220.7)**

**U.S. Department of Agriculture Foods**

Note: The following **optional** section is for use by districts that participate in the National School Lunch Program and receive foods from the USDA pursuant to 42 USC 1755 and 7 CFR 250.1-250.70. CDE is responsible for ordering and distributing USDA foods for use in California schools. Pursuant to 42 USC 1758, USDA must ensure that foods offered through this program reflect the most recent Dietary Guidelines for Americans.

**The district shall provide facilities for the storage and control of foods received through the U.S. Department of Agriculture (USDA) that protect against theft, spoilage, damage, or other loss. Such storage facilities shall maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The district shall comply with all federal, state, or local requirements related to food safety and health and procedures for responding to a food recall, as applicable, and shall obtain all required health inspections. (7 CFR 250.14)**

~~The Superintendent or designee shall ensure that foods received through the U.S. Department of Agriculture (USDA) are handled, stored, and distributed in facilities which: (7 CFR 250.14)~~

- ~~1. \_\_\_\_\_ Are sanitary and free from rodent, bird, insect, and other animal infestation~~
- ~~2. \_\_\_\_\_ Safeguard foods against theft, spoilage, and other loss~~
- ~~3. \_\_\_\_\_ Maintain foods at proper storage temperatures~~
- ~~4. \_\_\_\_\_ Store foods off the floor in a manner to allow for adequate ventilation~~
- ~~5. \_\_\_\_\_ Take other protective measures as may be necessary~~

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

The Superintendent or designee shall maintain inventories of USDA foods in accordance with 7 CFR 250.59 and CDE procedures, and shall ensure that foods are used before their expiration dates.

USDA donated foods shall be used in school lunches as far as practicable. USDA foods also may be used in other nonprofit food service activities, including, but not limited to, school breakfasts or other meals, a la carte foods sold to students, meals served to adults directly involved in the operation and administration of the food service and to other school staff, and training in nutrition, health, food service, or general home economics instruction for students, provided that any revenues from such activities accrue to the district's nonprofit food service account. (7 CFR 250.59)

**Contracts with Outside Services**

Note: The following **optional** section is for use by districts that contract for food service management services pursuant to Education Code 49554, 42 USC 1758, or 7 CFR 210.16 or consulting services pursuant to Education Code 45103.5, and should be modified to reflect the type(s) of contracts—~~in~~ the district **maintains**; see the accompanying Board policy.

The term of any contract for food service management or consulting services shall not exceed one year. Any renewal of the contract or further requests for proposals to provide such services shall be considered on a year-to-year basis. (Education Code 45103.5; 7 CFR 210.16)

Any contract for management of the food service operation shall be approved by CDE and comply with the conditions in Education Code 49554 and 7 CFR 210.16 as applicable. The district shall retain control of the quality, extent, and general nature of its food services, including prices to be charged to students for meals, and shall monitor the food service operation through periodic on-site visits. The district shall not enter into a contract with a food service company to provide a la carte food services only, unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible students. (Education Code 49554; 42 USC 1758; 7 CFR 210.16)

Any contract for consulting services shall not result in the supervision of food service classified staff by the management consultant, nor shall it result in the elimination of any food service classified staff or position or have any adverse effect on the wages, benefits, or other terms and conditions of employment of classified food service staff or positions. All persons providing consulting services shall be subject to applicable employment conditions related to health and safety as listed in Education Code 45103.5. (Education Code 45103.5)

*(cf. 3312 - Contracts)*

*(cf. 3515.6 - Criminal Background Checks for Contractors)*

*(cf. 3600 - Consultants)*

AR 3551(i)

**FOOD SERVICE OPERATIONS/CAFETERIA FUND** (continued)

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

*(cf. 4212 - Appointments and Conditions of Employment)*

(5/17 3/18) 7/19

**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

Certificated Personnel

AR 4117.7(a)  
4317.7

## EMPLOYMENT STATUS REPORTS

Note: Education Code 44030.5 and 44242.5, as added and amended by AB 449 (Ch. 232, Statutes of 2013), and 5 CCR 80303, as amended by Register 2014, No. 14, require the Superintendent to make a report to the Commission on Teacher Credentialing (CTC) when the employment status of a certificated employee has been changed as a result of alleged misconduct or while an allegation of misconduct is pending. Upon notification by the district or other specified agencies, the CTC may conduct a review and take an adverse action against the certificated employee, including, but not limited to, suspension or revocation of the credential.

Pursuant to 5 CCR 80303, the report must be made regardless of any proposed or actual agreement, settlement, or stipulation between the district and the employee not to make such a report. The report must also be made if the allegations are withdrawn in consideration of the employee's resignation, retirement, or other failure to contest the truth of the allegations.

Pursuant to Education Code 44030.5 and 5 CCR 80303, as amended, the Superintendent's failure to make the report of the change in employment status or to notify the affected employee of the contents of 5 CCR 80303 would be considered unprofessional conduct and, if it is determined that the Superintendent refused or willfully neglected to make the report, he/she the Superintendent may be found guilty of a misdemeanor and fined.

The Superintendent shall report to the Commission on Teacher Credentialing (CTC) any change in the employment status of a certificated employee who, while working in a position requiring a credential and as a result of an allegation of misconduct or while an allegation of misconduct is pending: (Education Code 44030.5, 44242.5; 5 CCR 80303)

1. Is dismissed or nonreelected

*(cf. 4116 - Probationary/Permanent Status)*  
*(cf. 4117.6 - Decision Not to Rehire)*  
*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

2. Resigns

*(cf. 4117.2/4217.2/4317.2 - Resignation)*

3. Is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse employment action

4. Retires

5. Is otherwise terminated by a decision not to employ or reemploy

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

## EMPLOYMENT STATUS REPORTS (continued)

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

Note: Pursuant to Education Code 44030.5 and 44242.5, as added and amended by AB 449 (Ch. 232, Statutes of 2013), a change in employment status due solely to unsatisfactory performance or a reduction in force does not require a report to the CTC.

This report is not required when the change in employment status is due solely to unsatisfactory performance pursuant to Education Code 44932 or a reduction in force pursuant to Education Code 44955-44958. (Education Code 44030.5, 44242.5; 5 CCR 80303)

*(cf. 4115 - Evaluation/Supervision)*  
*(cf. 4117.3 - Personnel Reduction)*

Note: Education Code 44030.5 requires the Superintendent to submit the report to the CTC within 30 days of the change in employment status. 5 CCR 80303, as amended by Register 2014, No. 14, requires the CTC to acknowledge receipt of the report within 30 days of receipt.

5 CCR 80303, as amended, describes the contents that must be included in the report. The report should be made using a notification form available on the CTC's web site and attaching relevant documents, evidence, and materials related to the district's investigation of the misconduct.

When required, the report of a change in employment status shall be submitted not later than 30 days after the employment action. The report shall be made using a form provided by the CTC and shall include all known information about each alleged act of misconduct by the employee. The report shall contain the name and current address of the certificated employee, name of the district, last school or district assignment, an explanation of the allegation of misconduct or pending allegation of misconduct, current contact information for all persons who may have information relating to the alleged misconduct, and any and all documentation related to the case. (Education Code 44030.5; 5 CCR 80303)

Upon a change in employment status as a result of alleged misconduct or while an allegation of misconduct is pending, the Superintendent shall, in writing, inform the employee of the contents of 5 CCR 80303. (5 CCR 80303)

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

### Additional Reports of Employee Misconduct

Note: Notification forms for the reports specified in items #1-2 below are available on the CTC's web site.

The Superintendent or designee shall submit a report to the CTC, using a form provided by the CTC and attaching all relevant documents, whenever:

**EMPLOYMENT STATUS REPORTS** (continued)

Note: Pursuant to Education Code 44940, the district must notify **the** CTC when an employee has been charged in court with a "mandatory leave of absence offense," defined as a sex or drug offense specified in Education Code 44940 **or a violation or attempted violation of Penal Code 187 (murder)**. Also see **BP** AR 4118 - Dismissal/Suspension/Disciplinary Action. Upon receiving notification from the district regarding any such offense, **the** CTC will automatically suspend the employee's credential. Education Code 44423.5 also requires **the** CTC to suspend an individual's credential upon receiving notice that another state has taken final action to revoke the individual's credential.

1. An employee, by complaint, information, or indictment filed in court, is charged with a "mandatory leave of absence offense," defined as a sex or drug offense specified in Education Code 44940 **or violation or attempted violation of Penal Code 187 (murder)**. (Education Code 44242.5, 44940, 44940.5)

Not later than 10 days after receipt of such a complaint, information, or indictment regarding an employee, the Superintendent or designee shall forward a copy of the received documents to **the** CTC. In addition, **he/she the Superintendent or designee** shall report to **the** CTC any action taken in connection with extending the employee's mandatory leave beyond the initial period. (Education Code 44940, 44940.5)

Note: According to **the** CTC's notification form, submission of this notification to **the** CTC does not relieve the district of the obligation to also submit an employment status report of the same misconduct when the district takes disciplinary action resulting in a change in employment status.

If the offense results in a change in employment status, the Superintendent shall submit an employment status report in addition to the report of the mandatory leave of absence offense.

2. An employee refuses, without good cause, to fulfill a valid employment contract, or departs from district service without the consent of the Superintendent or Governing Board. (Education Code 44242.5, 44420)

Note: Education Code 44242.5 gives **the** CTC authority to review any of the violations described in items #1-3 below upon receiving notice from a district. Since the law does not require districts to report these violations to **the** CTC, the district should revise the following list to identify the types of violations that it will report and then ensure consistent implementation.

As appropriate, the Superintendent or designee also shall notify **the** CTC of any of the following:

Note: Pursuant to Education Code 44242.5, **the** CTC will not consider action on the basis of alleged sexual misconduct (item #1 below) unless there is evidence in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

**EMPLOYMENT STATUS REPORTS** (continued)

1. A complaint filed with the district regarding a certificated employee's alleged sexual misconduct (Education Code 44242.5)

***(cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)***

The notice to **the** CTC shall contain all of the following information: (5 CCR 80304)

- a. Name of the employee alleged to have engaged in the sexual misconduct
- b. Name, age, and address of each victim of the alleged sexual misconduct
- c. A summary of all information known to the district regarding the alleged sexual misconduct
- d. A summary of the action, if any, taken at the district level in response to the complaint of sexual misconduct

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*  
*(cf. 5145.7 - Sexual Harassment)*

2. An employee's knowing and willful use of school records of student data in connection with, or in implicit or explicit attempts to recruit a student to be a customer for, any business owned by the certificated employee or in which the certificated employee is an employee (Education Code 44242.5, 44421.1)

*(cf. 5125 - Student Records)*

3. An employee's knowing and willful reporting of false fiscal expenditure data relative to the conduct of any educational program (Education Code 44242.5, 44421.5)
4. An employee's subversion or attempt to subvert any licensing examination or the administration of an examination (Education Code 44242.5, 44439)

*Legal Reference: (see next page)*

**EMPLOYMENT STATUS REPORTS** (continued)

*Legal Reference:*

EDUCATION CODE

- 44009 Conviction of specified crimes
- 44010 Sex offense, definitions
- 44011 Controlled substance offense, definitions
- 44030.5 Employment status reports
- 44225 Powers and duties of ~~the~~ CTC
- 44242.5 Reports and review of alleged misconduct
- 44420-44440 Adverse actions by CTC against credential holder
- 44932 Causes for dismissal
- 44940 Sex offenses and narcotic offenses; compulsory leave of absence
- 44940.5 Compulsory leave of absence
- 44955-44958 Reduction in force

PENAL CODE

187 Murder

CODE OF REGULATIONS, TITLE 5

- 80303 Reports of change in employment status, alleged misconduct
- 80304 Notice of sexual misconduct

*Management Resources:*

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

*California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel, ~~2013~~ 2019*

WEB SITES

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

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

# CSBA Sample Board Policy

Classified Personnel

BP 4218(a)

## DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

Note: The following policy is for use by districts that have not incorporated the merit system for classified employees pursuant to Education Code 45240-45320. For procedures applicable to districts that have incorporated the merit system, see BP/AR 4218.1 - Dismissal/Suspension/Disciplinary Action (Merit System).

The following policy is subject to collective bargaining and may be deleted or revised by any district whose collective bargaining agreement covers classified employee dismissal, suspension, and other disciplinary action.

The Governing Board expects all employees to perform their jobs satisfactorily and to exhibit professional and appropriate conduct. A classified employee may be disciplined for unprofessional conduct or unsatisfactory performance in accordance with law or any applicable collective bargaining agreement, Board policy, and administrative regulation.

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 4000 - Concepts and Roles)*  
*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*  
*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*  
*(cf. 4141/4241 - Collective Bargaining Agreement)*  
*(cf. 4200 - Classified Personnel)*

Disciplinary actions shall be based on the particular facts and circumstances involved and the severity of the employee's conduct or performance. The Superintendent or designee shall ensure that disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

*(cf. 4030 - Nondiscrimination in Employment)*  
*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*  
*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

Disciplinary actions may include, but are not limited to, verbal and written warnings, involuntary reassignment, demotion, suspension without pay, reduction of pay step in class, compulsory leave, and dismissal.

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at his/her discretion, dismiss a probationary classified employee from district employment. A probationary employee shall not be entitled to a hearing. A probationary classified employee may be dismissed by the Superintendent or designee at any time prior to the expiration of the probationary period.

*(cf. 4216 - Probationary/Permanent Status)*

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

Note: Education Code 45113 mandates districts not incorporating the merit system to prescribe, by written rule or regulation, causes and procedures for disciplinary action against permanent classified employees. Also see the accompanying administrative regulation.

Permanent classified employees shall be subject to **personnel disciplinary action** (~~suspension without pay, demotion, reduction of pay step in class, dismissal~~) only for cause as **specified in the accompanying administrative regulation**. ~~The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.~~ **(Education Code 45113)**

**Procedures for Disciplinary Proceedings**

Note: The following section should be revised to reflect district practice. Pursuant to Education Code 45113 and 45116, a permanent classified employee must be given notice of any recommendation for disciplinary action against the employee, including a time period during which the employee may request a hearing on the charges. See the section "Initiation and Notification of Charges" in the accompanying administrative regulation.

Pursuant to Education Code 45113, the Governing Board may delegate its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Penal Code 830.32, to an impartial third-party hearing officer. Hearings conducted by the Board or a hearing officer are not subject to the procedures used by the Office of Administrative Hearings pursuant to Government Code 11500-11529. The following section is for use by boards who conduct their own hearing and should be revised by boards that use a hearing officer.

As amended by AB 2234 (Ch. 996, Statutes of 2018), Education Code 45113 requires the Board to delegate its authority to an administrative law judge in cases involving allegations of egregious misconduct with a minor. Egregious misconduct is defined as immoral conduct leading to an allegation of a sex offense pursuant to Education Code 44010, a controlled substance offense pursuant to Education Code 44011, or child abuse or neglect pursuant to Penal Code 11165.2-11165.6. In conducting hearings on such matters, the administrative law judge is required to comply with Education Code 44990-44994, as added by AB 2234, pertaining to the testimony of minor witnesses.

**If a permanent classified employee receives a notice from the Superintendent or designee of a recommended suspension, demotion, involuntary reassignment, or dismissal, the employee may request a Board hearing on the matter.**

~~If the employee fails to file a notice of appeal~~ **request a hearing** within the time specified ~~in the notice, in these rules, he/she shall be~~ **the employee** is deemed to have waived ~~his/her~~ **the** right to ~~appeal~~ **do so**, and the Board may order the recommended ~~personnel disciplinary~~ **action** into effect immediately.

**If a timely request is submitted, a hearing shall be conducted by the Board.** ~~All hearings shall be heard by a hearing officer (who shall be an attorney licensed in the State of California.) except in those cases where the Board determines to hear the appeal itself.~~ **except that, if the matter involves an allegation of egregious misconduct as defined in**

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

**Education Code 44932 and involves a minor, the matter shall be referred to an administrative law judge to determine whether sufficient cause exists for disciplinary action against the employee. (Education Code 45113, 45312)**

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

In any case in which the Board hears the appeal, the Board may use the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. If the appeal is heard by the Board, the Board shall affirm, modify or revoke the recommended personnel action.

The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or hearing officer and the availability of legal counsel and witnesses. The parties-employee shall be notified of the time and place of the hearing.

**The hearing shall be held in closed session, unless the employee requests that the matter be heard in an open session meeting. (Government Code 54957)**

*(cf. 9321 - Closed Session)*

The employee shall be entitled to appear personally, produce evidence, and have counsel. The employee shall be entitled to a public hearing if he/she demands it when the Board is hearing the appeal. The complainant may also be represented by legal counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 11500 shall not apply to any such hearing before the Board or a hearing officer.

The Board may use the services of its legal counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. The Board or the hearing officer may review and consider the records of any prior personnel action proceedings against the employee in which a personnel disciplinary action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing. Neither the Board nor a hearing officer shall not be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

At any time before an employee's appeal a matter is finally submitted to the Board or to a hearing officer for decision, the complainant the Superintendent or designee may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of personnel disciplinary action. If the amended or supplemental recommendation presents includes new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her a defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

~~If the appeal is heard~~ **Following the hearing by the Board**, the Board shall affirm, modify, or revoke ~~reject~~ the recommended personnel disciplinary action recommended by the Superintendent or designee. The decision of the Board shall be in writing and shall contain findings of fact and the ~~personnel-disciplinary~~ **personnel-disciplinary** action approved, if any. The decision of the Board shall be final.

~~If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in a form that may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within 10 days after the proposed decision is filed by the Board. The Board may:~~

- ~~(1) — Adopt the proposed decision in its entirety.~~
- ~~(2) — Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.~~
- ~~(3) — Reject a proposed reduction in personnel action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.~~
- ~~(4) — Reject the proposed decision in its entirety.~~

~~d. — If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she shall prepare a proposed decision, as provided in item "7c" above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.~~

~~e. — In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a personnel action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.~~

**8. — Hearing Decision**

~~The decision of the Board shall be in writing and shall contain findings of fact and the personnel action approved, if any. The findings may reiterate the language of the pleadings or simply refer to them.~~

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

~~The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action, and he/she shall enforce and follow this decision. Within 10 working days of the Board's final decision, a~~ copy of the decision shall be delivered to the ~~appellant or his/her~~ employee and/or designated representative personally or by registered mail. ~~The decision of the Board shall be final.~~

**In cases involving an allegation of egregious misconduct, the ruling of the administrative law judge shall be binding on the district and the employee. (Education Code 45113)**

*Legal Reference:*

**EDUCATION CODE**

35161 *Delegation of powers and duties*

44009 *Conviction of specified crimes*

44010 *Sex offense*

44011 *"Controlled substance offense" defined*

**44031 *Personnel file***

44940 *Leave of absence; employee charged with mandatory or optional leave of absence offense*

44940.5 *Compulsory leave of absence; procedures; extension; compensation; bond or security;*  
~~reports~~

**44990-44994 *Testimony of minor witnesses at dismissal or suspension hearings***

45101 *Definitions (including "disciplinary action," "cause")*

45109 *Fixing of duties*

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

45123 *Employment after conviction of sex or narcotics offense*

**45124 *Dismissal of sexual psychopath***

**45202 *Transfer of accumulated sick leave and other benefits following dismissal***

**45240-45320 *Merit system, classified employees***

**CODE OF CIVIL PROCEDURE**

**1286.2 *Grounds for vacating decision of arbitrator***

**GOVERNMENT CODE**

**11500-11529 *Administrative adjudication***

**12900-12996 *Fair Employment and Housing Act***

**54957 *Brown Act open meeting laws; closed session***

**HEALTH AND SAFETY CODE**

**11054 *Schedule I; substances included***

**11055 *Schedule II, substances included***

**11056 *Schedule III, substances included***

**11357-11361 *Marijuana***

**11363 *Peyote***

**11364 *Opium***

**11370.1 *Possession of controlled substances with a firearm***

*Legal Reference continued: (see next page)*

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

*Legal Reference: (continued)*

**PENAL CODE**

**187 Murder**

**667.5 Sex offenders**

**830.32 Peace officers employed by district**

**1192.7 Violent or serious felony**

**11165.2-11165.6 Child abuse or neglect, definitions**

**VEHICLE CODE**

**1808.8 School bus drivers; dismissal for safety-related cause**

**UNITED STATES CODE, TITLE 42**

**12101-12213 Americans with Disabilities Act**

**COURT DECISIONS**

**California School Employees Association v. Bonita Unified School District, (2008) No. B200141**

**California School Employees v. Livingston Union School District, (2007) 149 Cal.App 4<sup>th</sup> 391**

**CSEA v. Foothill Community College District, (1975) 52 Cal. App. 3rd 150, 155-156, 124 Cal. Rptr**

**830 (1975)**

# CSBA Sample Administrative Regulation

Classified Personnel

AR 4218(a)

## DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

### Termination of Probationary Employment

Note: In accordance with Education Code 35161, the Board can delegate to the Superintendent or designee the authority to dismiss probationary classified employees as set forth below.

At any time prior to the expiration of the probationary period, the Superintendent or designee may, at his/her discretion, dismiss a probationary classified employee from district employment. A probationary employee shall not be entitled to a hearing.

### Involuntary Suspension Without Pay, Demotion, Reduction of Pay Step in Class, or Dismissal of Permanent Classified Employees

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay step in class, dismissal) only for cause. The Board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

### Causes for Disciplinary Action

Note: **The following section should be revised to reflect district practice.** Education Code 45113 mandates districts not incorporating the merit system to prescribe, by rule or regulation, causes for disciplinary action against permanent classified employees. **Pursuant to Education Code 45101,** such employees may be disciplined only for cause as so prescribed. **In merit system districts,** causes for suspension or dismissal are those designated by rule of the commission and those specified in Education Code 45303. **If negotiated collective bargaining agreements contain different provisions for employee discipline, those negotiated agreements would take precedence over this regulation for those employees covered by the collective bargaining agreements.**

#### I. Causes

In addition to any disqualifying or actionable causes otherwise provided for by statute or by policy or regulation of this district, each of the following constitutes cause for personnel action against a permanent classified employee: **A permanent classified employee may be subject to suspension, demotion, involuntary reassignment, or dismissal for one or more of the following causes:**

Note: Pursuant to Education Code 45122.1, 45123, and 45124, districts that use the merit system may **not** employ or continue to employ anyone who has been convicted of a **specified** sex offense, **controlled substance offense, or violent or serious offense as defined** described in item #1, **except for employees who have been rehabilitated or had their conviction reversed or the charges dismissed.** In addition, these districts may not employ anyone who has been convicted of a controlled substance offense unless the Board determines from the evidence it requires that the person has been rehabilitated for at least five years. **Also see AR 4112.5/4212.5/4312.5 - Criminal Record Check.**

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

**k.1. Immoral conduct, including, but not limited to, egregious misconduct that is the basis for a sex offense as defined in Education Code 44010, a controlled substance offense as defined in Education Code 44011, or child abuse and neglect as described in Penal Code 11165.2-11165.6**

*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*  
*(cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)*  
*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

**2. Conduct that constitutes a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c)**

**t.3. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public or other employees while acting in the capacity of a district employee, against any student or other employee**

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*  
*(cf. 5145.3 - Nondiscrimination/Harassment)*  
*(cf. 5145.7 - Sexual Harassment)*

**p.4. Violation of or refusal to obey state or federal law or regulation, district, Board or departmental rule, policy, or district or school procedure;**

**a.5. Falsifying Falsification of** any information supplied to the **school** district, including, but not limited to, information supplied on application forms, employment records, or any other school district records;

**b.6. Unsatisfactory performance Incompetency;**

**e. Inefficiency;**

**7. Unprofessional conduct**

**f.8. Dishonesty;**

**d.9. Neglect of duty or absence without leave;**

**e.10. Insubordination;**

**f. Dishonesty;**

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

**g.11.** ~~Drinking alcoholic beverages~~ **Use of alcohol or a controlled substance** while on duty or in such close time proximity thereto as to ~~cause any detrimental effect upon~~ **affect** the employee's **performance** ~~or upon employees associated with him/her.~~

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

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

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

*(cf. 4159/4259/4359 - Employee Assistance Program)*

Note: The following cause for disciplinary action deliberately makes no mention of drug addiction. It is not against the law to be an addict, and punishing someone for being an addict could lead to discrimination claims under the Americans with Disabilities Act.

~~h. Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.~~

~~i. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction for this purpose.~~

~~j. Absence without leave.~~

~~k. Immoral conduct~~

~~l. Discourteous treatment of the public, students, or other employees.~~

~~m. Improper political activity.~~

~~n. Willful disobedience.~~

**g.12.** **Destruction or misuse** of district property.

*(cf. 4040 - Employee Use of Technology)*

~~p. Violation of district, Board or departmental rule, policy, or procedure.~~

**g.13.** Failure to ~~possess or keep in effect~~ **fulfill any ongoing condition of employment including, but not limited to, maintenance of** any license, certificate, or other similar requirement specified in the employee's class specification or otherwise necessary for the employee to perform the duties of the position.

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

*(cf. 4212 - Appointment and Conditions of Employment)*

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

r. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.

Note: Pursuant to the federal Americans with Disabilities Act (42 USC 12101-12213) and the state's Fair Employment and Housing Act (Government Code 12900-12996), the district has a duty to reasonably accommodate qualified employees with known disabilities, except when such accommodation would cause an undue hardship to the district. This accommodation is not required for individuals who are not otherwise qualified for the job.

s.14. A physical or mental **disability condition** which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law **regulating the retirement of employees.**

(cf. 4030 - Nondiscrimination in Employment)  
(cf. 4032 - Reasonable Accommodation)

t. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age against the public or other employees while acting in the capacity of a district employee.

u.15. Unlawful **retaliation** against any other district officer or employee or member of the **public person** who, in good faith, reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any information relative to an actual or suspected violation of state or federal law occurring on **or directly related to** the job **or directly related thereto.**

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

16. **Violation of Education Code 45303 or Government Code 1028 (advocacy of communism)**

v.17. Any other **failure of good behavior** either during or outside of duty hours, **misconduct** which is of such nature that it causes discredit **or injury** to the district or his/her the **employee's position** employment.

An employee shall not be suspended, disciplined, reassigned, transferred, dismissed, or otherwise retaliated against solely for acting to protect a student, or for refusing to infringe on a student's protected conduct, when that student is exercising free speech or press rights pursuant to Education Code 48907 or 48950. (Education Code 48907, 48950)

(cf. 5145.2 - Freedom of Speech/Expression)

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

Except as defined in item "s" above, no personnel **No disciplinary** action shall be taken for any cause which arose before the employee became permanent, nor for any cause which arose more than two years before the date of the filing of the notice of cause unless this cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee would have disclosed the facts to the district. **(Education Code 45113)**

*(cf. 4216 - Probationary/Permanent Status)*

**2. — Initiation and Notification of Charges**

Note: **In districts not incorporating the merit system, Education Code 45113 mandates the Board districts to adopt disciplinary procedures which contain provisions for giving classified employees a written notice of specific charges, procedures, and employee rights, the employee's right to a hearing on those charges, the time within which the hearing may be requested, and a card or paper to complete to request a hearing.**

~~The Superintendent or designee may initiate a personnel action as defined herein against a permanent classified employee.~~

~~In all cases involving a personnel action, the person initiating the action~~ **The Superintendent or designee shall file a written any recommendation of personnel for a disciplinary action in writing** with the **Governing Board**. A copy of the recommendation shall be served upon the employee either personally or by registered or certified mail, return receipt requested, at the employee's last known address.

The ~~recommendation~~ **notice shall, in ordinary and concise language, include: inform the employee of the specific charge(s) or cause(s) for the disciplinary action, the specific acts and omissions upon which the action is based, and, if applicable, the district rule or regulation that the employee has allegedly violated. In addition, the notice shall include the employee's right to a hearing on those charges, the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper which the employee may sign and file to deny the charges and request a hearing. (Education Code 45113, 45116)**

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

- a. ~~A statement of the nature of the personnel action (suspension without pay, demotion, reduction of pay step in class, or dismissal).~~
- b. ~~A statement of the cause or causes for the personnel action, as set forth above.~~
- e. ~~A statement of the specific acts or omissions upon which the causes are based. If a violation of rule, policy, or regulation of the district is alleged, the rule, policy, or regulation violated shall be stated in the recommendation.~~

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

d. A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed.

e. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

**3. Employment Status Pending Appeal or Waiver**

Except as provided herein, any employee against whom a recommendation of personnel action has been issued shall remain on active duty status and responsible for fulfilling the duties of the position pending his/her appeal, or waiver thereof. If the Superintendent or designee determines that a permanent classified employee should be dismissed and that his/her continuing in active duty status would present an unreasonable risk of harm to students, staff, or property while proceedings are pending, the Superintendent or designee may order the employee immediately suspended from duty without pay in conjunction with the recommendation of personnel action. This suspension order shall be in writing and shall state the reasons that the suspension is deemed necessary. The suspension order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance.

Except in cases of emergency when the employee must be removed from the premises immediately, the Superintendent or designee shall give the employee written notice of the proposed recommendation of dismissal at least five calendar days before the effective date of any order of suspension issued in conjunction with a recommendation involving dismissal. This notice shall state that immediate suspension without pay is being considered, the reasons for the proposed dismissal and proposed immediate suspension without pay, materials upon which the proposed action is based, and the employee's right to respond to the Superintendent or designee orally or in writing before the final recommendation and order are issued.

**4. Time Limit of Suspension**

Except for a suspension imposed under #3 above, any suspension invoked under these rules against any one person for one or more periods shall not aggregate more than 90 calendar days in any 12 month period; however, this time limitation shall not apply to cases in which a personnel action of dismissal is modified by the Board to a suspension.

**5. Right to Appeal Request for Hearing**

Note: In *California School Employees Association v. Livingston Union School District*, a district's policy, pursuant to Education Code 45113, required that the employee be provided written notice of his right to request a hearing on the charges within five days "after service of the notice." The notice was delivered via

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

certified mail to the employee's post office box, but the employee did not actually receive the notice until several months later. The district denied the employee's late request for a hearing on the grounds that it was not received within five days from the date the notice was mailed. The court held that the district's notice was invalid because it was not "reasonably calculated" to notify the employee of the action and to afford him an opportunity to request a hearing. Thus, when calculating the five-day response timeline, districts should be careful to ensure that the notice has first been received by the employee. As provided in the section "Initiation and Notification of Charges" above, Education Code 45113 requires that the notice of disciplinary action include the time within which a hearing may be requested, which cannot be less than five days after service of the notice to the employee. In California School Employees Association v. Livingston Union School District, the appeals court ruled that the district failed to provide due process to an employee when it denied the employee the opportunity to request a hearing based on the employee's failure to respond within five days after service of the notice. The district's policy had established the date of "service of the notice" as the date of mailing, but the employee was a 10-month employee who was out of town when the notice was delivered. The court held that the notice was not "reasonably calculated" to provide an opportunity to timely request a hearing. Thus, it is recommended that districts use the date of the employee's receipt of the notice as the date upon which the five-day response period begins.

Within ~~five calendar days after receiving~~ **the time specified in the notice of** the recommendation of ~~personnel disciplinary~~ **action described above**, the employee may ~~appeal~~ **request a hearing on the charges** by signing and filing the card or paper included with the ~~recommendation notice.~~ **(Education Code 45113)**

Any other written document signed and appropriately filed within the specified time limit by the employee shall constitute a sufficient notice of ~~appeal~~ **the request for a hearing**. ~~A notice of appeal is filed only by delivering the~~ **The notice of appeal request shall be delivered** to the office of the Superintendent or designee during normal work hours of that office. ~~A notice of appeal may be~~ **If** mailed to the office of the Superintendent or designee, ~~it but~~ must be received or postmarked no later than the time limit ~~stated herein~~ **specified by the district**. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any ~~appeal of the recommendation of~~ **request for a hearing on the** dismissal shall also constitute ~~an appeal of a request to hear~~ **the suspension order**, and the necessity of the ~~suspension~~ **order** shall be an issue in the ~~appeal~~ **hearing**.

If the employee fails to file a notice of appeal within the time specified, in these rules, he/she shall be deemed to have waived his/her right to appeal, and the Board may order the recommended personnel action into effect immediately.

**3. Employment Status Pending a Hearing Appeal or Waiver**

Except as provided herein, any ~~A classified~~ **A classified** employee against whom a recommendation of ~~personnel disciplinary~~ **action** has been issued shall remain on active duty status ~~and~~ **responsible for fulfilling the duties of the position pending his/her appeal, or waiver thereof.** ~~pending any hearing on the charges, unless~~ **If** the Superintendent or designee determines

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

that a permanent classified employee should be dismissed and that his/her continuing the employee's continuance in active duty status would present an unreasonable risk of harm to students, staff, or property, while proceedings are pending, the Superintendent or designee may, **in writing**, order the employee immediately suspended from duty without pay in conjunction with the recommendation of personnel action. This suspension order shall be in writing and shall state the reasons that the suspension is deemed necessary. The suspension order shall be served upon the employee either personally or by registered or certified mail, return receipt requested, immediately after issuance.

**6. Amended/Supplemental Charges**

At any time before an employee's appeal is finally submitted to the Board or to a hearing officer for decision, the complainant may, with the consent of the Board or hearing officer, serve on the employee and file with the Board an amended or supplemental recommendation of personnel action. If the amended or supplemental recommendation presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare his/her defense. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegation may be made orally at the hearing and shall be noted on the record.

**7. Hearing Procedures**

a. The hearing shall be held at the earliest convenient date, taking into consideration the established schedule of the Board or hearing officer and the availability of counsel and witnesses. The parties shall be notified of the time and place of the hearing. The employee shall be entitled to appear personally, produce evidence, and have counsel. The employee shall be entitled to a public hearing if he/she demands it when the Board is hearing the appeal. The complainant may also be represented by counsel. The procedure entitled "Administrative Adjudication" commencing with Government Code 1150 shall not apply to any such hearing before the Board or a hearing officer. Neither the Board nor a hearing officer shall be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the hearing officer or the Board.

b. All hearings shall be heard by a hearing officer (who shall be an attorney licensed in the State of California) except in those cases where the Board determines to hear the appeal itself. In any case in which the Board hears the appeal, the Board may use the services of its counsel or a hearing officer in ruling upon procedural questions, objections to evidence, and issues of law. If the appeal is heard by the Board, the Board shall affirm, modify or revoke the recommended personnel action.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

e. If the appeal is heard by a hearing officer, he/she shall prepare a proposed decision in a form that may be adopted by the Board as the decision in the case. A copy of the proposed decision shall be received and filed by the Board and furnished to each party within 10 days after the proposed decision is filed by the Board. The Board may:

- (1) Adopt the proposed decision in its entirety.
- (2) Reduce the personnel action set forth in the proposed decision and adopt the balance of the proposed decision.
- (3) Reject a proposed reduction in personnel action, approve the personnel action sought by the complainant or any lesser penalty, and adopt the balance of the proposed decision.
- (4) Reject the proposed decision in its entirety.

d. If the Board rejects the proposed decision in its entirety, each party shall be notified of such action and the Board may decide the case upon the record including the transcript, with or without the taking of additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer, he/she shall prepare a proposed decision, as provided in item "7c" above, upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of this proposed decision shall be furnished to each party within 10 days after the proposed decision is filed by the Board.

e. In arriving at a decision or a proposed decision on the propriety of the proposed personnel action, the Board or the hearing officer may consider the records of any prior personnel action proceedings against the employee in which a personnel action was ultimately sustained and any records that were contained in the employee's personnel files and introduced into evidence at the hearing.

**8. Hearing Decision**

The decision of the Board shall be in writing and shall contain findings of fact and the personnel action approved, if any. The findings may reiterate the language of the pleadings or simply refer to them.

The decision of the Board shall be certified to the Superintendent or designee who recommended the personnel action, and he/she shall enforce and follow this decision.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

~~A copy of the decision shall be delivered to the appellant or his/her designated representative personally or by registered mail. The decision of the Board shall be final.~~

**4. ~~Time Limit of Suspension~~**

~~Except for a suspension imposed under #3 above, any suspension invoked under these rules against any one person for one or more periods shall not aggregate more than 90 calendar days in any 12-month period; however, this time limitation shall not apply to cases in which a personnel action of dismissal is modified by the Board to a suspension.~~

**OPTION 1 – Nonmerit System Districts**

**9. ~~Compulsory Dismissal~~**

~~Note: This section applies to districts that have not adopted the merit system. Pursuant to Education Code 45123, these districts may not employ or continue to employ anyone who has been convicted of any sex offense as described below. In addition, these districts may not employ anyone who has been convicted of a controlled substance offense as described below unless the Board determines from the evidence it requires that the person has been rehabilitated for at least five years.~~

~~The district shall not employ or retain in employment any person who has been convicted of any sex offense as defined in Education Code 44010 or any controlled substance offense as defined in Education Code 44011. However, the district may employ a person convicted of a controlled substance offense if the Board determines from the evidence it requires that the person has been rehabilitated for at least five years. If any such conviction is reversed and the person acquitted or charges dismissed except as otherwise provided below, the employee may be reemployed by the district, although reemployment is not a guarantee. (Education Code 45123)~~

~~The district reserves the right to dismiss an employee for any acts upon which the original criminal charges were based, despite the disposition by the courts. If dismissal is recommended and upheld, an employee will not be reemployed or compensated for the time he/she was suspended unless otherwise required by law. An employee shall be given notice of the possibility of not being reimbursed during mandatory suspension if he/she is ultimately dismissed for the acts upon which the original charges were based.~~

**OPTION 2 – Merit System Districts**

**9. ~~Compulsory Leave of Absence~~**

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

Note: Education Code 45304 requires that the Board in merit system districts immediately place on compulsory leave of absence any district or county office of education employee who is charged with a "mandatory leave of absence offense" as defined in Education Code 44940. Mandatory leave offenses are sex offenses and offenses involving the furnishing of certain drugs to minors. The Board may require compulsory leave for an employee charged with an "optional leave of absence offense." Optional leave of absence offenses are offenses involving murder, attempted murder, and the possession or sale of certain drugs. State law requires that classified employees in merit system districts and certificated employees be immediately placed on compulsory leave of absence following conviction for certain offenses specified in Education Code 44940, and gives districts discretion to place such employees on leave for other specified offenses. Although existing state law does not explicitly provide for application to classified employees in nonmerit system districts, such districts have authority pursuant to Education Code 45113 to establish causes for suspension or dismissal. The following section may be revised to reflect district practice.

Employees charged with a "mandatory leave of absence offense" as defined in Education Code 44940 shall be placed immediately on compulsory leave of absence for not more than 10 days after entry of judgment in the criminal proceedings, unless the leave is extended as provided below. (Education Code 45304)

Employees charged with an optional leave of absence offense as defined in Education Code 44940 may be placed immediately on compulsory leave of absence under the terms and conditions stated below. (Education Code 45304)

Despite the disposition of criminal charges, the Board reserves the right to dismiss an employee for the facts upon which the criminal charges were based. An employee ultimately found guilty by the Personnel Commission to have committed the acts upon which the original charges were based may be dismissed. If so dismissed, the employee is not entitled to compensation during the time of his/her suspension, unless otherwise required by law. An employee shall be given notice of the possibility of being dismissed without pay during the compulsory suspension if he/she is ultimately found guilty of the acts leading to the criminal charges, despite the disposition of the charges by the court.

Upon being informed by law enforcement that a classified employee has been charged with a "mandatory leave of absence offense," the Superintendent or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes:

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187 (murder or attempted murder)
3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substances as listed in Health and Safety Code 11054, 11055, and 11056

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

The Superintendent or designee may place on an immediate compulsory leave of absence a classified employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense specified in Education Code 44011 and Health and Safety Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols.

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings. However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless the employee demands a hearing on the dismissal.

~~10. — Extension of Compulsory Leave~~

Note: Pursuant to Education Code 45304, employees placed on compulsory leave are subject to the procedures of Education Code 44940.5.

~~The Board may extend an employee's compulsory leave of absence by giving him/her notice, within 10 days after the entry of judgment in the proceedings, that he/she will be dismissed in 30 days unless he/she demands a hearing. Employee compensation during the period of compulsory leave shall be made in accordance with law. (Education Code 44940.5)~~

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# CSBA Sample Board Policy

Students

BP 5123(a)

## PROMOTION/ACCELERATION/RETENTION

Note: Education Code 48070 and 48070.5 **mandate** that the Governing Board adopt a policy, at a public meeting, regarding the promotion and retention of students, including, but not limited to, promotion and retention at specified grade levels and with specified provisions.

The Governing Board expects students to progress through each grade level within one school year. Toward this end, instruction shall be designed to accommodate the variety of ways that students learn and provide strategies for addressing academic deficiencies as needed.

Students shall progress through the grade levels by demonstrating growth in learning and meeting grade-level standards of expected student achievement.

*(cf. 6011 - Academic Standards)*

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

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

*(cf. 6170.1 - Transitional Kindergarten)*

When high academic achievement is evident, the teacher may recommend a student for acceleration to a higher grade level. The student's maturity level shall be taken into consideration in making a determination to accelerate a student.

Note: Education Code 48070.5 **mandates** that the Board's policy provide for the identification of students who should be retained and who are at risk of being retained at the end of grades 2, 3, 4, the intermediate grades (usually grade 6), and the middle school grades (usually grade 8). Items #1-5 below should be revised to reflect the grade levels offered by the district. If the Board chooses to expand these requirements to cover other grade levels, the following list should be revised accordingly.

Education Code 48070.5 further **mandates** that the Board's policy provide for students to be identified as early in the school year, and as early in their school careers, as practicable.

Teachers shall identify students who should be retained or who are at risk of being retained at their current grade level as early as possible in the school year and as early in their school careers as practicable. Such students shall be identified at the following grade levels: (Education Code 48070.5)

1. ~~Between grades 2 and 3~~ Grades 2, 3 and 4
2. ~~Between grade 6s 3 and 4~~
3. ~~Grade 8~~ Between grades 4 and 5

**PROMOTION/ACCELERATION/RETENTION** (continued)

Note: If all the schools in the district are configured in the same manner, the district may specify the actual grade levels in items #4 and 5 below (e.g., between grades 6 and 7, between grades 8 and 9).

- 4. ~~Between the end of the intermediate grades and the beginning of the middle school grades~~
- 5. ~~Between the end of the middle school grades and the beginning of the high school grades~~

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Note: Education Code 48070.5 **mandates** that the district's policy establish the basis for identifying students who should be retained and who are at risk of being retained. If a student performs below the minimum standard based on indicators established by the district, the student shall be retained, unless the teacher determines that retention is not the appropriate intervention for the student's academic deficiencies; see the accompanying administrative regulation.

Pursuant to Education Code 48070.5, the district may use either of the following: (1) the student's grades and other indicators of academic achievement designated by the district (Option 1 below) or (2) the results of state assessments administered pursuant to Education Code 60640-60649 and minimum levels of proficiency recommended by the State Board of Education (SBE) (Option 2 below). With regards to **special education** students **with special needs**, the determination as to the appropriate standards for promotion or retention should be made as part of the **IEP individualized education program** process; see BP/AR 6159 - Individualized Education Program.

Education Code 48070.5 provides that, when a district chooses to identify students on the basis of grades pursuant to Option 1, the Board shall also designate other indicators of academic achievement that will be used. These other indicators of achievement (e.g., state or district assessments, portfolios, attendance) should be specified in the blanks provided below.

**OPTION 1:** Students shall be identified for retention on the basis of failure to meet minimum levels of proficiency, as indicated by grades and the following additional indicators of academic achievement:

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

Note: According to the California Department of Education's (CDE) "FAQs Pupil Promotion and Retention," student results from the California Assessment of Student Performance and Progress may be included as indicators of academic achievement for the purpose of identifying students for promotion or retention as provided in Option 2 below, but should not be the only criterion until minimum performance levels for this purpose have been established by CDE. Other indicators of achievement (e.g., grades, district assessments, portfolios, attendance) should be specified in the blanks provided below.

**PROMOTION/ACCELERATION/RETENTION** (continued)

**OPTION 2:** Students shall be identified for retention on the basis of failure to meet minimum levels of proficiency, as indicated by the results of state assessments administered pursuant to Education Code 60640-60649 and the following additional indicators of academic achievement:

1. Grades

2. Local Assessments

*(cf. 6162.5 - Student Assessment)*

*(cf. 6162.51 - State Academic Achievement Tests)*

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

Students between grades 2 and 3 and grades 3 and 4 shall be identified primarily on the basis of their level of proficiency in reading. Proficiency in reading, English language arts, and mathematics shall be the basis for identifying students between grades 4 and 5, between intermediate and middle school grades, and between middle school grades and high school grades. (Education Code 48070.5)

*(cf. 6142.91 - Reading/Language Arts Instruction)*

*(cf. 6142.92 - Mathematics Instruction)*

Note: Education Code 48070.5 **mandates** that the district's policy specify the teacher(s) responsible for the promotion/retention decision in cases where the student does not have a single regular classroom teacher. The following paragraph should be revised to indicate the specific teacher(s) who will be responsible (e.g., teachers responsible for core subjects).

If a student does not have a single regular classroom teacher, the Superintendent or designee shall specify the teacher(s) responsible for the decision to promote or retain the student. (Education Code 48070.5)

Note: Education Code 48070.5 **mandates** that the district's policy include a process by which the teacher's decision to promote or retain a student may be appealed; see the accompanying administrative regulation.

The teacher's decision to promote or retain a student may be appealed in accordance with AR 5123 - Promotion/Acceleration/Retention.

Note: ~~Education Code 37252.2 requires districts to provide supplemental instruction to students in grades 2-9 who have been retained or recommended for retention. Education Code 37252.8 authorizes, but not does require, districts to provide supplemental instruction to students in grades 2-6 who have been identified as at risk of retention.~~ Pursuant to Education Code 48070.5, the Board must adopt policy indicating the manner in which **supplemental instruction for these purposes will be provided to students who are recommended for retention or are identified as being at risk for retention.** See BP 6179 - Supplemental Instruction for language fulfilling this mandate.

**PROMOTION/ACCELERATION/RETENTION** (continued)

When any student in grades 2-9 is ~~retained or~~ recommended for retention **or is identified as being at risk for retention**, the Superintendent or designee shall offer an appropriate program of remedial instruction to assist the student in meeting grade-level expectations. ~~The Superintendent or designee also may offer supplemental instruction to a student in grades 2-6 who is identified as being at risk for retention.~~ (Education Code ~~37252.2, 37252.8,~~ 48070.5)

(cf. 6176 - *Weekend/Saturday Classes*)  
(cf. 6177 - *Summer Learning Programs*)  
(cf. 6179 - *Supplemental Instruction*)

*Legal Reference:*

EDUCATION CODE

~~37252-37254.1~~ ~~Supplemental instruction~~

46300 *Method of computing average daily attendance*

48010 *Admittance to first grade*

48011 *Promotion/retention following one year of kindergarten*

48070-48070.5 *Promotion and retention*

56345 *Elements of individualized education **plan program***

60640-60649 *California Assessment of Student Performance and Progress*

CODE OF REGULATIONS, TITLE 5

200-202 *Admission and exclusion of students*

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*FAQs Promotion, Retention, and Grading (students with disabilities)*

*FAQs Pupil Promotion and Retention*

*Kindergarten Continuance Form*

WEB SITES

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

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

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**Policy Reference UPDATE Service**

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# CSBA Sample Board Policy

Students

BP 5136(a)

GANGS

Note: The following optional policy and regulation may be used as a component of a the district's comprehensive district safety plan and should be revised to reflect district circumstances practice. See BP/AR 0450 - Comprehensive Safety Plan.

The National Gang Center, in its publication *Gangs in Schools*, recommends adopting policy that addresses gang-related incidents.

The Governing Board desires to keep district schools free from the threats or harmful influence of any groups or gangs which who exhibit drug use, violence or disruptive behavior disruptive to the school environment and/or the safety and well-being of students. The Board additionally desires to provide support and intervention to students who are members of gangs to enable them to successfully disengage from gang involvement and be successful in school. The Superintendent or designee shall take steps to deter gang intimidation of students and staff and confrontations between members of different gangs. He/she shall exchange information and establish mutually supportive efforts with local law enforcement authorities.

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3513.4 - Drug and Alcohol Free Schools)*

*(cf. 5131.4 - Student Disturbances)*

*(cf. 5131.6 - Alcohol and Other Drugs)*

*(cf. 5131.7 - Weapons and Dangerous Instruments)*

*(cf. 5137 - Positive School Climate)*

Note: Education Code 51265 urges districts to give high priority to inservice programs on gang violence and substance abuse prevention education.

The Superintendent or designee shall provide inservice training which helps staff to identify gangs and gang symbols, recognize early manifestations of disruptive activities, and respond appropriately to gang behavior. Staff shall be informed about conflict management techniques and alerted to intervention measures and community resources.

Note: The following paragraph is based on the Los Angeles Police Department's "Why Young People Join Gangs," available on its web site.

The Board realizes that students become involved in gangs for many reasons, such as peer pressure, the need for a sense of belonging, and lack of refusal skills. The Superintendent or designee shall develop strategies for gang prevention that address the reasons that students may become involved in gangs, including the identity, recognition, or status achieved as being part of a gang, protection from gang violence in the community, the need for companionship and an extended family, intimidation to join a gang, desire to

GANGS (continued)

join a gang to be in a position to intimidate others, and/or connection with criminal activity.

Note: The following paragraph reflects recommendations in the National Gang Center's Strategic Planning Tool and Gangs in Schools, both available on its web site.

Age appropriate gang violence prevention education shall start with students in the early elementary grades and may start in kindergarten. Gang violence prevention shall start as early as possible and include, but not be limited to, age-appropriate education that focuses on developing emotional and social competence, increasing prosocial peer bonds, strengthening attachment and commitment to school, and enhancing cooperative learning skills. Prevention shall also include improving parent/guardian involvement in and support for their children's academic progress, as well as ongoing gang awareness education for parents/guardians, including gang identifiers.

(cf. 5020 - Parent Involvement)  
(cf. 6164.2 - Guidance/Counseling Services)

The Superintendent or designee shall take steps to deter gang activity on school campuses, including threats and intimidation of students and staff, recruitment or intimidation of students to join gangs, bullying, fighting, criminal activities, and confrontations between members of different gangs.

(cf. 5131.2 - Bullying)

Note: Education Code 35183 authorizes the Governing Board to approve a site-initiated plan that prohibits the school's students from wearing gang-related apparel. The definition of "gang-related apparel" must be limited to apparel that reasonably could be determined to threaten the health and safety of the school environment, and the Board's approval must be based on a determination the policy is necessary for the health and safety of the school environment. In Marvin H. Jeglin et al v. San Jacinto Unified School District et al, a federal district court held that in order to justify a gang-related dress code, there must be evidence of a gang presence at a school and actual or threatened disruption or material interference with school activity. Education Code 32282 specifies that for the purpose of establishing a schoolwide dress code, gang-related apparel shall not be considered a protected form of speech pursuant to Education Code 48950. For further information, see BP/AR 5132 - Dress and Grooming.

~~To further discourage the influence of gangs,~~ the Superintendent or designee shall ensure that school rules of conduct and any school dress code prohibiting gang-related apparel are enforced consistently. If a student exhibits signs of gang affiliation, staff shall so inform the principal or designee and the student's parent/guardian.

(cf. 0450 - Comprehensive Safety Plan)  
(cf. 5132 - Dress and Grooming)  
(cf. 6164.2 - Guidance/Counseling Services)

**GANGS** (continued)

Note: Education Code 51265 urges districts to give high priority to in-service **training** programs on gang violence and substance abuse prevention education.

The Superintendent or designee shall provide in-service training which helps staff to identify gangs and gang symbols, recognize early manifestations of disruptive activities, and respond appropriately to gang behavior. Staff shall be informed about conflict management techniques and alerted to intervention measures and community resources. **The Superintendent or designee shall also provide staff development on social and emotional learning, classroom management, interactive teaching, and cooperative learning skills.**

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

**The Superintendent or designee may consider gang activity prevention and intervention when developing programs outside of the school day.**

*(cf. 5148 - Child Care and Development)*  
*(cf. 5148.2 - Preschool/Early Childhood Education)*  
*(cf. 5148.3 - Before/After School Programs)*  
*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*

**The Superintendent or designee shall collaborate with child welfare services, mental health agencies, social services, and local law enforcement authorities in the prevention and intervention of gang activity.**

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

*Legal Reference: (see next page)*

**GANGS** (continued)

*Legal Reference:*

EDUCATION CODE

32282 School safety plans

35183 Gang-related apparel

48907 Student exercise of free expression

**48950 Student freedom of speech**

51264 Educational inservice training; CDE guidelines

51265 Gang violence and drug and alcohol abuse prevention inservice training

51266-51266.5 Model gang and substance abuse prevention curriculum

PENAL CODE

186.22 Participation in criminal street gang

13826-13826.7 Gang violence suppression

UNITED STATES CODE, TITLE 20

7101-7122 Student Support and Academic Enrichment Grants

**Management Resources:**

**LOS ANGELES POLICE DEPARTMENT PUBLICATIONS**

**Why Young People Join Gangs**

**NATIONAL GANG CENTER PUBLICATIONS**

**Strategic Planning Tool**

**Gangs in Schools, March 2019**

**Parents' Guide to Gangs, July 2015**

**WEB SITES**

**California Cities Gang Prevention Network: <http://www.ccgpn.org>**

**California Department of Education: <https://www.cde.ca.gov/ls/ss/sa>**

**Gang Resistance Education and Training: <https://www.great-online.org/GREAT-Home>**

**Los Angeles Police Department, Gangs:**

**[http://www.lapdonline.org/get\\_informed/content\\_basic\\_view/1396](http://www.lapdonline.org/get_informed/content_basic_view/1396)**

**Homeboy Industries: <https://homeboyindustries.org>**

**National Gang Center: <https://www.nationalgangcenter.gov>**

# CSBA Sample Administrative Regulation

Students

AR 5136(a)

GANGS

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

## Prevention, ~~and~~ Intervention, and Suppression Measures

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

Districts may consider utilizing the Gang Resistance Education and Training Program (G.R.E.A.T.) for students in grades 4-7. Taught by local law enforcement, the program is designed to create stronger bonds with students and their communities and has a family component aimed at strengthening the resiliency of individual families susceptible to gang influences.

The Superintendent or designee shall become informed of the gang history in the district and community, conduct assessments of current gang activity at the school sites, and document and follow up on gang-related incidents.

In order to discourage the influence of gangs, ~~school staff shall take~~ the following measures shall be implemented:

1. Any student **suspected of gang affiliation based on the displaying of** behavior, gestures, apparel, or paraphernalia ~~indicative of gang affiliation~~ shall be referred to the principal or designee, **and the following actions taken, as appropriate:-**
  - a. The student's parent/guardian shall be contacted and may be asked to meet with school staff **in order to proactively address the concern and be included as part of the solution.**
  - b. The student may be sent home to change clothes if necessary.

(cf. 5132 - Dress and Grooming)

- c. The student's behaviors and progress in school shall be documented, including attendance and grades.**

(cf. 5113 - Absences and Excuses)

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5113.11 - Attendance Supervision)

(cf. 5113.12 - District School Attendance Review Board)

(cf. 6164.2 - Guidance/Counseling Services)

GANGS (continued)

d. Intervention techniques such as mentoring, academic support, and a system of wraparound support service shall be implemented to help the student disengage from gang involvement.

e. Consistent and graduated discipline and accountability shall be implemented when appropriate and combined with positive support using conflict-resolution strategies and other restorative justice practices demonstrated to be effective with gang-involved youth.

~~2. Staff members shall be provided with the names of known gang members.~~

~~3.~~

f. ~~Students who seek~~ Students shall be offered help in rejecting gang associations, including possible referral ~~may be referred~~ to community-based gang suppression and prevention organizations.

g. Law enforcement shall be notified if the student is suspected of being involved in gangs.

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

4.2. Any gang-graffiti on school premises shall be removed, washed down, or painted over as soon as discovered. Graffiti shall be documented and photographed before it is removed. These photographs shall be shared with local law enforcement authorities and used in future disciplinary or criminal action against the offenders. This information can also be used to determine whether a threat or incident is imminent.

~~a. Daily checks for graffiti shall be made throughout the campus.~~

~~b. Graffiti shall be photographed before it is removed. These photographs shall be shared with local law enforcement authorities and used in future disciplinary or criminal action against the offenders.~~

*(cf. 3515 - Campus Security)*

*(cf. 5131.5 - Vandalism and Graffiti)*

5.3. Classroom and after-school programs may include gang prevention lessons that are taught jointly by teachers, counselors, law enforcement, and/or other organizations that are knowledgeable about gang prevention and at each school shall be designed to enhance individual self esteem, provide positive reinforcement for acceptable behavior, and foster interest in a variety of constructive activities. These programs shall also:

**GANGS** (continued)

- a.** Provide social and emotional learning designed to enhance individual self-esteem, provide positive reinforcement for acceptable behavior, and foster interest in a variety of constructive activities
- a-b.** Explain the dangers of gang membership
- b-c.** Provide counseling for targeted at-risk students
- e-d.** Include lessons or role-playing workshops in gang avoidance skills and nonviolent conflict resolution, including communication skills, anti-bullying, anger management, acceptance ethnic/cultural tolerance, and mediation skills

*(cf. 5131.2 - Bullying)*

- d-e.** Assign individual gang members to cooperative learning groups in which they may work toward common goals with students who are not members of their gang
- e-f.** Provide school-to-career instruction
- f-g.** Provide positive interaction with local law enforcement staff

*(cf. 5137 - Positive School Climate)*

Gang prevention lessons may be taught jointly by teachers and law enforcement staff.

- 6-4.** Staff shall actively promote membership in authorized school clubs and student organizations, sports and cultural activities and affiliations with the local community, and community service projects which can provide students companionship, safety, and a sense of purpose and belonging, including:

- a.** Positive sports and cultural activities and affiliations with the local community

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

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

*(cf. 6145.2 - Athletic Competition)*

- b.** Structured, goal-oriented community service projects

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

**Parent/Guardian and Community Outreach**

Note: The following optional section may be revised to reflect district practice, is offered for districts that wish to provide gang education programs for parents/guardians or the community.

**GANGS** (continued)

**The Superintendent or designee may offer g**ang prevention classes or counseling **offered** for parents/guardians **which may shall** address the following topics:

**1. The reasons students join gangs**

- 1.2.** The dangers **and consequences** of gang membership
- 2.3.** Warning signs which may indicate that **children students** are at risk of becoming involved with gangs, **including the use of social media for gang communication and promotion**
- 3.4.** The nature of local gang apparel and graffiti
- 4.5.** Effective parenting techniques **and planning family time**
- 5.6.** Conflict resolution techniques

**In addition, the Superintendent or designee may offer c**ommunity programs **shall that** address: **1. T**he scope and nature of local gang problems **and 2. S**trategies by which each segment of the community may alleviate gang problems.

# CSBA Sample Board Policy

Instruction

BP 6142.2(a)

## WORLD/~~FOREIGN~~ LANGUAGE INSTRUCTION

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

**Education Code 51220 requires districts that serve students in grades 7-12 to offer courses in world languages. In January 2019, the State Board of Education adopted revised content standards and proficiency levels for world languages. The 2003 Foreign Language Framework for California Public Schools does not reflect current content standards and is scheduled to be updated in May 2020.**

**The following policy may be revised by districts that do not maintain any of grades 7-12. Districts that do not maintain secondary schools may adapt this policy to reflect any elementary school K-6 programs designed to develop student's literacy in a language other than English. Education Code 51212 states legislative intent to encourage programs of world language (foreign language) instruction as early as feasible for the district.**

In order to prepare students for global citizenship and to broaden their intercultural understanding and career opportunities, the Governing Board shall provide students with opportunities to develop **linguistic proficiency, communicative** and cultural **proficiency and** literacy in one or more world languages **in addition to English.**

Note: The California Department of Education's (CDE) Foreign Language Framework for California Public Schools encourages districts to offer as many language course options as possible. Within the context of the CDE's framework, the following paragraph may be revised to reflect language courses available in the district. **The revised state content standards acknowledge the need for the study of a wide variety of languages, and recognize** American Sign Language **is recognized as a foreign world language.**

The following paragraph may be revised to reflect language courses available in the district.

The Superintendent or designee shall recommend **a variety of** world languages to be taught in the district's educational program based on student interest, community needs, and available resources. **He/she shall also consider providing English learners the opportunity to study their heritage language, when such a course is available, in order to continue developing skills in that language.**

**For any program designed to provide students with instruction in a language other than English to a degree sufficient to produce proficiency in that language, the Superintendent or designee shall establish a process for schools to receive and respond to input from parents/guardians and other stakeholders regarding the non-English language in which instruction will be provided. (5 CCR 11300, 11312)**

**If** American Sign Language courses **are offered, they** shall be open to all students regardless of hearing status.

~~(cf. 6174 - Education for English Learners)~~

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

Note: On January 7, 2009, the State Board of Education (SBE) adopted voluntary content standards for world languages for grades K-12; see the accompanying administrative regulation, Education Code 60605.5, as added by AB 2290 (Ch. 643, Statutes of 2016), requires the Superintendent of Public Instruction to recommend revisions to the standards and requires the SBE to adopt, reject, or modify the recommended revisions by March 31, 2019. The 2003 Foreign Language Framework for California Public Schools does not reflect current content standards and is scheduled to be updated in 2020.

In addition, Education Code 51228 requires districts to offer students in grades 7-12 a course of study that fulfills the requirements and prerequisites for admission to California colleges and universities; see BP 6143 - Courses of Study. Admissions criteria for California State University and University of California include two years of coursework in one foreign language other than English that has been approved by the University of California. "Frequently Asked Questions" in the University of California's [A-G Policy Resource Guide](#), available on its web site, clarify that American Sign Language may be used to fulfill the requirement if used with a language other than English, but signing in English will not satisfy the requirement. The following paragraph may be revised by districts that do not maintain any of grades 7-12.

The district shall offer a sequential curriculum aligned with the state content standards, state curriculum framework, and, as applicable, California university admission requirements for languages other than English.

(cf. 6011 - Academic Standards)

(cf. 6141 - Curriculum Development and Evaluation)

Note: The following paragraph is for use by districts that maintain any of grades 7-12 and may be revised to reflect the grade levels at which instruction in world languages will be offered in the district. Education Code 51220 requires that the adopted course of study for grades 7-12, beginning no later than grade 7, include instruction in world languages designed to develop a facility for understanding, speaking, reading, and writing the particular language; see AR 6143 - Courses of Study.

Instruction in world languages shall be offered to secondary school students beginning no later than grade 7 and shall be designed to develop students' skills in understanding, speaking, reading, and writing the language. (Education Code 51220)

(cf. 6143 - Courses of Study)

Note: The following optional paragraph is for use by districts that maintain one or more high schools. Education Code 51225.3 requires high school students to complete a one-year course in either foreign language, American Sign Language, or visual and performing arts as a condition of high school graduation; see BP 6146.1 - High School Graduation Requirements. Pursuant to Education Code 51243-51245 and 5 CCR 1632, foreign language instruction completed in a private school must be granted credit toward high school graduation provided that the instruction meets specified standards and conditions; see BP/AR 6146.11 - Alternative Credits Toward Graduation.

A number of districts have chosen to present a biliteracy award upon high school graduation to students who demonstrate proficiency in speaking, reading, and writing skills in one or more languages in addition to English; see BP/AR 5126 - Awards for Achievement.

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

Students shall obtain credit toward high school graduation requirements for completion of a one-year course in a world language or American Sign Language during grades 9-12.

*(cf. 5126 - Awards for Achievement)*  
*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6146.11 - Alternative Credits Toward Graduation)*

Note: The following **optional** paragraph is for use by districts that choose to offer a dual-language immersion program and may be revised to reflect district practice. Effective July 1, 2017, Proposition 58 (November 2016) amended Education Code 305.310 and repealed Education Code 311 to authorize parents/guardians of English learners to select a language acquisition program that best suits their child. Districts must offer a structured English immersion program in which nearly all of the instruction is in English, and may offer dual language immersion programs or other language acquisition programs. Also see BP/AR 6174 - Education for English Learners. The CDE and the The Center for Applied Linguistics notes that dual-language immersion programs are often focused on the primary grades and that such programs may continue for five to seven years but optimally throughout grades K-12. Also see the accompanying administrative regulation.

For further information and recommendations regarding dual-language immersion programs, see CSBA's governance brief [English Learners in Focus, Issue 2: The Promise of Two-Way Immersion Programs](#).

The district may establish a dual-language immersion program that provides integrated language learning and academic instruction for native speakers of English and native speakers of another language, with the goals of high academic achievement, first and second language proficiency, and cross-cultural understanding. (Education Code 305-306)

Note: Pursuant to Education Code 60119, as a condition of receiving funds for instructional materials from any state source, the Governing Board is required to hold a public hearing to determine, **through a resolution**, whether each student **in the district** has sufficient textbooks and/or instructional materials in specified subjects, including **foreign world** language, that are aligned to the state content standards or curriculum frameworks; see BP 6161.1 - Selection and Evaluation of Instructional Materials.

The Board shall ensure that students have access to high-quality instructional materials in world languages. In accordance with Board policy, teachers shall be encouraged to identify and use supplemental resources, such as literature, technology, newspapers and other media, dictionaries, and volunteers from the community to enhance the world language instructional program.

*(cf. 1240 - Volunteer Assistance)*  
*(cf. 6161.1 - Selection and Evaluation of Instructional Materials)*  
*(cf. 6161.11 - Supplementary Instructional Materials)*  
*(cf. 6163.1 - Library Media Centers)*

The Superintendent or designee shall provide professional development as necessary to ensure that teachers of world languages have the knowledge and skills they need to implement an effective instructional program that helps students attain academic standards, **including communicative and cultural proficiency and understanding.**

**WORLD/~~FOREIGN~~ LANGUAGE INSTRUCTION** (continued)

*(cf. 4131 - Staff Development)*

Note: The following **optional** paragraph is for use by districts that maintain one or more high schools. Education Code 51225.3 requires high school students to complete a one-year course in either ~~foreign world~~ language, **which includes** American Sign Language, or visual and performing arts as a condition of high school graduation; see BP 6146.1 - High School Graduation Requirements. Pursuant to Education Code 51243-51245 and 5 CCR 1632, ~~foreign world~~ language instruction completed in a private school must be granted credit toward high school graduation provided that the instruction meets specified standards and conditions; see BP/AR 6146.11 - Alternative Credits Toward Graduation.

A number of districts have chosen to present a biliteracy award upon high school graduation to students who demonstrate proficiency in speaking, reading, and writing skills in one or more languages in addition to English; see BP/AR 5126 - Awards for Achievement.

~~Students shall obtain credit toward high school graduation requirements for completion of completing one year of a one-year course in a world language or American Sign Language course during grades 9-12.~~

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*(cf. 5126 - Awards for Achievement)*

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

*(cf. 6146.11 - Alternative Credits Toward Graduation)*

Note: A number of districts have chosen to present a biliteracy award upon high school graduation to students who demonstrate a **high level of** proficiency in speaking, reading, and writing skills in one or more languages in addition to English. **The California Spanish Assessment, which is part of the California Assessment of Student Performance and Progress, can be used to measure a student's competency in the Spanish language and is suitable for assessing qualifications for the State Seal of Biliteracy. See the California Department of Education's California Spanish Assessment Fact Sheet.** Also see BP/AR 5126 - Awards for Achievement.

**The district shall determine appropriate measures to assess student proficiency in world languages offered by district schools. Students who have attained a high level of proficiency may receive recognition for their achievement, including the State Seal of Biliteracy for students graduating from high school.**

*(cf. 5126 - Awards for Achievement)*

Note: The following **optional** paragraph should be revised to reflect indicators agreed upon by the Board and Superintendent for evaluating the district's world/~~foreign~~ languages instructional program.

The Superintendent or designee shall provide periodic reports to the Board regarding the effectiveness of the district's world language program which may include, but not be limited to, **whether the district's world language program is serving the grade levels required by law**, a description of the district's curriculum and the extent to which it is aligned with the state's content standards and curriculum framework, student achievement of district standards

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

for world language instruction, and student participation rates in each language course. Program evaluation shall be used to identify needed improvements and may be considered in determining the world languages to be taught in the district.

(cf. 0500 - Accountability)

(cf. 6190 - Evaluation of the Instructional Program)

*Legal Reference:*

EDUCATION CODE

300-310 Education for English learners

42238.02 Local control funding formula; class size requirements

44253.1-44253.11 Qualifications of teachers of English learners

44256-44257 Credential requirements, including teachers of foreign world language

48980 Parental notifications

51212 Legislative intent to encourage foreign world language instruction in grades 1-6

51220 Courses of study, grades 7-12

51225.3 High school graduation requirements

51243-51245 Alternative credits toward graduation for foreign world language instruction in private school

60119 Public hearings, instructional materials

60605.3 Content standards for world language instruction

60605.5 Revision of state standards for world language instruction

CODE OF REGULATIONS, TITLE 5

1632 Alternative credits toward graduation for foreign language instruction in private school

**11300-11316 Multilingual and English learner education**

*Management Resources:*

CALIFORNIA SCHOOL BOARDS ASSOCIATION CSBA PUBLICATIONS

**Proposition 58 Regulations, Fact Sheet, August 2018**

**English Learners in Focus: The English Learner Roadmap: Providing Direction for English Learner Success, Governance Brief, February 2018**

**English Learners in Focus, Issue 2: The Promise of Two-Way Immersion Programs, Governance Brief, September 2014**

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

**Two-Way Language Immersion Program Multilingual FAQ**

**World Languages Framework for California Public Schools, Kindergarten Through Grade Twelve**

**California Spanish Assessment Fact Sheet, March 2019**

**World Languages Content Standards for California Public Schools, Kindergarten Through Grade Twelve, adopted January 7, 2009 2019**

**California English Learner Roadmap: Strengthening Comprehensive Educational Policies, Programs and Practices for English Learners, 2017**

**Foreign Language Framework for California Public Schools, Kindergarten Through Grade Twelve, 2003**

CENTER FOR APPLIED LINGUISTICS PUBLICATIONS

**Guiding Principles for Dual Language Education, Second Edition, 2007**

Management Resources continued: (see next page)

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

*Management Resources: (continued)*

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

*CL-622 Serving English Learners*

NATIONAL EDUCATION ASSOCIATION PUBLICATIONS

*21st Century Skills Map: World Languages, January 2011*

UNIVERSITY OF CALIFORNIA PUBLICATIONS

*A-G Policy Resource Guide*

WEB SITES

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

American Council on the Teaching of Foreign Languages: <http://www.actfl.org>

California Association for Bilingual Education: <http://www.gocabe.org>

California Department of Education, *Foreign World Languages*: <http://www.cde.ca.gov/ci/fl>

California Language Teachers' Association: <http://www.clta.net>

California Foreign World Language Project: <http://www.stanford.edu/group/CFLP>

California Language Teachers' Association: <http://www.clta.net>

Center for Applied Linguistics: <http://www.cal.org>

*National Education Association, Partnership for 21st Century Skills:*  
<http://www.nea.org/home/34888.htm>

University of California, *a-g Course Approval A-G Policy Resource Guide:*  
<http://www.ucop.edu/agguide>

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**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

Instruction

AR 6142.2(a)

## WORLD/~~FOREIGN~~ LANGUAGE INSTRUCTION

### Content of Instruction

Note: Items #1-~~53~~ below reflect the ~~five~~ **three** categories of content standards for world languages adopted by the State Board of Education (~~SBE~~) on ~~in January 7, 2009~~ **2019**. Within each category, the state standards describe four proficiency levels or performance benchmarks. Education Code 60605.5, as added by AB 2290 (Ch. 643, Statutes of 2016), requires the Superintendent of Public Instruction to recommend revisions to the standards and requires the SBE to adopt, reject, or modify the recommended revisions by March 31, 2019. **The revised content standards also address information literacy, technology literacy, media literacy, and emotional literacy as outlined in the National Education Association's 21st Century Skills Map.**

The district may revise the following list to reflect ~~the~~ topics ~~to be~~ addressed in the district's **world language** program.

The district's instructional program for world languages shall be designed to help students gain knowledge about ~~new~~ language systems, **develop a cultural understanding**, and use that knowledge to communicate. Students shall receive instruction which is aligned with state academic standards appropriate to their age and stage of linguistic and cultural proficiency in the following categories:

~~1. Content: Students shall be presented with a wide variety of content that is age and stage appropriate and increases in complexity.~~

~~(cf. 6011 Academic Standards)~~

~~2.1.~~ **1.1.** Communication: Students shall be taught to effectively convey and receive messages by engaging in or interpreting written, spoken, and/or signed languages, **including:**

**a. Language functions, which describe the purposes to which language is used in culturally appropriate real-world communication**

**b. The setting in which the language is used, which includes using language both within and beyond the classroom to interact in local communities and abroad**

**c. The structures used to convey meaning**

~~3.2.~~ **3.2.** Cultures: Students shall receive instruction that allows them to ~~make connections and comparisons between language and culture~~ **interact, with competence and understanding, with those who are native to the language in a variety of real-world settings.**

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

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

4. **Structures:** The curriculum shall address components of grammar, syntax, and language patterns appropriate to the language being taught.
3. **Connections:** Students shall receive instruction that builds, reinforces, and expands their knowledge of other disciplines using the language to develop critical thinking and problem-solving skills, and to access and evaluate information and diverse perspectives readily or only available through the language and its cultures, in order to function in real-world, academic and career-related settings.
5. **Settings:** To help students comprehend meaning and use language that is culturally appropriate, students shall develop knowledge of the context or setting in which language is used, such as common daily settings, interpersonal settings, and informal and formal settings.

*(cf. 6011 - Academic Standards)*

**Dual-Language Immersion Programs**

Note: The following **optional** section is for use by districts that choose to establish a dual-language immersion program integrating native English speakers and English learners in a class that is taught in both English and a second language; see the accompanying Board policy.

Effective July 1, 2017, Proposition 58 (November 2016) amended Education Code 305-310 and repealed Education Code 311 to authorize parents/guardians of English learners to select a language acquisition program that best suits their child. Districts must offer a structured English immersion program in which nearly all classroom instruction is provided in English, and may offer dual language immersion programs or other language acquisition programs. See BP/AR 6174—Education for English Learners.

Items #1-2 below reflect program models **described** on the California Department of Education's (CDE) web site and may be revised to reflect district practice.

The district's dual-language immersion programs may be based on either or both of the following models:

1. A 50:50 model in which instruction is provided in the non-English target language for 50 percent of the time and in English for 50 percent of the time, throughout the duration of the program
2. A 90:10 model in which instruction is provided in the non-English target language for 90 percent of the time and in English for 10 percent of the time during the first year of the program, decreasing the percentage of time in the non-English language in each subsequent year until there is a 50:50 balance of languages

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

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

Note: The following two paragraphs reflect recommendations of the CDE in its "Two-Way Language Immersion Program FAQ," available on its web site, and may be revised to reflect district practice.

Native English speakers shall generally be admitted into the program only during the first grade level at which the program is offered, and English learners during the first or second grade level at which the program is offered. Bilingual students may enter the program at any time. On a case-by-case basis, the Superintendent or designee may admit a student later in the program if he/she determines it is determined that the student is adequately prepared for and will benefit from the program.

Note: The following paragraph reflects the recommendation of CDE in its "Multilingual FAQ," available on its web site, and may be revised to reflect district practice.

In enrolling students for the program, the district shall strive to maintain a ratio of half native English speakers and half English learners, and such ratio shall not fall below one-third for either language group except under exceptional circumstances.

Note: The following paragraph may be deleted by districts that do not offer a dual-language immersion program in any of grades K-3. Pursuant to Education Code 310, as amended by Proposition 58 (November 2016), all language acquisition programs must comply with requirements related to class size in grades K-3.

Any dual-language immersion program offered in grades K-3 shall comply with class size requirements specified in Education Code 42238.02. (Education Code 310)

*(cf. 6151 - Class Size)*

Note: Teachers in a class serving one or more English learners are required to possess the qualifications described in Education Code 44253.1-44253.11 and CTC leaflet CL-622, *Serving English Learners*. Also see AR 4112.22 - Staff Teaching English Learners.

Whenever one or more English learners are enrolled in a dual-language immersion classroom, the class shall be taught by a teacher who possesses the appropriate authorization issued by the Commission on Teacher Credentialing.

*(cf. 4112.22 - Staff Teaching English Learners)*

At the beginning of each school year or upon a student's enrollment, parents/guardians shall be provided information on the district's dual-language immersion program and other language acquisition programs available to students enrolled in the district, including, but not limited to, a description of each program. (Education Code 310)

*(cf. 5145.6 - Parental Notifications)*

**WORLD/FOREIGN LANGUAGE INSTRUCTION** (continued)

Note: Teachers in a class serving one or more English learners are required to possess the qualifications described in Education Code 44253.1 44253.11 and CTC leaflet CL 622, *Serving English Learners*. Also see AR 4112.22 – Staff Teaching English Learners.

Whenever one or more English learners are enrolled in a dual-language immersion classroom, the class shall be taught by a teacher who possesses the appropriate authorization issued by the Commission on Teacher Credentialing.

*(cf. 4112.22 – Staff Teaching English Learners)*

Note: Pursuant to 5 CCR 11311, districts are required to establish a process for schools to receive and respond to requests from parents/guardians of students enrolled in the school to establish a language acquisition program other than, or in addition to, programs available at the school. When the request is for a dual-language immersion program, requests from parents/guardians of enrolled students who are native speakers of English shall be considered along with requests from parents/guardians of English learners in determining whether the threshold has been met to require district response. See AR 6174 - Education for English Learners.

If a school does not currently offer a dual-language immersion program but the parents/guardians of 30 or more students at the school, or 20 or more students at the same grade level, request the establishment of such a program, the district shall determine whether it is possible to offer such a program in accordance with 5 CCR 11311.

# CSBA Sample Administrative Regulation

Instruction

AR 6145.2(a)

## ATHLETIC COMPETITION

### Nondiscrimination and Equivalent Opportunities in the Athletic Program

Note: The following section reflects pertinent provisions of state and federal law regarding nondiscrimination (Education Code 200-262.4; 5 CCR 4900-4965; Title IX, 20 USC 1681-1688). The Office for Civil Rights (OCR) in the U.S. Department of Education oversees complaints regarding violations of Title IX.

No student shall be excluded from participation in, be denied the benefits of, be denied equivalent opportunity in, or otherwise be discriminated against in interscholastic, intramural, or club athletics on the basis of any actual or perceived characteristic specified in law and BP 0410 - Nondiscrimination in District Programs and Activities. (Education Code 220, 221.5, 230; 5 CCR 4920; 34 CFR 106.41)

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

*(cf. 5145.3 - Nondiscrimination/Harassment)*

Note: 5 CCR 4921 and 34 CFR 106.41 authorize the establishment of separate teams for males and females where the selection of teams is based on competitive skills. 34 CFR 106.41 also authorizes single-sex teams for contact sports, as defined. Because state regulations do not address single-sex teams for contact sports, districts should consult legal counsel prior to establishing any such single-sex team for a contact sport for which selection is not based on competitive skills.

The Superintendent or designee may provide single-sex teams when selection for the teams is based on competitive skills. (5 CCR 4921; 34 CFR 106.41)

Note: Pursuant to Education Code 221.5, a district is required to permit a transgender student to participate in sex-segregated school programs and activities, including athletic teams and competitions, consistent with **his/her the student's** gender identity, regardless of the gender listed in the student's records; see BP/AR 5145.3 - Nondiscrimination/Harassment. The California Interscholastic Federation's (CIF) bylaws and [Guidelines for Gender Identity Participation](#) contain procedures for addressing student complaints regarding gender identity-based participation in interscholastic sports. Also see CSBA's [Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Discrimination](#).

Each student shall be allowed to participate in any single-sex athletic program or activity consistent with **his/her the student's** gender identity, **irrespective of the gender listed on the student's records, and** for which **he/she the student** is otherwise eligible to participate, **irrespective of the gender listed on the student's records.** (Education Code 221.5)

*(cf. 5125 - Student Records)*

**ATHLETIC COMPETITION** (continued)

When a school provides only one team in a particular sport for members of one sex, but provides no team in the same sport for members of the other sex, and athletic opportunities in the total program for that sex have been previously limited, members of the excluded sex shall be allowed to try out and compete with the team. The same standards for eligibility shall be applied to every student trying out for the team, regardless of sex, sexual orientation, gender, gender identity, gender expression, or other protected group status. (5 CCR 4921; 34 CFR 106.41)

Note: 5 CCR 4922 and 34 CFR 106.41, as reflected in items #1-11 below, list factors that districts must consider when determining whether equivalent opportunities are being provided. CIF's A Guide to Equity in Athletics suggests actions that districts can take for each of the factors to help the district meet its equivalence goals. Any district with questions about equivalent athletic opportunities for its students should consult legal counsel.

The Superintendent or designee shall ensure that equivalent opportunities are available to both sexes in athletic programs by considering, among other factors: (5 CCR 4922; 34 CFR 106.41)

1. Whether the offered selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes

Note: Education Code 230 provides the following three-part test to determine if a district has effectively accommodated the interests and abilities of both sexes in athletics. This test is the same three-part test that is used by OCR for helping to determine equivalent opportunities under Title IX.

The athletic program may be found to effectively accommodate the interests and abilities of both sexes using any one of the following tests: (Education Code 230)

Note: CIF's A Guide to Equity in Athletics advises that, in order to meet the criterion specified in item #1a below, the ratio of male/female athletes should be within five percent of the ratio of male/female district enrollment.

- a. Whether the interscholastic-level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments
- b. Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the district can show a history and a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the members of that sex

Note: In evaluating whether there is an unmet interest in a particular sport and sufficient ability to sustain a team in the sport (item #1c below), OCR considers (1) whether an institution uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students, (2) whether a

**ATHLETIC COMPETITION** (continued)

viable team for the underrepresented sex was recently eliminated, (3) multiple indicators of interest, (4) multiple indicators of ability, and (5) frequency of conducting assessments. A student survey is one indicator that may be used. A letter issued by OCR in April 2010 provides information that the district might consider in developing its own survey. In addition, CIF's A Guide to Equity in Athletics provides sample surveys.

- c. Where the members of one sex are underrepresented among interscholastic athletes and the district cannot show a history and continuing practice of program expansion as required in item #1b above, whether the district can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program
2. The provision and maintenance of equipment and supplies
3. Scheduling of games and practice times, selection of the season for a sport, and location of the games and practices
4. Travel and per diem allowances
5. Opportunities to receive coaching and academic tutoring
6. Assignment and compensation of coaches and tutors
7. Provision of locker rooms, practice facilities, and competitive facilities
8. Provision of medical and training facilities and services
9. Provision of housing and dining facilities and services
10. Publicity

Note: 5 CCR 4922 clarifies that unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams shall not by itself constitute a failure to provide equivalent opportunities. However, the provision of necessary funding for teams of both sexes is a factor in the determination, as specified below.

11. Provision of necessary funds

Each school that offers competitive athletics shall, at the end of the school year, post on its school web site, or on the district web site if the school does not have a web site, the following information: (Education Code 221.9)

1. The total enrollment of the school, classified by gender

**ATHLETIC COMPETITION** (continued)

2. The number of students enrolled at the school who participate in competitive athletics, classified by gender
3. The number of boys' and girls' teams, classified by sport and by competition level

*(cf. 1113 - District and School Web Sites)*

The data reported for items #1-3 above shall reflect the total number of players on a team roster on the official first day of competition. The materials used to compile this information shall be retained by the school for at least three years after the information is posted on the web site. (Education Code 221.9)

*(cf. 3580 - District Records)*

**Concussions and Head Injuries**

Note: Education Code 49475 requires districts to distribute information on concussions and head injuries to student athletes and their parents/guardians. The district may use fact sheets developed by the Centers for Disease Control and Prevention (CDC), available on CIF's web site, or other resources to develop the information sheet.

The requirements of Education Code 49475 apply to any district that offers an athletic program at any grade level and for any sport. These requirements do not apply to students engaging in an athletic activity during the regular school day or as part of a physical education course.

The Superintendent or designee shall annually distribute to student athletes and their parents/guardians an information sheet on concussions and head injuries. The student and parent/guardian shall sign and return the information sheet before the student initiates practice or competition. (Education Code 49475)

*(cf. 5145.6 - Parental Notifications)*

Note: Education Code 49032 requires that each high school coach complete an education program that includes, but is not limited to, a basic understanding of the signs and symptoms of concussions and appropriate response to them. ~~CIF makes it~~ Free online courses ~~are~~ available through ~~its~~ ~~CIF's~~ web site. Also see AR 4127/4227/4327 - Temporary Athletic Team Coaches.

The Superintendent or designee shall provide training to coaches and/or athletic trainers regarding concussion symptoms, prevention, and appropriate response. (Education Code 35179.1, 49032)

*(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)*

**ATHLETIC COMPETITION** (continued)

Note: Education Code 49475 requires that a student at any grade level engaged in an athletic program apart from the regular school day or physical education course who is suspected of sustaining a concussion be immediately removed from the athletic activity and not be allowed to return until a health care provider provides written clearance. CDC's web site includes an Acute Concussion Evaluation form which may be used to provide injured students and their parents/guardians with information about monitoring symptoms and the health care provider's recommendations regarding returning to daily activities, school, and sports. See CIF's web site for additional information regarding concussions.

If a student athlete is suspected of sustaining a concussion or head injury in an athletic activity, **he/she the student** shall be immediately removed from the activity for the remainder of the day. The student shall not be permitted to return to the activity until **he/she the student** is evaluated by a licensed health care provider trained in the management of concussions and receives the health care provider's written clearance to return to the activity. If the health care provider determines that the **athlete student** sustained a concussion or a head injury, the **athlete student** shall also complete a graduated return-to-play protocol of no less than seven days in duration under the supervision of a licensed health care provider. (Education Code 49475)

Note: The following paragraph is for use by districts that offer a football program and may be revised to reflect the grade levels offered by the district.

A middle school or high school football team shall not hold a full-contact practice during the off-season and shall not conduct more than two full-contact practices per week during the preseason and regular season (from 30 days before the commencement of the regular season until the completion of the final interscholastic football game of that season). In addition, the full-contact portion of a practice shall not exceed 90 minutes in any single day. For these purposes, *full-contact practice* means a practice where drills or live action is conducted that involves collisions at game speed, where players execute tackles and other activity that is typical of an actual tackle football game. (Education Code 35179.5)

**Heat Illness**

Note: Pursuant to Education Code 35179.1, **as amended by AB 2800 (Ch. 21, Statutes of 2018), effective January 1, 2019**, the district or CIF-developed coaching education program required by Education Code 49032 must include training on the signs and symptoms of, and the appropriate response to, heat illness. The National Federation of State High Schools offers a free online course, available on CIF's web site, that fulfills these requirements.

The Superintendent or designee shall provide training to coaches and/or athletic trainers regarding the signs and symptoms of, and the appropriate response to, heat illness, including heat cramps, heat syncope, heat exhaustion, and exertional heat stroke. (Education Code 35179.1, 49032)

Note: The following **optional** paragraph reflects recommendations in CSBA's and CIF's joint publication **Preventing Catastrophic Heat Illness**, and may be expanded to include additional district strategies.

**ATHLETIC COMPETITION** (continued)

To assist in the prevention of heat illness, coaches and/or athletic trainers shall gradually increase the intensity and duration of exercise to acclimate student athletes to practice in the heat, provide adequate rest breaks, make water available during all athletic activities, and alter practice plans in extreme environmental conditions.

**Sudden Cardiac Arrest**

Note: Education Code 33479.3 requires that student athletes and their parents/guardians receive information on the nature and warning signs of sudden cardiac arrest, as provided below. This information is available from CIF or, if the athletic activity is not governed by CIF, on the California Department of Education's (CDE) web site. In addition, Education Code 33479.2 encourages districts to post on their web sites the information provided on CDE's web site pertaining to sudden cardiac arrest.

The Superintendent or designee shall distribute the California Interscholastic Federation (CIF) information sheet on sudden cardiac arrest to all student athletes who will be participating in a CIF-governed athletic activity and to their parents/guardians. The student and parent/guardian shall sign and return the information sheet prior to the student's participation in the athletic activity. If an athletic activity is not covered by CIF, the student and ~~his/her~~ parent/guardian shall, prior to the student's participation in the athletic activity, sign and return an acknowledgement that they have received and reviewed the sudden cardiac arrest information posted on the California Department of Education's web site. (Education Code 33479.2, 33479.3)

Note: Education Code 33479.6 requires the coach of an athletic activity to complete, every two years, a training course related to the nature and warning signs of sudden cardiac arrest. See AR 4127/4227/4327 - Temporary Athletic Team Coaches. ~~CIF makes it~~ free online courses ~~are~~ available through ~~its~~ CIF's web site.

The Superintendent or designee shall provide training to coaches and/or athletic trainers regarding the nature and warning signs of sudden cardiac arrest. (Education Code 33479.6, 33479.7, 35179.1, 49032)

Note: Education Code 33479.5 and CIF bylaws provide for a student's removal from participation in an athletic activity if ~~he/she~~ **the student** passes out or faints. As defined by Education Code 33479.1, an "athletic activity" includes (1) interscholastic athletics; (2) an athletic contest or competition sponsored by a school, including cheerleading and club-sponsored sports activities; (3) noncompetitive cheerleading sponsored by a school; and (4) practices, interscholastic practices, and scrimmages for all these activities. Pursuant to Education Code 33479.5, this requirement does not apply when a student engages in an athletic activity during the regular school day or as part of a physical education course, unless the activity constitutes a practice, interscholastic practice, or scrimmage. Furthermore, Education Code 33479.5 authorizes, but does not require, the removal of a student from an athletic activity if ~~he/she~~ **the student** exhibits symptoms of sudden cardiac arrest other than passing out or fainting, as provided below. However, to promote student safety, the district may choose to require its staff to remove ~~a student~~ **a student** from an athletic activity ~~if he/she a student who~~ exhibits any symptom of sudden cardiac arrest at any time.

**ATHLETIC COMPETITION** (continued)

If a student athlete passes out or faints, or is known to have passed out or fainted, while participating in or immediately following **his/her** participation in an athletic activity, the student shall be removed from participation at that time. If a student exhibits any other symptoms of sudden cardiac arrest, including seizures during exercise, unexplained shortness of breath, chest pains, dizziness, racing heart rate, or extreme fatigue, **he/she the student** may be removed from participation by a coach or other employee who observes these symptoms. If any such symptoms are observed, notification shall be given to the student's parent/guardian so that the parent/guardian can determine the treatment, if any, the student should seek. A student who has been removed from participation shall not be permitted to return until **he/she the student** is evaluated and given written clearance to return to participation by a health care provider. (Education Code 33479.2, 33479.5)

**Automated External Defibrillators**

Note: Pursuant to Education Code 35179.6, **as added by AB 2009 (Ch. 646, Statutes of 2018), effective July 1, 2019**, a district that offers an interscholastic athletic program is required to make an automated external defibrillator (AED) available to coaches, athletic trainers, and/or other authorized persons at athletic activities or events. Education Code 35179.6 encourages districts to make AEDs available for emergency care or treatment within three to five minutes of sudden cardiac arrest to any person in attendance at an on-campus athletic activity or event. **See BP/AR 5141 - Health Care and Emergencies for requirements related to employee notifications and the proper use and maintenance of AEDs.**

Education Code 35179.6 clarifies that the district or district employee will not be liable for civil damages resulting from any act or omission in the rendering of emergency care or treatment provided that the employee complies with the requirements of Health and Safety Code 1797.196 and does not act with gross negligence or willful or wanton misconduct by using, attempting to use, or maliciously failing to use an AED to render emergency care or treatment.

The Superintendent or designee shall acquire at least one automated external defibrillator (AED) for each district school and shall make the AED(s) available to coaches, athletic trainers, and/or other authorized persons at athletic activities or events for the purpose of providing emergency care or treatment to students, spectators, and other individuals in attendance at athletic activities and events. (Education Code 35179.6)

*(cf. 5141 - Health Care and Emergencies)*

The district shall comply with all requirements of Health and Safety Code 1797.196 pertaining to any AED acquired by the district, including, but not limited to, regular maintenance and testing of the AED and the provision and posting of information regarding the proper use of the AED. (Education Code 35179.6; Health and Safety Code 1797.196)

**ATHLETIC COMPETITION** (continued)

**Additional Parental Notifications**

Note: The following **optional** section lists notices that the district may send to ~~parents/guardians of~~ students participating in interscholastic athletics **and their parents/guardians**. This section should be revised to reflect district practice.

Before a student participates in **practice or competition as part of** interscholastic athletic activities, the Superintendent or designee shall, in addition to providing ~~his/her~~ **the students and their** parents/guardians with ~~information on the signs and symptoms of concussions and sudden cardiac arrest as~~ **the notices** described above, send a notice to the ~~student's~~ **students and their** parents/guardians which:

Note: Education Code 33353 requires CIF to provide information to students and parents/guardians about procedures for discrimination complaints arising from interscholastic athletic activities. Education Code 33354 allows a complainant to file a discrimination complaint directly with CDE.

1. Contains information about the procedures for filing a discrimination complaint that arises out of an interscholastic athletic activity, including the name of the district's Title IX Coordinator

*(cf. 1312.3 - Uniform Complaint Procedures)*

Note: Education Code 221.61 requires districts to post specified information on their web sites related to Title IX. A district that does not maintain a web site may comply by posting the information on the web site of its county office of education. A comprehensive list of rights based on the provisions of the federal regulations implementing Title IX can be found in Education Code 221.8. See AR 5145.3 - Nondiscrimination/Harassment. **Optional** item #2 below provides that this information will also be provided in writing to the parents/guardians of student athletes.

2. Includes a copy of students' Title IX rights pursuant to Education Code 221.8

Note: In Kahn v. East Side Union High School District, the California Supreme Court analyzed the liability of a coach for an injury to a member of a high school diving team. The court acknowledged that some risk of injury is inherent in sports and part of a coach's job is to "push" a student athlete to advance ~~his/her~~ **in** skill level and to undertake more difficult tasks. According to the court, a coach could be found liable only when ~~he/she~~ **the coach** intentionally injures the student or engages in conduct that is so reckless that it is outside of the ordinary activity involved in teaching or coaching the sport.

The district may or may not wish to seek a waiver of liability for accidents or injuries resulting from participation in athletic activities. Whether a liability waiver is legally effective is likely to be determined on a case-by-case basis, and it is questionable whether a student's right to participate in extracurricular activities could be made contingent upon the submission of a waiver. Legal counsel should be consulted when addressing the complex issues related to liability waivers.

**ATHLETIC COMPETITION** (continued)

3. Explains that there is an element of risk associated with all athletic competitions and that the district cannot guarantee that students will not be injured, despite a commitment to every participant's health and welfare

*(cf. 3530 - Risk Management/Insurance)*

Note: Education Code 32221.5 requires the district to provide information about insurance protection to each student participating on a school athletic team. For specific language that must be contained in this statement, see AR 5143 - Insurance.

4. Provides information about insurance protection pursuant to Education Code 32221.5

*(cf. 5143 - Insurance)*

5. Requests parental permission for the student to participate in the program and, if appropriate, **to** be transported by the district to and from competitions

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

Note: Pursuant to Education Code 48900, a student may be subject to suspension or expulsion **if he/she for** engaging, or attempting **ing** to engage, in hazing.

6. States the district's expectation that students adhere strictly to all safety rules, regulations, and instructions, as well as rules and guidelines related to conduct and sportsmanship

*(cf. 5144 - Discipline)*

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

7. Includes a copy of the local CIF league rules

Note: Pursuant to Education Code 49033 and CIF bylaws, any student participating in athletics and **his/her** **the student's** parent/guardian must sign **a the** statement **described below**, ~~that the student will not use androgenic/anabolic steroids, unless he/she has a written prescription from a licensed health care practitioner, or dietary supplements banned by the U.S. Anti-Doping Agency as well as the substance synephrine. See Also see BP/AR 5131.63 - Steroids.~~

8. Includes information about the CIF bylaw and district policy requiring any student athlete and **his/her the student's** parent/guardian to sign a statement that the student will not use steroids, unless prescribed by a licensed health care practitioner, **or and will not use** prohibited dietary supplements that include substances banned by the U.S. Anti-Doping Agency

*(cf. 5131.63 - Steroids)*

**ATHLETIC COMPETITION** (continued)

Note: Pursuant to Education Code 49476, as added by SB 1109 (Ch. 693, Statutes of 2018), the district must annually provide to student athletes and their parents/guardians CDC's opioid fact sheet for patients. The CDC's fact sheet, Prescription Opioids: What You Need To Know, is available on its web site.

9. Includes the opioid fact sheet published by the Centers for Disease Control and Prevention in accordance with Education Code 49476. The district shall provide this fact sheet annually to each student athlete and shall require the student and the student's parent/guardian to sign a document acknowledging receipt of the fact sheet.

# CSBA Sample Board Policy

Instruction

BP 6145.6(a)

## INTERNATIONAL EXCHANGE

Note: The following optional policy is for use by districts that maintain secondary schools and accept enrollment of international students through approved programs sponsored by an International Student Exchange Placement Organization (ISEPO).

The policy does not apply to students who may otherwise meet district residency requirements for school attendance or to students whose parents/guardians were California residents who departed against their will, as defined in Education Code 48204.4. See AR 5111.1 - District Residency.

The Governing Board recognizes ~~that personal contact~~ **the value of interactions** between students of different countries and cultures ~~promotes~~ **in promoting** global awareness and international understanding **in an increasingly globalized and interconnected world.** ~~To that end,~~ The Board welcomes the enrollment of international exchange students **in district schools** and ~~further~~ encourages district students to take **any advantage of** opportunities that they may have to participate in such programs and study in another country.

With Board approval, a district school may establish a sister-school relationship with a school in another country.

### District Students Studying in Another Country

~~District staff shall~~ **School counselors may provide information regarding international exchange programs and academic relevant** counseling to district students who wish to study in a foreign country. **Such counseling shall include a review of the student's completed coursework, academic achievement, and personal goals, and shall advise the student regarding requirements that the student must meet during attendance in the foreign school in order to maintain progress toward meeting district graduation requirements.**

*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6164.2 - Guidance/Counseling Services)*

~~District~~ **Credit for courses successfully completed in the foreign country shall be granted in accordance with Board policy and administrative regulation.**

*(cf. 6146.11 - Alternative Credits Toward Graduation)*

### International ~~Student Exchange Programs~~ **Students in District Schools**

Note: Government Code 12623 requires that any organization that arranges for the placement of international exchange students in California schools first be registered with the Attorney General's Office.

**INTERNATIONAL EXCHANGE** (continued)

**Pursuant to Education Code 35185, a district is authorized to request proof of the registration as a condition to enrolling a student.**

**For the protection of students and to reduce district liability, CSBA strongly recommends that districts ~~Districts may~~ check to see if a student placement organization is registered in California by reviewing the Registry List maintained by the Attorney General's Registry of International Student Exchange Visitor Placement Organizations. ~~The U.S. Department of State also maintains a listing of organizations designated to administer a high school visitor exchange program. See CSBA's Legal Guidance Regarding International Student Exchange Placement Organizations for additional recommendations and best practices.~~**

In addition, the Council for Standards for International Educational Travel (CSIET), a non-profit organization whose purpose is to identify reputable international exchange programs, annually develops an Advisory List ~~as a resource from which prospective districts can gain an understanding of the scope, background, and operations of programs that have been reviewed. The Advisory List includes descriptions of exchange organizations which, upon evaluation, were found to be in compliance with the~~ **identifying exchange organizations that fully, provisionally, or conditionally meet** CSIET standards ~~and were accepted for listing into one of three categories (Full Listing, Provisional Listing, or Conditional Listing). The CSIET standards evaluate a program's~~ **related to** financial responsibility, ~~as well as the student selection,~~ **student** orientation, ~~and the~~ placement process.

**It is the responsibility of the ISEPO to confirm the eligibility of international students for the exchange program. To be eligible, secondary students must (1) have a J-1 or F-1 visa; (2) not have previously attended school in the United States through an exchange program or on a J-1 or F-1 visa; and (3) either have not completed more than 11 years of primary and secondary study in their home country, excluding kindergarten, or be at least 15 years of age but not more than 18 years and six months of age as of the program start date.**

The following **optional** paragraph is for use by districts that wish to only accept students participating in programs designated by the Attorney General's Office, ~~U.S. Department of State and CSIET.~~

~~To enroll~~ **Before enrolling an international exchange student in a district school, the Superintendent or designee shall request proof that the an international exchange student must be is participating in an exchange International Student Exchange Placement Organization (ISEPO) program registered with the California Attorney General's Office, designated by the U.S. Department of State and accepted for listing on the Council for Standards for International Educational Travel's Advisory List.**

**The Superintendent or designee shall obtain from the ISEPO a description of the services to be performed by the ISEPO for the student, host family, and the district; telephone numbers that the student, host family, or district may contact for assistance; and a summary of the student's complete prior academic coursework completed. (Government Code 12628; 22 CFR 62.25)**

**The district may require additional documents which may include, but are not limited to, evidence that the student has health and accident insurance from the time of departure from home to the time the student returns to the home country. (11 CCR 360; 22 CFR 62.25)**

## INTERNATIONAL EXCHANGE (continued)

Note: The following **optional** paragraph may be used by districts that wish to limit the total number of international exchange students admitted into the district.

When necessary because of overcrowding within district schools or limited district resources, the Superintendent or designee may limit the number of international exchange students to be accepted at any district high school during any school year.

The district shall not incur any financial obligations when **sending and/or receiving educating** international exchange students. **Program sponsors shall provide assurance of their responsibility for health/accident/liability insurance, the student's home placement, and the resolution of any related personal difficulties which may arise. An international student, or the ISEPO on behalf of the student, shall reimburse the district for the full, unsubsidized per capita cost of providing education at a district school for the period of the visiting student's attendance.**

*(cf. 3260 - Fees and Charges)*

Note: The following optional paragraph may be modified to reflect district practice. Federal and state law do not specify a formula for calculating the full, unsubsidized per capita cost of providing education to an international student for the purpose of determining the tuition that will be charged. Education Code 48052 identifies factors that must be considered in determining the total cost of educating a student who resides in a foreign country adjacent to California, which, for consistency, may also serve as a basis for calculating tuition for international students.

Alternatively, as described in CSBA's Legal Guidance Regarding International Student Exchange Placement Organizations, the district could use the per student amount of the high school base grant provided to districts under the local control funding formula, which could be augmented by the amount received by the district for separately funded categorical programs and any federal funding received by the district, or could consider its prior year per student expenditures.

**It is recommended that districts consult with legal counsel in determining such a formula.**

**In determining the tuition for international exchange students, the district shall calculate the total cost of educating the student, including, but not limited to, the amount expended per student for the current provision of instruction and services, the use of buildings and equipment, the repayment of local bonds and interest payments and state building loan funds, capital outlay, and transportation to and from school.**

The Superintendent or designee shall establish district criteria for issuing regular or honorary diplomas to international exchange students. The principal or designee shall refer to these criteria when assisting international exchange students in selecting classes and cocurricular activities based on the student's individual qualifications, needs, and interests.

*(cf. 5127 - Graduation Ceremonies and Activities)*  
*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6146.3 - Reciprocity of Academic Credit)*

**INTERNATIONAL EXCHANGE** (continued)

District staff shall provide relevant counseling to district students who wish to study in a foreign country. District credit for courses successfully completed in the foreign country shall be granted in accordance with Board policy and administrative regulation.

~~(cf. 6146.11 – Alternative Credits Toward Graduation)~~

*Legal Reference:*

EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

35185 Miscellaneous administrative authority

48052 Nonresidents

48204.4 Evidence of residency for school enrollment

51225.5 Honorary diplomas; foreign exchange students

GOVERNMENT CODE

12620-12630 International Student Exchange Visitor Placement Organizations

87100 General prohibition, conflict of interest

CALIFORNIA CODE OF REGULATIONS, TITLE 11

350-384 California Uniform Supervision of International Student Exchange Visitor Placement Organizations

CODE OF FEDERAL REGULATIONS, TITLE 8

214.2 Students in academic high schools

CODE OF FEDERAL REGULATIONS, TITLE 22

62.25 Secondary school students, exchange visitor program

*Management Resources:*

CSBA PUBLICATIONS

Legal Guidance Regarding International Student Exchange Placement Organizations, 2014

WEB SITES

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

California Interscholastic Federation: <http://www.cifstate.org>

~~California Attorney General's Office: California Office of the Attorney General, ISEPO:~~

~~<http://www.caag.state.ca.us> <https://oag.ca.gov/exchangestudents>~~

~~California Interscholastic Federation: <http://www.cifstate.org>~~

Council on Standards for International Educational Travel: <http://www.csiet.org>

U.S. Department of State, Bureau of Educational and Cultural Affairs: <http://exchanges.state.gov>

U.S. Department of State, Exchange Visitor Program: <http://j1visa.state.gov/programs/secondary-school-student>

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

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**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

Instruction

AR 6145.6(a)

## INTERNATIONAL EXCHANGE

Note: The following optional administrative regulation is for use by districts that maintain secondary schools and accept enrollment of international students through approved programs sponsored by International Student Exchange Placement Organizations.

### Admission

Prior to enrolling an international exchange student, the Superintendent or designee shall provide the International Student Exchange Placement Organization with written acceptance for the enrollment, including arrangements concerning the payment of tuition or the waiver of the tuition if applicable. (11 CCR 361; 22 CFR 62.25)

*(cf. 5111.2 - Nonresident Foreign Students)*

Note: The following optional paragraph may be revised to set a date by which the request for enrollment must be received.

In order to approve the admission of an international exchange student, the Superintendent or designee must receive a written request for enrollment before the end of the preceding school year.

Enrollment shall be for ~~one year only~~ one semester or one school year. (22 CFR 62.25)

*(cf. 5111.2 - Nonresident Foreign Students)*

All international exchange students shall meet state and district immunization requirements.

*(cf. 5141.22 - Infectious Diseases)*

*(cf. 5141.31 - Immunizations)*

### Athletics

Note: State bylaws of the California Interscholastic Federation (CIF) list eligibility requirements for participation by international exchange students in interscholastic athletics. These requirements include, but are not limited to, requiring that the student has been placed with a host family by an exchange program accepted for listing by the Council for Standards for International Educational Travel and ~~has been~~ approved by the CIF, California Attorney General's Office, and U.S. Department of State. Individual CIF section bylaws may have additional requirements.

International exchange students shall be eligible for participation in interscholastic sports in accordance with state bylaws of the California Interscholastic Federation as well as applicable section bylaws.

**INTERNATIONAL EXCHANGE** (continued)

*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6145.2 - Athletic Competition)*

**Diplomas**

International exchange students may be considered for a diploma if they have satisfactorily completed the district's graduation requirements.

*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6146.11 - Alternative Credits Toward Graduation)*  
*(cf. 6146.3 - Reciprocity of Academic Credit)*

Note: Pursuant to Education Code 51225.5, the **Governing** Board may grant an honorary diploma to international exchange students who have completed the course of study required for graduation and are returning to their home countries following completion of one school year. Honorary diplomas must be distinguishable from the district's regular diploma. **See BP 6146.1 - High School Graduation Requirements.**

The following **optional** paragraph provides standards for the granting of the honorary diploma and should be revised to reflect district practice.

International exchange students who are not eligible for a regular diploma may receive an honorary diploma, provided they have completed at least one semester of full-time enrollment and achieved at least a 2.0 grade point average.

*(cf. 5127 - Graduation Ceremonies and Activities)*

~~At the discretion of the principal or designee, if~~ International exchange students who do not meet requirements for a regular or an honorary diploma may, at the end of their visit, be given a **certificate or** letter certifying the time period for which they were enrolled **as well as a transcript documenting their completed coursework.**

# CSBA Sample Board Policy

Instruction

BP 6174(a)

## EDUCATION FOR ENGLISH LEARNERS

Note: The following policy may be revised to reflect district practice. State and federal law establish requirements for the identification, placement, and education of English learners.

Pursuant to Education Code 42238.02 and 42238.03, the local control funding formula provides additional funding based on the number and concentration of unduplicated counts of students who are English learners, foster youth, and/or eligible for free or reduced-price meals. Such funds must be used to increase or improve services for unduplicated students at least in proportion to the increase in funds apportioned on the basis of the number or concentration of unduplicated students; see BP 3100 - Budget.

In addition, 20 USC 6801-7014 (Title III) provide grant funds that may be used to supplement, but not supplant, funding from other sources for the purpose of ensuring that English learners attain English proficiency and meet the same challenging academic standards that are applicable to all students. During the Federal Program Monitoring (FPM) process, California Department of Education (CDE) staff will expect to see evidence that the district has complied with state and federal requirements. See [the CDE's](#) web site for FPM compliance monitoring instruments.

For further information regarding English learners, programs, and services, see CDE's publication [The California English Learner Roadmap: Strengthening Comprehensive Educational Policies, Programs and Practices for English Learners](#), available on its web site.

The Governing Board intends to provide English learners with challenging curriculum and instruction that maximize the attainment of high levels of proficiency in English, advance multilingual capabilities, and facilitate student achievement in the district's regular course of study.

Note: Pursuant to Education Code 60811, in November 2012 the State Board of Education (SBE) adopted state academic content standards for English language development (ELD), aligned with the California Common Core State Standards for English language arts, for students whose primary language is a language other than English. In July 2014, the SBE adopted the [English Language Arts/English Language Development Framework](#) aligned to those standards. A supplementary resource, [Integrating the CA ELD Standards into K-12 Mathematics and Science Teaching and Learning](#), specifies the correspondence between the state ELD standards and the California Common Core State Standards for mathematics and the Next Generation Science Standards.

CDE's Roadmap encourages differentiated instruction and curriculum which are integrated across all subject areas and emphasize inquiry-based learning and critical thinking skills.

English learners shall be provided differentiated English language development instruction which is targeted to their English proficiency level., ~~integrated across all subject areas, and aligned with the state content standards.~~ The district's program **Such instruction** shall be based on sound instructional theory, **be aligned with state content standards, use standards-aligned instructional materials,** emphasize inquiry-based learning and critical thinking skills, and **be integrated across all subject areas** ~~provide students with access to the full educational program.~~

**EDUCATION FOR ENGLISH LEARNERS (continued)**

*(cf. 6011 - Academic Standards)*

*(cf. 6141 - Curriculum Development and Evaluation)*

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

*(cf. 6161.11 - Supplementary Instructional Materials)*

*(cf. 6171 - Title I Programs)*

**Note:** The following items are for use by districts that maintain middle and/or high schools and may be revised to reflect the grade levels offered by the district. Education Code 60811.8, as added by AB 2735 (Ch. 304, Statutes of 2018), prohibits districts from denying any student who is an English learner the opportunity to enroll in core curriculum courses, courses required for middle school promotion or high school graduation, courses required for college admission, or advanced courses, with specified exceptions for recently arrived immigrant students. Pursuant to Education Code 60811.8, this law does not require districts to create supplemental courses in languages other than English.

**No middle or high school student who is an English learner shall be denied enrollment in any of the following: (Education Code 60811.8)**

- 1. Courses in the core curriculum areas of reading/language arts, mathematics, science, and history-social science, courses required to meet state and local high school graduation requirements, or courses required for middle school grade promotion**

**However, an English learner may be denied participation in any such course if the student has been enrolled in a school in the United States for less than 12 months or is enrolled in a program designed to develop the basic English skills of newly arrived immigrant students, and the course of study provided to the student is designed to remedy academic deficits incurred during participation and to enable the student to attain parity of participation in the standard instructional program within a reasonable length of time after the student enters the school system.**

- 2. A full course load of courses specified in item #1 above**
- 3. Other courses that meet the "a-g" course requirements for college admission or are advanced courses such as honors or Advanced Placement courses, on the sole basis of the student's classification as an English learner**

*(cf. 0415 - Equity)*

*(cf. 6141.4 - International Baccalaureate Program)*

*(cf. 6141.5 - Advanced Placement)*

**Note:** Education Code 52060 requires the district's local control and accountability plan (LCAP) to include annual goals and specific actions, aligned to state and local priorities, for all students and for each "numerically significant" student subgroup as defined in Education Code 52052, including English learners; see BP/AR 0460 - Local Control and Accountability Plan. The CDE's Roadmap provides an alignment between principles outlined for English learners and the eight state priority areas required in the district's LCAP.

**EDUCATION FOR ENGLISH LEARNERS (continued)**

The district shall identify in its local control and accountability plan (LCAP) goals and specific actions and services to enhance student engagement, academic achievement, and other outcomes for English learners.

*(cf. 0460 - Local Control and Accountability Plan)*  
*(cf. 3100 - Budget)*

Note: The following paragraph may be revised to reflect district strategies for parent/guardian and community involvement. Education Code 305 requires the district to solicit input on language acquisition programs as part of the parent/guardian and community engagement process during the development of the LCAP; see section on "Language Acquisition Programs" below. In addition, if district enrollment includes at least 15 percent English learners, with at least 50 students who are English learners, Education Code 52063 requires the establishment of an English learner parent advisory committee to review and comment on the district's LCAP; see the accompanying administrative regulation and BP 0460 - Local Control and Accountability Plan.

The Superintendent or designee shall encourage parent/guardian and community involvement in the development and evaluation of programs for English learners. ~~To support students' English language development,~~ ~~The Superintendent or designee may also provide an English development adult literacy training program that leads to English fluency for parents/guardians and community members so that they may better support students' English language development.~~

*(cf. 0420 - School Plans/Site Councils)*  
*(cf. 1220 - Citizen Advisory Committees)*  
*(cf. 6020 - Parent Involvement)*

Note: Pursuant to Education Code 60811, in November 2012 the State Board of Education (SBE) adopted state academic content standards for English language development (ELD), aligned with the California Common Core State Standards for English language arts, for students whose primary language is a language other than English. In July 2014, the SBE adopted the English Language Arts/English Language Development Framework aligned to those standards. A supplementary resource, Integrating the CA ELD Standards into K-12 Mathematics and Science Teaching and Learning, specifies the correspondence between the state ELD standards and the California Common Core State Standards for mathematics and the Next Generation Science Standards.

CDE's Roadmap encourages differentiated instruction and curriculum which are integrated across all subject areas and emphasize inquiry based learning and critical thinking skills.

~~English learners shall be provided differentiated English language development instruction which is targeted to their English proficiency level, integrated across all subject areas, and aligned with the state content standards. The district's program shall be based on sound instructional theory, use standards aligned instructional materials, emphasize inquiry based learning and critical thinking skills, and provide students with access to the full educational program.~~

*(cf. 6011 - Academic Standards)*  
*(cf. 6141 - Curriculum Development and Evaluation)*

## EDUCATION FOR ENGLISH LEARNERS (continued)

~~(cf. 6161.1 – Selection and Evaluation of Instructional Materials)~~  
~~(cf. 6161.11 – Supplementary Instructional Materials)~~  
~~(cf. 6171 – Title I Programs)~~

### Staff Qualifications and Training

Note: Commission on Teacher Credentialing (CTC) leaflet CL-622, Serving English Learners, describes requirements pertaining to the qualifications of teachers of English learners. A teacher who is assigned to provide English language development, specially designed academic instruction in English, and/or primary language instruction to English learners must hold an appropriate authorization from **the** CTC; see AR 4112.22 - Staff Teaching English Learners.

The Superintendent or designee shall ensure that all staff employed to teach English learners possess the appropriate authorization from the Commission on Teacher Credentialing.

*(cf. 4112.22 - Staff Teaching English Learners)*

Note: The following paragraph reflects a requirement for districts that receive federal Title III funds to improve the education of English learners, and is recommended for use by all districts. 20 USC 6825 lists the required uses of such funds, including the provision of professional development of sufficient intensity and duration to have a positive and lasting impact on teachers' performance in the classroom. Pursuant to 20 USC 6825, such professional development must not include one-day or short-term workshops and conferences.

The district shall provide effective professional development to teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), administrators, and other school or community-based organization personnel to improve the instruction and assessment of English learners and enhance staff's ability to understand and use curricula, assessment, and instructional strategies for English learners. Such professional development shall be of sufficient intensity and duration to produce a positive and lasting impact on teachers' performance in the classroom. (20 USC 6825)

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

Note: The following paragraph is **optional**. **The** CDE's Roadmap indicates the importance of a supportive and collaborative environment in order for teachers to effectively address the complex needs of English learners.

Staff development shall also address the sociocultural needs of English learners and provide opportunities for teachers to engage in supportive, collaborative learning communities.

~~To support students' English language development, the Superintendent or designee may provide an adult literacy training program that leads to English fluency for parents/guardians and community members.~~

**EDUCATION FOR ENGLISH LEARNERS** (continued)**Identification and Assessment**

Note: ~~The~~ CDE's Roadmap emphasizes the importance of early identification of English learners, as early childhood is a crucial period of time for language development. Education Code 313 requires any district that has one or more students who are English learners to assess the English language proficiency of those students using ~~a the~~ state assessment designated by the SBE. The state English Language Proficiency Assessments for California (ELPAC) are aligned with the 2012 state standards for ELD. They include ~~The~~ **ELPAC includes** an initial test for identifying students who may be English learners and an annual summative assessment for determining English learners' level of English proficiency and progress in acquiring the skills of listening, speaking, reading, and writing in English. CDE also provides a home language survey to be used to identify students who should be tested for English proficiency. See the accompanying administrative regulation for further information about test administration, ~~and~~ identification of English learners, and reclassification criteria.

The Superintendent or designee shall maintain procedures for the early identification of English learners and an assessment of their proficiency ~~and needs in the areas of listening, speaking, reading, and writing in English using the state's English Language Proficiency Assessments for California (ELPAC).~~ **To oversee test administration, the Superintendent or designee shall annually designate a district ELPAC coordinator and a site coordinator for each test site in accordance with 5 CCR 11518.40-11518.45.**

Once identified as an English learner, a student shall be annually assessed for language proficiency until ~~he/she~~ **the student** is reclassified based on criteria specified in the accompanying administrative regulation.

Note: In addition to testing the level of English proficiency of English learners, districts are required pursuant to Education Code 60640 to administer the California Assessment of Student Performance and Progress (CAASPP) to English learners; see BP/AR 6162.51 - State Academic Achievement Tests. As needed, English learners may be provided with the testing resources (i.e., universal tools, designated supports, and accommodations) specified in 5 CCR 854.1-854.3, ~~as renumbered by Register 2018, No. 4,~~ during test administration.

~~Education Code 60640 also authorizes districts to administer a primary language assessment to English learners in grades 2-11 for the purpose of assessing students' competency in reading, writing, and listening in their primary language. The Standards Based Test in Spanish may be used for this purpose until a test is available that is aligned with the most recent state ELD standards. The new California Spanish Assessment is expected to be operational in the 2018-19 school year. CAASPP also includes the optional California Spanish Assessment for students in grades 3-8 and high school, which measures a student's competency in reading, writing, and listening in Spanish.~~

**In addition,** English learners' academic achievement in English language arts, mathematics, science, and any additional subject required by law shall be assessed using the California Assessment of Student Performance and Progress. As necessary, the test shall be administered with testing variations in accordance with 5 CCR 854.1-854.3. English learners who are in their first 12 months of attending a school in the United States shall be exempted from taking the English language arts assessment to the extent allowed by federal law. (Education Code 60603, 60640; 5 CCR 854.1-854.3)

## EDUCATION FOR ENGLISH LEARNERS (continued)

(cf. 6162.51 - State Academic Achievement Tests)

Note: The following paragraph is **optional**. The CDE's Roadmap highlights the importance of formative assessments in order to continually adapt methodologies and instruction to meet the needs of English learners.

Formative assessments may be utilized to analyze student performance and appropriately adapt teaching methodologies and instructions.

(cf. 6162.5 - Student Assessment)

### Language Acquisition Programs

Note: Education Code 305-310 authorize parents/guardians to select a language acquisition program that best suits their child. At a minimum, the district must offer a structured English immersion program. It also may offer a dual-language immersion program, transitional and developmental program for English learners, or other language acquisition program as defined in Education Code 306. Pursuant to 20 USC 6312 and 34 CFR 100.3, parents/guardians have a right to decline or opt their child out of a language acquisition program. The following section may be revised to reflect programs offered by the district. Also see the accompanying administrative regulation.

The district shall offer research-based language acquisition programs that are designed to ensure English acquisition as rapidly and as effectively as possible and that provide instruction to students on the state-adopted academic content standards, including the English language development standards. (Education Code 306; 5 CCR 11300)

At a minimum, the district shall offer a structured English immersion program which includes designated and integrated English language development. In the structured English immersion program, nearly all of the classroom instruction shall be provided in English, but with the curriculum and presentation designed for students who are learning English. (Education Code 305-306; 5 CCR 11309)

Note: The following **optional** paragraph may be revised to reflect district practice. The Education Code does not define the term "nearly all" for purposes of ensuring that nearly all instruction in the structured English immersion program is provided in English pursuant to Education Code 306. The following paragraph defines "nearly all" as to provide that all classroom instruction be conducted in English except for clarification, explanation, and support as needed. The district could instead establish a minimum percentage of classroom instructional time to be conducted in English or specify the types of courses to be conducted in English and the courses (e.g., science, algebra) to be taught in the student's primary language.

For the purpose of determining the amount of instruction to be conducted in English in the structured English immersion program, "nearly all" means that all classroom instruction shall be conducted in English except for clarification, explanation, and support as needed.

Note: Items #1-2 below are **optional** and may be revised to reflect district practice.

**EDUCATION FOR ENGLISH LEARNERS** (continued)

In addition, language acquisition programs offered by the district may include, but are not limited to, the following: (Education Code 305-306)

1. **The district may offer a A** dual-language immersion program that provides integrated language learning and academic instruction for native speakers of English and native speakers of another language, with the goals of high academic achievement, first and second language proficiency, and cross-cultural understanding.

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

2. **The district may offer a A** transitional or developmental program for English learners that provides literacy and academic instruction in English and a student's native language and that enables an English learner to achieve English proficiency and academic mastery of subject matter content and higher order thinking skills, including critical thinking, in order to meet state academic content standards.

Note: The following paragraph is for use by districts that maintain any of grades K-3.

The district's language acquisition programs for grades K-3 shall comply with class size requirements specified in Education Code 42238.02. (Education Code 310)

(cf. 6151 - Class Size)

In establishing the district's language acquisition programs, the Superintendent or designee shall consult with parents/guardians and the community during the LCAP development process. **He/she The Superintendent or designee** shall also consult with administrators, teachers, and other personnel with appropriate authorizations and experience in establishing a language acquisition program. (Education Code 305)

At the beginning of each school year or upon a student's enrollment, parents/guardians shall be provided information on the types of language acquisition programs available to students enrolled in the district, including, but not limited to, a description of each program, the process to be followed in making a program selection, identification of any language to be taught in addition to English when the program includes instruction in another language, and the process to request establishment of a language acquisition program. (Education Code 310; 5 CCR 11310)

(cf. 5145.6 - Parental Notifications)

Note: Pursuant to 5 CCR 11311, **as added by Register 2018, No. 20**, districts are required to establish a process with specified components for schools to receive and respond to requests from parents/guardians of enrolled students, and those enrolled for attendance in the next school year, to establish a language acquisition program other than, or in addition to, those already available at the school. See the section "Language Acquisition Programs" in the accompanying administrative regulation.

## EDUCATION FOR ENGLISH LEARNERS (continued)

Whenever a student is identified as an English learner based on the results of the ELPAC, the student's parents/guardians may choose a language acquisition program that best suits their child. To the extent possible, any language acquisition program requested by the parents/guardians of 30 or more students at the school or by the parents/guardians of 20 or more students at any grade level shall be offered by the school. (Education Code 310; 5 CCR 11311)

### Reclassification

When an English learner is determined based on state and district reclassification criteria to have acquired a reasonable level of English proficiency pursuant to Education Code 313 and 52164.6, or upon request by the student's parent/guardian, the student shall be transferred from a language acquisition program into an English language mainstream classroom.

### Program Evaluation

Note: The following section may be revised to reflect indicators agreed upon by the Governing Board and Superintendent or designee for measuring the effectiveness of the district's educational program for English learners. Education Code 52061 requires that the annual update of the LCAP include a review of progress toward the goals included in the LCAP, an assessment of the effectiveness of the specific actions described in the LCAP toward achieving the goals, and a description of changes the district will make as a result of this review and assessment.

Pursuant to Education Code 313.2, the CDE is required to annually determine the number of students in each district and school who are, or are at risk of becoming, long-term English learners and to report that information to districts and schools. Definitions of "long-term English learner" and "English learner at risk of becoming a long-term English learner" are contained in Education Code 313.1.

20 USC 6311 requires the inclusion of a performance indicator on English language proficiency within the state accountability system under Title I.

To evaluate the effectiveness of the district's educational program for English learners, the Superintendent or designee shall report to the Board, at least annually, regarding:

1. Progress of English learners towards proficiency in English
2. The number and percentage of English learners reclassified as fluent English proficient
3. The number and percentage of English learners who are or are at risk of being classified as long-term English learners in accordance with Education Code 313.1
4. The achievement of English learners on standards-based tests in core curricular areas

**EDUCATION FOR ENGLISH LEARNERS** (continued)

5. For any language acquisition program that includes instruction in a language other than English, student achievement in the non-English language in accordance with 5 CCR 11309
6. Progress toward any other goals for English learners identified in the district's LCAP
7. A comparison of current data with data from at least the previous year in regard to items #1-6 above
8. A comparison of data between the different language acquisition programs offered by the district

The Superintendent or designee shall also provide the Board with regular reports from any district or schoolwide English learner advisory committees.

*Legal Reference: (see next page)*

## EDUCATION FOR ENGLISH LEARNERS (continued)

### Legal Reference:

#### EDUCATION CODE

300-340 English language education, especially:  
305-310 Language acquisition programs  
313-313.5 Assessment of English proficiency  
430-446 English Learner and Immigrant Pupil Federal Conformity Act  
33050 State Board of Education waiver authority  
42238.02-42238.03 Local control funding formula  
44253.1-44253.11 Qualifications for teaching English learners  
48980 Parental notifications  
48985 Notices to parents in language other than English  
52052 Accountability; numerically significant student subgroups  
52060-52077 Local control and accountability plan  
52160-52178 Bilingual Bicultural Act  
56305 CDE manual on English learners with disabilities  
60603 Definition, recently arrived English learner  
60640 California Assessment of Student Performance and Progress  
**60811-60812 Assessment of English language development**  
62002.5 Continuation of advisory committee after program sunsets  
CODE OF REGULATIONS, TITLE 5  
854.1-854.3 CAASPP and universal tools, designated supports, and accommodations  
854.9 CASSPP and unlisted resources for students with disabilities  
11300-11316 English learner education  
**11510-11517.5 California English Language Development Test**  
11517.6-11519.5 English Language Proficiency Assessments for California  
UNITED STATES CODE, TITLE 20  
1412 Individuals with Disabilities Education Act; state eligibility  
1701-1705 Equal Educational Opportunities Act  
6311 Title I state plan  
6312 Title I local education agency plans  
6801-7014 Title III, language instruction for English learners and immigrant students  
7801 Definitions  
CODE OF FEDERAL REGULATIONS, TITLE 34  
100.3 Discrimination prohibited  
200.16 Assessment of English learners  
COURT DECISIONS  
*Valeria O. v. Davis*, (2002) 307 F.3d 1036  
*California Teachers Association v. State Board of Education et al.*, (9th Circuit, 2001) 271 F.3d 1141  
*McLaughlin v. State Board of Education*, (1999) 75 Cal.App.4th 196  
*Teresa P. et al v. Berkeley Unified School District et al.*, (1989) 724 F.Supp. 698  
ATTORNEY GENERAL OPINIONS  
83 *Ops.Cal.Atty.Gen.* 40 (2000)

### Management Resources:

#### CSBA PUBLICATIONS

*English Learners in Focus: The English Learner Roadmap: Providing Direction for English Learner Success*, Governance Brief, February 2018  
*English Learners in Focus, Issue 4: Expanding Bilingual Education in California after Proposition 58*, Governance Brief, March 2017

Management Resources continued: (see next page)

**EDUCATION FOR ENGLISH LEARNERS (continued)**

*Management Resources: (continued)*

CSBA PUBLICATIONS (continued)

English Learners in Focus, Issue 1: Updated Demographic and Achievement Profile of California's English Learners, Governance Brief, rev. September 2016

English Learners in Focus, Issue 3: Ensuring High-Quality Staff for English Learners, Governance Brief, July 2016

English Learners in Focus, Issue 2: The Promise of Two-Way Immersion Programs, Governance Brief, September 2014

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Practitioners' Guide for Educating English Learners with Disabilities, 2019

California English Learner Roadmap: Strengthening Comprehensive Educational Policies, Programs and Practices for English Learners, 2018

Matrix One: Universal Tools, Designated Supports, and Accommodations for the California Assessment of Student Performance and Progress for 2017-18, rev. August 2017

Reclassification Guidance for 2017-18, CDE Correspondence, April 28, 2017

Integrating the CA ELD Standards into K-12 Mathematics and Science Teaching and Learning, December 2015

Next Generation Science Standards for California Public Schools, Kindergarten through Grade Twelve, rev. March 2015

English Language Arts/English Language Development Framework for California Public Schools: Transitional Kindergarten Through Grade Twelve, 2014

Common Core State Standards for Mathematics, rev. 2013

English Language Development Standards for California Public Schools: Kindergarten Through Grade Twelve, 2012

THE EDUCATION TRUST- WEST PUBLICATIONS

Unlocking Learning II: Math as a Lever for English Learner Equity, March 2018

Unlocking Learning: Science as a Lever for English Learner Equity, January 2017

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Accountability for English Learners Under the ESEA, Non-Regulatory Guidance, January 2017

Innovative Solutions for Including Recently Arrived English Learners in State Accountability Systems: A Guide for States, January 2017

English Learner Tool Kit for State and Local Educational Agencies (SEAs and LEAs), rev. November 2016

English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA), Non-Regulatory Guidance, September 23, 2016

Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, January 7, 2015

WEB SITES

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

California Association for Bilingual Education: <http://www.gocabe.org>

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

National Clearinghouse for English Language Acquisition: <http://www.ncela.us>

The Education Trust-West: <https://west.edtrust.org>

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

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**Policy Reference UPDATE Service**

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# CSBA Sample Administrative Regulation

## Instruction

AR 6174(a)

### EDUCATION FOR ENGLISH LEARNERS

#### Definitions

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

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

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

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

#### Identification and Assessments

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

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

**EDUCATION FOR ENGLISH LEARNERS (continued)**

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

Any student who is identified as having a primary language other than English as determined by the home language survey, and who has not previously been identified as an English learner by a California public school or for whom there is no record of results from an administration of an English language proficiency test, shall be initially assessed for English proficiency using the English Language Proficiency Assessments for California (ELPAC). (Education Code 313, 52164.1; 5 CCR ~~11511~~ **11518.5**)

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

Note: ~~5 CCR 11518.30-11518.35, as renumbered by Register 2017, No. 23, specify allowable variations and accommodations in the administration of the state English language proficiency assessment.~~

~~The ELPAC shall be administered in accordance with test publisher instructions and 5 CCR 11518.5-11518.20. Variations and accommodations in test administration may be provided to English learners pursuant to 5 CCR 11518.30-11518.35.~~

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

The Individuals with Disabilities in Education Act (20 USC 1412) requires that students with disabilities be included in all state assessments, including the ELPAC as appropriate. ~~English learners with disabilities must be allowed to take the test with accommodations as specified in their individualized education program or Section 504 plan.~~ Pursuant to 5 CCR 11518.30, students with the most significant cognitive disabilities who cannot participate in the assessment, even with appropriate accommodations, must be given an alternate assessment of English proficiency. 34 CFR 200.16 provides that, if an English learner with a disability is unable to take the assessment with accommodations, the state accountability system must include the student's score on any part(s) of the test for which it is possible to assess the student (i.e., speaking, reading, listening, writing).

**Pursuant to Education Code 56305, as amended by AB 99 (Ch. 15, Statutes of 2017), requires CDE to develop, by January 1, 2019, has developed a manual, California Practitioners' Guide for Educating English Learners with Disabilities, providing which provides guidance on identifying, assessing, supporting, and reclassifying English learners with disabilities.**

~~The ELPAC shall be administered~~ **Administration of the ELPAC, including the use of variations and accommodations in test administration when authorized, shall be conducted** in accordance with test publisher instructions and 5 CCR 11518.5-11518.20**35.**

**EDUCATION FOR ENGLISH LEARNERS** (continued)

Any student with a disability who is identified as an English learner shall be allowed to take the assessment with those accommodations for testing that the student has regularly used during instruction and classroom assessment as delineated in the student's individualized education program (IEP) or Section 504 plan. If the student is unable to participate in the assessment or a portion of the assessment even with such accommodations, an alternate assessment for English language proficiency shall be administered to the student as set forth in his/her IEP. (5 CCR 11518.25-11518.35; 20 USC 1412)

(cf. 6159 - Individualized Education Program)

(cf. 6162.51 - State Academic Achievement Tests)

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

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

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

The Superintendent or designee shall notify parents/guardians of their child's results on the ELPAC within 30 calendar days following receipt of the results from the test contractor **or, if the results are received from the test contractor after the last day of instruction for the school year, within 15 working days of the start of the next school year.** (Education Code 52164.1; 5 CCR ~~11514.5~~ **11518.15**)

(cf. 5145.6 - Parental Notifications)

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

The parent/guardian of a student participating in, or identified for participation in, a language instruction program supported by federal Title I or Title III funds shall receive notification of the assessment of ~~his/her child's~~ **the student's** English proficiency. Such notice shall be provided not later than 30 calendar days after the beginning of the school year or, if the student is identified for program participation during the school year, within two weeks of the student's placement in the program. The notice shall include all of the following: (Education Code 313.2, 440; 20 USC 6312)

1. The reason for the identification of the student as an English learner and the need for placement in a language acquisition program

**EDUCATION FOR ENGLISH LEARNERS (continued)**

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

Note: Education Code 313.2, as amended by AB 81 (Ch. 609, Statutes of 2017), requires that the notice contain information in regard to (1) whether the student is a long-term English learner, or English learner at risk of becoming a long-term English learner, and (2) the manner in which the program for English language development instruction will meet the educational strengths and needs of such students and help them develop English proficiency and achieve academic standards. Districts may send an alternate notice if the definitions of long-term English learners and those at risk of becoming long-term English learners used by the district are broader than those defined in Education Code 313.1, the notice states that the definitions utilized by the district are broader, and the notice contains the information specified in item #4 below.

4. As applicable, the identification of a student as a long-term English learner or at risk of becoming a long-term English learner, as defined in Education Code 313.1, and the manner in which the program for English language development instruction will meet the educational strengths and needs of such students and help such students develop English proficiency and meet age-appropriate academic standards
5. Information about the parent/guardian's right to have the student immediately removed from a program upon the parent/guardian's request
6. Information regarding a parent/guardian's option to decline to enroll the student in the program or to choose another program or method of instruction, if available

**EDUCATION FOR ENGLISH LEARNERS (continued)**

7. Information designed to assist a parent/guardian in selecting among available programs, if more than one program or method is offered

**Language Acquisition Programs**

Note: Pursuant to 5 CCR 11311, ~~as added by Register 2018, No. 20~~, districts are required to establish a process for schools to receive and respond to requests from parents/guardians of enrolled students, and those enrolled for attendance in the next school year, to establish a language acquisition program other than, or in addition to, those already available at the school. Each school is required to follow the process even when the district provides the language acquisition program at another school site. The following section includes the components of the process required by 5 CCR 11311 and may be expanded to reflect district practice.

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

1. The school shall make a written record of each request, including any request submitted verbally, that includes the date of the request, the names of the parent/guardian and student making the request, a general description of the request, and the student's grade level on the date of the request. As needed, the school shall assist the parent/guardian in clarifying the request. All requests shall be maintained for at least three years from the date of the request.
2. The school shall monitor requests on a regular basis and notify the Superintendent or designee when the parents/guardians of at least 30 students enrolled in the school, or at least 20 students in the same grade level, request the same or a substantially similar type of language acquisition program. If the requests are for a multilingual program model, the district shall consider requests from parents/guardians of students enrolled in the school who are native English speakers in determining whether this threshold is reached.
3. If the number of parents/guardians described in item #2 is attained, the Superintendent or designee shall:
  - a. Within 10 days of reaching the threshold, notify the parents/guardians of students attending the school, the school's teachers, administrators, and the district's English learner parent advisory committee and parent advisory committee, in writing, of the requests for a language acquisition program
  - b. Identify costs and resources necessary to implement any new language acquisition program, including, but not limited to, certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent

**EDUCATION FOR ENGLISH LEARNERS** (continued)

professional development for the proposed program, and opportunities for parent/guardian and community engagement to support the proposed program goals

- c. Within 60 calendar days of reaching the threshold number of parents/guardians described in item #2 above, determine whether it is possible to implement the requested language acquisition program and provide written notice of the determination to parents/guardians of students attending the school, the school's teachers, and administrators
- d. If a determination is made to implement the language acquisition program, create and publish a reasonable timeline of actions necessary to implement the program. If a determination is made that it is not possible to implement the program, provide a written explanation of the reason(s) the program cannot be provided.

Note: Pursuant to 5 CCR 11310, as amended by Register 2018, No. 20, districts are required to notify parents/guardians regarding language acquisition programs at the beginning of each school year or upon a student's enrollment. The following section includes the notice requirements pursuant to 5 CCR 11310.

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

1. A description of the programs provided, including structured English immersion
2. Identification of any language to be taught in addition to English when the program includes instruction in a language other than English
3. The manner in which the program is designed using evidence-based research and includes both designated and integrated English language development
4. The manner in which the district has allocated sufficient resources to effectively implement the program, including, but not limited to, certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development, and opportunities for parent/guardian and community engagement to support the program goals
5. The manner in which the program will, within a reasonable period of time, lead to language proficiency and achievement of the state-adopted content standards in English and, when the program includes instruction in another language, in that other language

**EDUCATION FOR ENGLISH LEARNERS** (continued)

6. The process to request establishment of a language acquisition program not offered at the school
7. For any dual-language immersion program offered, the specific languages to be taught. The notice also may include the program goals, methodology used, and evidence of the proposed program's effectiveness.

**Reclassification/Redesignation**

The district shall continue to provide additional and appropriate educational services to English learners for the purposes of overcoming language barriers until they: (5 CCR 11302)

1. Demonstrate English language proficiency comparable to that of the district's average native English language speakers
2. Recoup any academic deficits which may have been incurred in other areas of the core curriculum as a result of language barriers

English learners shall be reclassified as fluent English proficient when they are able to comprehend, speak, read, and write English well enough to receive instruction in an English language mainstream classroom and make academic progress at a level substantially equivalent to that of students of the same age or grade whose primary language is English and who are in the regular course of study. (Education Code 52164.6)

Note: Education Code 313 and 52164.6 and 5 CCR 11303 require that the district's reclassification process include, at a minimum, the criteria specified in items #1-4 below. Additional guidance is available on the CDE's web site. The district may expand the following list to reflect any additional criteria it has established.

The **measures procedures** used to determine whether an English learner shall be reclassified as fluent English proficient shall include, but not be limited to: (Education Code 313, 52164.6; 5 CCR 11303)

1. Assessment of English language proficiency using an objective assessment instrument, including, but not limited to, the ELPAC

Note: Pursuant to Education Code 313.3, as added by AB 1808 (Ch. 32, Statutes of 2018), CDE is required to develop, by June 30, 2020, a standardized teacher observation protocol for use in evaluating a student's English language proficiency, as required by item #2 below, as well as professional development tools to train teachers on the use of the protocol.

2. Participation of the student's classroom teacher and any other certificated staff with direct responsibility for teaching or placement decisions related to the student

**EDUCATION FOR ENGLISH LEARNERS** (continued)

3. Parent/guardian ~~opinion and consultation~~ **involvement, including:**
- a. Notice to parents/guardians of language reclassification and placement, including a description of the reclassification process and the parent/guardian's opportunity to participate**
  - b. Encouragement of parent/guardian participation in the district's reclassification procedure, including seeking parent/guardian opinion and consultation during the reclassification process**

~~The Superintendent or designee shall provide the parent/guardian with notice and a description of the reclassification process and of his/her opportunity to participate in the process and shall encourage his/her involvement in the process.~~

Note: Pursuant to Education Code 313, the fourth criterion requires comparison of student performance on an objective assessment of basic skills that provides an empirically established range of performance of English proficient students of the same age. A letter from CDE to district superintendents (Reclassification Guidance for 2017-18) dated April 28, 2017 clarifies that the Smarter Balanced Summative Assessment may be used as a local measure of the fourth criterion, or districts may select another local assessment. ~~The~~ CDE correspondence provides examples of appropriate measures and is available on ~~the~~ CDE's web site.

4. Student performance on an objective assessment of basic skills in English that shows whether the student is performing at or near grade level

The Superintendent or designee shall monitor the progress of reclassified students to ensure their correct classification and placement. (5 CCR 11304)

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

The Superintendent or designee shall monitor students for at least two years following their reclassification to determine whether ~~the student needs~~ any additional academic support **is needed**.

**Advisory Committee**

Note: The following section should be revised to reflect district practice. Pursuant to 5 CCR 11308, a parent/guardian advisory committee is required for any district with over 50 English learners and for each school with over 20 English learners. Duties of the advisory committee are specified in 5 CCR 11308.

A parent/guardian advisory committee shall be established at the district level when there are more than 50 English learners in the district and at the school level when there are more than 20 English learners at the school. Parents/guardians of English learners shall constitute committee membership in at least the same percentage as English learners represent of the total number of students in the school. (Education Code 52176; 5 CCR 11308)

**EDUCATION FOR ENGLISH LEARNERS** (continued)

The district's English language advisory committee shall advise the Governing Board on at least the following tasks: (5 CCR 11308)

1. The development of a plan for education programs and services for English learners, taking into consideration the school site plans for English learners
2. The districtwide needs assessment on a school-by-school basis
3. Establishment of a district program, goals, and objectives for programs and services for English learners
4. Development of a plan to ensure compliance with applicable teacher or aide requirements
5. Administration of the annual language census
6. Review of and comment on the district's reclassification procedures

*(cf. 0420 - School Plans/Site Councils)*  
*(cf. 1220 - Citizen Advisory Committees)*  
*(cf. 5020 - Parent Rights and Responsibilities)*  
*(cf. 6020 - Parent Involvement)*

In order to assist the advisory committee in carrying out its responsibilities, the Superintendent or designee shall ensure that committee members receive appropriate training and materials. This training shall be planned in full consultation with the members. (5 CCR 11308)

**LCAP Advisory Committee**

Note: The following section is applicable if the district's student enrollment includes at least 15 percent English learners, with at least 50 students who are English learners. Education Code 52063 requires that such districts establish an English learner parent advisory committee to review and comment on the district's local control and accountability plan; see BP 0460 - Local Control and Accountability Plan. 5 CCR 15495 requires this committee to include a majority of parents/guardians of English learners.
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When there are at least 15 percent English learners in the district, with at least 50 students who are English learners, a district-level English learner parent advisory committee shall be established to review and comment on the district's local control and accountability plan (LCAP) in accordance with BP 0460 - Local Control and Accountability Plan. The committee shall be composed of a majority of parents/guardians of English learners. (Education Code 52063; 5 CCR 11301, 15495)

*(cf. 0460 - Local Control and Accountability Plan)*

AR 6174(j)

**EDUCATION FOR ENGLISH LEARNERS** (continued)

The advisory committee established pursuant to 5 CCR 11308, as described in the section "Advisory Committee" above, could serve as the LCAP English learner advisory committee if its composition includes a majority of parents/guardians of English learners.

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# CSBA Sample Board Policy

Instruction

BP 6179(a)

## SUPPLEMENTAL INSTRUCTION

Note: The following policy is **mandated** pursuant to Education Code 48070.5 and should be revised to reflect the grade levels offered by the district.

Pursuant to Education Code 52060-52077, the Governing Board must annually adopt a local control and accountability plan which includes goals and actions aligned with **eight**-state priorities, including student achievement; see BP/AR 0460 - Local Control and Accountability Plan. The provision of high-quality supplemental instruction may be one strategy to improve student achievement outcomes for underperforming students.

**In addition, the provision of supplemental instruction may be a strategy to assist low-performing schools identified by the California Department of Education for comprehensive or targeted support and improvement pursuant to 20 USC 6311. Such schools are required to develop and implement a school plan to improve student outcomes.**

The Governing Board recognizes that high-quality supplemental instruction can motivate and support students to attain grade-level academic standards, overcome academic deficiencies, and/or acquire critical skills. The district shall offer programs of direct, systematic, and intensive supplemental instruction to meet student needs. Supplemental instruction shall be offered in accordance with law and may be used to assist the district in meeting its goals for student achievement.

*(cf. 0460 - Local Control and Accountability Plan)*  
*(cf. 5113.1 - Chronic Absence and Truancy)*  
*(cf. 5147 - Dropout Prevention)*  
*(cf. 6011 - Academic Standards)*  
*(cf. 6146.1 - High School Graduation Requirements)*  
*(cf. 6146.5 - Elementary/Middle School Graduation Requirements)*  
*(cf. 6164.5 - Student Success Teams)*

Supplemental instruction may be offered during and outside the regular school day, including during the summer, before school, after school, on Saturday, and/or during intersessions. When supplemental instruction is offered during the regular school day, it shall not supplant the student's instruction in the core curriculum areas or physical education.

*(cf. 5148.2 - Before/After School Programs)*  
*(cf. 6111 - School Calendar)*  
*(cf. 6112 - School Day)*  
*(cf. 6142.7 - Physical Education and Activity)*  
*(cf. 6176 - Weekend/Saturday Classes)*  
*(cf. 6177 - Summer Learning Programs)*

As appropriate, supplemental instruction may be provided through a classroom setting, individual or small group instruction, technology-based instruction, and/or an arrangement with a community or other external service provider.

**SUPPLEMENTAL INSTRUCTION** (continued)

When determined to be necessary by the principal or designee **and when written parent/guardian consent is obtained for the student's participation**, a student may be required to participate in supplemental instruction outside the regular school day. ~~In such cases, written parent/guardian consent shall be obtained for the student's participation.~~

Note: Pursuant to Education Code 37252.2, districts are required to provide supplemental instruction to students in grades 2-9, inclusive, who have been retained or recommended for retention, as provided below. Education Code 48070.5 **mandates** that districts adopt policy indicating the manner in which opportunities for remedial instruction will be provided to students who are recommended for retention. See BP/AR 5123 - Promotion/Acceleration/Retention for information regarding the criteria for identifying students for retention.

Supplemental instruction shall be offered to students **in grades 2-9 who have been retained or are recommended for retention, or are identified as being at risk for retention**, at their current grade level. (Education Code ~~37252.2~~, 48070.5)

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

*(cf. 5123 - Promotion/Acceleration/Retention)*

*(cf. 6162.51 - State Academic Achievement Tests)*

Note: The Every Student Succeeds Act (ESSA) (P.L. 114 95) repealed 20 USC 6316 which had required Title I schools identified for program improvement in year 2 or beyond to provide eligible students with supplemental educational services from an approved service provider. In accordance with the California Department of Education's (CDE) Every Student Succeeds Act 2016-17 School Year Transition Plan (April 2016), the CDE has elected to instead require the provision of alternative supports, defined and administered by the district, to eligible students beginning with the 2016-17 school year. See AR 0520.2 - Title I Program Improvement Schools for details regarding this requirement.

~~The district shall offer alternative supports designed to increase the academic achievement of socioeconomically disadvantaged students attending schools identified by the California Department of Education for program improvement for two or more consecutive years.~~

*(cf. 0520.2 - Title I Program Improvement Schools)*

*(cf. 0520.3 - Title I Program Improvement Districts)*

Note: Items #1-~~32~~ below are **optional** and may be revised to reflect district practice.

In addition, supplemental instruction may be offered to:

Note: Education Code 37252.8 authorizes, but does not require, districts to offer supplemental instruction to students in grades 2-6 who have been identified as being "at risk" for retention based on state assessment results, grades, or other indicators. See BP 5123 - Promotion/Acceleration/Retention for further information about criteria for identifying students as at risk of retention. If districts choose to offer such instruction, Education Code 48070.5 **mandates** that they adopt policy indicating the manner in which opportunities for remedial instruction will be provided to students who are at risk for retention.

**SUPPLEMENTAL INSTRUCTION** (continued)

~~1. Students who are identified as being at risk for retention based on state assessment results, grades, or other indicators~~

~~(cf. 5121 - Grades/Evaluation of Student Achievement)  
(cf. 6162.51 - State Academic Achievement Tests)~~

Note: Education Code 37252.8 authorizes, but does not require, districts to offer supplemental instruction to students in grades 2-6 who are identified as having a deficiency in mathematics, reading, or written expression based on state assessment results. At their discretion, districts may offer such instruction to students who demonstrate academic deficiencies at any grade level or in any subject matter.

~~2.1. Students who demonstrate academic deficiencies that may jeopardize their attainment of academic standards~~

~~(cf. 6142.6 - Visual and Performing Arts Education)  
(cf. 6142.7 - Physical Education and Activity)  
(cf. 6142.91 - Reading/Language Arts Instruction)  
(cf. 6142.92 - Mathematics Instruction)  
(cf. 6142.93 - Science Instruction)  
(cf. 6142.94 - History-Social Science Instruction)~~

Note: The following **optional** item may be used by districts maintaining high schools to provide support to students who need assistance to meet graduation requirements.

~~3.2. High school students who need support to successfully complete courses required for graduation~~

*Legal Reference: (see next page)*

**SUPPLEMENTAL INSTRUCTION** (continued)

*Legal Reference:*

EDUCATION CODE

37200-37202 School calendar

37223 Weekend classes

37252-37254.1 Supplemental instruction, summer school

42238.01-~~42238.07~~ 42238.5 Local control funding formula

46100 Length of school day

48070-48070.5-6 Promotion and retention

48200 Compulsory education

48985 Translation of notices

51210-51212 Courses of study, elementary schools

51220-51228 Courses of study, secondary schools

52060-52077 Local control and accountability plan

60603 Definitions, core curriculum areas

60640-60649 California Assessment of Student Performance and Progress

CODE OF REGULATIONS, TITLE 5

11470-11472 Summer school

UNITED STATES CODE, TITLE 20

6311 State plan

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Every Student Succeeds Act 2016-17 School Year Transition Plan, April 2016

WEB SITES

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

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

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

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**Policy Reference UPDATE Service**

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# CSBA Sample Board Bylaw

Board Bylaws

BB 9321(a)

## CLOSED SESSION ~~PURPOSES AND AGENDAS~~

Note: Pursuant to Government Code 54962, the Governing Board may hold a closed session only for purposes expressly authorized by the Brown Act (Government Code 54950-54963) or by a provision of the Education Code. Government Code 54954.5 provides specific agenda descriptions for most closed session items authorized by the Brown Act, as described throughout this bylaw and the accompanying Exhibit (1). Following the closed session, Government Code 54957.7 requires the Board to reconvene in open session to report any action taken in closed session, as described below and in the accompanying Exhibit (2).

The Governing Board is committed to complying with state open meeting laws and modeling transparency in its conduct of district business. The Board shall hold a closed session during a regular, special, or emergency meeting only for purposes authorized by law. ~~A closed session may be held during a regular, special, or emergency meeting in accordance with law.~~

Note: Government Code 54954.5 provides specific agenda descriptions for most closed session items authorized by the Brown Act.

Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law and specified below. (Government Code 54954.2)

(cf. 9320 - Meetings and Notices)

(cf. 9322 - Agenda/Meeting Materials)

Note: Government Code 54957.7 states requires that, before holding any closed session, the Board must disclose in an open meeting the item(s) to be discussed in the closed session. The Board may either state the information on the agenda or refer the public to the item(s) as listed by number or letter on the agenda. These disclosures may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements. In addition, the Board is required to reconvene in open session upon conclusion of a closed session to report any action taken in the closed session.

~~In the open session preceding the closed session, t~~The Board shall disclose in open session the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. (Government Code 54957.7)

After the closed session, the Board shall reconvene in open session before adjourning the meeting, and, when applicable, shall publicly disclose any action taken in the closed session, the votes or abstentions thereon, and other disclosures specified below that are applicable to the matter being addressed. ~~in the manner prescribed by Government Code 54957.1.~~ Such reports may be made in writing or orally at the location announced in the agenda for the closed session. (Education Code 32281; Government Code 54957.1, 54957.7)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

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

Note: Pursuant to Government Code 54957.1, a document approved or adopted in a closed session must be provided to any person who has submitted a written request within 24 hours of the posting of the agenda or who has made a standing request for all documentation as part of a request for meeting notices pursuant to Government Code 54954.1 or 54956.

When an action taken during a closed session involves final approval or adoption of a document such as a contract or settlement agreement, the Superintendent or designee shall provide a copy of the document to any person present at the conclusion of the closed session who submitted a written request. If the action taken results in one or more substantive amendments, the Superintendent or designee shall make the document available the next business day or when the necessary retyping is completed. Whenever copies of an approved agreement will not be immediately released due to an amendment, the Board president shall orally summarize the substance of the amendment for those present at the end of the closed session. (Government Code 54957.1)

**Confidentiality**

The Board shall not disclose any information that is protected by state or federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

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

Note: Pursuant to Government Code 54963, a Board member who discloses confidential information received in a closed session may be referred to the local grand jury or may be subject to action in a court of law. For a definition of confidential information and the actions that may be taken against a Board member if such information is disclosed, see BB 9011 - Disclosure of Confidential/Privileged Information.

A Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)

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

The Board shall not disclose any information that is protected by state or federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)

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

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)**Personnel Matters**

Note: Government Code 54957 authorizes the use of closed sessions for personnel matters described below. For the purpose of these closed sessions, "employee" includes an officer or independent contractor who functions as an officer or employee but excludes Board members. The Attorney General has concluded (59 Ops.Cal.Atty.Gen. 532 (1976)) that it is appropriate to use a closed session to discuss and evaluate Superintendent performance. (59 Ops.Cal.Atty.Gen. 532 (1976)) However, under the "personnel exception," the Board may not discuss or act upon any proposed change in compensation other than a reduction of compensation that results from the imposition of discipline ~~in closed session~~ under this exception.

In Fischer v. Los Angeles Unified School District, the court interpreted Government Code 54957 and found that the right to request an open session applies only when the Board hears specific complaints or charges brought against the employee. Thus, the right to request an open session does not apply when the Board is meeting in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee.

The Board may hold a closed session under the "personnel exception" to consider the appointment, employment, **performance** evaluation ~~of performance~~, discipline, or dismissal of an employee. Such a closed session shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957)

*(cf. 2140 - Evaluation of the Superintendent)*

*(cf. 4115 - Evaluation/Supervision)*

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

*(cf. 4215 - Evaluation/Supervision)*

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

*(cf. 4315 - Evaluation/Supervision)*

Note: Pursuant to Government Code 54957, failure of the Board to give an employee against whom a "specific complaint or charge" has been made the notice described below will render any action taken by the Board in the closed session null and void. Determining whether a "specific complaint or charge" is involved is usually fact-specific and the Board should consult legal counsel as necessary. In Furtado v. Sierra Community College District, the court held that the term "specific complaints or charges" as used in Government Code 54957 does not include negative comments in an employee's performance evaluation. In another decision, Bell v. Vista Unified School District, the court determined that a presentation to the Board by a district staff member regarding an employee's violation of a California Interscholastic Federation rule constituted a "complaint or charge" and thus the employee was entitled to 24-hour notice. Yet another ruling, Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, held that when a board rejects its hearing officer's findings of fact and conducts its own hearing, the employee must be given 24-hour notice.

Furthermore, an Attorney General opinion (78 Ops.Cal.Atty.Gen. 218 (1995)) has clarified that a probationary certificated employee does not have the right to an open session when the Board is discussing whether or not to reemploy ~~him/her~~ **the employee** for a third consecutive school year. Education Code 44929.21 allows the Board to non-reelect a probationary certificated employee at the end of the first or second school year as long as written notice is given in accordance with law; see AR 4117.6 - Decision Not to Rehire.

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

The Board may also hold a closed session to hear complaints or charges brought against an employee by another person or employee, unless the employee **who is the subject of the complaint** requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of **his/her the** right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

The Board may hold a closed session to discuss **a district an** employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)

**Note: In *Moreno v. City of King*, the court held that the requirement for special meeting agenda items to notice the "business to be transacted or discussed" pursuant to Government Code 54956 does not eliminate the "brief general description of each item" requirement pursuant to Government Code 54954.2. The court also held that describing the business as "public employee (employment contract)" was not sufficient when at least a quarter of the meeting was devoted to a discussion of the employee and whether to terminate the employee. The court further held that describing the item as "public employee dismissal," as illustrated in Government Code 54954.5, would not violate the employee's privacy rights and it would also provide adequate public notice that dismissal would be considered. The court noted that while Government Code 54954.5 does not provide the exclusive means of compliance with agenda specification requirements, it demonstrates how privacy rights can be protected while also providing adequate notice.**

Agenda items related to district employee appointments and employment shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Agenda items related to employee discipline, dismissal, or release require no additional information. (Government Code 54954.5)

**Note: Government Code 54957.1 requires the Board to publicly report any closed session action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a district employee. The Attorney General, in 89 *Ops.Cal.Attv.Gen.* 110 (2006), opined that boards are not required to publicly report an action taken in closed session to reject the proposed dismissal of an employee, as such a decision to maintain the status quo does not constitute "an action taken to dismiss."**

**After the closed session, the Board shall report any action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a district employee and shall identify the title of the affected position. The report shall be given at the public meeting during which the closed session is held, except that the report of a**

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

**dismissal or nonrenewal of an employment contract shall be deferred until the first public meeting after administrative remedies, if any, have been exhausted. (Government Code 54957.1)**

*(cf. 4117.7/4317.7 - Employment Status Reports)*

**Negotiations/Collective Bargaining**

Note: The Educational Employment Relations Act (Government Code 3540-3549.3) makes four specific exemptions from the Brown Act related to negotiations. Government Code 54957.6 provides that for the purpose of closed sessions related to collective bargaining, "employee" includes an officer or independent contractor who functions as an officer or employee but excludes any elected official, Board member, or other independent contractor.

Unless otherwise agreed upon by the parties involved, the following shall not be subject to the **open meeting requirements** of Brown Act: (Government Code 3549.1)

1. Any meeting and negotiating discussion between the district and a recognized or certified employee organization
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process
3. Any hearing, meeting, or investigation conducted by a factfinder or arbitrator
4. Any executive (closed) session of the district or between the district and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives

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

*(cf. 4143/4243 - Negotiations/Consultation)*

*(cf. 4143.1/4243.1 - Public Notice - Personnel Negotiations)*

Note: The Board is authorized pursuant to Government Code 54957.6, the "labor exception," to hold closed sessions with the district's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees, including the Superintendent. The Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a board may not meet in closed session for such purposes without the use of a designated representative who is involved with the "bona fide" negotiations with represented and/or unrepresented employees. The **California Office of the Attorney General's** publication The Brown Act: Open Meetings for Local Legislative Bodies, also states that the "labor exception" applies to **the Board** meeting in closed session to instruct its negotiator concerning negotiations with **current or** prospective employees.

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

The Board may meet in closed session, prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees, to review the Board's position and/or instruct its designated representative(s) regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. Prior to the closed session, the Board shall identify its designated representative in open session. Any closed session held for this purpose may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the Board's designated representative. For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees **shall not be taken in closed session.** (Government Code 54957.6)

*(cf. 2121 - Superintendent's Contract)*

~~Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)~~

~~For represented employees, the Board may also meet in closed session regarding any other matter within the statutorily provided scope of representation. (Government Code 54957.6)~~

The Board also may meet in closed session with a state conciliator ~~or mediator~~ who has intervened in proceedings regarding any of the purposes enumerated in Government Code 54957.6.

Agenda items related to negotiations shall specify the name(s) of the district's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)

**Approval of an agreement regarding labor negotiations with represented employees pursuant to Government Code 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. This report shall identify the item approved and the other party or parties to the negotiation. (Government Code 54957.1)**

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

**Matters Related to Students**

The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

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

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

**If a public hearing would lead to the disclosure of confidential student information,** the Board shall meet in closed session to address any student matter that may involve disclosure of confidential student information, or to consider a suspension, disciplinary action, or any other action against a student except expulsion, **or a challenge to a student record.** If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student **the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any student other than the student requesting the public meeting shall be in closed session.** (Education Code 35146, 48912, 49070)

*(cf. 5117 - Interdistrict Attendance)*

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

*(cf. 5125.3 - Challenging Student Records)*

*(cf. 5144 - Discipline)*

The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)

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

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

Note: Although Government Code 54954.2 requires the agenda to have a brief general description of all closed session items to be discussed, Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code. Since the purpose of conducting the closed session is to protect student privacy rights, the following **optional** paragraph provides that student names shall not be included on the agenda.

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing" or "grade change appeal," without violating the

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the Education Code requires closed sessions in these cases in order to prevent the disclosure of confidential student record information.

**Final action on a student matter deliberated in closed session shall be taken in open session and shall be a matter of public record. (Education Code 35146, 48918)**

*(cf. 5125 - Student Records)*

Note: Although Education Code 48918 states that student expulsion records are "nonprivileged, disclosable public records" and the Attorney General (80 Ops.Cal.Atty.Gen. 85 (1997)) has opined that districts must disclose the student's name, the court in Rim of the World Unified School District v. San Bernardino County Superior Court held that the federal Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g) preempts state law and prohibits the disclosure of student expulsion records to the public. Failure to comply with FERPA may lead to loss of federal funding. Because of the potential conflict between state and federal law, it is recommended that districts consult legal counsel prior to adopting the following paragraph.

**However, in taking final action, the Board shall not release any information in violation of student privacy rights provided in 20 USC 1232g or other applicable laws. In an expulsion or other disciplinary action, the cause for the disciplinary action shall be disclosed in open session, but the Board shall refer to the student number or other identifier and shall not disclose the student's name.**

**Security Matters**

The Board may meet in closed session with the Governor, Attorney General, district attorney, district legal counsel, sheriff or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings; to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service; or to the public's right of access to public services or public facilities. **Such discussions may be held in closed session during an emergency meeting called pursuant to Government Code 54956.5 if agreed to by a two-thirds vote of the Board members present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.** (Government Code **54956.5**, 54957)

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515 - Campus Security)*

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

*(cf. 9323.2 - Actions by the Board)*

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Note: Government Code 54956.5 authorizes an emergency meeting in closed session to meet with the law enforcement officials specified above pursuant to Government Code 54957. Two thirds of the Board members present at the meeting must agree to the need for the closed session. Those emergency situations that necessitate a need for an emergency meeting are listed in BB 9320 Meetings and Notices and include a terrorist attack, crippling disaster, or other activity that impairs public health or safety. For a list of actions for which more than a majority vote of the Board is required, see BB 9323.2 Actions by the Board.

The Board may meet in closed session during an emergency meeting held pursuant to Government Code 54956.5 to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two thirds vote of the Board members present. If less than two thirds of the members are present, then the Board must agree by a unanimous vote of the members present. (Government Code 54956.5)

Agenda items related to **these** security matters shall specify the name of the law enforcement agency and the title of the officer, or name of applicable agency representative and title, with whom the Board will consult. (Government Code 54954.5)

**The Board may meet in closed session to consult with law enforcement officials on the development of a plan for tactical responses to criminal incidents and to approve the plan. Following the closed session, the Board shall report any action taken to approve the plan, but need not disclose the district's plan for tactical responses. (Education Code 32281)**

**Conference with Real Property Negotiators**

Note: An Attorney General opinion (94 Ops.Cal.Atty.Gen. 82 (2011)) has concluded that only three subjects related to real property negotiations may be considered in closed session: (1) the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms. **Public disclosure of such items would reveal information that Government Code 54956.8 permits to be kept confidential.** Although Attorney General opinions are not binding, they are accorded deference by the courts.

**In addition, the California Office of the Attorney General publication The Brown Act: Open Meetings for Legislative Bodies states that, since Government Code 54957.1 requires the Board to report, at the conclusion of a closed session, the approval of a final agreement concluding real property negotiations, the Board's power to grant authority to its negotiator must also include the power to finalize any agreement so negotiated.**

The Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange, or lease of real property by or for the district in order to grant its negotiator authority regarding the price and terms of payment for the property. (Government Code 54956.8)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s), and the property under negotiation, and to specify the person(s) with whom the negotiator may negotiate. For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)

~~For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)~~

Agenda items related to real property negotiations shall specify the district negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda item shall specify the parcel number or another unique reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment, or both. (Government Code 54954.5)

**When the Board approves a final agreement concluding real estate negotiations pursuant to Government Code 54956.8, it shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held. If final approval rests with the other party to the negotiations, the Superintendent or designee shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the district of its approval. (Government Code 54957.1)**

**Pending Litigation**

Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding a pending litigation when a discussion of the matter in open session would prejudice the district's position in the litigation. For this purpose, "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Note: Pursuant to Government Code 54956.9, the district is considered to be a "party," or to have "significant exposure," to a litigation if any of its officers or employees is a party or has significant exposure to the litigation under circumstances specified in items #1 and #2 below.

Litigation is considered "pending" in any of the following circumstances: (Government Code 54956.9)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

1. Litigation to which the district is a "party" has been initiated formally. (Government Code 54956.9(a) **(d)(1)**)
2. A point has been reached where, in the Board's opinion based on the advice of its legal counsel regarding the "existing facts and circumstances," there is a "significant exposure to litigation" against the district, or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9(b) **(d)(2), (3)**)

*Existing facts and circumstances* for these purposes are limited to the following:  
(Government Code 54956.9)

- a. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiff(s) and which do not need to be disclosed.
- b. Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiff(s) and which must be publicly disclosed before the closed session or specified on the agenda.
- c. The receipt of a claim pursuant to the **Fort Government** Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

(cf. 3320 - Claims and Actions Against the District)

- d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.
  - e. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection. Such record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat **of litigation** on his/her **the victim's** behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(e) **(d)(4)**)

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Before holding a closed session pursuant to the pending litigation exception, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9 under which the closed session is being held. If authority is based on Government Code 54956.9~~(a)~~ **(d)(1)**, the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the district's ability to effectuate service of process upon unserved parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)

Agenda items related to pending litigation shall be described as a conference with legal counsel regarding either "existing litigation" or "anticipated litigation." (Government Code 54954.5)

"Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties, or case or claim number, unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9~~(b)~~ **(d)(2) or (3)** and shall specify the potential number of cases. When the district expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code 54956.9~~(c)~~ **(d)(4)** and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information regarding existing facts and circumstances described in item #2 b-e above. (Government Code 54954.5)

**Following the closed session, the Board shall publicly report, as applicable: (Government Code 54957.1)**

- 1. Approval to legal counsel to defend, appeal or not appeal, or otherwise appear in litigation. This report shall identify the adverse parties, if known, and the substance of the litigation.**
- 2. Approval to legal counsel to initiate or intervene in a lawsuit. This report shall state that directions to initiate or intervene in the action have been given and that the action, defendants, and other details will be disclosed to inquiring parties after the lawsuit is commenced unless doing so would jeopardize the district's ability to serve process on unserved parties or its ability to conclude existing settlement negotiations to its advantage.**
- 3. Acceptance of a signed offer from the other party or parties which finalizes the settlement of pending litigation. This report shall state the substance of the agreement.**

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

**If approval is given to legal counsel to settle pending litigation but final approval rests with the other party or with the court, the district shall report the fact of approval and the substance of the agreement thereon to persons who inquire once the settlement is final. (Government Code 54957.1)**

**Joint Powers Agency Issues**

Note: The following ~~section applies to~~ **paragraphs are for use by** districts participating in a joint powers agency (JPA) for insurance pooling or in a self-insurance authority.

The Board may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by a joint powers agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the district is a member. (Government Code 54956.95)

Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54954.5)

*(cf. 3530 - Risk Management/Insurance)*

**Following the closed session, the Board shall publicly report the disposition of joint powers agency or self-insurance claims, including the name of the claimant(s), the name of the agency claimed against, the substance of the claim, and the monetary settlement agreed upon by the claimant. (Government Code 54957.1)**

Note: Pursuant to Government Code 54956.96, a JPA may adopt a provision, either through a policy or through the joint powers agreement, authorizing a school district Board member serving on the JPA board to disclose confidential information received during the JPA board's closed session under the circumstances specified below. Government Code 54954.5 provides an agenda description for the purpose of this closed session. The following **optional** paragraphs are for use by districts that participate in a JPA that has adopted such a provision.

When the board of the JPA has so authorized and upon advice of district legal counsel, the Board may **also** meet in closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA **that has direct financial or liability implications for the district**. During the Board's closed session, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members. (Government Code 54956.96)

~~The Board member may also disclose the confidential JPA information to district legal counsel in order to obtain advice on whether the matter has direct financial or liability implications for the district. (Government Code 54956.96)~~

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Closed session agenda items related to conferences involving a JPA shall specify **the name of the JPA**, the closed session description used by the JPA, and the name of the Board member representing the district on the JPA board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)

**Review of Audit Report from California State Auditor's Office**

Note: Government Code 54956.75 authorizes the Board to meet in closed session to discuss a **confidential** final draft audit report from the California State Auditor's Office. This authority relates to situations in which a member of the legislature has requested the California State Auditor's Office to audit a school district. This audit is separate from the annual audit that districts must conduct pursuant to Education Code 41020. The law does not authorize the Board to meet in closed session to discuss the district's annual audit.

Upon receipt of a confidential final draft audit report from the California State Auditor's Office, the Board may meet in closed session to discuss its response to that report. After public release of the report from the California State Auditor's Office, any Board meeting to discuss the report must be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)

Closed session agenda items related to an audit by the California State Auditor's Office shall state "Audit by California State Auditor's Office." (Government Code 54954.5)

Note: Government Code 54956.75 does not specify reporting requirements for closed sessions related to the review of the audit report from the State Auditor. The following optional paragraph reflects the purpose of the closed session.

**Following the closed session, the Board shall publicly confirm that the report was reviewed and a response was prepared.**

**Review of Assessment Instruments**

The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)

~~(cf. 6162.5 - Student Assessment)~~

**(cf. 6162.51 - State Academic Achievement Tests)**

Note: The following **optional** paragraph provides for compliance with Government Code 54954.2, which requires the agenda to have a brief general description of all closed session items to be discussed. Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code.

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that Education Code 60617 authorizes a closed session for this purpose in order to maintain the confidentiality of the assessment under review.

**Note: Education Code 60617 does not specify reporting requirements for closed sessions related to the review of student assessment instruments. The following optional paragraph reflects the purpose of the closed session.**

**Following the closed session, the Board shall confirm that the assessment instruments were reviewed. Any actions related to the review shall be taken in open session without revealing any proprietary or confidential information and shall be a matter of public record.**

*Legal Reference:*

**EDUCATION CODE**

**32281 School safety plans**

35145 Public meetings

35146 Closed session ~~(re student suspension)~~ **for student suspension or disciplinary action**

44929.21 Districts with ADA of 250 or more

48912 Governing board suspension **of student**

48918 Rules governing expulsion procedures; hearings and notice

49070 Challenging content of students records

**49073-49079 Privacy of student records**

60617 ~~Meetings of governing board~~ **Closed session (re review of contents of statewide assessment)**

**GOVERNMENT CODE**

3540-3549.3 Educational Employment Relations Act

6252-6270 California Public Records Act

54950-54963 The Ralph M. Brown Act

**CALIFORNIA CONSTITUTION**

**Article 1, Section 3 Public right to access information**

**UNITED STATES CODE, TITLE 20**

**1232g Family Educational Rights and Privacy Act**

**CODE OF FEDERAL REGULATIONS, TITLE 34**

**99.1-99.8 Family Educational Rights and Privacy**

**COURT DECISIONS**

**Moreno v. City of King, (2005) 127 Cal.App.4th 17**

**Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860**

**Rim of the World Unified School District v. San Bernardino County Superior Court, (2002) 104 Cal.App.4th 1393**

**Bell v. Vista Unified School District, ~~(2001)~~(2000) 82 Cal.App. 4th 672**

**Fischer v. Los Angeles Unified School District, (1999) 70 Cal.App. 4th 87**

**Kleitman v. Superior Court of Santa Clara County, (1999) 87 Cal Rptr. 2d**

*Legal Reference continued: (see next page)*

**CLOSED SESSION PURPOSES AND AGENDAS** (continued)

*Legal Reference: (continued)*

**CODE OF FEDERAL REGULATIONS, TITLE 34** (continued)

*Furtado v. Sierra Community College District* (1998) 68 Cal.App. 4th 876

*Roberts v. City of Palmdale*, (1993) 5 Cal.App. 4th 363

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

*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, (1968) 263 Cal.App. 2d 41

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

**ATTORNEY GENERAL OPINIONS**

94 *Ops.Cal.Atty.Gen.* 82 (2011)

**89 *Ops.Cal.Atty.Gen.* 110 (2006)**

86 *Ops.Cal.Atty.Gen.* 210 (2003)

78 *Ops.Cal.Atty.Gen.* 218 (1995)

59 *Ops.Cal.Atty.Gen.* 532 (1976)

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

*Management Resources:*

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*The Brown Act: School Boards and Open Meeting Laws*, **2009-rev. 2014**

**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS**

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

**LEAGUE OF CALIFORNIA CITIES PUBLICATIONS**

*Open and Public IV: A Guide to the Ralph M. Brown Act*, rev. July 2010

**WEB SITES**

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

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

League of California Cities: <http://www.cacities.org>