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CSBA guidance addresses responsibilities to undocumented students

Discussions regarding schools' obligation to provide education to undocumented students erupted following a Jan. 25, 2017 executive order by President Trump addressing border security and immigration enforcement. School leaders have raised questions about their responsibilities under state and federal law and have expressed concerns that children will be reluctant to enroll in school for fear that they or their parents/guardians will be identified as undocumented.

In February CSBA issued legal guidance, *Providing All Children Equal Access to Education, Regardless of Immigration Status*, to bring clarity to these issues. CSBA also updated BP 5111 - Admission and BP 5111.1 - District Residency to emphasize that districts and county offices of education should not inquire into a student's citizenship status nor ask students to provide visas, passports, social security numbers or similar documentation upon enrollment.

California's compulsory education law requires all children ages 6-18 years to attend school. Thus, undocumented students not only have a right to attend school, but they are mandated to do so. Furthermore, state law affords all students the right to attend school free from discrimination, harassment, violence, intimidation and bullying.


These rights are consistent with the U.S. Supreme Court's ruling in *Plyler v. Doe*, 57 U.S. 202 (1982), which held that, under the 14th Amendment of the U.S. Constitution, states cannot deny a free public education to undocumented children. Inquiring about a student's immigration status may be a violation of federal law and is unnecessary to establish residency within the district for enrollment purposes.

If a school inadvertently learns that a student or his or her parent/guardian is undocumented, it is prohibited from sharing that information with U.S. Immigration and Customs Enforcement. In accordance with confidentiality laws, student records may not be shared except under narrow circumstances, such as in response to a court order, a subpoena or a request for directory information. There is no exception for providing student records to ICE officials without a court order.

If ICE officials come onto a school campus, the principal should notify the superintendent and district legal counsel. However, the ICE and Border Patrol currently have policies in place to "generally avoid" enforcement actions at "sensitive locations," including schools and school bus stops, unless there are exigent circumstances that involve national security, terrorism, public safety or imminent risk of destruction of evidence that is material to an ongoing criminal case. Districts/COEs should also be aware of proposed state legislation (Senate Bill 54) which would prohibit state and local law enforcement agencies and school police or security personnel from investigating, interrogating, detaining, detecting or arresting persons for immigration enforcement purposes.



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A number of governing boards have adopted resolutions to create “sanctuary” or “safe haven” districts in order to make clear that all students have a right to attend school and to feel safe at school. Such resolutions do not provide further or greater legal protection for students than already exists in law, but express the board’s commitment to provide equal access for all students to attend school in the district. CSBA has developed a sample resolution for use by boards that are interested in making such a statement.

CSBA’s legal guidance and sample board resolution are available at www.csba.org/LegalResources.

Withdrawal of transgender guidance will not directly impact policy in California

On Feb. 22, 2017, the U.S. Department of Justice and U.S. Department of Education rescinded guidance issued under the Obama administration which indicated that, under federal Title IX nondiscrimination laws, students must be allowed to use restrooms, locker rooms and other sex-segregated facilities in accordance with their gender identity. The February Dear Colleague letter explains that withdrawal of the May 2016 guidance was based on a decision that the guidance documents did not “explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.” While the new guidance emphasizes that schools still have an obligation to ensure that all students, including lesbian, gay, bisexual and transgender students, are protected from discrimination, bullying and harassment and that they are able to learn and thrive in a safe environment, the departments believe “there must be due regard for the primary role of the States and local school districts in establishing educational policy.”

In California, the rescission of the guidance has limited impact on school policy because state law enacted in 2013 (Assembly Bill 1266) affords specified rights to transgender students. Education Code 221.5 states: “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.”

Legal requirements and best practices to address the needs of transgender and gender-nonconforming students are included in BP/AR 5145.3 - Nondiscrimination/Harassment, as updated in September 2016. Also see CSBA’s *Final Guidance Regarding Transgender Students, Privacy, and Facilities* and policy brief *Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, available on CSBA’s website at www.csba.org.

To read the Dear Colleague letter, go to www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx


New law mandates policy on suicide prevention

By the beginning of the 2017-18 school year, each district/COE that serves students in grades 7-12 is mandated by AB 2246 (2016) to adopt policy addressing suicide prevention, intervention and postvention. Within this policy, the board must address any training to be provided to teachers on suicide awareness and prevention. It must also specifically address the needs of high-risk student groups, including, but not limited to, those who are bereaved by suicide; those with disabilities, mental illness, or substance use disorders; those who are experiencing homelessness or are in out-of-home settings such as foster care; and those who are LGBT or questioning youth.

To assist districts in developing policies and administrative regulations that fulfill this mandate, CSBA has updated BP/AR 5141.52 - Suicide Prevention. Districts should tailor the materials to meet local needs and circumstances and, in doing so, are required by law to consult with



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school and community stakeholders, school-employed mental health professionals and suicide prevention experts. CSBA also recommends consultation with legal counsel, risk managers or insurance carriers, as appropriate.

Youth suicide and self-inflicted injury are serious concerns. Suicide is the second leading cause of death among people ages 10-24 in the United States, according to 2014 data reported by the Centers for Disease Control and Prevention (www.cdc.gov/injury/wisqars/leadingcauses.html). A CDC survey (www.cdc.gov/violenceprevention/suicide/youth_suicide.html) found that, nationally:

- » In the 12 months preceding the survey, 16 percent of high school students reported seriously considering suicide, 13 percent reported creating a plan and 8 percent reported trying to take their own life.
- » Each year, approximately 157,000 youth ages 10-24 receive medical care for self-inflicted injuries at hospitals across the country.
- » Males are three times more likely to commit suicide, but females are more likely to report attempting suicide.
- » Among racial/ethnic groups, American Indian/Alaska Native youth have the highest suicide rates.
- » Factors that put teens at risk for suicide include a family history of suicide, past suicide attempts, mental illness, substance abuse, stressful life events, low levels of communication with parents, access to lethal means, incarceration and exposure to suicidal behavior of others.

Other research by the CDC shows that LGBT youth are four times more likely, and questioning youth are twice as likely, to attempt suicide than their heterosexual peers (www.cdc.gov/mmwr/pdf/ss/ss60e0606.pdf).

Schools, districts and COEs can promote students' emotional health by providing positive school climates free of discrimination, harassment, intimidation and bullying. School should be a place where students feel connected and have harmonious interrelationships with staff and other students. It is also important to provide student instruction in problem-solving and coping skills and to make counseling and other support services available.

Furthermore, school staff who have direct contact with students may be in a position to identify and refer at-risk students, but need information and training to understand the warning signs of suicidal intention, district/COE procedures for intervention, and resources available to students, parents/guardians and staff.

In developing policy and procedures, districts/COEs should take advantage of the numerous research studies, tools, best practices and professionals with expertise on suicide prevention, intervention and postvention. Examples of available resources include:

- » California Department of Education's new guidance on suicide prevention policy that fulfills the requirements of AB 2246: www.cde.ca.gov
- » American Association of Suicidology: www.suicidology.org
- » American Foundation for Suicide Prevention: <https://afsp.org>
- » Centers for Disease Control and Prevention, including its publication *The Relationship Between Bullying and Suicide: What We Know and What It Means for Schools*: www.cdc.gov/ViolencePrevention/suicide
- » National Association of School Psychologists, including *Preventing Youth Suicide: Tips for Parents and Educators*: www.nasponline.org
- » The Trevor Project, which provides crisis intervention and suicide prevention services for LGBTQ youth: www.thetrevorproject.org



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Title IX rights must be posted by July 1

By July 1, 2017, districts/COEs are required to post on their websites information related to Title IX, the federal law which prohibits discrimination based on sex, gender, gender identity, pregnancy and parental status. Added by SB 1375 (2016), the new law requires the following information be posted:

- » The name and contact information of the district/COE Title IX coordinator, including the phone number and email address
- » The rights of a student and the public and the responsibilities of the district/COE under Title IX, including web links to information about those rights and responsibilities located on the websites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights and a list of rights as specified in Education Code 221.8
- » A description of how to file a complaint under Title IX
- » An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations
- » An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint
- » Web links to complaint information and to the complaint form on the OCR's website, and the contact information for the OCR office including the phone number and email address

For the required web links, see www2.ed.gov/about/offices/list/ocr/docs/howto.html, www2.ed.gov/about/offices/list/ocr/complaintintro.html and www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf. OCR may be contacted at U.S. Department of Education Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Ave. SW, Washington DC 20202-1100, 800-421-3481, OCR@ed.gov.

A district that does not maintain a website may comply by posting the information on the website of its COE.

CSBA intends to update AR 5145.3 - Nondiscrimination/Harassment to reflect the new requirements.

Applications being accepted for Golden Bell Awards

Now in its 38th year, CSBA's Golden Bell Awards recognize outstanding programs and governance practices in districts/COEs throughout California. This awards program highlights best practices in education in all areas of operations, instruction and support services by:

- » Seeking out and recognizing key governance practices that support, sustain and inspire the creation and continuance of exemplary education programs
- » Seeking out and recognizing sustainable, innovative or exemplary programs which have been developed and successfully implemented by California teachers and administrators
- » Recognizing and supporting educators who invest extra energy and time to make a demonstrated difference for students
- » Promoting models with positive student outcomes
- » Focusing on the commitment to ensure that the needs of targeted students are met

The application deadline is June 23. For further information about awards categories, program specifications, and selection criteria and to apply, see <http://gb.csba.org>.



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CSBA education opportunities

Training for executive assistants

Executive assistants play a critical role at any district/COE. This course provides professional development to enhance the performance of executive assistants in meeting the needs of the superintendent, board and students.

The all-day session (9 a.m. to 3 p.m.) is scheduled on the following dates:

March 31 - Anaheim

April 4 - San Jose

May 4 - Sacramento

Registration opens at 8:30 a.m. The on-site registration fee of \$180 includes materials, morning refreshments and lunch.

To register, go to www.csba.org/TrainingAndEvents.

Webcast: Update on federal education issues

With the change of administration at the federal level, districts/COEs have had questions about the future of education policy and funding. In a one-hour webcast on March 22 (Noon - 1 p.m.), a panel of school attorneys will discuss:

- » The effect of the “supremacy clause” of the U.S. Constitution on state education policy
- » How the new administration’s U.S. Department of Education might affect education policy in California and how state education leaders might respond
- » How school districts can respond to federal immigration enforcement actions

“The Federal Government’s Impact on California Education and Students” will be moderated by CSBA Staff Attorney Mike Ambrose, and will feature attorneys from the CSBA Business Affiliate law firms of Atkinson, Andelson, Loya, Ruud & Romo and Fagen Friedman & Fulfroft.

This webcast is offered free of charge. Register online at www.csba.org/TrainingAndEvents.

New resources from CSBA

2016 Policies in Review

2016 Policies in Review, an overview of the major policy issues addressed in sample policies, administrative regulations, and the *Policy News* throughout the year, is available on CSBA’s website at www.csba.org/PNB.

This report describes critical policy issues related to accountability, curriculum and instruction, grading practices, homeless students, former juvenile court school students, district residency, student transfers, support services, qualifications of teachers and paraprofessionals, firearms on school grounds, school facilities, debt management, federal uniform guidance for the management of grant funds, board meetings, board training, nondiscrimination and uniform complaint procedures. Appendices provide a description of the policy services offered by CSBA, as well as complete lists of publications, leadership development opportunities, and sample policies, administrative regulations and board bylaws issued during the year.

In 2016, CSBA issued 142 sample district materials. Along with the five regular Policy Updates issued in March, May, July, October and December, CSBA issued four special releases to address urgent issues that required districts’ attention before the next regularly scheduled



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Policy Update. In addition, CSBA issued 39 sample policies and board bylaws specifically tailored to county boards.

Legal Alert on board elections

Beginning Jan. 1, 2018, SB 415 (2015) limits local governments from holding an election on a date other than a statewide election date. Specifically, districts must hold their elections on the scheduled statewide election date, in even-numbered years, if their voter turnout for a regularly scheduled election was at least 25 percent less than the average local voter turnout for the previous four statewide general elections. CSBA's *Legal Alert on the Impact of Senate Bill No. 415 on School Board Elections* (January 2017) explains the changes that may be needed in light of SB 415.

Typically, districts are limited to holding school board elections on the first Tuesday in November of each odd-numbered year. However, a school board may pass a resolution to move its election to the same day as a statewide primary or general election. Under SB 415, many districts will now be *required* to pass such a resolution to change their school board election date. When a school board consolidates its election, the term of office of all incumbent board members must be extended accordingly.

CSBA's Legal Alert describes how to determine whether the district meets the voter turnout threshold that subjects it to the new law. If it does, it must develop a plan by Jan. 1, 2018 to consolidate its election with the statewide election not later than the Nov. 8, 2022 statewide election.

The Legal Alert is available at www.csba.org/LegalResources. CSBA also intends to update BB 9220 - Governing Board Elections to reflect SB 415 and other new laws affecting the election process.



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