



November 2009

# Policy Advisory

## Policy Implications of Categorical Program Flexibility

As part of the 2009–10 state budget package, SBX3 4 and ABX4 2 grant flexibility in 39 Tier 3 categorical programs by authorizing districts to use funds received for any of these programs for “any educational purpose” (Education Code 42605). As a condition of receipt of the funds, governing boards must first hold a public hearing in order to take testimony from the public and to discuss and approve or disapprove the proposed use of the funding. Boards are also required to make explicit for each categorical budget item the purposes for which the funds will be used and to report expenditure of the funds to the California Department of Education using the Standardized Account Code Structure.

In July, CSBA issued a new sample policy (BP 3110 - Transfer of Funds) that expresses the board’s intent to exercise the categorical flexibility and includes the requirement for a public hearing. Also see [CSBA’s March 2009 Budget Advisory, “Flexibility Provisions in the 2008 and 2009 State Budget: Policy Considerations for Governance Teams,”](#) for additional background information on the categorical flexibility and issues for boards to consider in determining how best to utilize the flexibility.

Districts exercising this flexibility shall be “deemed in compliance with the program and funding requirements contained in statutory, regulatory and provisional language” for each of the Tier 3 categorical programs for the 2008–09 through 2012–13 fiscal years. Therefore, during the period of categorical flexibility, districts may choose to suspend the requirements specified in law for any Tier 3 categorical program.

The following advisory details the implications of this Tier 3 flexibility for district programs and policies and, to the extent that county offices of education receive funding for categorical programs, COE policies and programs, as well.

### District exercise of flexibility

Districts, with this exercise of flexibility, now have discretion regarding the underlying statutory requirements for Tier 3 categorical programs through the 2012–13 fiscal year. For example, districts that operate a grade 7–12 counseling program, a Tier 3 categorical program, are no longer subject to the priorities in law regarding students to be served or the items that the counselor must discuss with each student. This flexibility applies to all Tier 3 categorical programs regardless of whether the district transfers funds from that program.

CSBA’s budget advisory recommends that the board consider flexibility in the context of the district’s overall goals for student learning. This issue is obviously part of the difficult discussion about the specifics of the district budget and the cuts that must be made. The ability to transfer funds and to administer certain programs free of statutory constraints gives the board an opportunity to set the direction for the district’s educational program in the context of devastating cuts to education. As a result, each district accepting the flexibility will need to determine which program requirements it wishes to suspend during the period of categorical flexibility and which requirements it deems essential to program integrity and the best interests of students.

In some programs, the CDE is still determining the extent of the flexibility authorized by the law. Questions remain regarding community day schools, adult education and Williams uniform complaints.

## Effect on CSBA's sample policies and administrative regulations

Because CSBA's sample policies and regulations reflect legal requirements for categorical programs, certain provisions of the affected samples may not be applicable during the period of flexibility. This flexibility affects more than 40 CSBA samples in different ways. For some programs, entire policies may be "flexible," while for others, only some sections of policies might be "flexible."

CSBA has developed a new sample "umbrella policy" (BP 2210 - Administrative Discretion Regarding Board Policy) authorizing the temporary suspension of policies and regulations, or some provisions within the policies and regulations, based on the categorical program flexibility.

The Appendix at the end of this document details the Tier 3 categorical programs and the affected CSBA samples.

To advise readers that provisions of affected policies may not currently be in effect, CSBA has developed a "Cautionary Notice" which has been placed at the top of each of the affected samples. The notice will remain in place until the end of the flexibility period on June 30, 2013.

The CSBA sample notice reads as follows:

**Cautionary Notice:** As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009) and ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), Education Code 42605 grants districts flexibility in "Tier 3" categorical programs and provides that districts are deemed in compliance with the program and funding requirements for these programs for the 2008–09 through 2012–13 fiscal years. As a result of this flexibility, the district may choose to temporarily suspend certain provisions of the following policy or administrative regulation that reflect those requirements. However, this flexibility does not affect or alter any existing contract or bargaining agreement that the district may have in place. Thus, districts should examine the terms of these contracts and agreements and consult with district legal counsel for additional guidance. Also see BP 2210 - Administrative Discretion Regarding Board Policy.

## Effect on local district policies

Depending on how the flexibility is being exercised, districts may need to either revise each of their affected policies and regulations to reflect program changes, or somehow temporarily flag each of those affected policies and regulations so that readers become aware that some or all of the provisions may not be applicable during the flexibility period.

It is important to remember that this flexibility does not affect or alter any existing contract or bargaining agreement that the district may have in place. For example, districts may have a contractual obligation to current participants in the district's Beginning Teacher Support and Assessment induction program or have included specific requirements relative to Peer Assistance and Review in their bargaining agreement. Thus, districts should examine the terms of those contracts and agreements and consult with district legal counsel for additional guidance.

Districts using the flexibility should remember that any policies, regulations and other district documents that are revised to reflect this flexibility will need to be reviewed when the flexibility ends June 30, 2013. These materials may also need to be reviewed and revised as appropriate prior to that date. For example, the district may choose to implement the flexibility differently in 2011 than it did in 2010.

Subscribers to CSBA's policy services should consider the following actions to ensure that their local district policy manual accurately reflects the district's exercise of flexibility:

1. Review and adopt BP 2210 - Administrative Discretion Regarding Board Policy (issued November 2009).
2. Determine which district policies and regulations are affected by flexibility.
  - See Appendix for affected CSBA samples listed by categorical program and policy number.
3. Determine whether to flag the affected district policies and regulations so that readers become aware that certain provisions may not apply during the period of flexibility.
  - Consider adding the district "Cautionary Notice" (see below), which may be used or modified for this purpose. This notice should remain in the district's adopted policies and regulations until June 30, 2013.

- The district “Cautionary Notice” reads as follows:

**Cautionary Notice:** As added and amended by SBX3 4 (Ch. 12, Third Extraordinary Session, Statutes of 2009) and ABX4 2 (Ch. 2, Fourth Extraordinary Session, Statutes of 2009), Education Code 42605 grants districts flexibility in “Tier 3” categorical programs. The *(name of district)* district has accepted this flexibility and thus is deemed in compliance with the statutory or regulatory program and funding requirements for these programs for the 2008–09 through 2012–13 fiscal years. As a result, the district may temporarily suspend certain provisions of the following policy or regulation that reflect these requirements. For further information, please contact the superintendent or designee.

4. Review and modify other district documents that may be affected, such as student and employee handbooks or other district rules or procedures.

## Additional help for Manual Maintenance and Policy Online subscribers

As a service to our Manual Maintenance and Policy Online clients, CSBA will include a special categorical checklist with the district’s November Policy Update Packet. This checklist will identify the policies and/or regulations affected by the flexibility. Upon return of the checklist to CSBA for word processing, CSBA will insert the “Cautionary Notice” in all of the district policies and regulations on the checklist, unless the district indicates otherwise.

## Appendix

*The following Appendix lists the Tier 3 categorical programs and the affected CSBA sample policies, administrative regulations and exhibits. This list does not include those policies where only a note in the CSBA policy is affected.*

*Further changes may be necessary upon receipt of clarification by CDE.*

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### Administrator Training Program

- AR 0420.1 - School-Based Program Coordination
- AR 4331 - Staff Development

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### Adult Education\*

- BP/AR 6200 - Adult Education

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### Advanced Placement Grant Program

- AR 6141.5 - Advanced Placement
- E 5145.6 - Parental Notifications

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### Arts and Music Block Grant

- BP 6142.6 - Visual and Performing Arts Education

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### California High School Exit Examination Intervention Grants

- AR/E 1312.4 - Williams Uniform Complaint Procedures
- AR 4117.14/4317.14 - Postretirement Employment
- E 5145.6 - Parental Notifications
- BP 6146.1 - High School Graduation Requirements
- BP 6162.52 - High School Exit Examination
- BP/AR 6164.2 - Guidance/Counseling Services
- AR 6179 - Supplemental Instruction

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### California School-Age Families Education Program (CaSAFE)

- BP/AR 5146 - Married/Pregnant/Parenting Students
- AR 5148.1 - Child Care Services for Parenting Students

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### Certificated Staff Mentoring Program

- AR 4112.21 - Interns
- BP/AR 4138 - Mentor Teachers

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### Community Day School\*

- BP/AR 6185 - Community Day School
- E 9323.2 - Actions by the Board

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### Counselors, Grades 7–12

- BP/AR 6164.2 - Guidance/Counseling Services

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### County Offices of Education: Williams Monitoring\*

- None

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### **Deferred Maintenance**

- BP 3110 - Transfer of Funds
- BP 3111 - Deferred Maintenance Funds
- AR 7214 - General Obligation Bonds
- E 9323.2 - Actions by the Board

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### **Educational Technology**

- AR 0420.1 - School-Based Program Coordination

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### **Gifted and Talented Education Program (GATE)**

- BP/AR 6172 - Gifted and Talented Student Program

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### **High Priority Schools Grant Program, Including School Assistance Intervention Team and Corrective Actions**

- BP/AR 0520.1 - High Priority Schools Grant Program

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### **Instructional Materials Block Grant**

- BP 6142.6 - Visual and Performing Arts Education
- BP/AR 6161.1 - Selection and Evaluation of Instructional Materials
- BP 6163.1 - Library Media Centers

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### **International Baccalaureate**

- BP 6172 - Gifted and Talented Student Program

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### **Math and Reading Professional Development**

- AR 4131 - Staff Development
- BP 6142.91 - Reading/Language Arts Instruction

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### **Morgan-Hart 9th Grade Class-Size Reduction**

- BP/AR 6151 - Class Size

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### **National Board for Professional Teaching Standards Certification**

- None

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### **Oral Health Assessments**

- AR 5141.32 - Health Screening for School Entry

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### **Professional Development Block Grant**

- BP 4111 - Recruitment and Selection
- AR 4131 - Staff Development
- BP 4231 - Staff Development
- BP 6142.91 - Reading/Language Arts Instruction

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### **Pupil Retention Block Grant**

- BP/AR 0420 - School Plans/Site Councils
- AR 0420.1 - School-Based Program Coordination
- BP/AR 0520.1 - High Priority Schools Grant Program
- AR 1220 - Citizen Advisory Committees
- BP 5147 - Dropout Prevention
- BP 6142.91 - Reading/Language Arts Instruction
- BP 6164.2 - Guidance/Counseling Services
- BP 6176 - Weekend/Saturday Classes
- BP 6177 - Summer School
- BP 6178 - Career Technical Education
- BP 6179 - Supplemental Instruction

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### **ROC/Ps\***

- BP 6178 - Career Technical Education
- BP 6178.2 - Regional Occupational Center/Program

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### **School and Library Improvement Block Grant**

- BP/AR 0420 - School Plans/Site Councils
- AR 0420.1 - School-Based Program Coordination
- AR 0520.1 - High Priority Schools Grant Program
- AR 1220 - Citizen Advisory Committees
- BP 6163.1 - Library Media Centers

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**School Safety Block Grant**

- None

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**School Safety Competitive Grant**

- None

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**Staff Development**

- BP/AR 4139 - Peer Assistance and Review

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**Supplemental Instruction Programs/Summer School**

- AR 4117.14/4317.14 - Postretirement Employment
- BP 5123 - Promotion/Acceleration/Retention
- BP 6146.1 - High School Graduation Requirements
- BP/AR 6176 - Weekend/Saturday Classes
- BP 6177 - Summer School
- BP/AR 6179 - Supplemental Instruction

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**Targeted Instructional Improvement Block Grant**

- BP 6178 - Career Technical Education

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**Teacher Credentialing Block Grant**

- BP 4131.1 - Beginning Teacher Support/Induction

*\* Only certain portions of these programs are subject to flexibility.*