

governance

& POLICY SERVICES

N E W S

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New federal regulations impact policies

At the end of 2008, the outgoing administration approved new federal regulations on several issues affecting school districts, including amendments to the Individuals with Disabilities Education Act (IDEA), Family Educational Rights and Privacy Act (FERPA), Family Care and Medical Leave Act (FMLA), and No Child Left Behind (NCLB) Act. These regulations contain major new requirements that make several changes to CSBA's sample policies and administrative regulations necessary.

IDEA: The new regulations authorize a parent to revoke consent at any time for the continued provision of special education services. Once this revocation is received, the district need not develop an individualized education program (IEP) or convene an IEP meeting. The district may not override the parent's decision by filing for a due process hearing or requesting mediation in order to continue to provide services. In addition, the new regulations require a district's procedural safeguards notice to include a full explanation of this right to revocation. BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education and AR 6164.4 - Identification and Evaluation of Individuals for Special Education were revised to reflect these new requirements.

FERPA: Amendments to the regulations governing FERPA clarify conditions regarding disclosures in health and safety emergencies, disclosures as a result of a court order or subpoena under the USA Patriot Act, and permissible disclosures of student identifiers to contractors (e.g., for state data systems). The new regulations also amend several definitions, including the definition of "directory information" to clarify that a student's social security number or student identifier is not "directory information." BP/AR 5125 - Student Records and AR 5125.1 - Release of Directory Information were revised to reflect these new requirements.

FMLA: Effective January 16, 2009, new federal regulations address the military family leave entitlements. The new leave entitlements authorize an employee to take up to 26 weeks off to provide care to a family member who is a covered servicemember with a serious illness or injury. In addition, an employee may take up to 12 weeks off to attend to an "exigency" arising out of the fact that a spouse, child or parent of the employee is a member of the National Guard or Reserves and has been called, or received notice of a call, to active duty. The new regulations define "qualified exigencies" as events in several broad categories, such as child care, military events, legal and financial matters, and spending time with the military member who is on leave. The new regulations also include several changes to other provisions of the FMLA, including the fitness-for-duty certification. See AR 4161.8/4261.8/4361.8 - Family and Medical Leave.

NCLB Title I Program Improvement: Whenever a school has been identified for Program Improvement (PI) under NCLB, federal law requires the district to allow all students in that school to transfer to another district school or charter school that has not been identified for PI. In the second year of PI and beyond, the district must arrange for supplemental educational services for eligible students in that school. As indicated in the revised BP/AR 0520.2 - Title I Program Improvement Schools, new federal regulations clarify timelines for the notice and implementation of the transfer option, require additional information to be included in parent notifications regarding supplemental educational services, and require specified information about transfers and supplemental educational services to be posted on the district's Web site.

In addition, the new regulations amend provisions that require districts to spend 20 percent of their Title I funds to pay for costs related to supplemental educational services and transportation for transfers. Federal regulations now allow related outreach and assistance to parents to be counted in the district's 20 percent set-aside obligation. Also, if a district does not meet its 20 percent obligation in a given



school year, it must spend the unexpended amount on those specified purposes in the subsequent school year, unless it (1) partners with outside groups to help inform eligible students and their families of the opportunities to transfer or receive supplemental educational services, and (2) provides eligible students a genuine opportunity to transfer or to obtain supplemental educational services, by providing timely notifications, distributing sign-up forms for supplemental educational services, establishing at least two enrollment windows and making school facilities available to eligible providers.

Temporary COBRA subsidy

The American Recovery and Reinvestment Act of 2009 (P.L. 111-5, Section 3000), signed into law by President Obama on February 17, includes a temporary subsidy to cover 65 percent of the cost of health care continuation coverage for eligible individuals under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Districts participating in Cal-COBRA are also affected. The new law establishes new notice and reporting requirements for employers that must be dealt with immediately.

What the new law says: The subsidy is effective for health care continuation coverage beginning March 1, 2009. Eligible individuals are those whose employment was involuntarily terminated (other than by reason of gross misconduct) between September 1, 2008, and December 31, 2009, and who have an annual adjusted gross income of less than \$125,000, or \$250,000 if filing a joint tax return, for the taxable year in which the subsidy is received.

Eligible individuals pay 35 percent of the premium to the health plan (or the employer if the plan is self-insured), and the employer pays the remaining 65 percent. The employer will recover the 65 percent share from the federal government through a credit on its payroll tax return or, if the employer participates in Cal-COBRA, through the employer's insurance carrier. The subsidy does not apply if the former employee is not actually paying at least 35 percent, such as if the employer is fully paying the COBRA premium.

The maximum period of subsidized COBRA coverage is nine months from March 1 or the date that the individual loses coverage under the group health plan, whichever is later, followed by unsubsidized coverage for up to nine more months, for a total of 18 months as under current law. The subsidy ceases to be available when the individual becomes *eligible* for coverage under another group health plan or Medicare, is no longer eligible for COBRA or stops paying his/her portion of the premium.

What employers need to do: In order to comply with the new law, districts need to take steps to:

- Identify whether the district has former employees eligible for the subsidy and contact the district's insurance carrier or service provider.
- Send a revised general COBRA notice or a separate notice containing details about the availability of the premium subsidy to all individuals who qualify for COBRA coverage during the specified time frame. In addition, eligible individuals who previously declined COBRA coverage or subsequently terminated the coverage must be sent a notice of their opportunity to elect COBRA coverage as of March 1, 2009. The notices must be sent by April 18 (within 60 days of the enactment of the Act) and eligible individuals have 60 days from the date the notice is provided to elect COBRA coverage. The district or health plan administrator may develop the notices using a model prepared by the U.S. Department of Labor. Model notices are available at www.efast.dol.gov/ebsa/COBRAModelnotice.html.
- If eligible individuals overpay their share of the premium in March and/or April, reimburse the amount of the subsidy to those individuals within 60 days or provide a credit against future premiums as long as it is reasonable to believe that the credit will be used within 180 days of the overpayment.

Districts should review related district policies to determine if changes are needed. CSBA addresses COBRA and Cal-COBRA requirements in BP/AR 4154/4254/4354 - Health and Welfare Benefits and is studying the implications of the temporary subsidy on these materials to determine whether they will need to be revised to reflect the new provisions.

For further information about the new law, visit www.dol.gov/ebsa/COBRA.html.

Equitable distribution of qualified teachers

NCLB (20 USC 6311) requires states to ensure that poor, minority and/or underperforming students are not taught by inexperienced, underqualified or out-of-field teachers at higher rates than are other students in the district. To address this requirement, California's state plan, as adopted by the State Board of Education (SBE) in 2006 and revised in 2008, establishes goals for ensuring that:

- All core academic subjects are staffed by "highly qualified teachers" (HQT) pursuant to NCLB.
- No teachers with a provisional internship permit (PIP), short-term staffing permit (STSP) or credential waiver are assigned to schools that have 40 percent or higher poverty or are ranked in deciles 1–3 on the statewide Academic Performance Index.
- Interns, experienced and effective teachers, and experienced and effective administrators are equitably distributed among all school sites.

"The requirement in NCLB for equitable distribution of teachers and principals is a wonderful opportunity for school boards and districts to make strides in reducing the achievement gap amongst their students," says Stephanie Farland, CSBA senior research and policy consultant. "We know from research that a child's teacher is the number one indicator in a student's achievement level. These new requirements will help boards focus on how teachers and principals are distributed in their district, what barriers are in place to prevent districts from putting the right teacher in the right classroom and what boards can do to foster the elimination of the achievement gap in their districts."

The types of reports and information that must be provided to the California Department of Education (CDE) by districts vary depending on whether the district has been categorized by the CDE as Level A (not fully compliant with HQT requirements but has met adequate yearly progress (AYP)), Level B (not fully compliant with HQT and has not met AYP for two consecutive years), or Level C (not fully compliant with HQT and has not met AYP for three consecutive years). Districts should have received a notice from the CDE in January 2009 regarding their status or may check with their own California Basic Educational Data System coordinator.

Level A districts are required to submit a teacher experience worksheet, available on the Web site of the Santa Clara County Office of Education's Personnel Management Assistance Team (www.sccoe.org/depts/pmat), by April 15 for each school site that is not 100 percent compliant with HQT. Level B and C districts are required to submit additional worksheets for school comparisons and administrator experience, as well as an "equitable distribution plan" outlining strategies to improve recruitment, retention and effectiveness of teachers and administrators. Level C districts are also required to enter into an agreement with the CDE regarding the use of their Title II, Part A funds.

Level B and C districts should be aware that June 15, 2009, is the due date for both the equitable distribution plan and the Title II budget. The CDE expects to develop a model template for use by districts in developing the equitable distribution plan.

In assessing whether the district demonstrates equitable distribution of HQT and interns, the CDE may require districts to develop and submit board policy ensuring that no STSP or PIP holder is assigned to a high-poverty, low-achieving school and that interns are not placed in high-poverty, low-achieving schools in greater numbers than other schools. Thus, CSBA sample BP 4113 - Assignment has been revised to reflect these requirements.

Lynda Nichols, CDE consultant, recognizes that implementing strategies for equitable distribution may require time to review and negotiate collective bargaining language related to teacher assignments. In a Webinar conducted by CSBA on March 7, Nichols said, "What we're really looking for here is a detailed, step-by-step plan — what will be [the district's] process for developing board language, or policy, and then what will be your steps for working with your bargaining unit, what's the time frame for doing that. ... We don't expect anybody to be able to do this overnight. We expect it to be a detailed plan, and one that does move as quickly as possible."

The Webinar has been posted at csba.na4.acrobat.com/p60287248. For additional information, contact Nichols at 916-323-5822, lnichols@cde.ca.gov, or Farland at 800-266-3382, sfarland@csba.org.





Focus on bilingual proficiency

State content standards for world languages

On January 7, 2009, the SBE adopted new K–12 voluntary content standards for world/foreign languages. The state's *Foreign Language Framework for California Public Schools*, last issued in 2003, is scheduled to be revised in 2009–10 to reflect the content standards.

The standards are not specific to any particular language(s) and are based on the Language Learning Continuum disseminated by the College Board. As stated in the January SBE agenda, the Language Learning Continuum “provides clear benchmarks for measuring students’ ability to perform in the target language in culturally appropriate ways. It presents a model of progressive stages in the process of acquiring a second language.” The content standards define what students should know and be able to do at each stage of the Language Learning Continuum.

Thus, rather than being tied to specific grade levels, the standards are organized by four stages that a student progresses through in order to become proficient in a language other than English, ranging from understanding and producing signs, words and phrases to understanding and producing cohesive texts composed of multiple paragraphs. For each stage, the standards are separated into five categories of topics that, in practice, would be taught together: content, communication, cultures, structures and settings.

As of this writing, the state content standards had not yet been posted on the CDE’s Web site. However, they are available in the SBE agenda at www.cde.ca.gov/be/ag/ag/yr09/agenda0109.asp.

CSBA has issued a new sample policy and administrative regulation, BP/AR 6142.2 - World/Foreign Language Instruction, which is consistent with the state content standards and also addresses program goals, legal requirements for courses in foreign language, instruction in elementary schools, instructional resources, professional development, two-way immersion programs and program evaluation.

Bilingual competency award

To encourage the study of world languages, some districts have developed a district-level bilingual competency award that recognizes the achievement of high school graduates who attain proficiency in English and another language. Legislation to establish a state seal of biliteracy has twice failed (AB 1996, 2006, and AB 280, 2007), but provides a model that may be adapted by districts that wish to establish such an award. The award recognizes bilingual proficiency of native English-speaking students, and also recognizes English learners who have been able to maintain proficiency in their heritage language while attaining proficiency in English.

Californians Together, a statewide coalition that promotes the success of English learners and works to secure equal access to quality education for all children, encourages districts to adopt policy establishing such an award and setting criteria for eligibility for the award. To assist districts in this process, CSBA has revised BP/AR 5126 - Awards for Achievement to include related material.

“Students graduating from our public schools need multilingual skills and intercultural proficiencies to full participate in the 21st century global economy,” says Shelly Spiegel-Coleman, executive director of Californians Together. “The study of two or more languages opens up other worlds and presents a multitude of possibilities for the new generation of young people. This recognition of their talents is a statement of accomplishment for future employers and for college admission.”

Districts such as Rowland Unified School District, Ventura Unified School District, Eastside Union High School District, Sweetwater Union High School District and Glendale Unified School District provide a certificate, medallion and/or special seal on students’ diplomas to recognize bilingual or multilingual proficiency. Common eligibility criteria include overall grade point average, successful completion of high school requirements in English, proficiency on California Standards Tests, and demonstration of foreign language proficiency through completion of a four-year course of study in the same foreign language, passage of the Advanced Placement foreign language course or exam, or passage of a district or foreign government’s language exam.

Californians Together has developed a publication with further guidance which is posted on its Web site at www.californianstogether.org. In addition to criteria for high school seniors, there are examples of awards for students developing biliteracy skills in lower grades.

Administration of medication to Section 504 students

In November 2008, a superior court judge ruled in favor of the California Nurses Association, California School Nurses Organization, and others who brought a lawsuit challenging a settlement agreement entered into by the CDE concerning the rights of students with diabetes.

This ruling is the latest development in a series of lawsuits regarding administration of medication, such as insulin, by unlicensed personnel (that is, those who do not have a medical license) in the school setting. In 2007, the CDE issued a legal advisory as part of a settlement of a class action lawsuit filed by the American Diabetes Association and the Disability Rights and Education and Defense Fund. The legal advisory stated that federal law authorized unlicensed school employees to be trained to administer insulin, when other authorized persons were unavailable, in accordance with a student's Section 504 plan. This "option 8" was challenged by the nurses associations as contrary to laws regarding the licensing of nurses and the judge agreed and invalidated that portion of the legal advisory that authorized the training of unlicensed personnel. The CDE has appealed this decision and will likely not update their legal advisory until after the court case is finalized.

CSBA has updated AR 6164.6 - Identification and Education Under Section 504 to reflect this court ruling. When the CDE takes further action, CSBA will update its 2007 policy brief, *Rights of Students with Diabetes under IDEA and Section 504*. That advisory is still valid except for the part that discusses training of unlicensed personnel.

Upcoming issues

CSBA is monitoring the following issues and will revise affected policies as necessary.

Categorical program flexibility

On February 20, Governor Schwarzenegger signed a package of bills revising the 2008–09 state budget and enacting the 2009–10 budget. Although this budget contains steep cuts to over 50 categorical programs, SBX3 4 (the education trailer bill to the Budget Act) does provide a small glimmer of good news. The bill grants 40 of the categorical programs (so-called "Tier 3 categoricals") significant flexibility by authorizing districts and county offices to transfer funds received for any of these programs to "any educational purpose."

A district that wishes to exercise this flexibility provision is required to first hold a public hearing on the matter and to take testimony from the public to discuss and approve or disapprove the proposed use of the funding. Upon approval of flexibility by the board, SBX3 4 specifies that the district shall be "deemed in compliance with the program and funding requirements contained in statutory, regulatory and provisional language" for each of these Tier 3 categorical programs for the 2008–09 through 2012–13 fiscal years.

As a result, districts also have discretion regarding the underlying statutory requirements for these programs during this period of flexibility. For example, districts that operate a grade 7–12 counseling program, a Tier 3 categorical, and accept flexibility will no longer be subject to the priorities in law regarding students to be served or the items that the counselor must discuss with each student. Such expansive flexibility applies to all Tier 3 categoricals regardless of whether funds are transferred from that program.

Separate from this flexibility, SBX3 4 also makes significant changes to other categorical programs, including K–3 class size reduction, instructional materials, deferred and routine maintenance, and county office of education Williams oversight monitoring.

CSBA is preparing an advisory outlining the key impact of the budget and the policy implications arising from the categorical flexibility. CSBA's Policy Services is also in the process of developing a revised sample policy authorizing the flexibility and transfer of funds. In addition, depending on the level of flexibility exercised by the district and programs impacted, many of the district's policies and administrative regulations will be affected, including, but not limited to, policies on supplemental





instruction, student retention, professional development, peer assistance and review, counseling and community day schools. In the upcoming months, subscribers to CSBA's Policy Services will be receiving revised sample policies and administrative regulations reflecting this new flexibility.

Charter school facilities

In July 2008, CSBA revised BP/AR 7160 - Charter School Facilities to reflect the new regulations adopted by the SBE regarding Proposition 39 facilities requests by charter schools. In a legal challenge brought by CSBA's Education Legal Alliance, a judge held that the portion of the state regulations concerning additional procedures for conversion charters were invalid (5 CCR 11969.3(d)(1) and (d)(2)). As of this writing, the SBE has not yet taken action in response to the court's order and the court ruling has been appealed. Once the matter is decided, CSBA will revise AR 7160, most likely deleting the section of the regulation entitled "Additional Provisions for Charter School Established at an Existing School Site."

What's new at CSBA

Go green! Go online!

In this complimentary, two-hour workshop, CSBA Governance Technology staff will lead participants through a discussion of both GAMUT™ Online and AgendaOnline. The first presentation will address the benefits and new features of GAMUT™ Online and explain how the district's policy manual may be included online. The second presentation will demonstrate how to easily move from the current process of creating, editing, and viewing board agendas and minutes to an online format with AgendaOnline. There will be a question and answer session after each presentation.

Upcoming workshops, all scheduled from 1:00 – 3:00 p.m., will be held:

- May 28 — Santa Rosa
- June 11 — Redding
- July 14 — Rancho Cucamonga
- August 20 — Merced

For further information or to register, see the Events Calendar section on CSBA's Web site at www.csba.org.

Roadmap to Policy Updates

This complimentary session helps districts maximize the benefits they receive from CSBA's policy services. Participants will explore and discuss best practices and procedures for keeping the district's policy manual current through CSBA's GAMUT™ Online and Manual Maintenance services and discover pathways for accessing district policies online.

Upcoming workshops will be held:

- April 23 — Santa Clara County Office of Education
- May 6 — West Sacramento, CSBA office
- September 22 — Siskiyou County Office of Education
- September 23 — Tehama County Office of Education

All workshops are scheduled from 1:30 – 4:00 p.m. For further information or to register, see the Events Calendar section on CSBA's Web site at www.csba.org.

Trainings for executive assistants

Executive assistants play a key role in the district or county office. In this popular full-day training from CSBA, executive assistants can learn skills, tools and strategies to effectively meet the needs of the superintendent, boards, students and the community. The \$125 registration fee includes a continental breakfast, lunch and materials.

The conference will be held 9:00 a.m. – 3:00 p.m. at the following locations:

- April 20 — Sacramento

- April 21 — Redwood City
- April 30 — Rancho Cucamonga
- May 5 — San Diego

See the Events Calendar section on CSBA's Web site at www.csba.org.

eGovernance course: Human resources

CSBA's training on the roles and responsibilities of the governing board in human resources is now available in an online learning format. Board members and superintendents can receive quality governance content like that delivered in CSBA's Masters in Governance program in a flexible and convenient format.

Featured in small video segments ranging in length from 12 to 31 minutes, the eGovernance course contains self-paced overviews of the roles and responsibilities of the school board related to human resources, as well as self-assessment quizzes at the end of each lesson. The human resources module contains 12 lessons focusing on:

- The effective governance team
- Before hiring a new superintendent
- Superintendent hiring process
- The superintendent's contract
- Preparing for a successful leadership transition
- Superintendent evaluation
- Employment classifications
- Roles and responsibilities
- Legal requirements and accountability
- Personnel policies and procedures
- Board self-evaluation
- Legal and ethical issues

For a limited time only, CSBA is offering the human resources course for \$99. This introductory price allows unlimited access for six months from the time of purchase.

The human resources module is the first complete online course in the series. See www.csba.org/Services/Services/GovernanceServices/MastersInGovernance/MIGeLearning.aspx.

Golden Bell Awards

Entries are now being accepted for CSBA's Golden Bell awards program, which recognizes exemplary district programs throughout California. The 2009 program will consider applications in 19 categories: Curriculum; English Language Acquisition; Instruction; Early Childhood Education; Professional Development and Teacher Recruitment/Retention; Accountability/Assessment; Bridging the Achievement Gap; Technology; Invigorating High Schools; Partnerships and Collaboratives; Student Services; School Safety; Parental/Community Involvement; County Offices of Education; Special Education; Focus on Middle Grades; Juanita Haugen Memorial Award for Civic Education; Sustainable, Renewable, Energy and Resource Efficient Programs; and Wellness.

Entries must be postmarked by June 19, 2009. See www.csba.org/TrainingAndEvents/Events/GoldenBell.aspx for further information and entry forms.

Potential award winners will be evaluated through an on-site visitation in September. Award winners will be announced in October and will receive special recognition at an awards luncheon on December 5, 2009, in conjunction with CSBA's Annual Education Conference in San Diego.

Grant news

Fact sheet on indoor air quality

In a continuing effort to raise awareness of the link between asthma and student learning and help districts improve indoor air quality (IAQ) in the schools, CSBA has issued a fact sheet which describes the U.S. Environmental Protection Agency's *IAQ Tools for Schools (TfS) Action Kit* and





presents case studies demonstrating how California school districts have successfully used this tool to create healthier school environments. Available free from the EPA, *Tools for Schools* provides checklists and facility walk-throughs to identify problems as well as guidelines for improvement of IAQ. See www.epa.gov/iaq/schools/actionkit.html.

CSBA's fact sheet, along with policy briefs on *Indoor Air Quality: Governing Board Actions for Creating Healthy School Environments* (July 2008) and *Asthma Management in the Schools* (March 2008), are available on CSBA's Web site at www.csba.org/wellness.aspx.

CSBA's IAQ and asthma management project is funded with support from The California Endowment.

Guide for community collaboration

CSBA and the Cities, Counties and Schools Partnership (CCS Partnership) are undertaking a joint effort to encourage school board members and other school leaders to develop collaborative community approaches addressing the nutritional and physical activity needs of children. Healthy Communities — Healthy Students, a three-year project funded by the Vitamin Cases Consumer Settlement Fund, will equip school board members with the knowledge, resources and tools needed to garner community support and take collaborative action towards making community-wide changes supporting a healthier community. To that end, CSBA and the CCS Partnership are currently finalizing a resource guide that addresses the collaborative and leadership role school board members can play as community leaders in addressing childhood obesity.

Collaboration is a necessary strategy for meeting the comprehensive needs of children and the community. Successful collaborations maximize financial resources in the community, avoid duplication of programs and facilities, enhance programs, allow for expansion, and build and foster a unifying environment. This resource guide explores the foundations of collaboration, examines the steps needed in creating successful collaborations, and highlights best practices and case studies from across California in collaboration on nutrition and physical activity.

This guide will be printed and distributed in May 2009.

Physical education/physical activity survey

In partnership with California Project LEAN (CPL) and funded by The California Endowment, CSBA conducted an online survey of California school board members to gain a better understanding of their perceptions of the importance of student physical activity. The survey examined opportunities and barriers for physical education and activity in district policy and school-based programs.

Based on the responses of 339 participants, CSBA and CPL are developing a research brief that outlines the survey's key findings and presents policy recommendations to improve opportunities for physical education and activity. This research brief will be posted on CSBA's Web site at www.csba.org/wellness.aspx in April 2009.

School health services Webinar

A Webinar on *Expanding Access to School Health Services*, conducted by CSBA in January 2009 with support from The California Endowment, is now available online. Samantha Blackburn of the California School Health Centers Association joins CSBA staff in discussing the benefits, financing and structure of school health centers; board roles and responsibilities; opportunities for community partnerships/collaboration; and additional resources. To view and hear the one-hour Webinar, go to www.csba.org/wellness.aspx.

